April 7, 2022
President Joseph R. Biden
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear President Biden:

In order to preserve the integrity of the independent inspectors general system and to begin counteracting the pervasive culture of impunity at the Department of Homeland Security (DHS), we urge you to take swift and decisive action to address the chilling lack of independence demonstrated in multiple instances by DHS Inspector General Joseph V. Cuffari, who was under investigation as of February of this year by the Council of the Inspectors General on Integrity and Efficiency’s (CIGIE) Integrity Committee. While POGO has said in the past that it would be reasonable to place Cuffari on administrative leave pending the findings of a CIGIE investigation, our enclosed reporting reveals such extraordinary and improper deference to DHS officials that we call on you to immediately remove Cuffari from his position as DHS inspector general.¹

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.

As an organization, we vigilantly monitor the circumstances around how and why a president removes inspectors general. We have not hesitated to call for removals of inspectors general that, for lack of reasonable and detailed explanations to Congress and the public, undermine the integrity and nonpartisan nature of the inspector general community.² Nor do we, with sufficient explanation, hesitate to call for the removal of an inspector general who is not upholding the office’s statutory mandate to prevent waste, fraud, abuse, and mismanagement within their affiliated federal agency or entity. For example, we called for you to remove Federal Housing Finance Agency Inspector General Laura Wertheimer, and called for the Securities and

Exchange Commission to remove its inspector general, Carl Hoecker — both of whom abused their authority and undermined the integrity reasonably expected of inspectors general.  

POGO’s most recent investigation documents an unreleased survey in which more than 10,000 employees at DHS law enforcement components said they have experienced sexual harassment or sexual misconduct, part of an unpublished report that Cuffari still has not released, even though the survey was conducted from fiscal years 2012 to 2018. The same POGO investigation documents Cuffari’s signed instructions resulting in the removal of evidence from a 2020 report showing that Customs and Border Protection, a DHS component, substantiated domestic violence charges in 30 cases involving its employees — then continued to allow them access to government firearms.

That latest investigation is enclosed, as are previous POGO investigations which revealed that Cuffari quashed a pair of investigations involving the Secret Service that had been recommended by the agency’s career staff, that he repeatedly impeded and delayed two ongoing investigations into alleged intelligence manipulation and whistleblower retaliation, and that he may have illegally “retaliated” against former high-ranking employees within the DHS inspector general office.  

Cuffari’s lack of independence contributes to a culture of impunity at DHS and its components. Time and time again, Cuffari has used the authority of his office to bury instances of systemic wrongdoing and perpetuated an environment in which dysfunctional and predatory behavior goes unpunished. This should be deeply concerning to you and anyone else committed to the principles of accountability, transparency, and oversight in the federal government.

Cuffari’s failure to uphold the standards of his office undermines the legitimacy of the inspectors general system. As independent watchdogs tasked with the enormous responsibility of conducting oversight and strengthening accountability, inspectors general themselves must be held to the highest ethical standard. As Representative Gerry Connolly (D-VA), Chairman of the House Committee on Oversight and Reform’s Subcommittee on Government Operations, has said, “Inspectors general must be pure as the driven snow because if they’re not all their work is


tainted.” Cuffari has never even come close, repeatedly tainting the office’s work and allowing misconduct to be swept under the rug. Our investigations show that during his tenure as DHS inspector general, Cuffari has consistently compromised his independence by deferring to DHS management — which is unbefitting of his office and betrays the trust placed in him by the American public.

Cuffari must be held accountable for his actions. As an organization that has a longstanding history of advocating on behalf of a strong inspectors general system, we call for you to remove Cuffari. As long as he is inspector general, Cuffari is both a threat to the health of all independent inspectors general and a reminder that efforts to take corrective action against waste, fraud, and abuse lack the necessary independence needed to truly hold DHS officials accountable for wrongdoing.

Sincerely,

Danielle Brian

Enclosures: 4

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How a Federal Watchdog Suppresses Findings of Sexual Harassment and Domestic Violence

By Adam Zagorin & Nick Schwellenbach | Filed under investigation | April 07, 2022

More than 10,000 employees at law enforcement components of the Department of Homeland Security (DHS) say they have experienced sexual harassment or sexual misconduct, according to an unpublished federal watchdog report obtained by the Project On Government Oversight (POGO). That’s over one-third of the roughly 28,000 employees who responded to a survey conducted as part of the long-pending review.

DHS’s Office of Inspector General has been working on the report, which includes the survey responses, for more than four years. Capitol Hill received the draft report. POGO is not making it public in full at this time to protect sources who fear retaliation. None of its results have been previously released, even though a draft was cleared by a group of senior watchdog officials in late 2020.
Since then, a few top advisors close to Inspector General Joseph V. Cuffari have been trying to delete material from the sexual misconduct review, citing his removal of findings and evidence from previous reports. While it’s common for draft reports to face revisions to adjust language or double-check evidence and data, the wholesale proposed cuts of key material have led to delays of more than a year, an unusually long hold-up.

A censored version of one of those previous reports focused on domestic violence committed by DHS law enforcement personnel. It was published in November 2020. But POGO obtained an earlier draft of that document, which shows significant portions were removed prior to its release — for many of the same reasons now being used to justify major cuts from the sexual misconduct review.

It’s unclear whether even DHS Secretary Alejandro Mayorkas is aware of the shockingly high number of claims of sexual misconduct. Or that relatively few are ever officially reported. Or how those that do get official attention are ultimately dealt with by Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), the Transportation Security Administration (TSA), and the Secret Service.

It’s also unclear whether Mayorkas knows about the inspector general’s cuts from the 2020 report on domestic violence at DHS. Or that the agency substantiated those charges in 30 cases involving its employees — and then continued to allow them access to government-issued firearms.

A response from Mayorkas’ office gave no indication one way or the other. “By law, the DHS Office of Inspector General occupies a unique and independent status within the Department. DHS does not have any involvement with internal OIG deliberations or decisions,” a spokesperson for Mayorkas said in a statement provided to POGO.

In the sexual misconduct report, the sheer number of alleged abuses is all the more troubling because survey respondents reference their frequent fear of reprisal when considering whether to officially divulge what they say happened to them. Of the more than 10,000 survey respondents who say they experienced sexual misconduct during the seven-year period of fiscal years 2012 through 2018, only about 22% formally reported it. Among those who did report, a substantial number — about 41% — say doing so “negatively affected their careers.”

Taken as a whole, detailed evidence in the unfinished sexual misconduct report, as well as cuts from the domestic violence report, create the appearance that the four DHS components — which employ roughly 150,000 federal workers — suffer from a widespread culture of impunity, silencing, and retaliation when dealing with sexual misconduct and domestic violence.
A spokesperson for Mayorkas said the current administration has been trying to reform the agency. “Secretary Mayorkas has made it clear to the DHS workforce that sexual harassment and sexual assault will not be tolerated,” the spokesperson told POGO. “Since the start of the Biden-Harris Administration, DHS has taken important steps to combat abuse and misconduct, including reforms to Department policies and employee trainings.”

These revelations come just as Congress on a bipartisan basis renewed and expanded the landmark Violence Against Women Act (VAWA) by closing some key loopholes. In the words of former U.S. Representative Gabrielle Giffords (D-AZ), a prominent victim of gun violence, “It should anger all of us how many abusers and stalkers are able to slip through cracks in our laws and obtain guns.”

At the same time, influential Senate Republicans are trying to block two of President Joe Biden’s nominees because of allegations involving sexual harassment and domestic violence.

Senator Chuck Grassley (R-IA) — who has long kept close tabs on inspectors general — is seeking to delay a vote on one of Biden’s ambassador nominees who is accused of covering up sexual harassment allegations made against a close associate.

Senator James Lankford (R-OK), who sits on the Senate Homeland Security and Governmental Affairs Committee, recently cited a sworn 2021 affidavit alleging that Biden’s nominee to run ICE may have become violent with his wife at home.

“If these allegations of physical and violent domestic abuse are true, they are disqualifying for a law enforcement officer at any level,” Lankford said in a statement last month.

A spokesperson for Inspector General Cuffari offered only a limited reply in response to POGO’s detailed questions about the still-pending sexual misconduct report and the material removed from the domestic violence review. “Since coming on board in July 2019, Dr. Cuffari established the highest expectations for quality standards for every employee,” a spokesperson for Cuffari said in a statement emailed to POGO. “All reports initiated and published during his tenure meet appropriate quality standards.”

Part 1

“Better to be one of the guys than ‘that girl’”

In response to the sexual harassment survey, DHS employees provided several reasons for not reporting misconduct, such as believing some behavior was too minor, that their agency’s “law enforcement culture” was not supportive of reporting, or that no one would investigate their claims anyway. The draft report obtained by POGO quotes a female ICE employee saying: “this is the community I have to work in and grow in the ranks with and it’s better to be one of the guys than ‘that girl.’”
The unpublished report says that about 15% of federal law enforcement jobs are filled by women, and some agencies have even fewer. It notes that “women made up only 5 percent of CBP’s Border Patrol workforce.”

The draft also confirms that, in many cases, DHS managers did not investigate alleged offenders when employees filed formal complaints against them, even when those complaints led to six-figure financial settlements.

The unreleased document references 249 cases where DHS components reached settlements with employees who filed Equal Employment Opportunity (EEO) complaints related to sexual harassment. Yet in most cases — 185 out of 249 — inspector general staff found no records showing that DHS components carried out investigations or took disciplinary action against purported perpetrators.

While investigations of alleged offenders and potential discipline are not required to resolve an EEO complaint, they are strongly encouraged. The Equal Employment Opportunity Commission advises that once “on notice of alleged misconduct,” an agency “has a duty to exercise due care by launching an internal investigation, regardless of whether an EEO complaint is filed,” according to the draft report.

Even so, the draft found that, “although sexual harassment is a violation of each components’ policies and standards, none of the four components had formal mechanisms in place to administer discipline for violations reported exclusively through the EEO process.”

In one startling case, Customs and Border Protection paid a female employee $255,000 to settle her 2016 Equal Employment Opportunity complaint. She alleged her boss repeatedly made sexual remarks and propositioned her for sex. When she refused, the boss retaliated by denying her training and work opportunities, the unreleased draft says. It notes that an examination of CBP records showed “no indication the component conducted a corresponding misconduct investigation or administered disciplinary action for this case.”

In another case, a male Secret Service employee complained in 2018 that a male co-worker, “repeatedly stood over him and put his genitals near his face and shoulder.” As of late 2019, when the watchdog office wrapped up its fact-finding, the case was unresolved, and there was no record of any investigation or disciplinary action.

