

# IS EPA LEADERSHIP OBSTRUCTING ITS OWN INSPECTOR GENERAL?

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## HEARING

BEFORE THE

COMMITTEE ON OVERSIGHT  
AND GOVERNMENT REFORM  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

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## CONTENTS

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Hearing held on May 7, 2014 .....	Page 1
WITNESSES	
Mr. Patrick Sullivan, Assistant Inspector General for Investigations, Office of Inspector General, U.S. Environmental Protection Agency	
Oral Statement .....	6
Written Statement .....	8
Mr. Allan Williams, Deputy Assistant Inspector General for Investigations, Office of Inspector General, U.S. Environmental Protection Agency	
Oral Statement .....	17
Written Statement .....	19
Ms. Elisabeth Heller Drake, Special Agent, Office of Investigations, Office of Inspector General, U.S. Environmental Protection Agency	
Oral Statement .....	23
Written Statement .....	26
The Hon. Bob Perciasepe, Deputy Administrator, U.S. Environmental Protec- tion Agency	
Oral Statement .....	33
Written Statement .....	35
APPENDIX	
Opening Statement of Rep. Elijah Cummings .....	78
Portions of The Inspector General Act of 1978, submitted by Chairman Issa ...	80
Oct. 28, 2013 letter from Gina McCarthy, EPA Administrator, to the EPA IG, submitted by Rep. Chaffetz .....	83
Statement for the record by Rep. McHenry .....	84



## **IS EPA LEADERSHIP OBSTRUCTING ITS OWN INSPECTOR GENERAL?**

**Wednesday, May 7, 2014**

HOUSE OF REPRESENTATIVES  
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,  
WASHINGTON, D.C.

The committee met, pursuant to call, at 9:33 a.m., in Room 2154, Rayburn House Office Building, Hon. Darrell E. Issa [chairman of the committee] presiding.

Present: Representatives Issa, Mica, Turner, Duncan, Jordan, Chaffetz, Walberg, Amash, Gosar, Woodall, Meadows, Bentivolio, DeSantis, Cummings, Maloney, Norton, Tierney, Connolly, Cardenas, Lujan Grisham, and Kelly.

Staff Present: Molly Boyd, Majority Deputy General Counsel and Parliamentarian; Lawrence J. Brady, Majority Staff Director; Joseph A. Brazauskas, Majority Counsel; David Brewer, Majority Senior Counsel; Caitlin Carroll, Majority Press Secretary; Sharon Casey, Majority Senior Assistant Clerk; Drew Colliatie, Majority Professional Staff Member; John Cuaderes, Majority Deputy Staff Director; Adam P. Fromm, Majority Director of Member Services and Committee Operations; Linda Good, Majority Chief Clerk; Tyler Grimm, Majority Senior Professional Staff Member; Ryan M. Hambleton, Majority Senior Professional Staff Member; Christopher Hixon, Majority Chief Counsel for Oversight; Michael R. Kiko, Majority Legislative Assistant; Mark D. Marin, Majority Deputy Staff Director for Oversight; Matt Mulder, Majority Counsel; Jeffrey Post, Majority Senior Professional Staff Member; Andrew Rezendes, Majority Counsel; Katy Rother, Majority Counsel; Laura L. Rush, Majority Deputy Chief Clerk; Jessica Seale, Majority Digital Director; Andrew Sult, Majority Press; Peter Warren, Majority Legislative Policy Director; Rebecca Watkins, Majority Communications Director; Jaron Bourke, Minority Director of Administration; Lena Chang, Minority Counsel; Devon Hill, Minority Research Assistant; Julia Krieger, Minority New Media Press Secretary; Elisa LaNier, Minority Director of Operations; Mark Stephenson, Minority Director of Legislation; and Katie Teleky, Minority Staff Assistant.

Chairman ISSA. The committee will come to order. Without objection, the chair is authorized to declare a recess of the committee at any time.

The Oversight Committee exists to secure two fundamental principles: first, Americans have a right to know that the money Washington takes from them is well spent and, second, Americans deserve an efficient, effective Government that works for them. Our

duty on the Oversight and Government Reform Committee is to protect these rights. Our solemn responsibility is to hold Government accountable to taxpayers, because taxpayers have a right to know what they get from their Government. It is our job to work tirelessly in partnership with our inspectors general and citizen watchdogs to deliver the facts to the American people and bring genuine reform to the Federal bureaucracy. This is our mission, this is our calling, and this is my passion.

Today's hearing is about restoring the American people's trust in an agency that has developed a well-earned reputation for waste and mismanagement of taxpayers' funds.

The Environmental Protection Agency is one of the most powerful and far-reaching agencies, but it has offered too little accountability for how its employees are using their time, taxpayers' money, and, in fact, often abusing the American people by extending and expanding their jurisdiction.

We are not here today to talk about the overreach of policies of the EPA. Inventing from thin air regulations that don't exist, proactively abusing citizens trying to create wealth in this Country through mining, manufacturing, and agriculture. If only we could.

Today we are here because there is a terrifying truth at the EPA, which is responsible for regulations governing such a large percentage of our economy. The fact that it lacks internal controls to prevent even the most basic fraud and abuse. For example, in October the committee held a hearing about fraud perpetrated by John Beale, a senior level EPA employee who worked directly for the now Administrator Gina McCarthy. Beale is claimed to have masqueraded as a CIA employee in order to steal time, money, and travel, and even a handicapped parking space from the Federal Government. The disguise would have been uncovered by anyone who was looking for someone abusing the trust of the American people.

Beale's scam went on far more than 10 years without anyone at the EPA catching on. Even the bold-faced lies, the most outrageous were not detected. Americans were so shocked that even The Daily Show with Jon Stewart referred to Beale's scam as a web. Stewart's questioned how Beale could fool so many people at the EPA for so long, and I would too except for what we are going to hear today, because today we are going to understand that John Beale's behavior did not happen in a vacuum. In fact, it was just the tip of EPA's fraudulent iceberg.

This morning we will hear more stories from EPA that will appall and bewilder the American people. It is hard to shock the American people about waste, fraud, and abuse in Government, but I believe we will achieve that today. For example, one senior level EPA employee sold jewelry, pocketbooks, and weight loss products out of her office. She hired friends and even her own daughter, and paid for internships and steered bonuses toward her own daughter, also an EPA employee who she thinly veiled was coming from another part not under her control, under the anti-nepotism law, except, as you will hear today, the bonus came from her budget.

But instead of being reprimanded, she received the highly prestigious Presidential Rank Award and \$35,000 in special bonus. A senior manager, this woman, this mother of a child who was un-

lawfully and unreasonably hired and bonused by her own mother, is still at the EPA and is an employee today.

Another woman began working from home 20 years ago because of her multiple sclerosis. But she stopped producing any product more than five years ago. She didn't even access her emails. But her supervisors fraudulently kept signing off on her time cards, so she kept getting paid. Over the past year, she has been paid roughly \$600,000. But that's not enough for the EPA. She received a performance award during this time.

The EPA is an organization in which you can get a special award for not working at all.

Our sympathies go out to someone suffering from an awful disease. They should be taken care of, and the Government has programs to do so. But fraudulently claiming the person is at work and bonusing them is a crime, a crime that doesn't get punished at all at the EPA, not by criminal prosecution and certainly not by termination.

Then there is a GS-15 EPA employee who kept receiving normal paychecks for one to two years after moving into a retirement home. We are talking nursing home here, folks, not one of those places where you golf every day. From the nursing home, even though he did not work during any of that time, he continued to receive pay; again, falsified documents. His bosses knew it. When the IG began its investigation, his supervisor simply placed him on sick leave. One crime followed by another coverup.

Today we will also hear about Beth Craig. She is a Deputy Assistant Administrator in the Office of Air and Radiation who is still working at the EPA even though the IG found she exercised a severe lack of due diligence by signing off, yes, on CIA Agent Mr. Beale's travel.

Furthermore, John Beale's abuse of retention bonuses—and I want everyone to understand retention bonuses are supposed to be uniquely paid for somebody that has to be kept that would otherwise retire—abuse of retention bonuses that he did not deserve prompted the EPA IG to launch, as you might imagine, an audit, which found John Beale was not the only offender. Over the last eight years, EPA paid retention bonuses to 13 additional employees which totaled more than \$660,000. In 11 of the 13 cases, the EPA made unauthorized payments which cost more than \$481,000.

Additionally, in the wake of Mr. Beale's fraudulent travel, EPA IG looked into passport controls at EPA for the use of official passports. And, for the American people, these are second passports; they are not the blue ones that Americans can carry, these are ones that identify someone as official Government employees on official duty and they are a different color, they are red. The review found that out of 417 official passports belonging to the EPA, 199 could not be located.

This is truly a broken agency. We know about these issues because of the tenacity and the hard work of our inspector general and his staff.

Today's hearing is even more important because EPA leadership has engaged in an effort to keep the IG from doing its job. The Office of Homeland Security, a small organization, not the big Homeland Security, a small one within EPA, has been obstructing the

inspector general's work. In fact, one of our witnesses today was verbally assaulted by an employee of the Office of Homeland Security while simply trying to get him to sign a perfunctory form.

Until the Office of Inspector General is allowed to do their job to the extent authorized and mandated under the IG Act, we will never know more about John Beale and cases like that.

I didn't pull any punches today, but there is a lot more material that could have been included. The EPA has a long history that now has become intolerable to the American people. As I said in the first part of my opening statement, the abuses of the EPA that are policy driven are not the subject today, although they are real. But the waste, fraud, and abuse, the criminal conduct, and the fact that its senior management obviously is part of that activity is now intolerable.

With that, I recognize the ranking member for his opening statement.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

The EPA Office of Inspector General has expressed serious concerns that deserve serious attention by this committee so as we might be effective and efficient. The IG asserts that information he considers relevant to his mission is being withheld by the EPA. The IG also believes that the EPA's Office of Homeland Security is engaged in investigations that exceeds its authority. Those disputes do happen. They even happen here on Capitol Hill.

These concerns are symptoms of a jurisdictional dispute caused by difference in interpretation of two statutes, the Inspector General Act of 1978 and the Intelligence Authorization Act for Fiscal Year 1995.

