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DEPARTMENT OF HOMELAND SECURITY

BEFORE THE

**JUDICIARY SUBCOMMITTEE ON CRIME,
TERRORISM AND HOMELAND
SECURITY**

U.S. HOUSE OF REPRESENTATIVES

CONCERNING

ANALYZING MISCONDUCT IN FEDERAL LAW ENFORCEMENT

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Chairman Sensenbrenner, Ranking Member Jackson Lee, and Members of the Subcommittee:

Thank you for inviting me here today to discuss Federal law enforcement misconduct within the Department of Homeland Security (DHS). My testimony will focus on the DHS Office of Inspector General's (OIG) role, authority, and process for investigating employee misconduct, including that of law enforcement officers, and our internal policies and processes for investigations. I will also discuss specifically the work we have done with regard to issues involving the U.S. Secret Service.

First, let me state that the vast majority of DHS employees are dedicated public servants focused on protecting the Nation. Although a small percentage of employees have committed criminal acts and other misconduct warranting sanctions, the behavior of those few should not be used to draw conclusions about the character, integrity, or work ethic of the many. I am personally grateful for the hard work and commitment to mission demonstrated daily by the DHS workforce.

OIG's Investigative Role, Authority, and Process

Through the *Inspector General Act of 1978* (IG Act), Congress established Inspectors General, in part, in response to concerns about integrity and accountability and failures of government oversight. The IG Act charged Inspectors General, among other tasks, with preventing and detecting fraud and abuse in agency programs and activities; conducting investigations and audits; and recommending policies to promote efficiency, economy, and effectiveness. The position of Inspector General was strengthened by provisions in the IG Act creating independence from department officials, providing powers of investigation and subpoena, and reporting to the Secretary as well as Congress.

Federal law provides protections for employees who disclose wrongdoing. Specifically, managers are prohibited from retaliating against them by taking or threatening to take any adverse personnel actions because they report misconduct. The IG Act also gives us the absolute right to protect the identity of our witnesses, who we depend on to expose fraud, waste, and abuse.

Inspectors General play a critical role in ensuring transparent, honest, effective, and accountable government. The personal and organizational independence of OIG investigators, free to carry out their work without interference by agency officials, is essential to maintaining the public trust not only in OIG's work, but in the DHS workforce as a whole. The American public

must fundamentally trust that government employees will be held accountable for crimes or serious misconduct by an independent fact finder.

OIG and DHS Internal Affairs Offices

DHS Management Directive (MD) 0810.1, *The Office of Inspector General*, implements the authorities of the IG Act in DHS. MD 0810.1 establishes OIG's right of first refusal to conduct investigations of criminal misconduct by DHS employees and the right to supervise any such investigations conducted by DHS internal affairs offices. The MD requires that all allegations of criminal misconduct by DHS employees and certain other allegations received by the components—generally those against higher ranking DHS employees—be referred to OIG immediately upon receipt of the allegations.

Many DHS components have an internal affairs office that conducts investigations. Under the authority of the IG Act, OIG has oversight responsibility for those internal affairs offices. This oversight responsibility generally takes three forms. First, we determine upon receipt of the complaint whether the allegations are the type that should be investigated by OIG rather than the component's internal affairs office. Second, for those investigations the internal affairs offices conduct, we have the authority to receive reports on and monitor the status of investigations.

Lastly, we conduct oversight reviews of DHS component internal affairs offices to ensure compliance with applicable policies, reporting requirements, and accepted law enforcement practices. Our reviews are conducted on a three-year cycle and our findings are published through our website. In this fiscal year, we have reviewed two component internal affairs offices and made more than 45 recommendations for improvement. Our recommendations ranged from suggestions for improving the processing of allegations to counseling a component to seek the proper investigative authority for its internal affairs office. These reviews are critical to ensuring that misconduct allegations, whistleblowers, and those reporting allegations of wrongdoing by DHS employees are treated with the seriousness they deserve.

The investigative process generally follows these steps:

1. An allegation of misconduct is reported to OIG or other appropriate office; if reported to an office other than OIG and several criteria for seriousness are met, the component must report the allegation to OIG.
2. Whether the allegation was reported directly to OIG or through a component, OIG will decide to investigate the allegation or refer it to the component's internal affairs office; if referred, the component can decide to investigate the allegation or take no action.