Part 2

“My experience is not an anomaly”

The draft report’s findings are consistent with accounts from a former insider and agency critic. Former Senior Patrol Agent Jenn Budd has said she was raped in the Border Patrol academy in the 1990s, faced pressure not to report it, and later experienced sexual harassment on the job.
“My experience is not an anomaly. In general, the agency has an attitude that male agents are to be believed and those who complain about sexual assault or harassment are not,” Budd, who also served as a Border Patrol intelligence officer, told POGO.

“Whether an agent is disciplined or not is never known to most victims because the agency claims privacy restrictions. Offenders are often moved from station to station, sector to sector, and victims are often given settlements to remain quiet,” Budd said.

Her experience may help explain why the unpublished survey showed about 41% of those who reported their harassment said they felt that doing so harmed their careers.

If you file an Equal Employment Opportunity complaint, “everyone in your [Border Patrol] station will know within a week,” Budd told POGO. “You will be given dangerous positions without backup, your car may be vandalized, you may find yourself being written up for minor infractions such as a wrinkled uniform, and they will isolate you with a do-nothing position.”

Despite acknowledging receipt of POGO’s query, Customs and Border Protection – the Border Patrol’s parent agency – did not provide comments for this story.

Part 3

“Irrelevant” and “Inflammatory”

Amid the #MeToo movement and a 36% increase in allegations of sexual misconduct from fiscal years 2017 to 2018, then-DHS Secretary Kirstjen Nielsen issued a statement about the problem of workplace harassment.

Nielsen stressed the need for DHS to “respond swiftly,” and to block “retaliation” against agency staff who reported abuse. In her statement, she referenced incidents of sexual misconduct tied to DHS personnel that appeared in news stories around the country. “Courageous women and men have come forward to report their experiences with unwanted sexual advances, comments, or conduct in the workplace. Preventing this type of behavior is a subject I feel strongly about,” she said.

Around this same time, in early 2018, the DHS watchdog office began its review of how DHS’s law enforcement divisions handled sexual misconduct. It examined reams of internal sexual misconduct claims and disciplinary files and surveyed personnel at all four DHS law enforcement components.

By the end of November 2020, an all-but-complete version of the unpublished report on sexual misconduct had been approved by Cuffari’s Office of Counsel, by quality assurance staff, and by three high-level watchdog officials, according to interviews conducted by POGO.
Now, more than a year later, significant parts of the document seem to be at risk — if the report is ever issued at all.

Top aides to Cuffari, who are still reviewing the document, have marked for removal any mention of public, high-profile cases of sexual misconduct at DHS — even though Secretary Nielsen alluded to such cases in her statements condemning sexual misconduct in early 2018.

Top aides to Cuffari have marked for removal any mention of public, high-profile cases of sexual misconduct at DHS.

“In recent years, all four components have faced widely reported allegations and incidents of sexual harassment and sexual misconduct,” reads one of many factually accurate segments marked for deletion by a Cuffari advisor.

“For example, in 2012, the ICE Chief of Staff resigned amid allegations of sexual harassment and several Secret Service employees solicited prostitutes in Cartagena, Colombia,” reads another, also marked for removal.

And yet another tagged for excision: “In 2017, public reports surfaced about CBP’s ‘rape table’ at the Newark airport where employees were held down while other employees simulated sexual acts on them.”

To support their argument for censoring these references, and others, senior Cuffari aides opined in writing that they were “irrelevant,” “inflammatory,” or “unnecessary.”

In an attempted rebuttal, a staffer working on the report argued, also in writing, that “[I] don’t think there is anything to be embarrassed about beginning a review with topics of high public interest.”

Part 4

“Second-Guessing”? 

Other efforts by Cuffari’s aides to excise passages cite an aversion to “second-guessing” disciplinary decisions within DHS, pointing to an earlier directive by Cuffari.

The unreleased draft also highlights the finding that, even when sexual misconduct does lead to discipline, accountability often falls short. For example, it says many of the employees alleged to have sexually harassed co-workers or engaged in sexual misconduct get written up for vague infractions like “conduct unbecoming,” “inappropriate conduct,” and “unprofessional behavior.”

Because these generic charges do not detail the sexual nature of the offense, it is harder to keep track of subsequent acts of misconduct, impeding accountability.
A defense of non-specific, generic charges is that they can make it easier to discipline employees in certain cases — notably where the standard of proof for a sexual offense cannot be met because evidence is weak or absent. But non-specific allegations may also present a false picture of reality and hamper the ability of agencies to track sexual offenders over time when there is recidivism.

Nonetheless, a top aide to Cuffari objected to a finding in the draft that generic charges are often used to deal with sexual misconduct, writing:

“Aren’t we again going behind or second guessing the decisions of disciplinary authorities?” Another official backed that up, citing two prior reports issued under Cuffari that also cut findings regarding discipline.

Part 5

“Peel Off the Remaining Language”

One of those prior reports focused on domestic violence by DHS law enforcement agents.

A pre-publication draft of the domestic violence report obtained by POGO prominently highlighted 35 cases where DHS law enforcement agents — mostly within Customs and Border Protection — had engaged in domestic violence but had not been convicted.

Although DHS internal affairs officials “substantiated” their violent abuse of domestic partners, in 30 cases they kept their jobs and their government-issued guns. “In most instances the employee received little or no discipline and remained a law enforcement officer with access to a firearm,” the draft states.

This information was stripped out of the final document published in November 2020.

Instructions to remove this material, in addition to a data table and summaries of how and whether DHS disciplined the offenders, appeared in a July 9, 2020, email signed by Cuffari, also obtained by POGO.

“Peel off the remaining language and cases that essentially go beyond Lautenberg and risk appearing biased/in the posture of second guessing DHS disciplinary decisions without full facts and potentially in violation of applicable rules,” Cuffari wrote in the email. The Lautenberg Amendment is a law specifying that persons convicted of domestic violence cannot carry firearms.

In response to Cuffari’s directive, his staff removed nearly four pages of factual evidence, narrowed the declared scope of the report, and changed its title — essentially suppressing evidence, only to publish a softer, markedly incomplete version of the original document.
What had been described in the original draft as a presentation of how DHS handles “arrests and/or convictions” for domestic violence, was recast and limited to a technical analysis of the department’s compliance with the Lautenberg Amendment, which applies only to convictions.

The change in the report’s title highlights the shift. The original title, “DHS Has Not Adequately Addressed Law Enforcement Misconduct Related to Domestic Violence,” was weakened to read, “DHS Components Have Not Fully Complied with the Department’s Guidelines for Implementing the Lautenberg Amendment.”

Part 6
“A Clear and Compelling Need to Know”

But the title change overlooked a key fact: Existing agency policies already allow and actually encourage DHS to take action against alleged offenders — even if they avoid a conviction for domestic violence that would trigger the Lautenberg Amendment.

As a suppressed portion of the draft report clearly notes, DHS rules stipulate that even without a domestic violence conviction, agency components can “still investigate the offenses to determine whether the employees engaged in misconduct.” And a finding of misconduct — even it occurs off duty — can result in discipline, up to and including termination.

One former Customs and Border Protection official was pointed in his criticism. “It is highly inappropriate for that information to be stripped from the report,” former Assistant Secretary of Internal Affairs James Tomsheck told POGO. “It is their job to second guess and look at disciplinary practices to ensure consistency.”

He pointed to “wild discrepancies inside the Border Patrol” in disciplining employees for on-duty and off-duty conduct, such as confirmed instances of domestic violence. “If they liked an employee, they diluted discipline,” Tomsheck said.

There is no question that other inspector general offices have focused on how discipline is administered. A case in point: a 2015 report by the Justice Department watchdog. It found employees “are being charged inconsistently, which raises a potential that employees may receive inconsistent penalties for similar misconduct.”

Critics say DHS’s Customs and Border Protection, in particular, needs more scrutiny because of its wide-ranging power at and near borders and because it has more agents than any other law enforcement organization in the U.S.

“The public has a clear and compelling need to know what's going on in America's largest law enforcement agency,” Tomsheck said.
Part 7

“Punched His Wife in the Face”

Cuffari’s directive to remove material from the 2020 domestic violence report led to the stripping out not only of statistics, but of disturbing case studies as well. One deletion involved the factual account of an unnamed CBP agent attacking his own wife and another woman.

“A CBP officer was arrested and charged with assault after he punched his wife in the face,” says the excised segment.

Following the CPB agent’s assault on his wife, which the agent admitted in court papers despite never being convicted, CBP suspended him for five days, the deleted segment says.

Less than two years later, the agent assaulted another woman. CBP again suspended him, this time for 15 days. Then he returned to work.

During investigations of the assaults, CBP removed his firearm. After each investigation, it was returned to him.

No mention of the CBP agent’s assault on his wife, or other specific incidents of domestic violence at DHS law enforcement divisions ever appeared in the published version of the report.

Context in the domestic violence report was also put on the chopping block.

Federal standards in place at the time say that inspections “should provide the reader with the context ... to help ensure the focus is not too narrowly drawn and to give clearer understanding of the impact of any report recommendations.”

Despite this guidance, the final report did not include a statement from the draft that read, “Research ... suggests that domestic violence is higher in law enforcement families than in the general population.”

Cuffari’s advisors also directed the deletion of the statement that “domestic violence victims are five times more likely to be killed if their abuser has access to a gun” and an associated citation to the American Journal of Public Health.

Part 8

“The Border Patrol closes ranks”
The increased risk to victims is in part what motivated passage of the Lautenberg Amendment, which the DOJ described as “a tool” to remove firearms from “certain explosive domestic situations thus decreasing the possibility of deadly violence.” But the Lautenberg Amendment applies only when there is a conviction.

The case of the CBP agent who admitted to punching his wife, but was never convicted, illustrates the limits of relying solely on the criminal justice system. While assailants may be arrested, and their violence may be well documented, they are often not prosecuted or convicted. Indeed, the domestic violence report says that out of a sample of 162 domestic violence allegations over 2016 through 2018, only two led to convictions.

However, each DHS law enforcement component has an internal affairs unit. One such unit is CBP’s Office of Professional Responsibility.

According to James Wong, a former CBP deputy assistant commissioner for internal affairs, when a CBP employee is arrested by local law enforcement, the Office of Professional Responsibility opens a parallel investigation.

The office keeps in touch with local law enforcement or the district attorney — so that if they decline to prosecute, the office can proceed with its own administrative investigation “to get rid of the bad apples,” Wong said.

Under such circumstances, an administrative investigation is often the only means to hold perpetrators accountable.

Wong, Tomsheck, the former CBP official, and Budd, the ex-Border Patrol agent, all told POGO that the Border Patrol, a part of CBP, has particularly strong relationships with local law enforcement along the U.S.-Mexico border. Border Patrol managers frequently use those relationships to pull strings or apply pressure to persuade local police to downgrade or dump charges against CBP or other DHS agents.

As Wong put it, “The Border Patrol closes ranks.”

