

Congress of the United States
Washington, DC 20515

August 16, 2022

The Honorable Joseph V. Cuffari
Inspector General
Department of Homeland Security
245 Murray Lane, S.W., Building 410
Washington, D.C. 20528

Dear Inspector General Cuffari:

Since May 2022, we have written to you on three separate occasions to request documents and information about your conduct as Inspector General: first, following serious allegations that your office censored findings of domestic abuse and sexual harassment by Department of Homeland Security (DHS) employees¹; second, after you failed to promptly notify Congress of crucial information on the Secret Service's erasure of text messages related to the January 6, 2021, attack on the U.S. Capitol²; and third, after new information emerged on your repeated failures to gather text messages from the Secret Service and other senior officials related to the January 6 attack.³

In response to the Committees' requests, you have refused to produce responsive documents and blocked employees in your office from appearing for transcribed interviews. Your obstruction of the Committees' investigations is unacceptable, and your justifications for this noncompliance appear to reflect a fundamental misunderstanding of Congress's authority and your duties as an Inspector General. If you continue to refuse to comply with our requests, we will have no choice but to consider alternate measures to ensure your compliance.

¹ Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, and Chairman Bennie G. Thompson, Committee on Homeland Security to Inspector General Joseph V. Cuffari, Department of Homeland Security (May 10, 2022) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2022-05-10.CBM%20Thompson%20to%20Cuffari-DHS%20IG%20re%20Reports.pdf>).

² Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, and Chairman Bennie G. Thompson, Committee on Homeland Security to Inspector General Joseph V. Cuffari, Department of Homeland Security, and Chair Allison C. Lerner, Council of the Inspectors General on Integrity and Efficiency (July 26, 2022) (<https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2022-07.26.CBM%20BGT%20to%20Cuffari-DHS%20and%20Lerner-CIGIE%20re%20Secret%20Service.pdf>).

³ Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, and Chairman Bennie G. Thompson, Committee on Homeland Security to Inspector General Joseph V. Cuffari, Department of Homeland Security (Aug. 1, 2022) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2022-08-01.CBM%20BGT%20to%20Cuffari-DHS%20re%20Document%20Request.pdf>).

Committees' May 2022 Requests and DHS IG's Refusal to Comply

On May 10, 2022, the Committees wrote to you requesting documents related to two DHS Office of Inspector General (OIG) reports that your office reportedly sought to censor or delay. These reports included troubling findings of domestic abuse and sexual harassment by DHS employees. The Committees' letter explained that your office's conduct "calls into question whether you are able to perform high-quality audit work with integrity, objectivity, and independence, and provide accountability and transparency over government programs and operations."⁴

In response to our requests, your office withheld responsive documents and instead produced a copy of a letter you previously sent to the Senate Committee on the Judiciary in response to their separate inquiry.⁵ This response failed to comply with the requests in our May 10, 2022, letter. Among other things, you failed to produce any drafts, working papers, or communications regarding the censored or delayed reports.

On August 8, 2022, you informed the Committees that on August 3—more than 12 weeks after receiving our requests—you had "requested an opinion from OLC [Office of Legal Counsel] concerning whether I am permitted to release deliberative records and information to Congress."⁶ The possibility that responsive documents may reflect the deliberations of your office is not a valid justification for withholding these documents from Congress, particularly where our investigation is focused precisely on potential misconduct in your office.⁷ We are

⁴ Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, and Chairman Bennie G. Thompson, Committee on Homeland Security to Inspector General Joseph V. Cuffari, Department of Homeland Security (May 10, 2022) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2022-05-10.CBM%20Thompson%20to%20Cuffari-DHS%20IG%20re%20Reports.pdf>).

⁵ Letter from Inspector General Joseph V. Cuffari, Department of Homeland Security, to Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, and Chairman Bennie G. Thompson, Committee on Homeland Security (May 17, 2022) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/DHS-OIG.220517.Response%20to%20CBM%20Thompson%20re%20DHS%20OIG%20Projects%20Cover.pdf>); Letter from Inspector General Joseph V. Cuffari, Department of Homeland Security, to Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, and Chairman Bennie G. Thompson, Committee on Homeland Security (May 25, 2022) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/DHS-OIG.220525.Response%20to%20CBM%20Thompson%20re%20DHS%20OIG%20Projects%20Cover.pdf>).