Under the Inspector General Act, the IG has broad authority to investigate cases of employee misconduct. Yet, Federal courts have ruled that this authority maybe limited in certain cases involving national security. In addition, under the Intelligence Authorization Act, and various presidential executive orders and directives, the EPA has certain national security responsibilities to refer cases to the Federal Bureau of Investigation.

The dispute lies at the intersection of these two laws. The two offices do not agree on what role the IG should play in these cases or what obligations the EPA has to keep the IG informed of actions relating to referrals made to the FBI. Passions have run high during this dispute, and even resulted in an altercation between special agents of the IG and the staff of the Office of Homeland Security. That is most unfortunate.

There are several ways to resolve this issue. One way is to wait for a Federal court to decide the matter. Another way is for Congress to enact new legislation. Both these options will take a long time and cooperation between the EPA, the IG, and the FBI will suffer in the meantime and the people will not be properly served.

A better way is to find a practical solution that will allow all parties to win. I believe this committee can do that by helping them craft a plan that will clarify their roles and responsibilities, require the most information sharing possible, and ensure better cooperation going forward.

In preparation for today's hearing, I asked my staff to work with all the parties to help find a solution. My staff spent many hours



discussing the issues with various stakeholders, trying to find not only common ground, but higher ground. Based on my staff's discussions with the parties, I believe there are significant areas of agreement, and I would like to confirm this progress here today, again, so that we might be effective and efficient in what we are trying to do.

First, I believe all parties agree that the FBI, as the lead agency for national security investigations, should be directly involved in the discussion to resolve their concerns. Second, if the FBI is not leading an investigation into employee misconduct, it is properly the lead role of the IG, and not the EPA's Office of Homeland Security. Third, the Office of Homeland Security has an intelligence support function to perform, including intelligence analysis. And, fourth, better information sharing between the EPA and the IG will help ensure that the de-confliction occurs, which will protect investigations from being compromised or agents from being endangered.

Those are areas of agreement that I think we have already achieved. If you all can confirm those today, I believe we will have a strong foundation for positive resolution. I was also pleased to hear that yesterday senior leadership of the EPA and the IG, as well as the FBI, scheduled a meeting next week to work towards a resolution of this dispute. Again, this is an effort to get it done, to resolve the issue. I believe that all the parties involved here are hardworking Federal employees that simply want to do their job in an effective and efficient manner, and we should be about the business of trying to help them do that.

With that, I yield back.

Chairman ISSA. I thank the gentleman.

At this time I would ask unanimous consent that the portions of the Inspector General Act of 1978 which state and list the agencies that are allowed to have exemptions, which are the Department of Defense, Homeland Security, Justice, Treasury, plus the United States Postal Service and Federal Reserve, noting that the creation of Homeland Security Act was what created that exemption afterwards.

Members may have seven days in which to submit opening statements for the record.

We are now pleased to welcome our panel of witnesses.

Mr. Patrick Sullivan is the Assistant Inspector General for Investigations for the Office of Inspector General at the EPA.

Mr. Allan Williams is the Deputy Assistant Inspector General for OIG, Office of Inspector General, at the EPA.

Ms. Elisabeth Heller is the Special Agent at the Office of Investigations at the Office of Inspector General at the EPA. She is here today to provide testimony as a private citizen, although I am going to codify that by saying her experience well in fact as an agent that she then was put through is also part of her testimony.

The Honorable Robert Perciasepe is the Deputy Administrator at the EPA, and we welcome you for being here.

Pursuant to the rules, all witnesses are to be sworn. Would you please rise to take the oath and raise your right hand?

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

[Witnesses respond in the affirmative.]

Chairman ISSA. Please be seated.

Let the record reflect that all witnesses answered in the affirmative.

Three out of the four of you are, quite frankly, career opening statement people, it is part of your job. Ms. Heller, I know that yours is a little less scripted and organized. For that reason, I would ask that you all remain as close as you can to five minutes. Ms. Heller, if you need a little bit more time, you will be granted it.

With that, Mr. Sullivan, you are recognized.

### **WITNESS STATEMENTS**

#### **STATEMENT OF PATRICK SULLIVAN**

Mr. SULLIVAN. Good morning, Chairman Issa, Ranking Member Cummings, members of the committee. I am Patrick Sullivan, Assistant Inspector General for Investigations at EPA. Thank you for inviting me to testify.

We are here today because the EPA OIG's Office of Investigations is being impeded from fulfilling its responsibilities by actions of the EPA's internal Office of Homeland Security, also known as OHS, a unit within the Office of the Administrator.

As I testified before you in October on the John Beale case, prior to EPA officials contacting the OIG about the situation involving Mr. Beale, OHS conducted its own investigation. The OHS actions, which included several interviews with Mr. Beale, delayed and damaged the OIG's subsequent investigation.

I would like to go on record today and state that as the official in charge of internal investigations at the EPA, I am very concerned that vital information regarding suspected employee misconduct is being withheld from the OIG. Because OHS continues to block my office's access to information essential to the OIG's work, I cannot assure the committee that we are doing everything possible to root out other John Beales who may be at the EPA or uncover other malfeasance of a similar magnitude. I believe that the current situation represents a significant liability for the EPA, the Congress, and the American taxpayers. In short, the actions of OHS violate the IG Act, the very legislation that Congress passed to ensure Federal agencies have oversight.

The EPA OIG was created pursuant to the IG Act and thereby has statutory authority to conduct investigations of employee misconduct, threats against EPA personnel and facilities, and intrusions into EPA computer networks and systems. Pursuant to the attorney general's guidelines for OIGs with statutory law enforcement authority, the EPA and the FBI share concurrent jurisdiction for agency-related cases.

OHS serves as the Agency's central liaison for homeland security matters. The OHS has no law enforcement or investigative authority. The most critical concern for the OIG is the safety and security of all EPA employees, facilities, and assets. The OIG's ability to in-

investigate threats against EPA employees and facilities has been impeded due to OHS's total and systematic refusal to share threat information.

In investigating threats, timely access to all available information is critical. OHS's stance places my special agents at unnecessary risk. Most important, the withholding of threat information from the OIG also places all EPA employees and facilities at risk. This practice is not only unacceptable; it is dangerous.

The current situation with OHS harks back to the days before 9/11 when U.S. Government entities often did not communicate effectively or at all, contributing to the most horrific terrorist attack ever on U.S. soil. No single entity can accomplish its work in a vacuum; we must work together.

In response to denying the OIG's repeated request for information and cooperation, OHS has invoked the term "national security" as its mantra. This formidable cloak does not justify OHS's insistence on filtering information germane to the OIG's jurisdiction, whether classified or not. OHS does not have authority to make such a call. Agency management, let alone a small shop like OHS buried inside the Agency, has no power whatsoever to tell the OIG what it needs to know. It is actually the reverse. Under the IG Act, the OIG has access to the entirety of information available to the Agency, and it is the IG who determines what information it needs to know.

In fact, EPA's own Office of Environmental Compliance and Assurance issued a legal opinion holding that OHS lacks both statutory law enforcement authority and the authority to assign an EPA Criminal Investigations Division special agent to work as a criminal investigator within OHS. This special agent, who carries a gun and a badge, routinely conducts national security and misconduct investigations for OHS.

Over the past few months, I discussed this situation with many of my fellow assistant inspectors general for investigation in the Federal OIG community. I learned that the situation I face at EPA is an anomaly. Most of my counterparts advised me that their Offices of Investigation would either directly participate with the FBI in any such national security related investigation targeting an employee or they would be fully informed about the investigation for coordination and de-confliction purposes. In addition, the use of non-disclosure agreements by an internal entity such as OHS to prevent employees from speaking to the OIG would not be tolerated.

In summary, we need Congress's help in rectifying the situation. The OHS's refusal to share information must be addressed and corrected immediately.

Mr. Chairman, this concludes my prepared statement.

[Prepared statement of Mr. Sullivan follows:]

**Statement of  
Patrick Sullivan  
Assistant Inspector General for Investigations  
Office of Inspector General  
U.S. Environmental Protection Agency  
Before the  
Committee on Oversight and Government Reform  
U.S. House of Representatives  
May 7, 2014**

Good morning, Chairman Issa, Ranking Member Cummings and members of the committee. I am Patrick Sullivan, Assistant Inspector General for Investigations at the U.S. Environmental Protection Agency (EPA). Thank you for inviting me to appear before you today.

**Overview of the EPA OIG**

Given the issues that will be discussed, it is important to remind everyone present that the Office of Inspector General (OIG) is an independent and objective office within the EPA that is uniquely charged with conducting investigations and audits related to programs and operations at the agency and the U.S. Chemical Safety and Hazard Investigation Board. Although we are a part of the EPA, the OIG operates with a separate budget and decision-making authority, and the agency's senior leaders may not prohibit, prevent or obstruct us from conducting our work.

In accordance with the Inspector General (IG) Act of 1978, as amended, the OIG's mission is to: conduct independent and objective audits and evaluations; prevent and detect waste, fraud and abuse; promote economy, effectiveness and efficiency; review pending legislation and regulation; and keep the agency head and Congress fully and currently informed. We fulfill our mission primarily by issuing audit and evaluation reports that include recommendations for corrective actions, by conducting investigations and by referring criminal cases to the U.S. Department of Justice for prosecution.

Before I begin, I would like to commend the expertise, dedication, diligence and professionalism of the OIG staff who strive every day to carry out this mission.

**How the EPA OHS Impedes the OIG's Mission**

The EPA OIG's Office of Investigations is being impeded from fulfilling its responsibilities by actions of the EPA's internal Office of Homeland Security (OHS), a unit within the Office of the Administrator. OHS is overseen by Gwendolyn Keyes Fleming, who serves as Chief of Staff to Administrator Gina McCarthy. To illustrate this big picture problem, I will discuss three specific, serious, ongoing actions by OHS.

As a starting point, I would like to call your attention to our successful investigation of former EPA official John Beale, which was the subject of a hearing held by this committee on October 1, 2013. You will recall that Mr. Beale defrauded the agency under the guise of being a Central

Intelligence Agency operative. The OIG's investigation ultimately led to Mr. Beale's conviction and sentence to serve 32 months in federal detention. As I testified in October, prior to EPA officials contacting the OIG about the situation, OHS conducted its own investigation. The OHS' actions, which included several interviews with Mr. Beale, damaged the OIG's subsequent investigation.