According to Tomsheck, local Border Patrol managers sometimes even pressure victims to drop charges. He says that they frequently “go to victims and say, ‘If you go forward with these charges, [your] primary breadwinner … will be out of a job.’” Wong said law enforcement at all levels, including at CBP, often try to influence spouses, or other potential complainants, not to testify against their alleged abusers.

When victims recant or withhold their testimony, it can pose a significant hurdle to criminal prosecution, according to researchers.

**Part 9**

**“The Bigger Picture”**
Wong said that any effort to understand how CBP and other DHS law enforcement components deal with domestic violence by their own agents cannot be limited to convictions that trigger the Lautenberg Amendment. He said there is a clear additional need to examine administrative investigations, their findings, and the discipline that results — not just convictions. “That’s the bigger picture,” Wong said.

He also said the propensity to commit domestic violence off duty is a sign of how Border Patrol agents, who often work with vulnerable immigrants in remote settings far from public view, will conduct themselves on the job.

“It raises questions about someone’s fitness for the job if they abuse someone they have committed their life to,” Wong said. “How are they going to treat a total stranger they have no relationship with? Who’s going to stop them?”

A portion of the draft report that was cut before publication addresses those questions.

“In cases where the employee has shown a propensity to violence, agencies put victims and the public at risk of further violence by keeping weapons in these individuals’ hands,” the draft report says in another section that was removed.

Recently, the head of ICE’s union noted the connection between domestic violence and fitness for law enforcement duty when he raised questions about Biden’s nominee for ICE director, Harris County, Texas sheriff Ed Gonzalez, who faces allegations of violence against his wife.

“Federal law enforcement agencies are entrusted by the American people to enforce laws passed by our elected representatives, and to do so in an honorable, humane, and respectable fashion,” wrote Chris Crane, National ICE Council president, in a letter regarding the allegations against Gonzalez sent to Senator Gary Peters (D-MI), chairman of the Senate Homeland Security Committee. “The ‘good old boy’ culture that currently exists within our agency needs to end.”

Gonzalez has denied the accusations. “It’s false, it’s all politics,” he told a local Houston news station that also reported his wife has denied the allegations and that he was never charged.

But worry about his nomination is only the latest concern, widely shared across the political spectrum, about domestic violence in the ranks of law enforcement — even in the absence of criminal convictions.

The draft report speaks to those concerns. Given that some 45,000 CBP law enforcement officers are required to carry guns — with another 12,000 at ICE, and 5,000 at the Secret Service — the draft report concluded that, “it is imperative that DHS and its components take appropriate action against those who have committed domestic violence.”
Yet these statements were also removed, as well as several recommendations calling for disciplinary improvements at the four DHS law enforcement components.

**Part 10**

**An Undeniable Pattern**

Last June, about two years into Cuffari’s tenure as DHS’s top watchdog, the Government Accountability Office (GAO) issued a report noting serious deficiencies in his office, some that predated his arrival.

Among other problems, the GAO found that little or nothing had been done to reduce delays in completing reports, noting that an increasing percentage are taking longer than 18 months to publish.

While GAO made no mention of the unfinished review of sexual misconduct, it fits the bill because it has been in the works since February 2018 — and Cuffari’s office has now been stalling a near-final draft for more than a year and counting.

According to GAO, “without timely DHS OIG reports, DHS’s ability to respond to such oversight efforts and Congress’s ability to conduct effective oversight of DHS operations are limited.”

Moreover, the suppressed DHS watchdog reports on sexual misconduct and domestic violence are part of a pattern where Cuffari has appeared unwilling to oversee his department as an independent watchdog.

In an article published in April 2021, POGO documented how Cuffari refused to approve any review into the use of force by Secret Service agents in clearing Black Lives Matter protestors from Lafayette Square across from the White House. Around the same time, he also refused to probe a sizable outbreak of COVID-19 among Secret Service agents.

In July 2021, POGO documented how, as part of an investigation into CBP’s 2019 Facebook scandal where at least 60 Border Patrol agents engaged in misconduct such as posting racist and sexist comments online, Cuffari prevented his own professional investigators from interviewing senior DHS officials about their knowledge of the matter.

In the same article, POGO described, using documents, various ways in which Cuffari delayed and interfered with a probe into charges made by a high-ranking DHS whistleblower who claimed that politically sensitive intelligence was being manipulated and suppressed by top DHS officials, including then acting secretary Chad Wolf. Wolf and other top officials denied the charges.
And in February, POGO reported that Cuffari is the principal target of a probe into his alleged retaliation against an official then serving as his top deputy. Cuffari has denied retaliating.

Yet more recently, Cuffari finds himself confronting a very different kind of criticism: that he signed off on a report that allegedly mischaracterizes the facts and is harsh on DHS management.

In March, Cuffari's office issued a report finding “egregious conditions” and understaffing in an ICE detention center, calling for the “immediate removal” of immigrant detainees.

In ICE’s official response, the agency wrote that it has questioned whether the report met federal standards and alleged that Cuffari’s office “falsified and mischaracterized evidence, and has ignored facts in order to achieve preconceived conclusions.”

Cuffari’s office has responded that it “fully disagrees” and stands by the accuracy of its report. “Our employees’ impartiality, independence, and integrity are essential to our oversight work and will remain so moving forward,” the inspector general’s office said in a statement.

Sadly, Cuffari himself has an undeniable pattern of removing significant facts and evidence from major reports. As a result of this pattern, his independence and impartiality are in question. And, intentionally or not, he is effectively protecting alleged predators inside DHS.
In the months leading up to the 2020 election, the Department of Homeland Security’s top watchdog, appointed by then-President Donald Trump, quashed a pair of investigations involving the Secret Service that had been recommended by the agency’s career staff, according to multiple federal sources and records reviewed by the Project On Government Oversight (POGO).

One of the inquiries would have scrutinized the Secret Service’s controversial use of force in and around Washington, D.C.’s Lafayette Square last June against people protesting the killing of George Floyd. The aggressive removal of demonstrators by the Secret Service and other law enforcement agencies led to injuries, which immediately preceded Trump’s photo op at a church across the square where he brandished a Bible upside down.
A second proposed inquiry would have examined Secret Service policies for handling the threat of COVID-19 to agents protecting high-level officials including the president.

As a result of Inspector General Joseph Cuffari’s decision not to probe the chaotic Lafayette Square episode, a variety of unanswered questions remain surrounding the Secret Service’s adherence to its own use-of-force and related policies. Because Cuffari blocked the proposed review, it’s unclear if a full picture will ever emerge of who was in charge or what happened inside the Secret Service’s Joint Operation Center, which normally plays a key coordination role when protestors are cleared from Lafayette Square and its environs.

While not the aim of the probe, an investigation could have shed light on a central point that remains in dispute: Trump administration officials have contended that clearing protestors just coincidentally happened right before the photo op. Many critics find that implausible.

Yet the Secret Service was deeply involved in both events. Moreover, the White House staffer who organized Trump’s photo op was top Secret Service official Anthony Ornato who, in a reportedly unprecedented arrangement, was on leave at the time to serve as White House deputy chief of staff for operations. It remains unclear whether Ornato’s role in the events of Lafayette Square ever came under scrutiny. (Ornato has since returned to the Secret Service, where he now directs the agency’s training efforts.)

Ornato also coordinated campaign logistics for Trump, then-Vice President Mike Pence, and others at political events, some of which became COVID-19 super-spreaders, infecting agents and others. Cuffari’s sidelining of his agency’s proposed review of Secret Service COVID-19 policies avoided any potential examination of his role and why so many agents, not to mention Trump, contracted the illness. At one point, more than 130 agents, or about 10% of the agency’s core security personnel, were ordered to isolate or quarantine after testing positive for COVID-19, according to the Washington Post, which first reported the extent of the spread.

A Secret Service spokesperson would not comment to POGO, other than to say that the agency has been following all Centers for Disease Control and other appropriate protocols.

An investigation would also likely have examined Secret Service protocols last October when Trump, presumably still contagious with COVID-19, ignored medical advice and rode around waving to supporters from a presidential SUV as Secret Service agents were sealed inside with him.

“Any potential criticism of the administration or the White House likely was a factor in Cuffari’s decisions and helped determine what work the agency would and would not be permitted to take on,” said a federal official in the government oversight community familiar with the matter who requested anonymity because they are not authorized to speak to the press.
Indeed, Cuffari’s decision to avoid delving into such sensitive issues in the run-up to a presidential election inevitably raises questions about his role as an independent and non-partisan watchdog overseeing one of the largest and most consequential Cabinet departments. That concern is compounded because he did so by overruling the previously unreported recommendations of his own staff.

Unlike most other Trump appointees, but typical for inspectors general, Cuffari remains in his role during the Biden administration.

“When there are hot-button, politically sensitive matters, those are precisely the kind of issues an inspector general should take on,” a former inspector general, who requested anonymity because he routinely interacts with watchdog offices, told POGO.

“Our office does not have the resources to approve every oversight proposal,” a spokesperson for Cuffari’s office told POGO. “We have to make tough strategic decisions about how to best use our resources for greatest impact across the Department. In both of these cases, we determined that resources would have a higher impact elsewhere.”

“That a matter is politically sensitive is not a reason in itself to review the issue, nor is it a reason to decline to take it up,” the spokesperson emailed. The spokesperson also pointed to a number of reviews that they said show a willingness to handle politically sensitive probes. The first review the spokesperson referred to is of Secret Service expenditures at Trump’s golf course in Scotland, which was published in March 2020, but that investigation was launched many months before Cuffari became the inspector general.

The spokesperson cited Cuffari’s history as a mid-level civil servant across a variety of Republican and Democratic administrations as evidence that he is not partisan. The spokesperson left unmentioned Cuffari’s preceding six years as an advisor to Republican Governors Jan Brewer and Doug Ducey in Arizona.

Cuffari’s deputy and chief of staff, Kristen Fredricks, also emailed POGO that “you may be interested in related information” and provided a link to a December report commissioned by Cuffari’s office with a private law firm that investigated his subordinates for “undermining” him. That $1.4 million examination of Cuffari’s employees included investigating them for their complaints about Cuffari to Congress and a council of inspectors general—communications that are constitutionally and legally protected regardless of motive.

The revelations regarding the scuttled probes come as the Government Accountability Office is poised to release a review of Cuffari’s office, which will be the focus of an April 21 House Homeland Security Committee hearing.

Congress has also raised questions about the office and Cuffari’s leadership. In a March 2020 letter to Cuffari, Representative Bennie Thompson (D-MS), chair of the House Homeland Security Committee, wrote that he had concerns about “the willingness of the office to conduct in-depth examinations of sensitive topics.”
Part 1

“You can’t legislate a spine”

The Lafayette Square protests began on May 29, 2020, as those assembling joined a wave of nationwide activism sparked by video of Minneapolis police officer Derek Chauvin kneeling on George Floyd’s neck for over nine minutes even after Floyd, a Black man, pleaded, “I can’t breathe” and didn’t have a pulse.

