

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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WASHINGTON, DC 20515-6143

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<https://oversight.house.gov>

July 29, 2022

The Honorable Alejandro Mayorkas
Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Secretary Mayorkas:

We write to investigate efforts by the Department of Homeland Security (DHS) to obstruct oversight by the DHS Office of Inspector General (OIG). According to recent reports, DHS is advising employees on how to impede OIG oversight including how to avoid turning over documents and systems access to the OIG. If these reports are true, DHS leadership is deliberately undermining the OIG's mission, "[t]o provide independent oversight and promote excellence, integrity and accountability within DHS."¹ In light of the growing catastrophe along the southern border, DHS's obstruction is particularly troubling. Rather than committing time and resources to deny information to the OIG, DHS should be dedicating resources to protecting the southern border. We write to request documents and communications about DHS's efforts to deny the DHS OIG access to information needed to conduct its audits and investigations.

In early July, a briefing memorandum ("the memo") was allegedly circulated among Customs and Border Protection (CBP) employees in preparation for a meeting with DHS OIG personnel.² Essentially, the memo encouraged CBP employees to resist the OIG's request for access to CBP systems. More alarming, CBP's memo included flawed legal analyses—apparently sanctioned by DHS Office of General Counsel—to justify withholding information from the OIG.³ For example, the memo claimed "OIG's access to information is not unlimited."⁴ The memo, however, relied on a statute that limits *public* disclosure of information, not OIG access.⁵ The memo claimed that DHS has unilateral authority to impose a reasonableness

¹ *About Us, Office of Inspector General*, Dep't of Homeland Security Off. of Inspector Gen., available at <https://www.oig.dhs.gov/about> (last accessed July 22, 2022).

² Klippenstein, Ken, *Secret Service Deleted Jan. 6 Text Messages After Oversight Officials Requested Them*, THE INTERCEPT (July 14, 2022).

³ Memorandum from CBP Staff to CBP Leadership, *OIG Leadership Meeting* (Jul. 7, 2022), on file with committee staff.

⁴ *Id.*

⁵ See 5 U.S.C. app 5 § 5(e)(1) ("Nothing in this section shall be construed to *authorize the public disclosure of information which is-* (A) specifically prohibited from disclosure by any other provision of law; (B) specifically required by Executive order to be protected from disclosure in the interest of national defense or national security or in the conduct of foreign affairs; or (C) a part of an ongoing criminal investigation.") (Emphasis added).

requirement on OIG's ability to access information.⁶ The Inspector General Act, however, contains no such limitation. Also, the memo asserted—without any statutory justification—that the OIG is limited to access information only for audits the OIG has announced.⁷ This is simply false. Neither law nor government auditing standards limits OIGs' access to information to announced audits.

This memo undermines the OIG's statutory mandate to have “timely access to all records, reports, audits, reviews, documents, papers, recommendations, or other materials,” from DHS's programmatic components.⁸ In fact, the DHS Secretary may only prevent the OIG from pursuing oversight in very limited situations to preserve national security where such an exception is issued by the Secretary in writing and reported to Congress.⁹ We have received no report that you have invoked such an exception during your tenure.

The OIG is currently auditing and investigating the effects of the Biden Administration's border policies—policies that have created a dangerous, chaotic, and inhumane border. We are concerned DHS's efforts to obstruct OIG oversight is targeted to CBP program areas. CBP employees, including U.S. Border Patrol agents, are on the frontlines of the border crisis. Therefore, DHS OIG must have access to these employees and CBP systems so it can accurately assess the Biden Administration's decisions and execution of the law regarding our southern border.

To provide transparency regarding whether DHS is preventing the OIG from conducting its oversight responsibilities, please provide the following documents and information no later than August 12, 2022 covering the time period January 20, 2021 to the present:

1. A complete copy of any memorandum or other document transmitted from DHS headquarters, including the Office of General Counsel, to any component agency advising personnel how to interact with the OIG, including but not limited to, any instructions related to resisting requests by the OIG;
2. Drafts or earlier versions of any memorandum or other document responsive to request number 1;
3. All documents and communications between DHS headquarters personnel and any component agency referring or relating to any interactions with the OIG employees;

⁶ *Supra*, n.3.