I would like to go on record today and state that, as the official in charge of internal investigations at the EPA, I am very concerned that vital information regarding suspected employee and contractor misconduct is being withheld from the OIG. Because OHS continues to block my office's access to information essential to the OIG's work, I cannot assure the committee that we are doing everything possible to root out other "John Beales" who may be at the EPA or other malfeasance of similar magnitude. I wholeheartedly believe that the current situation represents a significant liability for the EPA, the Congress and the American taxpayers. In short, the actions of OHS violate the IG Act, the very legislation that Congress passed to ensure federal agencies have oversight to prevent and detect fraud waste and abuse. Without a shred of doubt, I can say that OHS is preventing the OIG from doing what Congress has mandated us to do.

Certain news media have reported on alleged assaults associated with an OIG initial investigation into OHS last year. The circumstances of that incident are indeed important and part and parcel of the overall narrative. I am grateful that the committee has taken an interest in what happened that day and will hear from witnesses on that topic. To date, the public has heard less about the broader issues at stake regarding the respective jurisdictions of the OIG and OHS. Those will be the subject of my testimony.

As a final background topic, it is necessary to provide a brief description of the duties and authority of the three offices involved in this matter. Those offices are the OIG, OHS and the EPA Security Management Division (SMD).

The EPA OIG was created pursuant to the IG Act and thereby has statutory authorization, as well as an obligation, to conduct criminal and administrative investigations of employee misconduct, threats against EPA personnel and facilities, and intrusions into EPA computer networks and systems. Pursuant to the Attorney General's Guidelines for OIGs with Statutory Law Enforcement Authority, the EPA and the Federal Bureau of Investigation (FBI) share concurrent jurisdiction for agency-related cases. Indeed, the OIG's Office of Investigations enjoys a healthy professional working relationship with the FBI, and we currently are collaborating on numerous joint investigations.

OHS serves as the agency's central liaison for homeland security matters. It was created on February 6, 2003, by a memorandum from the EPA Administrator. The OHS has absolutely no statutory authority to conduct investigations and no law enforcement authority. Nor does the Administrator's memorandum authorize OHS to take investigatory actions. Although OHS continually has stated that there are intelligence directives and guidelines that provide it authority to withhold information from and avert oversight by the EPA OIG – including Title 50 U.S. Code Section 402a; Presidential Policy Directive-21, Critical Infrastructure Security and Resilience (2013); and EPA Order 3220, Intelligence Operations (2008) – it has yet to provide a

basis that trumps the IG Act. While certain Title 50 agency OIGs have some limitations on their oversight authority, the EPA OIG, as a non-Title 50 agency, does not have any limitations.<sup>1</sup>

The SMD, which is part of the EPA's Office of Administration and Resource Management, provides management and protection of the EPA's facilities and other critical assets nationwide. At most federal departments and agencies, the designated offices of the OIG, and those entities with similar duties to EPA's OHS and SMD, typically work together in a reasonable manner and within their respective scopes of authority. While the OIG Office of Investigations is appreciative of such a relationship with SMD, both offices' interactions with OHS are highly concerning, putting EPA employees and facilities at risk.

The three issues I will discuss are as follows: First, and most important, the OIG's ability to investigate threats against EPA employees and facilities has been diminished due to OHS' complete and systematic refusal to share threat information with the OIG. Second, the OIG's ability to conduct employee misconduct investigations has been impeded due to the OHS' own investigative actions and its joint investigative actions with the FBI, which effectively cut off the OIG's access to information on suspected employee and contractor misconduct. Third, the OIG's ability to investigate computer intrusions has been impeded due to OHS' refusal to share information or recognize the authority of the OIG to investigate intrusions.

OHS' actions are violating federal law. Neither the Office of the Administrator nor its Office of General Counsel at the EPA has stepped in to stop this usurping of authority by OHS or its interference with the statutory authority of the OIG.

***Issue One: The OIG's ability to investigate threats against EPA employees and facilities has been impeded due to OHS's total and systematic refusal to share threat information.***

The most critical concern of the OIG is the safety and security of all EPA employees, facilities and assets. The OIG's ability to investigate threats against EPA employees and facilities has been impeded due to OHS' total and systematic refusal to share threat information.

To date, despite the OIG's repeated and sincere efforts to coordinate and exchange information on matters of mutual interest, OHS has refused to provide any threat information or reasonably cooperate at all with the OIG Office of Investigations. At times, my office has received threat information from external federal law enforcement agencies significantly later than it was known by OHS, whether acquired by or given to that office from other sources. This problem has created an extremely dysfunctional environment, as my office receives threat information from external federal law enforcement agencies, on a sporadic, hit-or-miss basis, after it was provided to or otherwise known by OHS.

In investigating threats, timely access to all available information is critical to developing a profile, assessing the situation and implementing an investigatory plan of action. OHS, by refusing to provide or exchange information with the OIG, places my special agents in the

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<sup>1</sup> Title 50 U.S. Code Section 402a establishes and provides authority to entities that comprise the U.S. Intelligence Community.

position of developing an assessment based upon incomplete information. Obviously, this situation creates an elevated and undue risk for OIG special agents in the field who are conducting interviews. Even worse, if OHS possesses independent information of a threat that the OIG is not privy to, we have absolutely no ability at all to investigate, address or mitigate that threat, which is a key function of our office.

Most important, the withholding of threat information from the OIG also places all EPA employees and facilities at risk.

OHS refuses to provide threat information not only to the OIG, but also to the EPA SMD. To put this point in context, OHS, which has a primary function to liaise and coordinate with intelligence and homeland security agencies<sup>2</sup>, refuses to share threat information with the very EPA offices charged with investigating threats (OIG) and providing first line security for EPA facilities (SMD). This practice is not only unacceptable—it is dangerous.

The current situation with OHS harks back to the days before 9/11 when U.S. government entities often did not communicate effectively or at all, contributing to the most horrific terrorist attack ever on U.S. soil. A tragic lesson resulting from that day was the critical importance that law enforcement, intelligence and public safety units establish clear and timely lines of communication to share relevant information. Obviously, that is not happening at the EPA. No single entity can accomplish its work in a vacuum. We must work together.

In response to denying the OIG's repeated requests for information and cooperation, OHS has invoked the term "national security" as its mantra. This formidable cloak does not justify OHS' insistence upon filtering information germane to the OIG's jurisdiction, whether classified or not, or a summary dismissal of two EPA entities charged with security. OHS does not have authority to make such a call. OIGs in the Intelligence Community agencies (which the EPA is not) deal almost exclusively with classified information. Agency management, let alone a small shop buried inside the agency, has no power whatsoever to tell the OIG what it needs to know. It is actually the reverse. Under the IG Act, the OIG has access to the entirety of information available to the agency, and it is the IG who determines what information, among that universe, it needs to know. The IG has the power to request IG employees be read into any classified compartment and obtain access to any classified documents available to the agency.

Personnel in both the OIG and SMD hold security clearances. I personally hold a Top Secret security clearance with four Sensitive Compartmented Information (SCI) endorsements. I have held a Top Secret/SCI security clearance for more than 35 years. All OIG special agents hold, at a minimum, Top Secret security clearances. Clearly, the federal government has entrusted me, and my special agents, to handle classified information.

For at least three years, OHS has attempted to limit the OIG's access to classified information by deciding, unilaterally, that OIG personnel do not have "a need to know." OHS uses circular logic to assert its own conclusion that the OIG does not need the information and then uses the conclusion as a basis to assert that it would be violating national security protocols to share the information.

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<sup>2</sup> <http://www.epa.gov/homelandsecurity/responsibilities.htm>

Equally troubling is that OHS' Senior Intelligence Advisor, when challenged about OHS' responsibilities and limitations, repeatedly has invoked the authority of the FBI and threatened the possible imprisonment of EPA employees who have disagreed with or questioned his position.

I would like to describe a specific example of OHS' refusal to provide threat information to the OIG. In August 2013, the OIG received a threat-related Direction of Interest Report from the U.S. Secret Service. This report concerned an individual who stated he had knowledge of a threat to harm President Obama and who also exhibited potential threatening behavior toward the EPA. The individual had an extensive and violent criminal history including weapons and drug charges. The Secret Service had prepared this report at the request of an OHS employee without the knowledge of the OIG. My office, which investigates threats, belatedly learned of the report only because of our working relationship with the Secret Service. During our subsequent investigation, we discovered that, in addition to the OIG, OHS had never shared the threat information with either SMD or the EPA Administrator's protective detail. The OIG immediately notified both entities. The SMD issued a bar notice so that the individual could not enter any EPA facility, and the OIG conducted an investigation that included interviewing the subject.

The OHS' refusal to share information must be addressed and corrected so that the OIG and SMD can timely, fully and safely perform their respective functions, including collaborative efforts with OHS, to thwart any potential attack on an EPA employee or facility. This change needs to happen immediately.

***Issue Two: The OIG's ability to conduct employee misconduct investigations has been impeded by OHS' operation as an unauthorized de facto law enforcement organization as well as its personnel's refusal to share information related to employee misconduct cases.***

The second issue is that the OIG's ability to conduct employee misconduct investigations has been impeded by OHS' operation as an unauthorized *de facto* law enforcement organization, as well as that office's refusal to share information related to potential criminal and administrative misconduct by EPA employees and contractors.

I need to emphasize that the EPA OHS has no authority to conduct investigations or engage in law enforcement activities. In fact, the EPA's own Office of Environmental Compliance and Assurance (OECA) issued a legal opinion holding that OHS lacks both statutory law enforcement authority and the authority to detail an EPA Criminal Investigation Division (CID) special agent to work as a criminal investigator within OHS.

Even so, the OHS continues to operate directly within the EPA's Office of the Administrator as a *de facto* independent law enforcement and investigative organization, having acquired by detail an EPA CID special agent who carries a weapon, badge and law enforcement credentials. This special agent is limited by statute (18 USC 3063) to the investigation of environmental crimes. Under no circumstances should this agent be conducting national security or employee misconduct investigations. OHS has engaged in a pattern of clear investigative activities that have included having EPA employees sign non-disclosure forms; conducting interviews of EPA employees and



contractors; and collecting the emails of EPA employees. These unauthorized activities by OHS have crossed into the statutory authority and established jurisdiction of the OIG.