⁶ Letter from Inspector General Joseph V. Cuffari, Department of Homeland Security, to Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, and Chairman Bennie G. Thompson, Committee on Homeland Security (Aug. 8, 2022) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/DHS-OIG.220808.Response%20to%20CBM%20BGT%20re%20DHS%20IG%20Reports.pdf>).

⁷ Congress often obtains documents related to executive branch deliberations where they are relevant to an investigation and Committees have long taken the position that deliberative process privilege, like other common law privileges, is not a valid basis to withhold documents from Congress. *See, e.g.*, Memorandum from Chairwoman Carolyn B. Maloney to Members of the Committee on Oversight and Reform (July 20, 2022) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2022.07.20%20COR%20Census%20Memorandum.pdf>) ("The successful resolution of the Committee's lawsuit against Secretary Ross and Attorney General

extremely concerned that your highly unusual request for OLC to intervene was a delay tactic meant to hamper the Committees' inquiry.

Committees' July and August 2022 Requests and DHS IG's Refusal to Comply

On July 26, 2022, the Committees wrote to you expressing serious concerns with your investigation into the Secret Service's preparation for and response to the January 6, 2021, insurrection at the U.S. Capitol.⁸ During that investigation, you failed to provide adequate or timely notice that the Secret Service refused to comply with DHS OIG requests for information and you failed to notify Congress after learning that the Secret Service had erased text messages related to this matter. In light of our grave concerns about your lack of transparency and independence, we urged you to step aside from this critical investigation and allow another IG to complete this work.

On August 1, 2022, the Committees wrote to you again and requested documents and communications on the decision not to pursue missing Secret Service text messages or text messages from former DHS leaders, as well as your failure to provide timely and sufficient notification to Congress. The Committees also requested that two Deputy Inspectors General be made available for transcribed interviews.⁹

On August 8, you sent a letter to our Committees refusing to acknowledge any failures in the adequacy and timeliness of your notification to Congress.¹⁰ You gave no indication that you

Barr vindicates the authority of the Committee to conduct robust oversight of the Executive Branch and to obtain Executive Branch documents, including with respect to potentially illegal conduct, despite inappropriate and overbroad assertions of attorney-client privilege and deliberative process privilege.”); Letter from Chairman Jason Chaffetz, et al., Committee on Oversight and Government Reform, to Huban Gowadia, Acting Administrator, Transportation Security Administration (May 2, 2017) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2022.07.20%20COR%20Census%20Memorandum.pdf>); Letter from Chairman Jason Chaffetz, et al., Committee on Oversight and Government Reform, to Huban Gowadia, Acting Administrator, Transportation Security Administration (May 2, 2017) (“The House of Representatives derives its authority from the United States Constitution and is bound only by the privileges derived therefrom. ... [N]either the Committee nor the United States House of Representatives recognizes purported non-disclosure privileges associated with the common law.”) (online at <https://republicans-oversight.house.gov/wp-content/uploads/2017/05/2017-05-02-JEC-EEC-to-Gowadia-TSA.pdf>).

⁸ Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, and Chairman Bennie G. Thompson, Committee on Homeland Security to Inspector General Joseph V. Cuffari, Department of Homeland Security, and Chair Allison C. Lerner, Council of the Inspectors General on Integrity and Efficiency (July 26, 2022) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2022-07.26.CBM%20BGT%20to%20Cuffari-DHS%20and%20Lerner-CIGIE%20re%20Secret%20Service.pdf>).

⁹ Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, and Chairman Bennie G. Thompson, Committee on Homeland Security to Inspector General Joseph V. Cuffari, Department of Homeland Security (Aug. 1, 2022) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2022-08-01.CBM%20BGT%20to%20Cuffari-DHS%20re%20Document%20Request.pdf>).

¹⁰ Letter from Inspector General Joseph V. Cuffari, Department of Homeland Security, to Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, and Chairman Bennie G. Thompson, Committee on Homeland Security (Aug. 8, 2022) (online at

would step aside from the investigation, raising the prospect that the inquiry could be further compromised. You also refused to provide any documents responsive to our request and or allow your staff to be interviewed, stating, “we do not authorize our staff to sit for transcribed interviews with your committee about these ongoing matters.”¹¹ As described below, you did not provide valid justifications for your refusal to comply with the Committees’ requests.

