



April 1, 2021

Attorney General Merrick Garland
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Garland:

The Project On Government Oversight (POGO) is a nonpartisan independent watchdog that investigates and exposes waste, corruption, abuse of power, and when the government fails to serve the public or silences those who report wrongdoing. We champion reforms to achieve a more effective, ethical, and accountable federal government that safeguards constitutional principles. To that end, we write to encourage you to support the Inspector General Access Act (S. 426),¹ a bill recently introduced by a bipartisan group of senators led by Senate Judiciary Committee Chairman Richard Durbin and Senator Mike Lee. This bill was reported favorably out of the Senate Judiciary Committee by a strong bipartisan vote in June 2020 and passed the House via voice vote in the 116th Congress.²

POGO has led a bipartisan, politically diverse coalition of civil society organizations in calling on the Senate to expeditiously enact the Inspector General Access Act in the 117th Congress.³ Support for this reform is strong and comes from all points along the issue and ideological spectrum, ranging from right-leaning civil liberties groups to nonpartisan good government organizations to left-leaning advocacy outfits.

The Inspector General Access Act would make a straightforward revision to the Inspector General Act of 1978 by striking Section 8E of that bill. Section 8E creates a jurisdictional carve-out within the Department of Justice's Office of the Inspector General that essentially prohibits the inspector general from investigating allegations of misconduct by the department's attorneys, including prosecutors. The task of investigating such allegations is instead assigned to the Justice Department's Office of Professional Responsibility, **an entity that is not independent and has failed to adequately hold the department's attorneys accountable.**⁴ This carve-out is unique

¹ Inspector General Access Act of 2021, S. 426, 117th Cong., (2021). <https://www.congress.gov/bill/117th-congress/senate-bill/426>

² "Executive Business Meeting," Senate Committee on the Judiciary, June 25, 2020. <https://www.judiciary.senate.gov/meetings/06/25/2020/executive-business-meeting-1>; Inspector General Access Act of 2019, H.R. 202, 116th Cong., (2019). <https://www.congress.gov/116/bills/hr202/BILLS-116hr202rfs.pdf>

³ "Cross-Partisan Coalition Calls on Senate to Enact DOJ Accountability Bill," Project On Government Oversight, March 26, 2021. <https://www.pogo.org/letter/2021/03/cross-partisan-coalition-calls-on-senate-to-enact-doj-accountability-bill/>

⁴ Nick Schwellenbach, *Hundreds of Justice Department Attorneys Violated Professional Rules, Laws, or Ethical Standards*, Project On Government Oversight (March 13, 2014). <https://www.pogo.org/report/2014/03/hundreds-of-justice-department-attorneys-violated-professional-rules-laws-or-ethical-standards/>; Brooke Williams, Samata Joshi,

to the Justice Department. Inspectors general at every other federal agency are permitted to investigate potential wrongdoing by attorneys⁶ at their respective agencies.

We are concerned that the present framework does not sufficiently protect against or respond to allegations of misconduct by department attorneys, and that it undermines the Office of the Inspector General.

Whether it is problematic manipulations of documents and other abuses in the Foreign Intelligence Surveillance Act context,⁵ reported attempts to undermine the results of the 2020 presidential election by department officials,⁶ or potential discovery violations and misconduct by federal prosecutors,⁷ there is a distinct need for an independent mechanism through which to investigate allegations of misconduct and potential wrongdoing and to hold the department's attorneys accountable.

In most instances, inspectors general have a long and solid history of independence and integrity when it comes to spotlighting wrongdoing and making strong recommendations regarding how to respond to substantiated instances of misconduct.⁸ In other words, inspectors general can be an essential tool in ensuring a more accountable, transparent, and responsive federal government that also safeguards key constitutional principles.

Our justice system places immense power in the hands of prosecutors. When they wield their power fairly and ethically, it benefits the entire system: the accused, the victims of crime, and society in general. But when prosecutors fall short of this ideal, those failures can damage the system and gravely distort the pursuit of justice. In your new role as the nation's top law enforcement official, we urge you to support the enactment of the Inspector General Access Act and to facilitate its implementation once the bill has been signed into law. The fair and equal administration of justice is not self-executing and requires the presence of independent watchdogs who can help crack down on wrongdoing and facilitate redress. Inspectors general are exactly that kind of watchdog, and that is why we are urging you to empower the department's inspector general through your support of this bill.

Shawn Musgrave, "The Secretive 'Discipline' Process for Federal Prosecutors," *The Intercept*, October 10, 2019. <https://theintercept.com/2019/10/10/justice-department-federal-prosecutors-accountability/>

⁵ Department of Justice Office of the Inspector General, *Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation* (December 2019). <https://www.justice.gov/storage/120919-examination.pdf>

⁶ Katie Benner, "The Justice Dept.'s inspector general opens an investigation into any efforts to overturn the election," *New York Times*, January 25, 2021. <https://www.nytimes.com/2021/01/25/us/politics/justice-dept-investigation-election-trump.html>

⁷ Jessica Brand, "The Epidemic of Brady Violations: Explained," *The Appeal*, April 25, 2018. <https://theappeal.org/the-epidemic-of-brady-violations-explained-94a38ad3c800/>

⁸ Joe Davidson, "Report finds sloppy handling of sexual misconduct cases in Justice Department," *Washington Post*, June 2, 2017. <https://www.washingtonpost.com/news/powerpost/wp/2017/06/02/report-finds-sloppy-handling-of-sexual-misconduct-cases-in-justice-department/>; Matt Stieb, "VA Inspector General: Secretary Wilkie Smearred Accuser," *New York Magazine*, December 13, 2020. <https://nymag.com/intelligencer/2020/12/va-secretary-doubted-aides-sexual-assault-claim-report.html>; Charles S. Clark, "Homeland Security Employees Aren't Disciplined Consistently for Misconduct," *Government Executive*, June 20, 2019. <https://www.govexec.com/management/2019/06/homeland-security-employees-arent-disciplined-consistently-misconduct/157897/>

Thank you, Attorney General Garland. We welcome your response to this letter and look forward to working with you on this and other related issues. If you have any questions or would like to discuss this matter further, please contact Dylan Hedtler-Gaudette, Government Affairs Manager at the Project On Government Oversight. Dylan can be reached at dylanhg@pogo.org or (207) 756-0274.

Sincerely,

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