We opened an investigation, not of criminal wrongdoing, but of the nature and extent of these activities, as they were impacting our ability to carry out our mandated activities. As part of that effort, we attempted to interview the CID special agent (criminal investigator) who was working for OHS. He was obligated to submit to our interview. Because he was not suspected of any criminal wrongdoing, he was not entitled to have an attorney present, but we concurred to his having an attorney present as an accommodation. Unfortunately, because of several delays caused by the CID special agent, we were unable to complete the interview.

The result of OHS having EPA employees sign non-disclosure agreements is the effective preclusion of the OIG from interviewing those individuals. Such an agreement also prevents those employees from reporting potential misconduct to the OIG related to the subject of any OHS interview. When the OIG contacted the FBI in order to de-conflict a matter related to an ongoing EPA investigation, OHS accused the OIG of interference. Again, the FBI and the OIG are law enforcement organizations that share concurrent jurisdiction. It is entirely appropriate, and often necessary, for an OIG special agent to communicate with an FBI special agent. The EPA OIG and OIG community, in general, regularly work with the FBI on a myriad of criminal investigative issues. OHS' assertion demonstrates either a lack of understanding of the OIG's authority under the IG Act or a blatant disregard for that authority.

In July 2012, OHS entered into a unilateral memorandum of understanding (MOU) with the FBI—without the OIG's knowledge or consent—making OHS the EPA's single point of contact with the FBI for investigations with a nexus to national security. In particular, the MOU mentions that OHS will make referrals to the FBI under Section 811 of the 1995 Intelligence Authorization Act, as amended, 50 USC 402a(e), whenever there is an indication that classified information is being or may have been disclosed to a foreign power. In order for OHS to reach any decision to refer such matters to the FBI, it would almost certainly involve a suspicion that an EPA employee or contractor is engaged in serious misconduct.

This arrangement effectively has precluded the OIG from being able to conduct some employee misconduct investigations and some threat investigations. We have attempted to engage the EPA Administrator on the question of how the MOU with the FBI's National Security Section was approved without the OIG's input, but we have not received a satisfactory response.

Also problematic is OHS' utter refusal to acknowledge or accept the OIG's statutory authority and its oversight over *all* EPA employees. Because OHS operates directly within the Office of the Administrator, OHS has been able to operate with impunity from any effective OIG oversight. Further, since OHS is essentially operating as a rogue law enforcement organization, we do not have access to that office's cases. This block unquestionably has hamstrung the OIG's ability to carry out its statutory mandate to investigate wrongdoing of EPA employees—including, potentially, those within OHS.

Indeed, OIG special agents had attempted to conduct an administrative investigation of OHS which led to alleged assaults. The EPA Administrator made an unprecedented request that the OIG stand down on the administrative investigation into potential wrongdoing by OHS employees, including that office's Senior Intelligence Advisor. We asked the Federal Protective Service to conduct a criminal investigation which led to a referral to DOJ. However, DOJ declined prosecution and referred the matter back to the OIG for administrative action. Due to a potential conflict of interest, we asked the Council of Inspectors General on Integrity and Efficiency to assign another OIG to investigate the administrative matter. The investigation by the U.S. Department of Defense's Office of Inspector General is currently ongoing, so we cannot discuss the case.

Recently, the OIG received a serious allegation regarding intimidation and potential threats by an OHS employee; however, due to OHS' continuous obstruction and refusal to cooperate with official OIG investigations, the OIG is unable to carry out an investigation into this potential wrongdoing.

***Issue Three: The OIG's ability to investigate computer intrusions has been impeded due to OHS' refusal to share information or recognize the OIG's authority to investigate classified intrusions.***

OHS' refusal to share classified, or any, information, or to recognize the OIG's statutory authority and responsibility, also extends to intrusions into EPA computer systems and networks.

In many cases, information related to cyber and computer related intrusions is derived from classified sources, which the OIG has the ability, and the statutory authority and responsibility, to receive, handle and investigate. OHS' actions are blocking the OIG's ability to conduct computer intrusion investigations, which could adversely affect the EPA's computer network.

For example, recent attempts have been made to illegally penetrate the agency's network. These incidents were reported to the OIG by the EPA's Computer Security Incident Response Capability. In return, the OIG has shared investigative information with the agency's network administrators that could assist the agency in the protection of the EPA network. The OIG has learned that OHS received classified information directly related to attempted intrusions yet failed to share it with the OIG.

OHS has taken it upon itself to exclude the OIG, withhold sensitive information and discourage outside agencies, such as the FBI, from working with the OIG by creating agency-supported roadblocks such as the external MOU with the FBI. OHS has excluded the OIG from any investigation as it sees fit, which gravely impedes the OIG's ability to provide accurate and timely investigative information to the appropriate network security teams responsible for securing the EPA's network. These actions have damaged external law enforcement relationships between outside agencies and the OIG— thus creating serious gaps in the OIG's ability to appropriately respond, mitigate and investigate threats to the EPA's network.

### Conclusion

My testimony today shines a bright light on the misguided actions of the agency's Office of Homeland Security, which has dangerously morphed into a *de facto* law enforcement and investigative organization without any authority to conduct investigations. This masquerade has led to the EPA's direct impedance of the OIG to conduct investigations as mandated under the IG Act. Under the heavy cloak of "national security," OHS has repeatedly rebuffed and refused to cooperate with the OIG's ongoing requests for information or cooperation.

Over the past few months, I discussed this situation with many of my fellow Assistant Inspectors General for Investigation (AIGIs) within the federal OIG community. I learned that the situation I face at the EPA is an anomaly. Most of my AIGI counterparts, particularly those with statutory law enforcement authority such as the EPA, advised me that their Offices of Investigation would either directly participate with the FBI in any such national security related investigation targeting an employee or they would be fully informed about the investigation for coordination and de-confliction purposes. In addition, the use of "non-disclosure" agreements by an internal entity, such as OHS, to prevent employees from speaking to the OIG would not be tolerated.

Additionally, the OIG's leadership has numerous times implored the EPA's leadership to recognize the illegitimacy of OHS conducting itself in such a manner and the urgency of correcting the situation. We are reminded of the John Beale case in that the agency's highest managers appear to believe, and even endorse, a fictitious set of facts manufactured by OHS personnel. This situation could, and should, have been fixed easily a long time ago without a need to elevate it to the level of Congress' attention.

In conclusion, I would like to reaffirm the OIG's commitment to add value and assist the EPA in accomplishing its mission of safeguarding the health of the American people and protecting the environment. We take very seriously our mandate to promote economy, efficiency and effectiveness, and prevent and detect fraud, waste and abuse through independent oversight of the EPA's programs and operations.

Toward that end, on behalf of the EPA OIG, I must urge the committee to lend assistance in the following five areas:

1. Delineating for the EPA's leadership, including within OHS, the clear authority of the OIG's jurisdiction under the IG Act to conduct unfettered criminal and administrative investigations, including full access to information, records and employees.
2. Encouraging EPA's leadership to collaborate expeditiously with the OIG to finalize, sign and abide by a new MOU between the OHS and the OIG that recognizes each office's unique responsibilities and sets forth a joint obligation to share information relevant to both missions. The OIG has drafted such a document and shared it with EPA leadership. However, overtures to collaborate on achieving a final version have been stonewalled.
3. Persuading the EPA's leadership to inform the FBI that the current OHS-FBI MOU is null and void because it does not account for the OIG's authorities and requirements.

4. Requesting that the EPA acknowledge OHS is a policy office that does not have the authority to conduct investigations or engage in law enforcement activities.
5. Ascertaining the understanding of the EPA's leadership that agency employees outside of the OIG may not conduct criminal or administrative misconduct investigations, as doing so places both the agency and such an employee at risk. As supported by the written legal opinion of the EPA's OECA, that office's employees – whether working in OECA or detailed to OHS – may conduct only investigations of environmental crimes.

Mr. Chairman, this concludes my prepared statement. I will be pleased to answer any questions you may have.

Chairman ISSA. Thank you.  
Mr. Williams.

#### STATEMENT OF ALLAN WILLIAMS

Mr. WILLIAMS. Good morning, Chairman Issa, Ranking Member Cummings, and members of the committee. I am Allan Williams, Deputy Assistant Inspector General for the U.S. Environmental Protection Agency. Thank you for inviting me to appear before you today to discuss our investigations of employee misconduct involving time and attendance fraud.

The Office of Inspector General is an independent entity within EPA; therefore, the views expressed in my testimony are based on the findings of the OIG's work and are not intended to reflect the views of the Agency.

The OIG's successful investigation of John Beale was the subject of a hearing held by this committee on October 1st, 2013. On December 18th, 2013, Mr. Beale was sentenced to 32 months in prison for defrauding EPA of approximately \$900,000 in undeserved pay and bonuses. Our investigation found, among other things, that Mr. Beale received his salary while missing more than two and a half years of work with EPA, making this case one of the most notorious time and attendance fraud cases in the Federal Government.

My role here today is to inform the committee about findings from several time and attendance investigations both related and unrelated to Beale.

First, the OIG investigated an allegation of serious employee misconduct by an EPA senior executive alleged to have been directly involved in approving fraudulent time and attendance records and travel vouchers for Mr. Beale. Our investigation was able to substantiate that this senior executive did not exercise due diligence with respect to the authorization and approval of Mr. Beale's time and attendance records, travel authorizations, and travel vouchers. The investigation also revealed that the senior executive did not exercise due diligence in part because she believed Mr. Beale worked for the Central Intelligence Agency. She never questioned Mr. Beale; consequently, she authorized and approved fraudulent time and attendance records and travel vouchers in excess of \$180,000.

Similarly, the OIG conducted an investigation into serious misconduct by another EPA manager who allowed an employee to stay at home and not report for duty for several years. Based on a long-standing arrangement with the employee, which allegedly began as an accommodation to work at home due to a medical condition, this manager not only entered fraudulent time and attendance records for the absent employee, but also approved the same records. It is estimated that the manager's approval of fraudulent time and attendance records cost the Government more than \$500,000. What is even more egregious is that the EPA manager authored and approved exemplary performance appraisals that resulted in a cash award for the absent employee.

During the same investigation, the OIG found evidence that implicated an EPA executive. This executive, who was the absent employee's prior supervisor, remained aware the employee had been

in a telework status for more than 20 years with very little substantive work product to show during this time. The executive took no action, even though he knew the EPA was being defrauded. Upon receiving a target letter from the U.S. Department of Justice, the executive retired and was not prosecuted. Furthermore, the Department of Justice declined to prosecute either the absent employee or the current supervisor.