On June 1, federal forces used chemical agents and pepper balls to expel demonstrators from Lafayette Square. Soon after, Trump, several high-level officials, and Secret Service agents walked from the White House across the square to St. John’s Episcopal Church, where the president held up a Bible in a staged photo op.

The hurried and unexpected use of force contrasted with long-standard methods for clearing demonstrators from Lafayette Square. Directly across from the White House, the square is a common venue for protests. The Secret Service manages to clear it—often dozens of times in a year—without resorting to smoke canisters or other dangerous methods.

Firsthand accounts from the demonstrations describe, and video shows, Secret Service officers charging at the largely peaceful protestors, followed by barely audible warnings from the Park Police telling protestors to clear the square and surrounding streets. The use of force injured protestors and journalists.

The episode drew rebukes from a number of Republicans. “Should you use tear gas to clear a path so the president can go have a photo-op? The answer is no,” said Senator Tim Scott (SC), the only Black Republican in the Senate.

Chairman of the Joint Chiefs of Staff General Mark Milley, who participated in the photo op, later apologized. Some ex-Secret Service employees were also reportedly disturbed by the deployment of their former agency in the incident.

On June 2, the day after the use of force and photo op, congressional leaders sought answers from the Secret Service and other agencies.

On June 10, career staff at the Department of Homeland Security’s Office of Inspector General proposed a probe of the Secret Service’s use of force in Lafayette Square, according to internal records reviewed by POGO.

A few days later, the Secret Service admitted it had used pepper spray in Lafayette Square after having first denied doing so.

On June 18, Cuffari rejected his career staff’s proposal to examine the Lafayette Square incident, according to the records.
He apparently made informal comments saying he preferred data-driven investigations and that it was more appropriate for the Secret Service to conduct a review of its own actions, according to several federal sources who requested anonymity due to fear of retaliation and because they are not authorized to speak to the press.

The former inspector general POGO spoke with voiced concerns about Cuffari’s alleged rationale for quashing the investigation. “This is the whole point of an inspector general” because “agencies ultimately answer to the administration and the White House,” the former inspector general said. “An agency cannot credibly investigate themselves, especially when the matters are high-profile and controversial.”

While Trump had purged the leadership of several watchdog offices involved in politically sensitive probes in spring of 2020, some inspectors general continued to take on high-profile investigations. In contrast to Cuffari, inspectors general at the Justice Department and Interior Department (the latter is also a Trump appointee) launched coordinated reviews of their agencies’ participation in clearing out protestors at Lafayette Square. Reports of those investigations have not been released.

But because these watchdogs do not have jurisdiction over the Secret Service, it’s not clear that the public will get a full picture of what happened at Lafayette Square given the agency’s command-and-coordination role in clearing protestors from the square and in protecting the president. “Without Secret Service, you don’t have the complete story of that day,” said a federal official not authorized to speak to the press.

“Cuffari had enough sense to know [a review of Lafayette Square] would anger the White House and he didn’t want to do that,” said the former inspector general, who believes Congress should strengthen protections for watchdog officials. “The problem is you can’t legislate a spine, but you can encourage it.”

Cuffari’s refusal to investigate was closely held within his office, even as other groups and members of Congress pressed for him to launch a probe.

On July 19, chairs of three House committees asked Cuffari to investigate Homeland Security actions both at Lafayette Square and in Portland, Oregon, where a Border Patrol tactical unit was deployed and federal officers were snatching protestors and shunting them around in unmarked vans.

“The Department of Justice (DOJ) and the Department of Homeland Security (DHS) appear to have increasingly abused emergency authorities to justify the use of force against Americans exercising their right to peaceful assembly,” wrote Representatives Jerrold Nadler (NY), Carolyn Maloney (NY), and Thompson.

In a written response, Cuffari stated that he would probe his department’s actions in Portland. His letter was silent regarding Lafayette Square.
A spokesperson for the Department of Homeland Security’s (DHS) Office of Inspector General (OIG) told POGO in an email that “with respect to the review of the June 1, 2020 events in Lafayette Square, DHS OIG closely coordinated with Justice and Interior OIGs, who were each planning reviews given the greater presence and participation of their agencies on that day.”

The spokesperson added that “DHS OIG facilitated Interior OIG’s access to Secret Service documents and interviews with employees.” The spokesperson did not explain why Cuffari’s letter to Congress was silent regarding Lafayette Square and the behind-the-scenes hand-off to other watchdogs lacking expertise or jurisdiction over the Secret Service. The spokesperson also did not respond to the claim that Cuffari said he believed the Secret Service should investigate itself in the matter.

Officials such as then-Attorney General William Barr and then-acting Park Police Chief Gregory Monahan have claimed that the effort to clear those assembling in Lafayette Square was solely part of an effort to erect fencing and expand the security perimeter due to growing protests. In other words, they claim the timing of Trump’s photo op was a coincidence, and unrelated to the decision to violently disperse demonstrators.

Whatever the motivation, a prominent legal expert who has accepted at face value many of the Trump administration’s statements about the episode, has questioned the use of force at Lafayette Square. “Many peaceful protesters and journalists were placed in an extremely dangerous situation by the use of smoke canisters and pepper balls to disperse a crowd that already appeared to be moving back,” Jonathan Turley, a George Washington University law professor, told Congress. “Few courts would look kindly on such rapid escalation of force by law enforcement in the middle of a protest over police abuse.”

**Part 2**

“This is a 10 out of 10”

In July and August, dozens of Secret Service agents protecting Trump and Pence contracted COVID-19 after accompanying them to campaign events. On August 10, career watchdog staff working under Cuffari formally proposed examining actions taken to protect Secret Service personnel from the virus and to minimize the impact of the pandemic on the agency’s mission. (POGO later revealed that at least 11 Secret Service personnel at a Maryland training facility also came down with COVID-19 that month.)

On August 13, officials close to Cuffari put a hold on the proposed investigation so they could narrow its scope, according to an internal agency document.
In spite of the Secret Service’s widely reported problems in dealing with the spread of COVID-19 and the disease’s impact on the agency’s mission and individual agents, the inspector general never initiated a review, narrowed or otherwise, sources told POGO. According to the inspector general’s website, the watchdog has no ongoing projects involving the Secret Service.

A spokesperson for Cuffari pointed to a number of reviews of how other Homeland Security components have handled COVID-19, which have led to national news coverage. But the spokesperson did not explain why the spread of COVID-19 within the Secret Service was not seen as a high-enough risk to warrant review given the importance of the Secret Service’s mission and those it protects, namely the president and vice president.

On October 1, Trump tested positive for COVID-19 and was hospitalized the next day. While still contagious, and over the objections of medical personnel, he went on a ride days later in a presidential SUV with Secret Service agents to drive past and wave to supporters.

The presidential SUV is “hermetically sealed against chemical attack,” tweeted Dr. James Phillips, a Walter Reed physician and George Washington University’s chief of disaster medicine, meaning “the risk of COVID-19 transmission inside is as high as it gets outside of medical procedures.”

“The irresponsibility is astounding. My thoughts are with the Secret Service forced to play,” he wrote on Twitter.

Soon after Election Day, well over 100 Secret Service staffers were reportedly infected with COVID-19 or quarantining. Given the limited personnel that make up the presidential protective detail, the drop in staffing posed “serious ramifications given the zero-fail mission of the Secret Service,” a federal official not authorized to speak to the press told POGO.

“The Secret Service has continued throughout the pandemic to methodically assess the unique requirements necessary to complete our essential mission in the ongoing pandemic environment,” the agency said in an emailed statement to POGO. “The agency takes all appropriate precautions to protect our workforce, our protectees, and the public from exposure to COVID-19.”

Among the ongoing projects Cuffari’s spokesperson pointed to as evidence of Cuffari’s willingness to tackle politically sensitive reviews is a review of the federal preparation and reaction to the violent assault by Trump supporters on Congress on January 6 to stop the certification of Biden’s electoral victory. But unlike the two probes that were quashed months before Election Day, when Cuffari’s office announced this review along with three other inspectors general on January 15, Trump was just days from leaving office.

As for Cuffari’s decisions not to review the Secret Service in the context of Lafayette Square and COVID-19, “the inspector general should have greenlighted both of these investigations,” the former inspector general said. On a scale of how bad this looks, “this is a 10 out of 10.”
The top watchdog at the Department of Homeland Security (DHS), Joseph Cuffari, has repeatedly impeded and delayed two ongoing investigations into alleged intelligence manipulation and whistleblower retaliation, according to previously unreported records and interviews with federal insiders by the Project On Government Oversight (POGO).

What the investigations find—or don’t find—could affect assessments of a key intelligence failure in the run-up to the January 6 attack on the U.S. Capitol.

The actions of Cuffari, who has been DHS inspector general since July 2019, disturbed career staff within his office. In a previously unreported memo by Brian Volsky, the former head of Cuffari’s whistleblower protection unit, Volsky wrote that Cuffari and his top aides engaged
in “gross mismanagement and conduct that undermines the independence or integrity reasonably expected of” an inspector general office.

The memo, filed on April 27 with a government panel that investigates misconduct by inspectors general, does not precisely detail the allegedly mismanaged matters at issue or name the complainant at the center of the case. But sources and records confirm that it addresses Cuffari’s handling of allegations made by a high-level DHS whistleblower named Brian Murphy, DHS’s former top intelligence official.

Beyond the accusations against Cuffari from Volsky, POGO separately obtained internal government documents that support Volsky’s account. Volsky, who no longer works in the inspector general office, declined to comment and did not provide POGO with his memo or the other records.

Volsky’s complaint is significant, however, because career investigators in Cuffari’s Office of Inspector General are currently scrutinizing the headline-grabbing charges made by Murphy in a formal complaint filed last September. That complaint to Cuffari’s office said that DHS political appointees, including then-acting Secretary Chad Wolf and then-acting Deputy Secretary Ken Cuccinelli, had demanded politically motivated changes to intelligence on hot-button issues. The matters, all of interest to the White House and then-President Donald Trump, included Russia’s attempts to influence the 2020 election, the growing threat of white supremacist violence, and border security.

Wolf and others have repeatedly denied the accusations. In an interview, Wolf described them as “outlandish” and “false.” Cuccinelli called the allegations “outrageously false.”

A spokesperson for Cuffari’s DHS inspector general office did not address specific allegations, but told POGO that it “protects the identity of whistleblowers and shares information only with those who have a need to know. We do not publicly discuss whether, or what, whistleblower retaliation investigations are pending.”