3. If OIG decides to investigate, we develop sufficient evidence to substantiate or not substantiate an allegation and write a report of investigation.
4. OIG provides its investigative findings to the affected component, which uses this information to decide whether discipline is warranted. We are not involved in decisions regarding discipline after we provide our investigative findings.
5. For criminal matters, OIG presents its investigative findings to the Department of Justice (DOJ) for a determination of whether DOJ will pursue judicial action.

The Department employs more than 240,000 employees (and nearly an equal number of contract personnel), including a large number of law enforcement officers and agents in U.S Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement, the Secret Service, and the Transportation Security Administration (TSA). These officers and agents protect the President, our borders, travel, trade, and financial and immigration systems. In fiscal year (FY) 2014, we received 16,281 complaints. A substantial number of the complaints alleged that DHS personnel engaged in misconduct. We initiated 564 investigations. The remainder were referred to component internal affairs offices, other agencies, or were administratively closed. In FY 2014, our investigations resulted in 112 criminal convictions and 36 personnel actions. Thirteen of these convictions involved DHS law enforcement personnel and 21 of the 36 personnel actions involved law enforcement. These convictions and personnel actions were for various offenses including theft, narcotics, child pornography, and bribery.

DHS Employee Misconduct

OIG has about 200 investigators in headquarters and in about 30 field offices across the country. We have less than one investigator for every 1,000 DHS employees. A large number of investigators are located along the Southwest border, where we have one OIG investigator for about every 792 DHS employees.

The smuggling of people and goods across the Nation's borders is a large scale business dominated by organized criminal enterprises. The Mexican drug cartels today are more sophisticated and dangerous than any other organized criminal groups in our law enforcement experience. As the United States has enhanced border security with successful technologies and increased staffing to disrupt smuggling routes and networks, drug trafficking organizations have become more violent and dangerous and more clever. These organizations have turned to recruiting and corrupting DHS employees. The obvious targets of corruption are border patrol agents and CBP officers who can facilitate and aid in smuggling; less obvious targets are employees who can provide access to sensitive law enforcement and intelligence information, allowing the drug

cartels to track investigative activity or vet their members against law enforcement databases.

As demonstrated by OIG-led investigations, border corruption may take the form of cash bribes, sexual favors, and other gratuities in return for allowing contraband or undocumented aliens through primary inspection lanes or even protecting and escorting border crossings; leaking sensitive law enforcement information to people under investigation; selling law enforcement intelligence to smugglers; and providing needed documents, such as immigration papers. Border corruption impacts national security. A corrupt DHS employee may accept a bribe for allowing what appear to be simply undocumented aliens into the United States, unwittingly helping terrorists enter the country. Likewise, what seems to be drug contraband could be weapons of mass destruction, such as chemical or biological weapons, or bomb-making materials. Although those who turn away from their sworn duties are few, even one corrupt agent or officer who allows harmful goods or people to enter the country puts the Nation at risk.

Several examples from the last few years illustrate this problem:

- As acknowledged in their plea agreements, a border patrol agent and a former state prison guard formed a “criminal partnership” to earn money by helping traffickers smuggle drugs and aliens into the United States. As part of this multi-year partnership, the border patrol agent accepted bribes from the former state prison guard in exchange for providing him with sensitive information, including sensor maps, combinations to gates located near the Mexican border, computer records of prior drug seizures, and the location of border patrol units. The agent and former prison guard were sentenced to prison for 15 years and 9 years, respectively.
- While patrolling the border with Mexico, a border patrol agent driving a marked government vehicle helped three individuals on the Mexican side of the border smuggle bales of marijuana weighing 147 pounds into the United States. The agent pled guilty to possession of a firearm in furtherance of drug trafficking offense and was subsequently sentenced to 60 months in prison.
- We investigated a TSA supervisor in the U.S. Virgin Islands who was actively assisting a drug smuggling organization to bypass security at an airport. He was sentenced to 87 months imprisonment and 24 months of supervised release.
- With our Border Corruption Task Force partners, we investigated a border patrol agent who worked in the intelligence unit and sought to provide sensitive law enforcement information to smugglers. Intelligence

materials, such as border sensor maps, combinations to locked gates, and identities of confidential informants were delivered to the supposed smugglers who were actually undercover agents. The border patrol agent pled guilty and was sentenced to 180 months imprisonment, followed by 36 months of supervised release.