In addition to those cases, the OIG has several ongoing investigations involving employees and alleged serious misconduct. One of the investigations involves a career employee who has allegedly stored pornographic materials on an EPA network server. When an OIG special agent arrived at the employee's workplace to conduct an interview, the special agent witnessed the employee actively viewing pornography on his Government-issued computer. Subsequently, the employee confessed to spending, on average, between two and six hours per day viewing pornography while at work. The OIG's investigation determined that the employee downloaded and viewed more than 7,000 pornographic files during duty hours. This investigation has been referred to and accepted by the Department of Justice for prosecution.

Finally, the OIG has an ongoing investigation of a GS-15 Step 10 EPA employee who has a debilitating disease and has not been physically able to complete any work for at least a year. However, this employee continues to draw a full salary and receive the benefits of an active employee. This employee has resided in an assisted living facility for more than a year, and the former supervisor was aware of the situation and the employee's condition. This investigation is ongoing and is yet to be presented to the Justice Department for prosecution.

These are recent examples of OIG employees misconduct cases at the EPA. True deterrence of employee misconduct ultimately rests with the Agency's executives and managers to set a tone that ensures such behavior will not be condoned. By doing so, the Agency's leadership can establish a culture of accountability within the EPA and clearly communicate that employee misconduct will not be tolerated.

Thank you, Mr. Chairman, for the opportunity to discuss some of our cases involving employee misconduct at the EPA. The OIG appreciates the committee's continued interest in our work. This concludes my testimony and I am pleased to answer any questions you may have.

[Prepared statement of Mr. Williams follows:]

**Statement of  
Allan Williams  
Deputy Assistant Inspector General for Investigations  
Office of Inspector General  
U.S. Environmental Protection Agency  
Before the  
Committee on Oversight and Government Reform  
U.S. House of Representatives  
May 7, 2014**

Good morning, Chairman Issa, Ranking Member Cummings and members of the committee. I am Allan Williams, Deputy Assistant Inspector General for Investigations for the U.S. Environmental Protection Agency (EPA). Thank you for inviting me to appear before you today to discuss our investigations of employee misconduct involving time-and-attendance fraud.

The Office of Inspector General (OIG) is an independent entity within the EPA; therefore, the views expressed in my testimony are based on the findings of the OIG's work and are not intended to reflect the agency's views.

**OIG's Office of Investigations**

In concert with the statutory authority granted to the OIG through the Inspector General Act of 1978 (IG Act), as amended, the mission of the OIG is to promote economy, efficiency and effectiveness, and to prevent and detect fraud, waste, and abuse through independent oversight of the programs and operations of the EPA and the U.S. Chemical Safety and Hazard Investigation Board (CSB).

To achieve this end, the OIG's Office of Investigations manages, sets policy, coordinates and has overall responsibility for investigations involving:

- Criminal activities in the award, performance and payment of funds under EPA contracts, grants and other assistance agreements to individuals, companies and organizations (for example, fraud, bribery, conflict of interest, etc.).
- Alleged criminal conduct or serious administrative misconduct by EPA employees (for example, time fraud, travel fraud, ethics violations, abuse of authority, etc.).
- Threats directed against EPA employees, facilities and assets, including acts of violence committed in EPA facilities.
- Theft or abuse of government property.
- Criminal activity or serious misconduct affecting the integrity of EPA programs that could erode the public trust (for example, impersonation of EPA officials; counterfeiting or misuse of EPA official insignia, logos or credentials; and scientific research misconduct).
- Intrusions into and attacks against the EPA's computer network, as well as incidents of hijacking EPA computers and/or systems, and the use of outside computers to commit fraud against the EPA.

In addition, the Office of Investigations is responsible for the OIG Hotline, which receives complaints of fraud, waste and abuse in the EPA and in CSB programs and operations, as well as any complaints involving the OIG.

It is important to note that the OIG's successful, unimpeded operations are reliant on coordination with, and support from, the EPA Administrator, EPA senior executives and subordinate agency offices, all of which are aware of the authorities provided to the OIG through the IG Act. Additionally, at the conclusion of an investigation, when the OIG issues its report to the appropriate EPA official, EPA executives and managers are ultimately responsible for determining the appropriate administrative action for employees found to be engaged in misconduct.

### **Employee Rights**

As background for the cases that I will discuss, OIG investigators are required to notify EPA employees of their rights when they are suspected of administrative or criminal wrongdoing.

If an employee is suspected of only administrative wrongdoing, investigators are required to provide him or her with an "Administrative Warning: Duty to Cooperate," often called the Kalkines warning. This warning notifies the employee that he or she is not suspected of any criminal wrongdoing and, as a federal employee, has a duty to cooperate and respond to questions regarding his or her official duties. Under this warning, federal employees do not have a right to be represented by an attorney. However, the employee may request an attorney, and the request may be granted, at the sole discretion of the OIG. The employee is notified that if he or she fails to cooperate and answer questions about his or her official duties, he or she can be disciplined by the agency.

The Kalkines warning is also applicable when an agency employee declines to voluntarily speak to the OIG concerning an investigation. In such matters, an investigator reads the Kalkines warning aloud and tells the employee that he or she must cooperate and provide a statement or be subject to discipline by the agency.

If an employee is suspected of potential criminal culpability, investigators are required to provide the employee with an "Acknowledgment of Rights," often called the Garrity warning. The Garrity warning notifies the employee of the rights afforded to him or her as prescribed in the U.S. Supreme Court case *Garrity v. New Jersey*. The Garrity warning is designed to preserve the government's ability to use the employee's statements in any criminal or administrative proceeding by advising the employee that the interview is purely voluntary and the employee will not be disciplined solely for refusing to answer questions; however, the employee's silence can be considered in an administrative proceeding for its evidentiary value that is warranted by the facts surrounding his or her case.

### **OIG Investigations of EPA Employee Misconduct**

The OIG's successful investigation of John Beale was the subject of a hearing held by this committee on October 1, 2013. On December 18, 2013, Mr. Beale was sentenced to 32 months



in prison for defrauding the EPA of approximately \$900,000 in undeserved pay and bonuses. Our investigation found, among other things, that Mr. Beale received his salary while missing more than 2.5 years of work at the EPA—making this case one of the most notorious time-and-attendance fraud cases in the federal government.

As noted in previous OIG testimony before this committee on October 1, 2013, our investigation of Mr. Beale was delayed several months (and otherwise negatively impacted) due to the fact that the EPA's Office of General Counsel and its Office of Homeland Security did not immediately notify the OIG of Mr. Beale's misconduct.

The investigation of Mr. Beale has resulted in other OIG investigations within the EPA, as well as an ongoing series of audits reviewing the internal controls that allowed Mr. Beale to commit his fraud.

My role here today is to inform the committee about findings from several time-and-attendance investigations, both related and unrelated to the Beale case.

First, the OIG investigated an allegation of serious employee misconduct by an EPA senior executive alleged to have been directly involved in approving fraudulent time-and-attendance records and travel vouchers for Mr. Beale. Our investigation indicated that the senior executive approved, or authorized the approval of, fraudulent time-and-attendance records and travel vouchers for Mr. Beale from 2000 through 2010. Our investigation was able to substantiate that this senior executive did not exercise due diligence with respect to the authorization and approval of Mr. Beale's time-and-attendance records, travel authorizations and travel vouchers. The senior executive allowed Mr. Beale to carry out—unchecked—extensive time-and-attendance and travel voucher fraud. The investigation also revealed that the senior executive did not exercise due diligence, in part because she believed, she said, that Mr. Beale worked for the Central Intelligence Agency. She never questioned Mr. Beale further, she said, because she believed the questioning might compromise national security. This unwillingness to question issues of purported national security enabled this senior executive to authorize or approve fraudulent time-and-attendance records and travel vouchers in excess of \$180,000.

Similarly, the OIG conducted an investigation into serious misconduct by another EPA manager who allowed an employee to stay at home and not report for duty for several years. Based on a long-standing arrangement with the employee (which allegedly began as an accommodation to work at home due to a medical condition), this EPA manager not only entered fraudulent time-and-attendance records for the absent employee but also approved the same fraudulent records. It is estimated that the manager's approval of fraudulent time-and-attendance records cost the government more than \$500,000. Even more egregious is that this EPA manager authored and approved exemplary performance appraisals that resulted in a cash award for the absent employee.

During the same investigation, the OIG also found evidence that implicated a senior executive. This senior executive, who was the absent employee's prior supervisor, remained aware that the employee had been teleworking for more than 20 years with very little substantive work product to show during this time. The senior executive knew about the arrangement between the

employee's current supervisor and the absent employee. This senior executive took no action, even though he knew the EPA was being defrauded. Upon receiving a target letter from the U.S. Department of Justice (DOJ), the senior executive retired and was not prosecuted. Furthermore, the DOJ declined to prosecute either the absent employee or the current supervisor.

During the course of the OIG's investigation, the absent employee's supervisor informed us that he was not the only EPA manager who was allowing employees not to report for duty. In an apparent effort to cooperate with the DOJ and the OIG, the supervisor provided the names of three additional EPA managers who were allegedly engaging in the same activity. However, an OIG investigation was launched into this reported activity, and the allegations were determined to be unsubstantiated.

In addition to those cases, the OIG has several ongoing investigations involving EPA employees and serious misconduct that is allegedly occurring. One such investigation involves a career EPA employee who allegedly stored pornographic materials on an EPA network server shared by colleagues. When an OIG special agent arrived at this employee's work space to conduct an interview, the special agent witnessed the employee actively viewing pornography on his government-issued computer. Subsequently, the employee confessed to spending, on average, between two and six hours per day viewing pornography while at work. The OIG's investigation determined that the employee downloaded and viewed more than 7,000 pornographic files during duty hours. This investigation has been referred to and accepted by the DOJ for prosecution.

Finally, the OIG has an ongoing investigation of a GS-15 Step 10 EPA employee who has not been physically able to complete any work for at least the last year; however, this employee continues to draw a full salary and receive the benefits of an active employee. This employee suffers from a debilitating disease and has been allowed to remain on telework status for several years without providing any substantive work product. Furthermore, this employee has resided in an assisted living facility for more than a year. When the employee entered the facility, the employee's supervisor was aware of the employee's condition and situation; however, the now former supervisor continued to allow and facilitate the employee's retention of a full salary and benefits. This investigation is ongoing and has yet to be presented to the DOJ for prosecution.

