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United States Senate

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COMMITTEES
ENVIRONMENT AND PUBLIC WORKS
ENERGY AND NATURAL RESOURCES
COMMERCE, SCIENCE,
AND TRANSPORTATION
SMALL BUSINESS
AND ENTREPRENEURSHIP

The Honorable Ron Johnson
Chairman
Senate Committee on Homeland Security
and Governmental Affairs
340 Dirksen Senate Office Building
Washington, DC 20510-6050

The Honorable Claire McCaskill
Ranking Member
Senate Committee on Homeland Security
and Governmental Affairs
340 Dirksen Senate Office Building
Washington, DC 20510-6050

Dear Chairman Johnson and Ranking Member McCaskill:

I am writing to request the Committee on Homeland Security and Governmental Affairs (HSGAC) hold an oversight hearing to examine 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]."*

In light of HSGAC's leadership last Congress to strengthen the IG Act by developing and passing the Inspector General Empowerment Act, I believe the Committee should carefully examine 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.

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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, I urge HSGAC to invite the Chair of the Council of Inspectors General on Integrity and Efficiency (CIGIE), former DHS IG Roth and relevant officials from DHS and the U.S. Department of Justice to examine this critical oversight matter. Congress relies on independent and empowered agency inspectors general to conduct oversight of the Executive Branch and to hold the government accountable. Thank you in advance for your consideration of my request for an oversight hearing.

Sincerely,



Tammy Duckworth
United States Senator

CC:

The Honorable Chuck Grassley, Chairman of the Senate Judiciary Committee
The Honorable Dianne Feinstein, Ranking Member of the Senate Judiciary Committee