- We investigated two border patrol agents accused of abusing four marijuana smugglers, who were travelling on foot and were taken into custody on a remote section of the U.S.-Mexican border. After capturing the smugglers, the agents forced them to remove their footwear and jackets and eat handfuls of marijuana. The agents then burned the jackets and footwear and ordered the smugglers to return into the desert, miles from nearby shelter. The agents were found guilty and both were sentenced to 24 months imprisonment, followed by a term of supervised release.

Use of Force Investigations

We also investigate possible misconduct by DHS employees in use of force incidents. Typically, these are incidents that result in serious injury or death and include indications or allegations that the use of force was excessive or potentially violated an individual's civil rights. MD 0810.1 requires that such incidents be reported to OIG. If the matter involves possible criminal misconduct by DHS employees, which is within the jurisdiction of DOJ's Civil Rights Division, the matter is promptly referred to DOJ for consideration. Attorneys in the Civil Rights Division review the matter and determine whether to initiate an investigation, decline an investigation, or request more information. Because we have concurrent jurisdiction, OIG investigates some use of force incidents jointly with the Federal Bureau of Investigation. DHS component internal affairs offices investigate and/or review use of force incidents that do not meet our investigative thresholds and we provide oversight as appropriate.

Non-criminal Misconduct Investigations

OIG and component internal affairs offices are also responsible for handling hundreds of complaints about employee misconduct. This includes:

- misuse of government vehicles;
- failure to report certain contacts with foreign nationals;
- engaging in prohibited personnel practices;
- violations of conflict-of-interest restrictions on former DHS employees;
- violations of ethical standards governing government employees, including gifts from outside sources, gifts between employees, conflicting financial interests, impartiality in performing official duties, seeking other employment, misuse of position, and outside activities;

- improper disclosure of classified or law enforcement information;
- illegal drug use and excessive alcohol use; and
- domestic violence and other state and local crimes that affect fitness for duty.

Allegations of Secret Service Misconduct in Cartagena, Colombia

Of note, one of our investigations concerned allegations that, in April 2012, during President Obama's visit to Cartagena, Colombia, for the Summit of the Americas conference, Secret Service agents solicited prostitutes and engaged in other misconduct.

During our investigation, we independently identified Secret Service personnel who directly supported the Cartagena visit and other potential witnesses who may have had information about the Cartagena trip. We identified the personnel directly involved in the incident, as well as the potential witnesses, through documentary sources, including official travel records, hotel registries, country clearance cables, personnel assignments, and Secret Service and U.S. Embassy records.

As part of our investigation, we conducted 283 interviews of 251 Secret Service personnel.¹ Based on our interviews and review of records, we identified 13 Secret Service employees who had personal encounters with female Colombian nationals consistent with the misconduct reported. We determined that one of the female Colombian nationals involved in the incident was known to the Intelligence Community. However, we found no evidence that the actions of Secret Service personnel had compromised any sensitive information.

Our investigation determined that 12 Secret Service employees met 13 female Colombian nationals at bars or clubs and returned with them to their rooms at the Hotel Caribe or the Hilton Cartagena Hotel. In addition, one Secret Service employee met a female Colombian national at the apartment of a Drug Enforcement Administration Special Agent. We interviewed the remaining 12 Secret Service employees who had personal encounters with the 13 female Colombian nationals. Through our interviews, we learned that following their encounters, three females left the rooms without asking for money, five females asked for money and were paid, and four females asked for money but were not paid. In addition, one female, who asked to be paid but was not, brought a Colombian police officer to the door of the Secret Service employee's room; the employee did not answer the door. As a result, she was paid by another Secret Service employee and left. A fourteenth Secret Service employee, who the Secret

¹ Thirty three Secret Service employees refused to participate in a voluntary interview and refused to answer our questions. Eight were senior level managers or senior executives, including Deputy Assistant and Assistant Directors; and 25 were special agents, inspectors, or employees of the Uniformed Division.