DHS IG Violated the Inspector General Act

Contrary to the claims in your August 8, 2022, letter, evidence, including new information released by the Project On Government Oversight, makes clear that you have not complied with your statutory reporting obligations.¹²

In your August 8 letter, you stated that “consistent with the law, I have reported to Congress various access issues that my office has experienced since 2021.” You highlighted DHS OIG’s semiannual report sent to Congress in November 2021.¹³ However, this report made no mention of Secret Service text messages and left the impression that access issues had been resolved. This “periodic” report was transmitted to Congress nine months after communications were requested from the Secret Service, and long after your office learned that text messages were missing. Preventing Congress from being notified of these serious access issues for nine months is not timely. The Inspector General Act of 1978 requires Inspectors General to “immediately” report to the head of the agency when they become “aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations.” The head of the agency must then “transmit any such report to the appropriate committees or subcommittees of Congress within seven calendar days.”¹⁴

New reporting reveals that DHS OIG removed key information before sending a subsequent semiannual report to Congress in June 2022. An earlier draft version of the report would have provided Congress with a detailed explanation of Secret Service’s “resistance to OIG’s oversight activities” and refusal to produce documents.¹⁵ The draft report also included detailed information about the Secret Service’s erasure of text messages:

<https://oversight.house.gov/sites/democrats.oversight.house.gov/files/DHS-OIG.220808.Response%20to%20CBM%20BGT%20re%20Document%20Request.pdf>).

¹¹ *Id.*

¹² Project On Government Oversight, *DHS Watchdog Nixed Alert to Congress About Purged January 6 Texts, New Docs Show* (Aug. 11, 2022) (online at www.pogo.org/investigation/2022/08/dhs-watchdog-nixed-alert-to-congress-about-purged-january-6-texts-new-docs-show).

¹³ Letter from Inspector General Joseph V. Cuffari, Department of Homeland Security, to Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, and Chairman Bennie G. Thompson, Committee on Homeland Security (Aug. 8, 2022) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/DHS-OIG.220808.Response%20to%20CBM%20BGT%20re%20Document%20Request.pdf>).

¹⁴ 5 U.S.C. App. (IG Act) § 5(d).

¹⁵ Project On Government Oversight, *DHS Watchdog Nixed Alert to Congress About Purged January 6 Texts, New Docs Show* (Aug. 11, 2022) (online at www.pogo.org/investigation/2022/08/dhs-watchdog-nixed-alert-to-congress-about-purged-january-6-texts-new-docs-show).

Further, on February 23, 2022—more than 2 months after OIG renewed its requests for select Secret Service employees’ text messages—Secret Service claimed [an] inability to extract text message content due to an April 2021 mobile phone system migration, which wiped all data. Secret Service caused significant delay by not clearly communicating this highly relevant information at the outset of its exchanges with OIG during this reporting period. Moreover, Secret Service has not explained why it did not preserve the texts prior to the migration.¹⁶

The final June 2022 semiannual report submitted to Congress did not include any of this language. It did not reveal that Secret Service text messages had been erased—or even mention text messages at all. The failure to notify Congress of the destruction of text message related to the January 6th attack set back efforts to recover these crucial communications and complete this important investigation.

You also failed to take several other steps to inform Congress about this issue. In addition to your failure to send a seven-day letter, you also failed to send a management alert, which is intended to be sent when your office identifies an “immediate and serious threat of waste, fraud and abuse.” According to the DHS OIG website, “These alerts, usually triggered by findings made in the course of our audit, inspections and investigative work, may also contain recommendations to correct the identified concerns.”¹⁷ Career staff in your office reportedly drafted a management alert in October 2021 that would have alerted Congress and the public, but you “rejected sending the alert.”¹⁸

In your August 8, 2022, response to the Committees you claimed that since 2021, you and your staff “provided numerous briefings to Members and congressional staff about the widespread access issues that [you] have faced at every level of DHS.”¹⁹ Since 2021, you have not provided a single briefing to the Oversight Committee that identified access issues with DHS, despite the Oversight Committee’s jurisdiction over Inspectors General. You also did not adequately brief the Homeland Security Committee on access issues. While you briefed the Homeland Security Committee on July 15, 2022, regarding the missing Secret Service text messages, that was 14 months after you reportedly learned the text messages were unavailable. You also failed to disclose to the Homeland Security Committee that the OIG told DHS in July 2021 that it no longer needed the text messages. Further, you left out that Chad Wolf and Ken Cuccinelli’s text messages were also missing.