The spokesperson added that when Cuffari took office in 2019, he reorganized the Whistleblower Protection Unit, placing it under his legal department to give it “appropriate supervision and leadership,” and also assigned subject matter experts “to oversee the unit and ensure it applies appropriate legal standards.”

Part 1

“Never Produced an Intelligence Product...”

Knowledgeable federal insiders say, however, that a number of Murphy’s key allegations are accurate. “Brian Murphy was 100% correct about the politically motivated effort to downplay the domestic terrorism threat from white supremacists and the effort to amp up the threat of
antifa,” said Olivia Troye, a former Homeland Security intelligence staffer who was detailed to Vice President Mike Pence until resigning last August, in an interview with POGO.

Troye, who interacted extensively with Wolf and Murphy in her White House role, said, “There was an effort to make the intelligence fit with what they wanted,” referring to Wolf and other Trump appointees.

For objecting to such distortions, Murphy said he was removed from his job leading DHS’s Office of Intelligence and Analysis, an action which he and his lawyers have described as illegal retaliation.

Many others—including Troye, a U.S. senator, independent intelligence experts, and a DHS insider—have asserted that Murphy’s removal and his allegations merit further scrutiny or are directly relevant to understanding DHS’s January 6 intelligence failures.

DHS did not respond to POGO’s questions about the matter.

Those DHS failures occurred following Murphy’s ouster at the end of July 2020, when I&A, as the office is known, was placed under new leadership. The office, according to multiple reports, failed to sound the alarm in the run-up to January 6, when the Capitol fell victim to precisely the kind of white supremacist violence Murphy says Wolf and others downplayed.

Experts studying the January 6 assault have specifically identified white supremacists as part of an increasingly emboldened constellation of domestic terrorism threats coming from the far right. The acting chief of the Capitol Police has said white supremacist groups were present that day. Yet a bipartisan Senate report released last month found that “DHS I&A never produced an intelligence product, bulletin, or warning specific to the January 6 Joint Session of Congress.”

A senior federal source told POGO that under Murphy, the office had been monitoring threats of violence over social media—an approach that would have spotted some of the many warning signals ahead of the January 6 attack. But, the source said, “After Murphy was removed, the focus changed to more general, so-called ‘strategic intelligence issues’ instead.” Similarly, Mitchell D. Silber, the author of a recent Atlantic Council report on January 6 intelligence failures, told POGO, “Once they fired Murphy, the message went out to analysts working in I&A that you shouldn’t speak truth to power. And that message would have lasted right up to and including January 6.”

After Senate Republicans refused to approve a bipartisan commission to investigate the attack, House Speaker Nancy Pelosi announced a select committee to investigate the matter. Still, the IG office reviews of Murphy’s claims, and their relationship to January 6, are significant given that the select committee may end up relying on the IG’s findings.
“How does the leadup to January 6 happen? Those months beforehand are critically important,” said Troye, now director of the Republican Accountability Project, which has advocated for an independent commission to examine January 6.

But the public and Congress may never get a full picture of the pre-January 6 intelligence debacle or why it occurred—at least not one informed by the investigations under Cuffari’s supervision.

Documents and interviews show that Cuffari constrained his own staff’s reviews of Murphy’s retaliation claim and his allegations of political pressure to manipulate intelligence.

At the same time, it’s not clear whether Cuffari’s office will examine the underlying accuracy of some of Murphy’s most serious allegations—like DHS giving distorted intelligence to Congress, or DHS downplaying evidence of threats of white supremacist violence—even after they featured widely in press reports.

The pattern of actions by Cuffari and his top aides appears to have delayed the probes on multiple occasions, potentially restricted or even compromised interviews with key witnesses, and limited investigators’ time to get answers from Wolf and Cuccinelli before they left government.

“In totality, when you put all of this together it would be hard to give any IG a pass on these matters without some further explanation by the IG,” Gordon Heddell, who served as a Republican and Democratic appointee for 12 years as inspector general at the Labor and Defense departments, told POGO. “Each of these issues keeps coming back to the question, or the perception, of independence.”

Part 2

“The IG has a meeting with the Secretary today”

An inspector general’s role often requires work that may be uncomfortable for senior agency leaders. “Any IG who tells me that they are seeking to achieve a balance between independence and keeping the department happy is not going to succeed,” Heddell told POGO. “It doesn’t work that way.”

The allegations against Cuffari are even more troubling in light of documents that appear to show a broader pattern of undue deference by Cuffari toward Wolf and top Homeland Security political appointees and a potential lack of candor with Congress.

In one example, notes from an August 19, 2020, meeting show that Cuffari wanted to consult Wolf to determine who should be the top official in charge of DHS, a dispute in which Wolf had a vested personal interest. The Government Accountability Office (GAO) had just ruled...
that Wolf was serving unlawfully as acting head of the agency and referred the matter to Cuffari.

According to the notes, “The IG has a meeting with the Secretary today to discuss this [the GAO referral], as well as other matters. IG will make a decision later this week on next steps.”

Asked about the notes during a recent House Homeland Security Committee hearing, Cuffari testified, “I don’t believe I actually had a meeting with the secretary.” He added, “It was probably regarding other ongoing investigations.”

Asked again about the notes by POGO, neither Cuffari nor the DHS inspector general office offered any response.

Wolf said that, as acting Secretary, he typically met with Cuffari on a quarterly basis, when the two would go through a range of issues. Now working in the private sector, Wolf said he currently lacks access to his previous DHS calendars or staff notes of meetings, if they occurred, and could not determine if he discussed the matter with Cuffari at that time.

Weeks after the August 19, 2020, planned meeting that staff were told about, Cuffari sent a letter to Congress disagreeing with the Government Accountability Office’s ruling on Wolf, declining to take up the matter. “It would be pointless for DHS OIG to add its voice to what has become a bitter inter-branch disagreement,” Cuffari wrote.

Multiple federal courts subsequently upheld the Government Accountability Office’s view, holding that Wolf was serving as head of DHS illegally. At stake was the lawfulness of a number of controversial decisions pushed by the White House and ordered by Wolf regarding immigration and asylum policies that only a legally installed head of DHS was empowered to make.

The year before, Cuffari’s seemingly kid-glove approach to top political appointees appeared in an October 25, 2019, email to his staff. Still relatively new to the job after being confirmed by the Senate in July 2019, Cuffari was addressing a then-ongoing probe into what senior DHS officials knew about a scandalous Border Patrol Facebook group.

As first reported by ProPublica, the group included some 9,500 current and former Border Patrol agents across the country who exchanged sexist and racist comments, replete with personal attacks on Latino members of Congress and other lawmakers.

Even though the basis of the review was to learn what senior officials knew about the group, in his email, Cuffari said he wanted “to minimize the burden on high level officials” when interviewing top appointees on the matter. Cuffari suggested his staff consider alternatives to interviews, such as sending written queries. His email addressed a proposal from career investigators to interview then-acting Secretary Kevin McAleenan, whose previous position was head of Customs and Border Protection, which includes the Border Patrol.
Cuffari wrote that if his investigators felt obliged to interview McAleenan, “I need to review the questions that are proposed to be asked.”

Two former inspectors general told POGO that written questions should be a last resort, not the go-to solution Cuffari suggested.

“If career staff believes in-person interviews are a necessary part of the investigation, that should outweigh concerns about the burden placed on the political appointee,” Michael Bromwich, a former Justice Department inspector general, told POGO. “As the IG, you should not get in the way of that.”

“Written questions are a vastly inferior way to gather information and they are lawyered,” Bromwich added. “You don’t get the honest, candid answers you would get from in-person interviews, and you have no opportunity for follow-up.”

Similarly, Heddell said, “when you send over written questions, you’re showing your hand.”

During a House Homeland Security Committee hearing in April, Representative Ritchie Torres (D-NY) asked Cuffari about this email. “The email claims that you were concerned about demands that an interview would impose on senior DHS leadership,” Torres said. “Is that whistleblower claim true? Yes or no?”

“The answer is no,” Cuffari responded, at odds with the text of his own email. He also told the congressional panel that it was “incorrect” that his email instructed subordinates to avoid asking questions of McAleenan on topics about which McAleenan had already commented publicly.

Yet in his email, Cuffari instructed staff to review “prior statements giving testimony (before Congress, etc.)” because he wanted “to ensure that this is not duplicative of other inquiries and that we are using the least burdensome method of obtaining this information.”

While Cuffari ultimately approved the interview requests, McAleenan never faced questioning from inspector general staff about the issue because he soon left DHS, before investigators could speak with him.

According to a final IG office report, published in May, McAleenan “left DHS without responding to us” and months later, “we asked CBP [Customs and Border Protection] to contact him on our behalf again, but he did not respond.” Instead, the report paraphrased McAleenan’s congressional testimony, stating that “he said the posts published by media sources were unacceptable and did not reflect the character of most CBP employees.”

Without anyone from the watchdog office having questioned McAleenan, the report said investigators “found no evidence” that senior leaders were aware of the offensive social media posts until ProPublica reported on the matter in July 2019.
Neither Cuffari nor the DHS inspector general office offered any comment.

POGO has previously reported on Cuffari’s decisions to overrule his career staff’s proposals when matters with implications for the White House were at stake. POGO documented how Cuffari refused to allow his office to investigate the Secret Service’s use of force last summer in Washington’s Lafayette Square against protestors speaking out against racism and aggressive police tactics. (A recent Interior Department inspector general report on events that day did not review the role of the Secret Service. “The unfortunate thing is not everything is in our jurisdiction,” Interior Department Inspector General Mark Greenblatt explained to the New York Times. The Secret Service is part of DHS and within Cuffari’s jurisdiction.)

POGO also recounted how Cuffari nixed a staff-proposed probe of what the Secret Service was doing to prevent the rampant spread of COVID-19 in its own ranks and among those it protects, including the president.

A June Government Accountability Office report noted that officials working under Cuffari “told us that they are often unsure why the Inspector General chooses to pursue certain work and declines to pursue other work and that this confusion led to frustration among staff.”

Earlier in his tenure, others had questioned Cuffari’s approach to politically sensitive investigations. In a letter last year, Representative Bennie Thompson (D-MS), chair of the House Homeland Security Committee, told Cuffari that the “many critical shortcomings in the work of the OIG” made him concerned about “the willingness of the office to conduct in-depth examinations of sensitive topics.”

Neither Cuffari nor the DHS inspector general office offered any comment.

Part 3

“He’s a big piece of our puzzle”

Wolf removed Murphy from his intelligence role at the end of July 2020. The day before, the Washington Post had reported on the Office of Intelligence and Analysis’s compilation of tweets by journalists who published leaked I&A documents on DHS activities concerning racial justice protests in Portland. As first reported by the Post, the office also produced a report detailing electronic correspondence between Portland, Oregon, protestors.