Service initially identified as involved in the misconduct, was subsequently determined to have been misidentified.

Of the 13 employees accused of soliciting prostitutes in Cartagena, three were returned to duty with memoranda of counseling, after being cleared of serious misconduct. Five employees had their security clearance revoked because they either knowingly solicited prostitutes, demonstrated lack of candor during the investigation, or both. Five employees resigned or retired prior to the adjudication of their security clearance. Several of these last five employees appealed their adverse personnel actions to the United States Merit Systems Protection Board.

After the incident, the Secret Service instituted new rules regarding personal behavior. For example, it issued a directive addressing personal and professional conduct. This directive amended Secret Service standards of conduct with additional guidance and policies about off duty conduct, briefings, and supervision on foreign trips. In addition, the directive reiterated that the absence of a specific, published standard of conduct covering an act or behavior does not mean the act is condoned, is permissible, or will not result in corrective or disciplinary action.

During our Cartagena investigation, we asked employees about the Secret Service system of dealing with misconduct allegations in general. We received reports from Secret Service employees who alleged a culture of retaliation and disparate treatment toward employees, including directed punishment toward complainants and those voicing concerns about Secret Service programs and operations. Secret Service personnel reported that the resulting culture may have adversely impacted the employee retention rate. Several Secret Service personnel interviewed also reported that Secret Service officials “whitewashed” allegations of Secret Service employee misconduct, effectively downplaying and underreporting complaints to OIG so they would appear to be administrative and not potentially criminal. These actions would, in turn, cause the allegations to be returned to Secret Service internal affairs for inquiry instead of OIG accepting them investigation.

Other Misconduct by Secret Service Agents

We are also aware of other misconduct by Secret Service employees, including:

- In November 2010, a Secret Service employee traveling in Thailand to support a Presidential visit went into the local town with other employees during a stop. The employee failed to return on time and missed the assigned flight aboard a military aircraft. It took a resource-intensive response by Secret Service, military, and American civilian personnel to locate the employee, including a Secret Service supervisor who remained in the country to help locate the employee. The employee, who arrived at

the airport about four hours late, was observed arriving with unknown local residents and smelled of alcohol. Unfortunately, the Secret Service failed to fully investigate the matter and failed to report the matter to us. The agent was suspended for seven days.

- In November 2013, a Secret Service supervisory agent was involved in an incident at the Hay Adams hotel in Washington, DC. The supervisor began conversing with a woman at the hotel bar and later accompanied the woman to her room. The woman solicited the help of hotel security when she wanted the agent to leave her room, reporting that he had a gun and she was frightened. The agent left the room without incident. The Secret Service's Office of Professional Responsibility (Inspections Division) conducted an inquiry and the Office of Protective Operations issued the agent a letter of reprimand.
- In March 2014, a Secret Service Uniformed Division officer assigned to the Special Operations Division was involved in a car accident while driving a government-rented vehicle while on official travel to support a Presidential visit to Miami. The officer was found to have consumed alcohol in the hours preceding the accident, in violation of the 10-hour rule regarding alcohol consumption. The officer was ultimately served with a 7-day suspension, which was appealed and has not yet been adjudicated. This officer was one of 10 others who were out together the evening before the accident. Three of the other officers violated the 10-hour rule and a fourth misused a government-rented vehicle. These officers were issued suspensions ranging from 21 days to 35 days. One of the officers resigned.
- In March 2014, a Secret Service agent, who was a member of the Special Operations Division Counter-Assault Team (CAT), was sent back to Washington, DC, after being found unconscious outside his hotel room in The Hague, Netherlands, while on official travel. When interviewed, the agent said he went out to dinner at a restaurant with CAT personnel, during which he had several drinks. After dinner, the agent remained at the restaurant with two other CAT agents and had several more drinks. The agent could not remember leaving the restaurant or how he got back to his hotel. All three agents were found to have violated the 10-hour rule regarding alcohol consumption. The agent who was found unconscious resigned from the Secret Service. The other two agents were issued suspensions for 30 days and 28 days, respectively.