¹⁶ *Id.*

¹⁷ Department of Homeland Security Office of Inspector General, *Reports* (online at www.oig.dhs.gov/reports/management-alerts) (accessed on Aug. 10, 2022).

¹⁸ Project on Government Oversight, *DHS Watchdog Failed to Sound Alarm for Months on Secret Service’s Purged Jan. 6 Texts* (July 21, 2022) (online at www.pogo.org/investigation/2022/07/dhs-watchdog-failed-to-soundalarm-for-months-on-secret-services-purged-jan-6-texts).

¹⁹ Letter from Inspector General Joseph V. Cuffari, Department of Homeland Security, to Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, and Chairman Bennie G. Thompson, Committee on Homeland Security (Aug. 8, 2022) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/DHS-OIG.220808.Response%20to%20CBM%20BGT%20re%20Document%20Request.pdf>).

DHS IG Lacks Justification for Blocking Congressional Oversight

You have not identified a legitimate basis to refuse to comply with the Committees' requests for documents and information, and your claim that you are prevented from doing so due to an ongoing criminal investigation is inaccurate.

On July 20, 2022, DHS OIG instructed the Secret Service to stop its internal investigation due to the DHS OIG's "ongoing criminal investigation."²⁰ This was roughly 14 months after you reportedly learned that the Secret Service texts were unavailable—a period in which you had failed, as required by law, to "immediately" report this "particularly serious or flagrant" problem.²¹ You also abandoned efforts to collect text messages from the Secret Service 13 months ago.²² We are concerned that you are now improperly using a criminal investigation that you only recently announced to hide evidence from Congress of your misconduct and mismanagement.

Congress frequently conducts independent investigations even when a related criminal investigation is ongoing. As the Supreme Court has acknowledged, legislative inquiries need not yield to parallel proceedings, even if those proceedings are criminal in nature.²³ For example, in October 2017, Committee on Oversight and Reform Chairman Trey Gowdy and Committee on the Judiciary Chairman Bob Goodlatte launched a joint investigation into the Department of Justice (DOJ), including decisions involving "the investigation into campaign associates of then-candidate Donald Trump."²⁴ This ran parallel to Special Counsel Robert Mueller's criminal investigation that examined the actions of President Trump and his associates during the 2016 presidential campaign.²⁵ Chairs Gowdy and Goodlatte subpoenaed and received documents

²⁰ *Exclusive: DHS Inspector General Knew of Missing Secret Service Texts Months Earlier than Previously Known*, CNN (July 30, 2022) (online at www.cnn.com/2022/07/29/politics/secret-service-missing-texts-january-6-dhs-inspector-general/index.html).

²¹ Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, and Chairman Bennie G. Thompson, Committee on Homeland Security, to Inspector General Joseph V. Cuffari, Department of Homeland Security (Aug. 1, 2022) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2022-08-01.CBM%20BGT%20to%20Cuffari-DHS%20re%20Document%20Request.pdf>).

²² *Id.*

²³ *Hutcheson v. United States*, 369 U.S. 599, 618 (1962) (internal citations omitted) ("[S]urely a congressional committee which is engaged in a legitimate legislative investigation need not grind to a halt whenever responses to its inquiries might be potentially harmful to a witness in some distinct proceeding, or when crime or wrongdoing is disclosed").

²⁴ Committee on Oversight and Reform, *Press Release: Gowdy, Goodlatte Open Investigation into Decisions Made by DOJ in 2016* (Oct. 24, 2017) (online at <https://republicans-oversight.house.gov/release/gowdy-goodlatte-open-investigation-decisions-made-doj-2016/>).

²⁵ Department of Justice, *Special Counsel's Office - Special Counsel Robert S. Mueller III* (online at www.justice.gov/archives/sco-mueller) (accessed Aug. 10, 2022).

from DOJ and conducted transcribed interviews with current and former Federal Bureau of Investigation officials.²⁶

Between 2013 and 2015, DOJ conducted a criminal investigation into the targeting of conservative groups by the Internal Revenue Service.²⁷ At the same time, Oversight Committee Chairman Darrell Issa conducted an independent investigation and received over 700,000 pages of documents and conducted over 50 transcribed interviews.²⁸

Congress's Broad Authority to Investigate and the Committees' Investigation

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X.²⁹ The Committee also has legislative jurisdiction over the Inspector General Act of 1978 and has a long history of conducting oversight related to Inspectors General.