Then, in September, Murphy filed his complaint alleging his removal was not due to the Portland incidents, but was reprisal for earlier whistleblowing to Wolf, Cuccinelli, and other senior officials in the intelligence community, as well as his previous anonymous complaints made to the inspector general.
Wolf has denied the allegations. Cuccinelli told POGO that “Murphy never made any whistleblowing complaints to me. None. His allegations or intimations to the contrary are false.”

Murphy’s complaint also alleged that “Mr. Wolf stated to Mr. Murphy that although he knew there was no merit to the press allegations [that I&A had abused its authority], the removal and reassignment of Mr. Murphy would be politically good for Mr. Wolf, who wanted to be officially nominated as the DHS Secretary.”

In an interview, Wolf called Murphy’s version of events “patently false.”

Murphy’s complaint also stated that “any intelligence information gathered regarding the protests that were ongoing at the time in places like Portland was done in strict compliance with existing legal guidance” and was carried out only if there was evidence that individual protestors posed a violent threat.

Rival explanations are typical in reprisal cases. Investigators often must try to glean the real reason for the action taken against the employee. It’s not unusual to find there may be no single, clear answer, and it can be a challenge to compile conclusive evidence.

Especially challenging in the Murphy case is the fact that only a small number of people at the top echelons of government would have firsthand knowledge of, for instance, his claim of Wolf’s privately stated reason for removing him, because it was allegedly communicated verbally, rather than in writing.

Yet for career staff at the inspector general office, even advancing an investigation beyond preliminary interviews with Murphy and his attorneys proved to be a struggle. Behind the scenes, Cuffari initially attempted to avoid conducting a probe of Murphy’s retaliation claims altogether, according to Volsky, the former head of whistleblower protection in the inspector general office.

Indeed, for well over a month after Murphy’s complaint was filed on September 8, Cuffari held off on launching that investigation, citing his concern about a supposed conflict of interest. Volsky, whose whistleblower protection unit was to lead the probe, learned of Cuffari’s concern on September 25.

That was two days after Wolf, in testimony before the Senate, denied Murphy’s allegations of manipulated intelligence, calling the claims “patently false” and a “fabrication.”

The nature of the conflict Cuffari thought existed is redacted from Volsky’s memo. But Volsky writes that the idea that there could be any conflict at all “appears pretextual, as this ‘conflict’ is not found in any policy.” Volsky added there were “no procedures in place to identify and prevent such a ‘conflict’ in other cases, and no effort was taken to modify OIG policy or procedures to address the IG’s [Cuffari’s] newfound concerns.”
Soon after Joe Biden’s election win in November, Cuffari abandoned his concern about the conflict without any explanation to his staff, and permitted the retaliation probe to move haltingly forward.

But by that point, Volsky wrote, his whistleblower protection unit “had lost several weeks of investigation time and had roughly two months before it would lose the ability to compel many of the key witnesses in the investigation.”

Neither Cuffari nor the DHS inspector general office offered any comment.

With Trump slated to leave office on January 20, 2021, time was of the essence for both investigations stemming from Murphy’s allegations. Cuffari’s staff would have to quickly interview top Homeland Security political appointees, including Wolf, about Murphy’s charges before Inauguration Day. After that date, and perhaps even before it, Wolf and other appointees would leave government and fall outside the watchdog’s jurisdiction.

A December 7 email obtained by POGO underscores the worries of Cuffari’s staff about ever getting to interview Wolf. “I’m most concerned he’ll resign before January 20th and that we won’t get to talk to him at all,” the email from a career inspector general official stated. “He’s a big piece of our puzzle.”

The belated start of the reprisal investigation also meant delays in the issuance of requests for DHS records that could shed light on Murphy’s claims, truncating investigators’ time to prepare for interviews. There were also other delays that were not due to Cuffari. For example, it took months for Murphy’s lawyers to obtain security clearances that would allow them necessary access to classified information.

Murphy’s attorney Mark Zaid told POGO that, in his experience, inspector general investigations of whistleblower reprisal routinely take far too long. But the Murphy case involved urgent, high-profile matters, he said, warranting timely actions by DHS’s watchdog office to review the full scope of Murphy’s troubling allegations as well as faster DHS processing of security clearances for himself and the other members of Murphy’s legal team (who routinely receive them in the course of representing intelligence community employees). Zaid said he would continue to work with Cuffari’s office.

“Timing is always critical,” Heddell, the former Defense and Labor Department inspector general, told POGO. “Delayed interviews potentially compromise clarity and accuracy of information.”

According to records, Cuffari continued to interfere in his staff’s investigative work.

This interference shielded Wolf and Cuccinelli from robust questioning about their alleged attempts to manipulate intelligence products.
Indeed, in the aftermath of multiple intelligence failures marked by allegations of improper political influence, the consignment of Murphy’s charges to an investigative process that Cuffari appears to have limited or even compromised suggests the public may never find out what really took place.

Part 4

“Nothing Significant to Report”

In April, President Joe Biden told a joint session of Congress that white supremacist terrorism—one of the intelligence issues Murphy said was distorted and suppressed prior to his removal last summer—is now the greatest national security threat facing the U.S.

The Department of Homeland Security is reviewing how it handles domestic extremism and is reestablishing a unit within the Office of Intelligence and Analysis focused on that threat. During the Trump administration, David Glawe, Murphy’s former boss, who left government in May 2020, dismantled the unit, noted Olivia Troye. “That was a big mistake” that has been unfairly pinned on Murphy, said Troye, who worked for Glawe at I&A and briefly with him in the private sector.

(A spokesperson for Glawe told POGO he is only giving interviews related to his current, private sector job combatting insurance fraud.)

DHS itself did not respond to POGO’s queries about the matter.

The Office of Intelligence and Analysis was “told to stay in line” after “Murphy was reassigned to the basement with his red stapler,” said Troye. Murphy “wasn’t perfect, but he was pushing them to get ahead of the threats and think about everything happening on social media,” she added. If that’s verified, it could help shape assessments of intelligence breakdowns related to the January 6 assault on the Capitol.

According to ABC News, chaos and inattention in the Office of Intelligence and Analysis in the months right after Murphy’s removal may have made it oblivious to threats building ahead of January 6. Indeed, the Wall Street Journal reported that a national intelligence summary from the office dated January 5 stated, “Nothing significant to report.”

But outside of I&A, at least one government office was sharing signals that an assault on Congress on January 6 might be imminent. On January 5, an FBI field office in Norfolk, Virginia, issued an intelligence report which, according to the Washington Post, quoted an online thread discussing specific calls for violence, including these words: “Be ready to fight. Congress needs to hear glass breaking, doors being kicked in ... Get violent. Stop calling this a march, or rally, or a protest. Go there ready for war.”
Knowledgeable federal sources told POGO that after Murphy’s removal, his former office de-emphasized analyzing social media for indications of threats of violence until mid-afternoon on January 6, as people around the world watched mobs storm the Capitol on live video.

If Murphy had still been at the helm of the Office of Intelligence and Analysis, a senior federal source told POGO, “It’s 100% that the focus would have been on threats to life.” The official added, “Those threats were all over social media on and before January 6, and would have been picked up on because I&A had been collecting [social media information] against known violent actors.”

A recent Atlantic Council report concluded that after Murphy’s ouster at the Office of Intelligence and Analysis, “the number of analysts scrutinizing social media was cut, rules for what could be culled from social media were tightened, and I&A’s issuance of reports on domestic extremists to law-enforcement partners was diminished.”

Citing private conversations with former Homeland Security officials, the report, authored by Mitchell D. Silber, former head of the New York City Police Department’s intelligence unit, concluded that “I&A analysts in the highly politicized environment after the November 3, 2020, election didn’t issue a warning about January 6 because they had been intimidated and were reluctant to make waves that would upset political appointees higher up in DHS.”

Silber wrote that this created “a perfect storm within DHS I&A, hobbling the organization and its ability to function as a viable intelligence-analysis unit at a crucial moment in the runup to January 6.”

Silber found that warnings were flowing into the Office of Intelligence and Analysis from so-called fusion centers staffed by federal, local, and state officials, yet the unit did not issue a threat warning. Silber deemed this an “analytic intelligence failure by DHS I&A.”

Melissa Smislova, now in charge of I&A and the second-in-command on January 6, told a Senate committee in March that, prior to January 6, the office’s leadership thought more general warnings about the domestic terrorism threat to federal buildings should have sufficed. “We thought we had provided that warning,” she testified, but admitted, “we did not have anything specific about an attack on the Capitol to occur on January 6, so we did not issue a separate report. In hindsight, we probably should have.”

In that hearing in March, Senator Jeff Merkley (D-OR) asked Smislova about Murphy’s allegations of pressure to manipulate intelligence. “I did not personally have that influence pushed on me,” she said.

Merkley also asked Smislova if the office produced detailed intelligence assessments during the Portland protests but not in the run-up to January 6 “because of this pressure to downplay to some degree the threat posed by white extremists.” Smislova responded, “it’s impossible to compare the two” because in Portland there was ongoing violence and DHS was requesting information from I&A.
Neither Smislova nor DHS offered any comment.

The Office of Intelligence and Analysis has long been seen as a backwater in the intelligence community, charged with analyzing, compiling, and sharing information with DHS and other government partners, down to the local level.

Nearly since its creation, the office has been plagued by bureaucratic turf battles and chronically low morale, and has faced intense criticism from Congress, according to a recent Center for New American Security report by former Senate homeland security staffer Christian Beckner. Morale remains among the lowest in the federal government, even after a bump in 2019, according to the Partnership for Public Service.

That increase in scores came after Murphy’s first year at DHS, where he arrived in March 2018 after two decades with the FBI.

From the start, he began seeing improper actions. During his first month at DHS, according to Murphy’s complaint, he began raising concerns about “attempted censorship of intelligence analysis and improper administration of an intelligence program related to Russian efforts to influence and undermine United States interests.”

Murphy’s complaint “highlights the greater vulnerability of DHS I&A to political pressure, compared with agencies such as the FBI, due to its weaker stature and institutional norms,” according to Beckner’s report.

**Part 5**

“*It seems insane to me*”

By the time Murphy’s allegations of attempts to manipulate intelligence began generating headlines last September, DHS had already begun what looked like a campaign to cast doubt on his claims.

Less than a week after Murphy’s filing with Cuffari’s office, the department sent the House intelligence committee a letter quoting a July 25, 2020, email from Murphy that DHS said is in “direct contradiction to Mr. Murphy’s claims.” The letter quoted Murphy’s purported email as saying, “The acting secretary has never given me any direction on what to do Regarding [sic] threats. The same applies to the acting deputy secretary,” CBS News correspondent Catherine Herridge reported via Twitter.