Prior to the last three incidents, in April 2012, the Secret Service instituted new policies involving the use of alcohol, particularly on protective assignments away from agents' home offices. Specifically, the new policy prohibited the use of alcohol with 10 hours of reporting for duty. Additionally, while on a

protective assignment away from the home office, agents were prohibited from drinking at the protectee's hotel once the protective visit has begun, but could drink "in moderate amounts" while off duty during the protective mission.

Previously, we have publicly acknowledged that, as a result of media reports, we are investigating other alleged Secret Service misconduct. Our investigations of these matters are ongoing and we therefore cannot discuss the details. At the conclusion of our investigations, we will issue public reports of our findings. These matters include:

- An allegation that two Secret Service supervisors in a government-owned vehicle drove through an active suspicious package investigation on March 4, 2015, in an attempt to enter the White House grounds upon their return from a retirement party.
- An allegation that, in March 2015, one or more Secret Service agents accessed, through the Secret Service data systems, the employment application of an individual who later became a member of Congress.
- An allegation that, in March 2015, a senior manager, after a farewell party involving drinking, sexually assaulted a female subordinate.

After the March 4, 2015 incident, the Secret Service issued yet another set of rules about alcohol consumption, prohibiting the use of a government-owned vehicle within 10 hours of drinking alcohol in any amount.

Inquiry into Systemic Issues

We conducted an inspection of the Secret Service's efforts to identify, mitigate, and address instances of misconduct and inappropriate behavior, which was published in December 2013.²

The inspection report described a situation in which many employees were hesitant to report off-duty misconduct either because of fear that they would be retaliated against or because they felt management would do nothing about it. As part of the report, we conducted an online survey as well as face-to-face interviews. Of the 138 electronic survey respondents who personally observed excessive alcohol consumption, 118 (86 percent) indicated they did not report the behavior. Each respondent could select multiple reasons for not reporting the behavior. Some frequently cited reasons included:

- 66 respondents (56 percent) indicated the employee engaged in the behavior while off duty.

² http://www.oig.dhs.gov/assets/Mgmt/2014/OIG_14-20_Dec13.pdf

- 55 respondents (47 percent) did not believe that management supported employees reporting the behavior.
- 47 respondents (40 percent) were afraid of reprisal or retaliation.

In a separate question, 1,438 of 2,575 electronic survey respondents (56 percent) indicated that they could report misconduct without fear of retaliation, meaning that a significant portion of the workforce may fear retaliation for reporting misconduct.

We also looked at the employee misconduct that did get reported. From January 2004 to February 2013, the Secret Service tracked 824 incidents of employee misconduct. Excluding partial-year data from 2013, pending cases, and cases with incomplete date information, there were 791 misconduct cases between 2004 and 2012. The highest percentage of those involved neglect of duty. During this period, the Secret Service's workforce averaged 6,600 employees.

As a result of our findings, we identified areas in which the Secret Service needed better management controls for reporting misconduct or inappropriate behavior and adjudicating and administering disciplinary actions. We made 14 recommendations to improve the Secret Service's processes for identifying, mitigating, and addressing instances of misconduct and inappropriate behavior. Additionally, we suggested the Secret Service continue to monitor and address excessive alcohol consumption and personal conduct within its workforce. The Secret Service concurred with all 14 recommendations and implemented changes to its discipline program. Specifically, the Secret Service created:

- A table of penalties that serves as a guide in determining appropriate corrective, disciplinary, or adverse actions for common offenses. This policy requires employees to report information about potential misconduct involving violations, as set forth in the table of penalties, to their chain of command, the Secret Service Office of Professional Responsibility, or OIG. The policy also requires that supervisors report misconduct through their chain of command.
- Policies clarifying when and how managers are to conduct their own fact-finding inquiries and requiring that the results of those inquiries be forwarded to the Office of Professional Responsibility.
- A policy granting the Chief Security Officer unfettered access to employees to obtain information relating to potential security concerns.
- Policies to ensure discipline files contain all required information.

Mr. Chairman, this concludes my prepared statement. I welcome any questions you or other Members of the Subcommittee may have.