The Committee on Homeland Security has jurisdiction of “[o]verall homeland security policy” and the “[o]rganization, administration, and general management of the Department of Homeland Security” under House Rule X.³⁰

The Supreme Court has made clear that Congress has broad authority to inquire about a wide array of topics that could be the subject of legislation and appropriations:

The power of inquiry has been employed by Congress throughout our history, over the whole range of the national interests concerning which Congress might legislate or decide upon due investigation not to legislate; it has similarly been utilized in determining what to appropriate from the national purse, or whether to appropriate. The scope of the power

²⁶ See Committee on Oversight and Reform, *Press Release: Goodlatte, Gowdy Reach Agreement with the Department of Justice* (Apr. 23, 2018) (online at <https://republicans-oversight.house.gov/release/goodlatte-gowdy-reach-agreement-with-the-department-of-justice/>); Committee on Oversight and Reform and Committee on the Judiciary, Interview of James Rybicki (Jan. 18, 2018); Committee on Oversight and Reform and Committee on the Judiciary, Interview of James Comey (Dec. 7, 2018).

²⁷ *Justice Department Launches IRS Probe*, The Hill (May 14, 2013) (online at <https://thehill.com/policy/finance/150513-justice-department-launches-irs-probe/>); *DOJ: No Criminal Charges in IRS Tea Party Probe*, USA Today (Oct. 23, 2015) (online at www.usatoday.com/story/news/politics/2015/10/23/justice-closes-investigation-of-irs-no-criminal-charges-poor-management-not-a-crime/74470404/).

²⁸ Committee on Oversight and Reform, *Legislative and Oversight Accomplishments of the House Committee on Oversight and Government Reform* (Dec. 31, 2014) (online at <https://republicans-oversight.house.gov/report/legislative-oversight-accomplishments-house-committee-oversight-government-reform/>); Committee on Oversight and Reform, *About – IRS Targeting Investigation* (Apr. 21, 2016) (online at <https://republicans-oversight.house.gov/about-irs-targeting-investigation/>).

²⁹ House rule X, clause 4(c)(2).

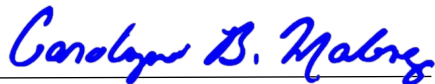
³⁰ House rule X, clause 4(j)(1)-(2).

of inquiry, in short, is as penetrating and far[-]reaching as the potential power to enact and appropriate under the Constitution.³¹

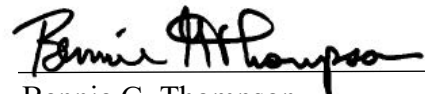
The Committees are seeking to determine whether you censored findings of domestic abuse and sexual harassment by DHS employees, covered up the extent of missing records in your investigation of the January 6, 2021, insurrection, and failed to fulfill the requirements for Inspectors General to perform their work with independence and objectivity. Full compliance with our requests is necessary, in part to determine whether legislative reforms are needed to ensure the duties of Inspectors General are carried out in an “independent and objective” manner and that Congress is kept “fully and currently informed about problems and deficiencies” as required by law.³²

Your failure to comply with our outstanding requests lacks any legal justification and is unacceptable. Please provide all responsive documents by August 23, 2022, and make the individuals requested for transcribed interviews available by the same date. If you continue to obstruct, we will have no choice but to consider alternate means to ensure compliance.

Sincerely,



Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform



Bennie G. Thompson
Chairman
Committee on Homeland Security

cc: The Honorable James Comer, Ranking Member
Committee on Oversight and Reform

The Honorable John Katko, Ranking Member
Committee on Homeland Security

³¹ *Barenblatt v. U.S.*, 360 U.S. 109, 111 (1959). See also *Trump v. Mazars USA, LLP*, 591 U.S. ___ (2020) (citations omitted) (“This ‘power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function.’ Without information, Congress would be shooting in the dark, unable to legislate ‘wisely or effectively.’ The congressional power to obtain information is ‘broad’ and ‘indispensable.’ It encompasses inquiries into the administration of existing laws, studies of proposed laws, and ‘surveys of defects in our social, economic or political system for the purpose of enabling the Congress to remedy them’”).

³² 5 U.S.C. App. (IG Act) § 2.