⁷ *Id.*

⁸ 5a U.S.C. § 6 (“...each Inspector General, in carrying out the provisions of this Act, is authorized... to have timely access to all records, reports, audits, reviews, documents, papers, recommendations, or other materials available to the applicable establishment which relate to the programs and operations with respect to which that Inspector General has responsibilities under this Act...”).

⁹ 5a U.S.C. § 8I(a).

Secretary Mayorkas

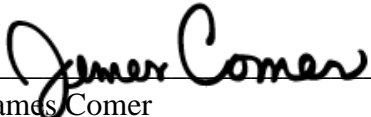
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4. All documents and communications between or among DHS headquarters personnel referring or relating to any discussion(s) of whether or not to provide access to information to the OIG;
5. All documents and communications between or among CBP personnel referring or relating to interacting with the OIG.

Thank you for your consideration of this important issue. To make arrangements to deliver documents or ask any related follow-up questions, please contact Committee on Oversight and Reform Republican Staff at (202) 225-5074. The Committee on Oversight and Reform is the principal oversight committee of the U.S. House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. Thank you in advance for your cooperation with this inquiry.

Sincerely,



James Comer
Ranking Member
Committee on Oversight and Reform



Jody Hice
Ranking Member
Subcommittee on Government
Operations



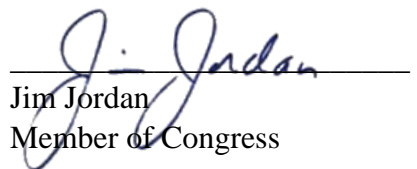
Glenn S. Grothman
Ranking Member
Subcommittee on National Security



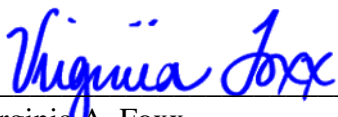
Michael Cloud
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Subcommittee on Economic and
Consumer Policy



Nancy Mace
Ranking Member
Subcommittee on Civil Rights and
Civil Liberties



Jim Jordan
Member of Congress



Virginia A. Foxx
Member of Congress

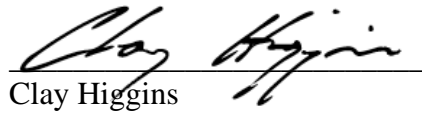


Bob Gibbs
Member of Congress

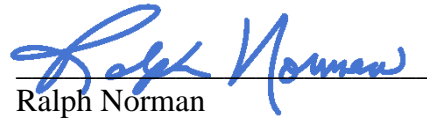
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Clay Higgins
Member of Congress



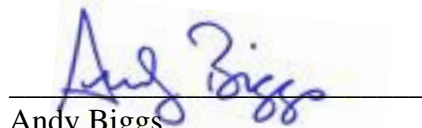
Ralph Norman
Member of Congress



Pete Sessions
Member of Congress



Fred Keller
Member of Congress



Andy Biggs
Member of Congress



C. Scott Franklin
Member of Congress



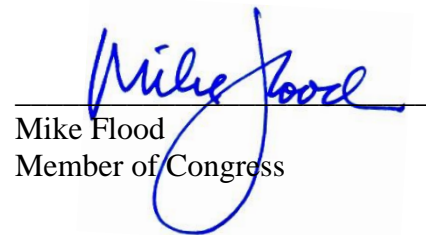
Jake LaTurner
Member of Congress



Pat Fallon
Member of Congress



Byron Donalds
Member of Congress



Mike Flood
Member of Congress

cc: The Honorable Carolyn Maloney, Chairwoman
Committee on Oversight and Reform

The Honorable Gerald E. Connolly, Chairman
Subcommittee on Government Operations

The Honorable Stephen F. Lynch, Chairman
Subcommittee on National Security

The Honorable Raja Krishnamoorthi, Chairman
Subcommittee on Economic and Consumer Policy

The Honorable Jamie Raskin, Chairman
Subcommittee on Civil Rights and Civil Liberties