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United States Senate

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COMMITTEES
ENVIRONMENT AND PUBLIC WORKS
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COMMERCE, SCIENCE,
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AND ENTREPRENEURSHIP

VIA ELECTRONIC DELIVERY

The Honorable Michael Horowitz
Inspector General of the U.S. Department of Justice
Chair of the Council of the Inspectors General on Integrity and Efficiency
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Inspector General Horowitz:

I am deeply concerned with the U.S. Department of Homeland Security's (DHS) recent attempt to redact information contained in a forthcoming final report produced by the DHS Office of Inspector General (DHS OIG) examining U.S. Customs and Border Protection's (CBP) implementation of Executive Order (EO) 13769.

In a November 20, 2017 letter sent to Congress shortly before he retired, the Honorable John Roth, former DHS Inspector General (IG), expressed deep concern that DHS was seeking to effectively block the release of the DHS OIG final report to Congress and the public by making an unprecedented deliberative process privilege assertion.

As IG Roth noted, this common law privilege had never been invoked during his tenure as DHS IG and threatens to establish a new precedent that would gut the Inspector General Act of 1978's (IG Act) statutory intent and requirement to keep "Congress fully and currently informed about problems and deficiencies":

*"I am particularly troubled by the Department's threat to invoke the deliberative process privilege, as this is the first time in my tenure as Inspector General that the Department has indicated that they may assert this privilege in connection with one of our reports or considered preventing the release of a report on that basis. In fact, we regularly have published dozens of reports that delve into the Department's rationale for specific policies and decisions, and comment on the basis and process on which those decisions were made. **Indeed, that is at the heart of what Inspectors General do** [emphasis added]."*

DHS delaying the public release of the final DHS OIG report examining implementation of EO 13769 harms government transparency. This obstruction also prevents Congress from understanding why DHS OIG concluded CBP violated at least two separate Federal court orders and how the current nominee to be CBP Commissioner, acting CBP Commissioner Kevin McAleenan, oversaw CBP's implementation efforts.

Allowing this Administration, and any future Administration, to block the release of information contained in an OIG report because it addresses a Federal agency's deliberations would significantly weaken Congressional oversight, undermine transparency and render the IG Act toothless in regard to examining agency management and policy implementation decisions.

Accordingly, to inform Congressional oversight examining the validity and implications of DHS potentially invoking the deliberative process privilege to block the release of information contained in a final DHS OIG report, I am requesting that the Council of the Inspectors General on Integrity and Efficiency (CIGIE) conduct a survey of all agency inspectors general to request the following information:

1. Whether an IG ever received a formal or informal threat to redact information pursuant to the deliberative process privilege;
2. How many times, if any, an IG experienced an agency redacting information in an OIG product pursuant to the deliberative process privilege;
3. For any redactions, the facts and circumstances surrounding the invocation of the deliberative process privilege; and
4. Whether an IG believes agency assertions of deliberative process privilege impede or otherwise hinder an IG's ability to effectively comply with the IG Act's statutory requirement to keep "Congress fully and currently informed about problems and deficiencies."

Thank you in advance for your leadership and CIGIE's efforts that inform Congressional oversight and are vital to ensuring government transparency and accountability.

Sincerely,

A handwritten signature in blue ink, reading "Tammy Duckworth". The signature is fluid and cursive, with a long horizontal stroke at the end.

Tammy Duckworth
United States Senator