### **Conclusion**

These examples are just a few of the OIG's employee misconduct cases at the EPA. True deterrence of employee misconduct at the EPA ultimately rests with agency executives and managers to set a tone that ensures such behavior will not be condoned. By doing so, the agency's leadership can establish a culture of accountability within the EPA and clearly communicate that employee misconduct will not be tolerated.

Thank you, Mr. Chairman, for the opportunity to discuss some of our cases involving employee misconduct at the EPA. The OIG appreciates the committee's continued interest in our work.

This concludes my testimony. I am pleased to answer any questions you may have.

Chairman ISSA. Thank you.  
Ms. Heller.

**STATEMENT OF ELISABETH HELLER DRAKE**

Ms. HELLER DRAKE. Chairman Issa, Ranking Member Cummings, and distinguished members of the Oversight Committee, thank you for inviting me to testify before you today. My name is Elisabeth Heller Drake and I am a Special Agent in the Environmental Protection Agency's Office of Inspector General. I am testifying about what happened to me as a Federal law enforcement officer last fall and I appear before you voluntarily as an individual, and not on behalf of the Agency nor on behalf of the OIG. No one at EPA has pre-approved my statement.

On Thursday, October 24th, 2013, Federal EPA OIG Special Agent Ryan Smith and I had a difficult interview with EPA Office of Homeland Security employee John Martin. We extended him the courtesy of having his personal attorney present, but he wouldn't answer even basic questions.

He kept indicating he needed to be home to meet his children, so we ended in a timely fashion in spite of his lack of cooperation with our official investigation. Minutes after he left, I realized he left without the standard warning not to discuss the ongoing investigation with others and without signing the standard non-disclosure form.

Agent Smith was escorting Martin's attorney out of the building and I was unable to reach her by phone, so I asked Special Agent Gary Don Dorman to go with me to the EPA Office of Homeland Security to notify Martin of his obligations.

As we progressed into OHS's office suite, someone asked if Agent Dorman and I needed assistance, at which time I also overheard Mr. Martin's voice talking to someone about specific information discussed during our interview of him. Turning in the direction of his voice and looking down the hallway, I saw Mr. Martin standing in the open doorway of an office, talking to a woman I later learned was Nancy Dunham from EPA's Office of General Counsel. With them was someone I later realized was EPA Senior Intelligence Advisor Steven Williams.

Mr. Martin approached Agent Dorman and me and asked what we wanted. I responded that we had a follow-up item to address with him that would only take an additional moment of his time. Mr. Martin seemed defensive and responded that he didn't want to discuss anything without his attorney present. I explained there was no intention to ask him additional questions, but we merely needed his attention for a quick aside. Following protocol, I was trying not to unnecessarily disclose the ongoing investigation to others in the area.

Martin said anything I had to say to him could be said in front of all present. Keeping my composure, I informed him that he wasn't permitted to discuss details of his interview with anyone other than his personal attorney. Ms. Dunham and Mr. Williams shouted that my instructions weren't accurate, at which point it became clear Mr. Martin wasn't going to sign our standard non-disclosure form.

I responded to Mr. Martin that I heard him talking about our interview when Agent Dorman and I entered the office space and that he needed to desist from that type of dialogue immediately. I repeated that Mr. Martin should only discuss the interview details with his personal counsel. As I made those statements, Ms. Dunham continued to yell from the hallway that I wasn't right.

At this time, Mr. Williams aggressively approached me, yelling, "Put it in writing!" He stepped between me and Mr. Martin in a menacing way, again screaming to "Put it in writing!" and demanding to know where the standard protocol I was addressing was documented. Williams invaded my personal space, pointing and yelling to a degree that it became difficult to understand what he was saying. He repeatedly jabbed his finger at me merely inches from my chest and, as he got more aggressive, his complexion heated, his veins bulged, and he began to swear profusely.

We are trained to deal with difficult circumstances; however, I was surprised at having this situation escalate so quickly in a professional setting over a request that was so standard and minor. If an individual had acted this way toward me as a Federal agent on the street, I might have arrested him. But it shocked me to be approached in this manner by what appeared to be a high-ranking EPA official.

While Mr. Williams is not a large man, his inexplicable anger and aggressiveness in this professional office setting managed to leave me feeling intimidated. The fact I had a sidearm holstered out of sight under my suit jacket didn't make a difference. I wasn't chasing a criminal on the street, but, rather, in an environment where I would never have expected such behavior from a professional staff member.

Avoiding unnecessary physical contact, I stepped back from Mr. Williams. I tried to de-escalate the incident by asking Mr. Williams to identify himself. Remaining professional and upon hearing his name, I responded, "Mr. Williams, I am Special Agent Elisabeth Drake. It is so nice to meet you," and I put my hand out to shake his. He refused to shake my hand and instead responded, "I don't want to know you."

In spite of my clear notice that I was a Federal law enforcement officer, he again started yelling at me. I thought back to my research and recalled that he wasn't only a GS-15, but he was also a Naval Reserves captain, making his tirade and interference with my official duties all the more surprising.

In another effort to reduce the tension, I told Mr. Williams that I wasn't there to speak with him, at which point he screamed at Agent Dorman and me to get out of their office space. He continued to yell as we departed.

Back at the office, we reported the assault to management, leading other agents to return to the Office of Homeland Security to investigate Mr. Martin. Martin had left. Ms. Dunham and Mr. Williams said they were too stressed to be interviewed.

The case was turned over to the Federal Protective Service to investigate. They interviewed Agent Dorman and me, as well as the OHS staff member who had offered us assistance when we first arrived that evening of the 24th. FPS then prepared an affidavit in support of Mr. Williams' arrest for the D.C. offense known as in-

tent to frighten assault, but the U.S. Attorney's Office decided to refer it back to EPA for handling through administrative action.

Whether Mr. Williams attacked and intimidated me that evening because I am a female and so felt he could get away with it, and whether he has acted in a threatening manner towards other females in the workplace are questions for another time and place. I, instead, am here to relay what happened that night and EPA's response to it out of concern about OIG not being allowed to do its job.

Was Mr. Williams put on paid administrative leave until a full inquiry could be completed? No. Was I allowed to resume the OIG investigation involving Office of Homeland Security staff? No. Did the administrator remind those involved of their duty to cooperate with the OIG? No. Have my attorney and I repeatedly asked, both in person and in writing, for the EPA to do such things? Yes. In fact, the only prompt concrete action taken by the EPA was to issue a stand-down memo days later that halted the OIG investigation until a plan could be developed and put in place to end ongoing conflicts between the EPA's Offices of Homeland Security and of the Inspector General.

As my attorney and I told the administrator's staff, we know of no exemption in the law that says an agency head can halt an official OIG investigation so long as it is done to encourage investigators and their targets to get along better with each other. It is common in our line of work to remain professional in spite of conflict. It is not common for a GS-15 official to interfere, then essentially be rewarded with an investigation being halted for what has been over six months.

Mr. Chairman and Ranking Member Cummings, we are now more than six months out from the events of October 24th, yet I believe the investigation underway the day of the assault continues to go uninvestigated. If there were wrongdoings going on within EPA's OHS, as an OIG agent, I feel responsible to conclude my investigation and bring those issues forward. However, I find it equally as important to determine that if there were no wrongdoings within the office identified, to set the record straight in that regard as well.

To be clear, I am not complaining about the actions of the EPA inspector general or his staff. They have been very supportive of my career, especially so during the difficult months since I was assaulted in the line of duty. I am also not out to harm EPA. On the contrary, it is because the Environmental Protection Agency's work is so important that the Agency must be given the best chance possible to succeed. That only can happen if there is a healthy, independent, and unobstructed OIG, an OIG whose agents can insist upon cooperation from the Agency's employees regardless of their seniority and regardless of the office that happens to be the one subject to our law enforcement authority on a given day.

Thank you for your time, and I would be happy to answer any questions you may have for me.

[Prepared statement of Ms. Heller Drake follows:]

## **Statement for the Record**

### **Introduction**

Chairman Issa, Ranking Member Cummings, and distinguished Members of the Oversight Committee, thank you for inviting me to testify before you today.

My name is Elisabeth Heller Drake and I am a Special Agent in the Environmental Protection Agency's (EPA) Office of Inspector General (OIG). I am testifying about what happened to me as a federal law enforcement officer last fall, and I appear before you voluntarily, as an individual, and not on behalf of the agency, nor on behalf of the OIG. No one at EPA has pre-approved my statement.

### **The Initial Obstruction**

On Thursday, October 24, 2013, fellow EPA OIG Special Agent Ryan Smith and I had a difficult interview with EPA Office of Homeland Security (OHS) employee John Martin. We extended him the courtesy of having his personal attorney present, but he would not answer even basic questions.

He kept indicating he needed to be home to meet his children, so we ended in a timely fashion in spite of his lack of cooperation with our official investigation. Minutes after he left, I realized he left without the standard warning not to discuss the ongoing investigation with others and without signing the standard non-disclosure form.

Agent Smith was escorting his attorney out of the building and I was unable to reach her by phone, so I asked Special Agent Gary Don Dorman to go with me to the EPA Office of Homeland Security (OHS) to notify Martin of his obligations.

As we progressed into OHS's office suite, someone asked if Agent Dorman and I needed assistance, at which point I also overheard Mr. Martin's voice, talking to someone about specific information discussed during our interview of him. Turning in the direction of his voice, looking down a hallway, I saw the witness standing in the open doorway of an office, talking to a woman I later learned was Nancy Dunham from the EPA's Office of General Counsel. With them was someone I later realized was EPA Senior Intelligence Advisor Steven Williams.

Mr. Martin approached Agent Dorman and me and asked what we wanted. I responded that we had a follow-up item to address with him that would only take an additional moment of his time. Mr. Martin seemed defensive and responded that he did not want to discuss anything without his attorney present. I explained that there was no intention to ask additional questions, but that we merely needed his attention for a quick aside. Following protocol, I was trying not to unnecessarily disclose the ongoing investigation to the others in the area.

Martin said anything I had to say to him could be said in front of all present. Keeping my composure, I informed the witness that he was not permitted to discuss details of our interview with anyone other than his personal attorney.