Murphy’s attorney Mark Zaid fired back: “The selective disclosure of heavily redacted documents by DHS neither contradicts what is contained in Mr. Murphy’s whistleblower complaint, nor even supports the character assassination attempt by the Department.”
And Troye, the former Trump White House aide, told POGO that Murphy had informed her about pressure from Wolf and others long preceding this email, which was dated around the time Murphy became the target of congressional ire regarding DHS’s actions in Portland. “They had been clashing for a long time before Portland,” Troye said of Wolf and Murphy. (Others who served in the last administration have told of similar clashes causing a months-long delay in the release of a threat assessment on domestic extremism that is a key focus of Murphy’s complaint.)

Late July 2020 marked a final turning point in Murphy’s relationship with Wolf. Wolf appeared to seize on allegations of improper Office of Intelligence and Analysis activities connected to Portland to get rid of Murphy by the end of that month.

An internal record obtained by POGO said that, while the inspector general’s investigative unit confirmed that Murphy’s office compiled open source intelligence reports on journalists, the investigative unit found no criminal intent.

Loose guidance may have meant I&A did not break any rules, although there is some debate about that. While the office is barred from intelligence gathering for the “sole purpose of monitoring activities protected by the First Amendment,” according to agency guidelines, a knowledgeable federal source says the office was keeping track of public media posts in response to a possible security concern stemming from the leak of I&A records in addition to removing Murphy from his job, Wolf set in motion a DHS-run review of Murphy and his unit.

Career staff at the inspector general office probing Murphy’s allegations remained in the dark about the DHS probe, a number of them said, until early December when Murphy’s attorney told them about it. Yet, as it turned out, Cuffari had known about the department’s probe for several months, according to an internal email.

“It’s hard to imagine a valid reason for holding back this information from career staff,” Bromwich, the former Justice Department inspector general, told POGO. “You rely on your staff to be straight with you. They have the right to expect the same thing in return.” Bromwich added, “If they conclude that you are playing footsie with the political appointees who head the Department, that can be devastating to morale.”

When career staff in the watchdog office found out about the department’s review, it sparked serious concerns. A staffer reacting to the revelation wrote in a December 4 email that “it seems insane to me that we would be comfortable with the department doing a concurrent review of issues overlapping [with our] work.”

While the department’s review was focused on the Office of Intelligence and Analysis’s activities connected to the Portland protests, aspects of it appear to have been much broader, suggests a March 2021 letter from Senate intelligence committee Democrats. The lawmakers also called for the review’s public release.
If not managed appropriately, parallel agency and inspector general reviews can create problems and affect the outcome of similar investigations already underway.

“If agency personnel conduct an investigation examining similar issues as the OIG, the IG should tell the agency to suspend what it’s doing unless there is a compelling reason for the agency to conduct a review of its own,” Bromwich told POGO. “Parallel reviews are a very bad idea—they undermine the role of the IG.”

Indeed, documents obtained by POGO show that in 2017, a previous DHS inspector general told the department to “stand down,” citing the department’s rules when he learned of a parallel department-led investigation involving the Office of Intelligence and Analysis. The watchdog also cited the risk that the department’s investigation could be seen as “retaliatory.”

The department’s investigation involving Murphy moved rapidly and was nearly complete by December 4, when career staff in the inspector general office first learned of it. According to Zaid, Murphy’s lawyer, a DHS attorney leading the agency’ parallel probe told him that investigators had interviewed over 70 employees by the time they interviewed Murphy, the main focus of the probe, on December 9.

One person interviewed in the department’s investigation told POGO they were asked “a string of negative questions” about Murphy. The person said that they and others got the impression that the process “was designed to get him” since the interviewers had no interest in positive things Murphy had done to reform the office.

Zaid commented that “this so-called internal review ... was a set-up from the beginning in order for Chad Wolf to cover his own failures and retaliate against Mr. Murphy, who is the highest-ranking lawful whistleblower in decades.”

Wolf did not respond directly to Zaid’s allegation, but said that the DHS probe of Murphy and his office was largely complete by the time the inspector general’s review of Murphy’s complaints got fully under underway. In any case, he said, the separate investigations involved different aspects of Murphy’s conduct and management and did not interfere with each other.

DHS completed its report, with largely unfavorable conclusions about Murphy, on January 6, the day of the attack on the Capitol and days before Wolf left office. The report’s findings were soon leaked to Catherine Herridge, the CBS News reporter.

Citing an unnamed source, Herridge tweeted that Wolf had written a memo, dated January 11, saying that the just-concluded DHS review had “strongly encouraged DHS leadership to refrain from allowing Mr. Murphy to return to I&A.” Murphy’s whistleblower complaint had requested that he be allowed to return to the office.
Wolf wrote the memo as one of his final actions as DHS acting secretary before he relinquished the job that same day. (He stayed on as undersecretary for strategy, policy and plans until January 20.)

**Part 6**

**“An Expedited Timeline”?**

Last fall, career staffers in the inspector general office were also conducting a separate review of the purportedly politicized intelligence. They soon encountered roadblocks of their own.

In September, soon after Murphy's complaint was filed, Cuffari wanted to explore incorporating an investigation of allegedly politicized intelligence into the ongoing Portland probe, according to records and sources. But sources told POGO that this idea could and should have been quickly rejected, given the substantial difference between the disparate allegations.

Instead, the issue delayed the review of allegedly suppressed and politicized intelligence until late October, nearly a month later.

Even after Cuffari approved the review, the IG office did not put DHS on notice until November 30. This step is required before the watchdog office can begin obtaining records from the department or conducting interviews.

The approved review would focus only on the creation and handling of an intelligence notification from Murphy’s office earlier in 2020, on Russia’s disinformation campaign. A July 7, 2020, DHS email leaked to *ABC News* partially corroborated Murphy’s claim that Wolf had blocked the dissemination of that intelligence assessment. (Wolf has admitted to blocking the assessment, but says he did so because it failed to meet DHS’s standards.)

Career staff repeatedly flagged timeliness as a concern in the fall of 2020. “There is significant public and congressional interest in a prompt answer to whether this allegation is true or false,” internal inspector general records state, citing “urgency” and the need for “an expedited timeline.”

Yet further delays and barriers confounded that goal.

**Part 7**

**Running Out the Clock**
With the clock still ticking in December, Cuffari and his senior aides constrained his office’s two investigative teams’ ability to interview Wolf, Cuccinelli, and another political appointee. Inspector general “leadership was preemptively and without explanation narrowing the terms of the interviews to the detriment of” the office, Volsky wrote in his complaint.

Career staff initially sought Cuffari’s approval for two hours of interview time each with Wolf, Cuccinelli, and a third appointee, according to internal records examined by POGO. The time would be split, with one hour for the team investigating the retaliation claims and another for the team examining those of political pressure on intelligence.

Even before approaching the department with requests for interviews, Cuffari and his deputies sought to cut that in half. They wanted to limit the interviews with the appointees to 30 minutes, according to records. In contrast, Murphy sat for a daylong interview on December 18. (This was followed by another hourlong interview on December 23.)

Internal emails show career staff’s frustration and their sense that Cuffari was acting in a way that was inconsistent with the independence of the office he leads by giving staff so little time to conduct interviews.

One federal source not authorized to speak to the press said it’s not unusual for an agency secretary’s office to push back interview requests from an inspector general. What was unusual in this case was that the pushback was coming from the inspector general himself, in an attempt to limit the time available to his own investigators.

Bromwich, the former Justice Department inspector general, told POGO that the two teams examining Murphy’s claims should each have received at least two hours of interview time with each official. And Bromwich said interviews with officials alleged to be responsible for political pressure on intelligence products could easily require more time than the reprisal investigation given the complexity of those issues.

Eventually, Volsky persuaded Cuffari’s deputies to allow more time—90 minutes per interview—by arguing that might help Wolf, Cuccinelli, and another political appointee to bolster their own defense, according to sources.

But there was another problem. Cuffari’s “Chief of Staff [Kristen] Fredricks agreed to permit agency counsel to attend all three interviews against” the policy of the whistleblower protection unit and the recommendations of career staff, Volsky wrote. Then, she failed to inform the career employees “that she had agreed to permit agency counsel, resulting in a last minute scramble for investigative staff, and never provided an explanation for her decision.”

Regarding the inclusion of agency lawyers in investigative interviews, “we took a hard line on that,” said Bromwich of his time running the Justice Department Office of Inspector General. He said he opposed allowing agency counsel to participate in interviews, echoing the
practices of numerous other inspectors general, because these lawyers have an “obligation to prepare witnesses” and to protect the agency.

“The concern is agency counsel will share what happened during the interview with” other witnesses or accused parties, Bromwich told POGO. “The risk is you get answers tailored to what the other witnesses have already said.”

Cuffari’s deputies also directed the team looking into alleged intelligence manipulation to ask questions of Wolf and other Trump appointees only in writing. Yet the investigative team had sought in-person interviews. A federal source informed about the matter told POGO that career investigators wanted to interview Wolf in-person so they could ask follow-up questions.

“You can’t do credible investigations using just written questions or brief in-person interviews,” Bromwich said. “That just doesn’t work.”

In early January, investigators sent their written questions to Wolf and Cuccinelli.

In mid-January, Wolf’s staff sent his written responses to Cuffari’s chief of staff, Kristen Fredricks. But she did not forward those answers to investigators until early February—more than two weeks later. By then, Wolf had left government service and could no longer be compelled to answer any follow-up queries.

Cuffari promoted Fredricks two months later to deputy inspector general.

Neither Cuffari, Fredricks, nor the DHS inspector general office offered any comment.

Nearly six months after DHS’s parallel probe of Murphy was complete and parts of it leaked, Cuffari’s office is still working on both Murphy’s retaliation charges and a review of allegedly manipulated intelligence.

It remains to be seen whether the ongoing inspector general inquiries will confirm there was retaliation against Murphy and will validate his other charges. There’s also the possibility of a mixed result: that Murphy’s claims related to intelligence will be vindicated, but not his reprisal claim, or vice versa. Such outcomes are not uncommon in whistleblower cases.

Senators Chuck Grassley (R-IA) and Maggie Hassan (D-NH) have recently introduced legislation that would empower “inspectors general to compel testimony from former employees so bad actors in government can’t simply run from accountability by exiting government,” as Grassley said in a statement. Such legislation would give watchdog offices a key tool to uncover the truth. If the legislation or a broader House bill becomes law, political appointees and other government officials won’t be able to just run out the clock.
But for now, Cuffari’s actions have put at risk a complete accounting of Murphy’s weighty allegations, and their implications for the later intelligence breakdowns at DHS. His actions have also raised more troubling questions about a watchdog office that oversees one of the most important Cabinet departments.