Ms. Dunham and Mr. Williams shouted that my instructions were not accurate, at which point it became clear Mr. Martin was not going to sign our standard non-disclosure form.

I responded to Mr. Martin that I heard him talking about our interview when Agent Dorman and I entered the office space, and that he needed to desist from that type of dialogue immediately. I repeated that Mr. Martin should only discuss the interview details with his personal counsel. As I made those statements, Ms. Dunham continued to yell from down the hallway that I was not right.

At this time, Mr. Williams aggressively approached me, yelling "Put it in writing!" He stepped between me and Mr. Martin in a menacing way, again screaming to "Put it in writing!" and demanding to know where the standard protocol I was addressing was documented. Williams invaded my personal space, pointing and yelling, to a degree that it became difficult to understand what he was saying.

He repeatedly jabbed his finger at me, merely inches from my chest, and as he got more aggressive, his complexion heated, his veins bulged, and he began to sweat profusely.

We are trained to deal with difficult circumstances. However, I was surprised at having this situation escalate so quickly in a professional setting—EPA headquarters—over a request that was so standard and minor. If an individual



had acted this way toward me as a federal agent on the street, I might have arrested him. But it shocked me to be approached in this manner by what appeared to be a high-ranking EPA official. While Mr. Williams is not a large man, his inexplicable anger and aggressiveness in this professional office setting managed to leave me feeling intimidated.

The fact I had a sidearm holstered out of sight under my suit jacket did not make any difference; I was not chasing a criminal on the street, but rather in an environment where I never would have expected such behavior from a professional staff member. Avoiding unnecessary physical contact, I stepped back from Mr. Williams.

I tried to de-escalate the incident by asking Mr. Williams to identify himself. Remaining professional, upon hearing his name I responded, "Mr. Williams, I'm Special Agent Elisabeth Drake. It's so nice to meet you" and put out my hand to shake his. He refused to shake my hand and instead responded, "I don't want to know you."

In spite of my clear notice that I was a federal law enforcement officer, he again started yelling at me. I thought back to my research and recalled that he was not only a GS-15, but also a Naval Reserves Captain, making his tirade and interference with my official duties all the more surprising.

In another effort to reduce the tension, I told Mr. Williams that I was not there to speak with him, at which point he screamed at Agent Dorman and me to get out of their office space. He continued to yell as we departed.

Back at the OIG office, we reported the assault to management, leading other agents to return to the Office of Homeland Security to investigate. Martin had left; Ms. Dunham and Mr. Williams said they were too stressed to be interviewed.

The case was turned over to the Federal Protective Service (FPS) to investigate. They interviewed Agent Dorman and me, as well as the OHS staff member who had offered us assistance when we first arrived that evening of October 24. FPS then prepared an affidavit in support of Mr. Williams' arrest for the DC offense known as "INTENT TO FRIGHTEN ASSAULT." But the U.S. Attorney's Office decided to refer it back to EPA for handling through administrative action.

Whether Mr. Williams attacked and intimidated me that evening because I am female and so felt he could get away with it, and whether he has acted in a threatening manner towards other females in the workplace, are questions for another time and place. I instead am here to relay what happened that night and EPA's response to it out of concern about OIG not being allowed to do its job.

**The Second Obstruction**

Was Mr. Williams put on paid administrative leave until a full inquiry could be completed? No. Was I allowed to resume the OIG investigation involving Office of Homeland Security staff? No. Did the Administrator remind those involved of their duty to cooperate with the OIG? No. Have my attorney and I repeatedly asked, both in person and in writing, for EPA to do such things? Yes.

In fact, the only prompt, concrete action taken by the EPA was to issue a stand-down memo days later that halted the OIG investigation until a plan could be developed and put in place to end ongoing conflicts between the EPA's Offices of Homeland Security and of the Inspector General.

As my attorney and I told the Administrator's staff, *we know of no exemption in the law that says an agency head can halt an official OIG investigation so long as it is done to encourage investigators and their targets to get along better with each other*. It is common in our line of work to have to remain professional in spite of conflict. It is not common for a GS-15 official to interfere, then essentially be rewarded with an investigation being halted for what has been over six months.

Mr. Chairman and Ranking Member Cummings, we are now more than six months out from the events of October 24, yet I believe the investigation underway the day of the assault continues to go uninvestigated. If there were wrongdoings going on within EPA's OHS, as an OIG Agent I feel responsible to

conclude my investigation and bring those issues forward. However, I find it equally as important to determine that if there were no wrongdoings within the office identified, to set the record straight in that regard as well.

### **Conclusion**

To be clear, I am not complaining about the actions of the EPA Inspector General or his staff. They have been very supportive of my career, especially so during the difficult months since I was assaulted in the line of duty.

I also am not out to harm EPA. On the contrary, it is because the Environmental Protection Agency's work is so important that the agency must be given the best chance possible to succeed. That only can happen if there is a healthy, independent, and unobstructed OIG; an OIG whose Agents can insist upon cooperation from the agency's employees, regardless of their seniority, and regardless of the office that happens to be the one subject to our law enforcement authority on a given day.

Thank you for your time, and I would be happy to answer any questions you may have for me.

\* \* \* \* \*

Chairman ISSA. Thank you.

Mr. Perciasepe, your entire opening statement is in the record. Please feel free to include any answers to the testimony you have just heard.

**STATEMENT OF THE HONORABLE BOB PERCIASEPE**

Mr. PERCIASEPE. Thank you, Mr. Chairman. Given I have slight cold, I may have to cough and take a sip every once in a while here.

Chairman ISSA. Coughing is fully authorized.

Mr. PERCIASEPE. Fully authorized? Then I appreciate that.

[Laughter.]

Mr. PERCIASEPE. Let me go through my written statement, and maybe I will add a few comments, but I am sure we will get into it in the questions and answers, as I do want to be able to respond and explain what we are doing to deal with some of these issues that have come up here. Far be it for us to be in a situation where we do not want to have a problem with the IGS' access to whatever they need to have in the Agency. That is our position, that is Gina McCarthy's position, and I want to assure the committee of that.

That goal is paramount for us. Having an independent and healthy IG is what we need to be able to deal with some of the issues you have in any large institution to make sure we are dealing with waste, fraud, and abuse, and we see the inspector general as a partner in that. In fact, since 2009, employees of the EPA have provided their information, their knowledge, and their support to over 2,600 audits, investigations, and actions of the Office of the Inspector General. I want you to keep that context in mind. Many of these identified in-house actions that have persisted for a long time in the Agency and require a systemic improvement in management systems in the Agency, and we have stepped up to meet those challenges in remedying them.

Agency employees routinely work cooperatively to provide information to the inspector general to ensure their important work is achieved. That has always been not only our policy, but our culture.

Unfortunately, these questions that are being raised about that commitment in light of some of these instances are not the norm. The vast majority of the work we do with the IG is done efficiently, appropriately, and with good result. And I can assure the committee that EPA remains committed to ensuring that our Office of Inspector General is successful in its efforts to root out waste, fraud, and abuse in every program across the agency, without exception.

I was last before this committee, as you have mentioned, in the fall, to talk about the criminal fraud of John Beale, and all of us at the Agency, and I want everyone to know this, are profoundly offended by the actions of Mr. Beale. But I want you also to know that the Agency has risen to the occasion to that massive fraud with steady action to make improvements.

In December of 2013, we released a 19-page report on evaluation and corrective actions we have already started to take that I testified to when I was before the committee in October. That document evaluated each of the aspects of Mr. Beale's conduct, how Mr. Beale

evaded the Agency's existing controls, and the Agency's planned corrective actions. Since that time, we have taken steps to put measures in place to help ensure that this type of fraud cannot be repeated.

In April we completed a second review of the issues raised by the case entitled "Report on Internal Control Assessments of EPA's Sensitive Payment Areas." This 50-page report uses the assessment processes outlined by the Government Accountability Office's Standards for Internal Control of Federal Government to analyze seven key areas: executive payroll approvals, employee departures, statutory pay limits, parking and transit subsidy, retention incentives, travel reimbursements above per diem rate, and executive travel approval. That report was also provided to the Office of Inspector General on April 17th of this year.

While undertaking our review, if you recall at my hearing with you, I said we are anxious and continue to work directly with the IG on their ongoing administrative reviews of issues that came up in the Beale matter. We also were not going to wait, because we didn't want anything else to happen, so we started working on it as well. So we are working in parallel and in tandem in a very cooperative way, and we have provided the Office of Inspector General with any necessary assistance in their ongoing audits related to this matter. Indeed, to ensure swift response to their needs, the EPA has requested, and the IG has agreed, to biweekly meetings between the IG and all of our senior managers that are related to the programs that are involved. These meetings are attended by senior officials from every office and they are designed to make sure that nothing falls through the cracks as we are working together.

In over a decade of service at EPA, I am not aware of another instance where we have committed this level of senior level involvement in a single audit and set of reviews by the Office of Inspector General. In fact, there will be a series of audits; some have started to come out. So we are looking forward to receiving them, as I said before, and working with them, but we are also doing our own work at the same time so we can stay ahead of the curve and bring all of it together to continue to improve our management processes.

Finally, I just want to take this opportunity to recognize that the overwhelming majority of hardworking 16,000 EPA employees are dedicated, hardworking, professional, and public servants, a point of which I know the inspector general agrees. I am very proud of them and I am very proud of EPA's achievements in protecting human health and the environment, and they also protect the American people. Employees work every day to make those achievements possible and we work every day, every day on numerous projects, reviews, and audits with the Office of Inspector General in a cooperative, productive, and appropriate manner.

I look forward to answering any of the questions you have.

[Prepared statement of Mr. Perciasepe follows:]

**TESTIMONY OF  
BOB PERCIASEPE  
DEPUTY ADMINISTRATOR  
U.S. ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE  
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM  
U. S. HOUSE OF REPRESENTATIVES  
May 7, 2014**

Chairman Issa, Ranking Member Cummings, and members of the Committee, thank you for the opportunity to testify today. I want to begin by assuring the Committee that the Environmental Protection Agency (EPA) shares the goal of the Committee and of the Office of the Inspector General of preventing and correcting any waste, fraud or abuse in any agency programs or operations. The EPA values the Inspector General as an important partner in achieving that goal.