The stakes are high. “After January 6, the threat of domestic extremist violence is still out there,” Silber told POGO. “So to safeguard the future we need to understand it and fix what went wrong at DHS and elsewhere in the government after the storming of the Capitol.”
Homeland Security’s Embattled Watchdog Faces Probe

By Adam Zagorin & Nick Schwellenbach | Filed under investigation | February 11, 2022

The Department of Homeland Security’s (DHS) top watchdog, Joseph Cuffari, faces a previously undisclosed and escalating investigation — one that will apparently address persistent questions about whether he illegally “retaliated” against former high-ranking employees. As such, the probe signals the latest phase of a nasty internecine battle that refuses to fade away, despite Cuffari’s successful bid to force out his former top deputy, as other internal critics left amid bitter recriminations.

According to a non-public email sent at 8:30 p.m. on Friday, January 28, 2022, and obtained by the Project On Government Oversight (POGO), Cuffari’s current top deputy in his DHS Office of Inspector General (OIG) instructed all staff to cooperate with the probe, if called upon to do so by investigators.

The investigation is being conducted by the Integrity Committee of CIGIE, the Council of Inspectors General on Integrity and Efficiency. The Integrity Committee (IC) is the federal government’s “watchdog of the watchdogs,” a little-known entity that monitors allegations of
wrongdoing by inspectors general and their top staff. It’s also an entity long criticized for being too secretive, too slow, and too selective in what it investigates.

“DHS OIG has been cooperating fully in the IC’s investigation, and it will continue to do so,” the January 28 email says, sent by Cuffari’s deputy, Glenn Sklar. “You are instructed to cooperate if you are approached.”

The stakes in the Integrity Committee investigation are potentially high. For one thing, the ongoing probe into Cuffari could take months or more than a year to complete, casting a shadow over his role and decisions in the meantime. And if Cuffari’s allegedly serious misconduct is substantiated, such a finding would represent a major blow to his leadership as DHS watchdog.

Cuffari runs one of the federal government’s most important oversight offices, keeping tabs on more than 240,000 DHS employees. He has the authority to investigate and review everything from immigration enforcement to surveillance practices to intelligence failures in the run-up to the January 6 breach of the U.S. Capitol.

As DHS inspector general, Cuffari oversees Customs and Border Protection, the nation’s largest law enforcement agency, which has come under fire for serious alleged abuses along the border. His jurisdiction also includes Immigration and Customs Enforcement, the U.S. Secret Service, the Coast Guard, the Federal Emergency Management Agency, the Transportation Security Administration, U.S. Citizenship and Immigration Services, and the Department of Homeland Security’s Office of Intelligence and Analysis.

The January 28 email does not mention the target of the investigation or its subject matter. “They were trying to bury the lede,” a federal source said, referring to the timing of the email and the lack of information on the investigation’s scope and target. The investigation into Inspector General Cuffari began in May of last year, according to written answers Cuffari transmitted to a House oversight committee in a previously unreported June 2021 letter.

In Cuffari’s letter, he told Congress that the Integrity Committee was reviewing whether he had authorized an investigation by the law firm WilmerHale “in ‘retaliation’ for unspecified protected activity of unspecified persons.”

Those unspecified persons who were targets of the WilmerHale investigation turned out to be high-ranking critics of Cuffari himself and were some of his most senior employees inside the agency’s watchdog office.

The recent widely circulated email from Cuffari’s number-two official to all Homeland Security OIG staff signals that the investigation is ramping up, and getting closer to potentially exonerating him, or finding him at fault.
CIGIE’s Integrity Committee is conducting its probe with help from a team of professional investigators from the Transportation Department’s watchdog office. Probes that get to this phase in the Integrity Committee process normally do so after an accused inspector general or other senior OIG officials have an initial opportunity to refute the allegations against them. After that, the Integrity Committee only launches a full-blown investigation when the target’s refutation is not sufficiently persuasive.

At the same time, the Integrity Committee only explores reports of serious misconduct by inspectors general or the senior staff who directly report to them, not minor offenses or offenses allegedly committed by rank-and-file employees. The probe of Cuffari is one of only four investigations across the federal government that the Integrity Committee launched in the last fiscal year.

A DHS Office of Inspector General spokesperson emailed POGO that the office, “as a matter of policy, does not comment on pending investigations.” The Council of Inspectors General on Integrity and Efficiency declined to comment.

“Complaints and Countercomplaints”

President Donald Trump nominated Cuffari as inspector general, after he served as an advisor to a pair of GOP governors in Arizona, Jan Brewer and Doug Ducey, who pushed tougher immigration enforcement policies. During his Senate confirmation hearing, Cuffari said he did not work on implementing immigration policies for those governors. Prior to his nomination, Cuffari also worked in the federal government in various jobs, including as a criminal investigator within the Justice Department’s watchdog office.

Cuffari’s former deputy and others were leery of his nomination as inspector general. Among other issues, they raised concerns that a then-unaccredited university with a reputation as a “diploma mill” had awarded him a doctorate in 2002. Despite the criticism, Cuffari regularly references his PhD when signing letters to Congress and on OIG reports.

After the Senate confirmed him and he took the helm of DHS OIG, that deputy also made disclosures to both Congress and the Integrity Committee in late 2019 that Cuffari improperly withheld publication of an OIG report on the department’s technology shortcomings in regards to the tracking of separated migrant families and misled Congress about the delay. That previously unpublished complaint also asserted that Cuffari wanted to “forbid use of the words ‘fail’ and ‘lack’ to describe the Department’s actions so, as he explained, we (the OIG) can have a better relationship with DHS officials.” The Integrity Committee declined to examine those allegations.

In addition, Cuffari himself petitioned the Integrity Committee to investigate his former deputy and others — and the committee rejected his proposal without providing an explanation.
When that attempt failed, Cuffari sought an investigation by a prominent Washington law firm in early 2020. Cuffari’s office awarded WilmerHale a contract to investigate his deputy and other high-ranking subordinates who had raised concerns regarding his doctorate, the family separation report, and other issues, paying the firm about $1.4 million. He has maintained he had no role in the choice of WilmerHale and that the contract made up less than one percent of the OIG’s budget. He has also told Congress that, neither “did I or anyone at DHS OIG telegraph a particular outcome to WilmerHale.”

WilmerHale’s report vindicated Cuffari. Its section dealing with Cuffari’s internal critics was entitled, “Undermining the New IG,” making the case that his then-deputy and others had sought to subvert his authority. The report states that the behavior of Jennifer Costello, who served as his deputy inspector general, “exacerbated an atmosphere of mistrust and unprofessionalism to the detriment of the agency and its mission.” It also cited “complaints and countercomplaints filed with the Integrity Committee” as well as a variety of other actions taken by Costello and two other DHS OIG employees.

Regarding the allegation that he delayed publication of the family separation report, WilmerHale cited Cuffari’s explanation, but did not assess it. According to the WilmerHale report, Cuffari said there was the “erroneous idea that he had ‘parked the report’ and that he was sitting on it for political purposes.”

The OIG did not address questions about the WilmerHale report or Costello’s complaint.

Some eight months before the law firm’s report was finished in December 2020, Cuffari placed Costello, its principal target, on administrative leave. While on leave, she faced an investigation for improperly representing herself as acting inspector prior to Cuffari’s Senate confirmation. Cuffari then terminated her employment.

In August, WilmerHale sought to interview Costello as part of its investigation, but she refused to cooperate and, given her departure from the OIG, she could not be compelled to do so. Her attorney told POGO that the WilmerHale investigation was an inappropriate use of taxpayer dollars and that Costello has a pending appeal before a government panel that handles employment complaints. POGO did not obtain Costello’s complaint from her or her attorney. (Two other targets of the law firm’s investigation left the OIG and did cooperate with WilmerHale.)

A month after the WilmerHale report was finished, Cuffari’s office released it to reporters who had filed Freedom of Information Act requests. After an initial round of news coverage, close observers began asking questions about WilmerHale’s review, including its examination of Cuffari’s high-ranking staff who had filed complaints about him. WilmerHale’s examination of that activity is now the focus of the Integrity Committee’s investigation.
In Cuffari’s June 2021 letter to Representative Bennie Thompson (D-MS), the chairman of the House Homeland Security Committee, he disclosed the Integrity Committee’s investigation into his conduct, and also took strong exception to his ousted deputy’s complaint that the WilmerHale report was retaliation against her for her criticism of him — to Congress and others.

Cuffari’s letter warned explicitly that, “Sweeping WilmerHale’s findings under the rug, as the CIGIE IC is attempting to do, will destroy DHS OIG.”

Whether his contention about destroying DHS OIG will prove correct or not, there is no doubt that if the Integrity Committee finds that the WilmerHale review amounted to illegal “retaliation” by Cuffari against his ousted deputy or others, such a finding could be damaging to him personally.

Given Cuffari’s excoriation of the Integrity Committee in his letter to Congress, the January 28, 2022, email to Cuffari’s staff instructing them to cooperate with its investigation amounts to a distinct shift in tone.

Impeding an Integrity Committee investigation can create risks. Key Republican senators called for the removal of another inspector general last spring, in part because she resisted a different Integrity Committee probe of her alleged misconduct.

That other inspector general’s “willful actions to impede an investigation into her own alleged misconduct and support of an environment that condones the intimidation of witnesses show that she lacks the attributes reasonably expected of an IG,” wrote Republican Senators Chuck Grassley (IA) and Ron Johnson (WI). The Integrity Committee has a policy that allows it to “make an independent finding of wrongdoing” if an accused inspector general fails to cooperate with a committee investigation.

**A Pattern of Troubled DHS Watchdogs**

Meanwhile, there have been other complaints about Cuffari. On April 27, 2021, a former attorney in the DHS watchdog office filed a complaint with the Integrity Committee about alleged interference by Cuffari and others on his leadership team in a high-profile whistleblower investigation. POGO first reported on this complaint last year. Like the vast majority of cases it considers, the Integrity Committee closed the matter, deciding not to investigate further. POGO also broke news that Cuffari rejected proposals by his career staff to examine the use of force at Lafayette Square in June 2020 and how the Secret Service was handling the pandemic.

As it turns out, Cuffari is far from the first DHS watchdog to face scrutiny. One recent acting inspector general, John V. Kelly, directed auditors to water down reports on disaster responses by the Federal Emergency Management Agency, leading to the retraction of 13
audits. Last month, Charles K. Edwards, who served as acting inspector general from 2011 through 2013, pleaded guilty to theft of proprietary software from the DHS OIG. He has not been sentenced yet.

The January 28 email to Cuffari’s staff mandating cooperation with the Integrity Committee probe came two weeks after the Justice Department issued a press release announcing Edwards’ guilty plea. As the legal case against one former DHS OIG leader reached its conclusion, and the fate of his latest successor began to look ever-more precarious, a federal source in touch with Cuffari’s watchdog office said the view of many who work there is, “Here we go again.”