Since 2009, employees of the Environmental Protection Agency have provided their information, knowledge, and support to over 2,600 audits, investigations, and actions of the Office of the Inspector General. Many of the issues identified in those actions have persisted through multiple administrations, and this administration has stepped up to meet the challenge of remedying them. Agency employees routinely work cooperatively to provide information to the Inspector General to ensure their important work is achieved. That has always been not only the EPA policy, but a part of EPA's culture.

Unfortunately, some have recently questioned the Agency's commitment to ensuring that the program offices within EPA provide timely, complete assistance to the Office of the Inspector General. I can assure this Committee that the EPA remains

committed to ensuring that our Office of Inspector General is successful in its efforts to root out waste, fraud, and abuse in every program office across the agency.

I was last before this Committee after the EPA and our Inspector General exposed the criminal fraud of John C. Beale. All of us at the agency were offended by the actions of Mr. Beale. The EPA has risen to the challenge required by Mr. Beale's massive fraud with steady action. First, in December 2013, the EPA released its 19 page *Report of Evaluation and Corrective Actions* related to that case. That document evaluates each aspect of Mr. Beale's conduct, how Mr. Beale evaded the agency's existing controls, and the Agency's planned corrective actions. Since that time we have taken steps to put measures in place to help ensure this type of fraud cannot be repeated.

In April, the EPA completed a second review of the issues raised by that case, entitled *Report on Internal Control Assessments of EPA's Sensitive Payment Areas*. This 50+ page report used an assessment process informed by the Government Accountability Office's *Standard for Internal Controls of the Federal Government* to analyze seven key areas: Executive Payroll Approvals, Employee Departures, Statutory Pay Limits, Parking and Transit Subsidy, Retention Incentive, Travel Reimbursements Above the Per Diem Rate, and Executive Travel Approval. That report was provided to the Office of Inspector General on April 17, 2014.

While undertaking our review, EPA has ensured that the program offices have provided the Office of Inspector General with any necessary assistance with their on-going audits related to this matter. Indeed, to ensure swift responses to their needs, the



EPA requested biweekly meetings with the Office of Inspector General audit teams to ensure proper coordination and support for the Office of Inspector General's efforts. These meetings are attended by senior officials from every office involved in responding to the audits, and specifically includes an opportunity for the Office of Inspector General to identify any outstanding data requests or concerns about the agency's level of support. In over a decade of service to the EPA, I am not aware of another instance where the EPA has committed this level senior leader attention to a single set of Office of Inspector General audits. We look forward to receiving their reports, and to working cooperatively with them to ensure that all appropriate corrective actions are taken.

Finally, I would like to take this opportunity to recognize that the overwhelming majority of the approximately 16,000 EPA employees are dedicated, hardworking, professional public servants. A point on which I know the Inspector General agrees with me. I remain very proud of both the EPA's achievements in protecting human health and the environment on behalf of the American people, and of the EPA employees who work hard every day to make those achievements possible.

I look forward to answering any questions you may have.

Chairman ISSA. Thank you.

It is now my pleasure to recognize a distinguished panel of members of the Army War College, in spite of the various uniforms. But you will notice that there are more Army uniforms there. They are here to observe the workings of Congress. Let's try not to disappoint them in any negative way.

[Laughter.]

Chairman ISSA. For years Congressman Todd Platts represented the Carlyle Barracks, so I think they have had a tradition of coming here, and hopefully you will find this esteemed body not to disappoint you, depending upon your expectations.

I will now recognize myself for a series of questions.

Mr. Sullivan, let me understand something you said in your opening statement. This office, I understand 10 or so men and women office, is although statutorily authorized to exist and has existed, has no statutory authority to be a law enforcement organization.

Mr. SULLIVAN. Mr. Chairman, I believe that the creation of the office was at the discretion of the administrator. I don't think there was any statutory requirement to have an Office of Homeland Security. But the second part of your statement is absolutely correct, they have no authority whatsoever to do law enforcement or investigative work.

Chairman ISSA. So unlike the uniformed service next to us who pack heat when they go into combat, these people have guns without any congressional requirement that they exist as a law enforcement entity in any way, shape, or form. How did they get those guns?

Mr. SULLIVAN. Well, there is only one employee, to my knowledge, that has a firearm.

Chairman ISSA. He has a gun and a badge.

Mr. SULLIVAN. Yes, he does.

Chairman ISSA. Who the heck came up with the badge? What does it look like?

Mr. SULLIVAN. He has a badge that identifies him as a special agent in the EPA Criminal Investigations Division——

Chairman ISSA. So they made up their own badge——

Mr. SULLIVAN. No, sir.

Chairman ISSA.—and authorization?

Mr. SULLIVAN. No, sir. He was employed by the EPA Criminal Investigations Division and he was transferred to the Office of Homeland Security. Now——

Chairman ISSA. So he shows a gun and a badge from a different part that he is not actually part of.

Mr. SULLIVAN. Yes.

Chairman ISSA. What is that gentleman's name?

Mr. SULLIVAN. His name is John Martin.

Chairman ISSA. Okay, so John Martin. We have heard about him before.

Mr. SULLIVAN. Yes.

Chairman ISSA. I am sure we will get back to that in a moment.

Mr. Perciasepe, you were here before and we asked you about retention bonuses, and you failed to note that these other ones had existed. I understand they were dropped just before the hearing. I

am disappointed that you wouldn't have been more forthcoming. But I have other questions today.

Quite frankly, how much pornography would it take for an EPA employee to lose their job? We have just heard from Mr. Williams that you know, and have known, that somebody is searching 600 sites in a four-day period, thousands of them, putting pornography, perhaps illegal pornography, but certainly I didn't know there were 627 sites that somebody could surf in a four-day period, but apparently there are. You know that and that person is still on the job. Why? What does it take for you to take somebody off of a computer when you discover they are doing it, and actually when the IGs walk in and find it?

Mr. WILLIAMS. First, let me say—I do want to say something about the—

Chairman ISSA. Well, answer how much pornography it takes to get fired at the agency first.

Mr. WILLIAMS. We have a service that we employ in our computer system to block pornography.

Chairman ISSA. It is not working so well, is it?

Mr. WILLIAMS. Well, the world out there stays ahead of it and we are always constantly trying to catch up. So I want the committee to understand that our first line of defense is to block things like pornography or gambling sites from coming in to the agency; and we do a pretty good job of that, but we have now discovered, with the help of the IG, that there is some other site that we hadn't had on that, and we are now in the process of working to block that.

You know, I wish I could offer my thoughts on this, but this is going to go either to a court or it is going to have an administrative process and employees have—

Chairman ISSA. Is this employee still being paid? Is this employee still at work?

Mr. WILLIAMS. I believe yes.

Chairman ISSA. Okay, enough said. I am sorry, that is not good enough for the American people.

Mr. WILLIAMS. I can't answer on what my feelings are and what should happen because I am going to corrupt the integrity of the administrative processes, and then we will have even more trouble down the road. And I know you understand that and I know you—

Chairman ISSA. Okay, but according to what we have been told, for example, this individual spent four consecutive hours on a site called Sadism is Beautiful. I am going to tell you something. I am not real up on this. I have been out of the business world for a number of years, but I have a strong feeling that the House of Representatives figured out how to block sites with titles like that. It would shock me that they wouldn't. But it shocks me that you can tell us that you do a pretty good job and something as explicit as those key words, or Bears so Horny. I am not going to go into the other names, it disgusts me.

You are running an organization in which nobody can be fired. I am just going to go through two quick questions. One, isn't it a crime to falsify records saying someone is working when they are not? Yes or no?

Ms. Heller, isn't it a crime for someone to say that an employee is working when they are not, and get them paid for it, in your experience as an agent?

Ms. HELLER DRAKE. It would be fact-based, and I wouldn't—

Chairman ISSA. Mr. Williams, is it a crime to let someone get paid for not working at the EPA or in the Federal Government? Is it a crime to falsify documents saying somebody is in fact working when they are not working, and not even able to work?

Mr. WILLIAMS. It can be prosecuted if DOJ deems it necessary to be prosecuted, or it could—

Chairman ISSA. I am not asking—if it can be prosecuted, then there is 18 U.S.C. There is a title that says it is a crime, right?

Mr. WILLIAMS. For falsifying documents, it depends on the document that you are falsifying.

Chairman ISSA. Well, let me explain something. If you commit fraud and send money to somebody else in the private sector, you get sued, you get fired, and you usually get prosecuted, or at least your employer tries to. If you pay your daughter clandestinely a bonus with anti-nepotism laws that exist in the Federal Government, you do that in the private sector, you get prosecuted. So I am a little disappointed that we have to get into it is all fact-based. People defrauded the American people. They defrauded the American people and I am hearing, according to your IG, they are still on the job.

Ms. Heller was attacked, assaulted, and six months later you still have a stand-down on the investigation that they were doing so that an agency that is not even authorized to be a law enforcement agency can continue doing investigations directly on behalf of the administrator. I am shocked. I am appalled. And this is why you are here. And, yes, you are going to be coming back to Congress for a long time because it is clear you are not cooperating with your own IG, you are blocking the IG's investigations. Your testimony is not credible. And I will give you an opportunity to respond to why you think you are credible when in fact you are not. Any time you want to respond.

The ranking member is recognized.

Mr. WILLIAMS. I appreciate you letting me respond. Let me just say, yes, things are fact-based, but it is a crime to falsify Federal documents. I mean, that is an established fact. How that crime is prosecuted, what happens, is all fact-based. So I just want to be clear I understand that, Mr. Chairman.

On this incident, let me just say it is disturbing to me and I am upset that Agent Heller has the feelings of what happened at that evening. You should know, and it is not well publicized, that other employees in that office have filed hostile work environment complaints as well. So we haven't been doing nothing. We worked together with the inspector general, as Agent Heller identified in her testimony, with the Federal Protection Services, and when they suggested back to the IG that we handle this case administratively, both of us agreed, the inspector general and EPA management, that we would go to the Council of Inspectors General for Integrity and Efficiency, CIGIE it is called, to get a referral so that we could have an independent IG come in and look at only the issues surrounding that fact. That investigation is ongoing. The CIGIE se-

lected, and we all agreed, to let the Department of Defense inspector general work on this case, and that is going on.

I can't characterize that as being irresponsible. I can't characterize that as not doing anything. I characterize that as looking, first and foremost, and I want Agent Heller to know this, that Gina McCarthy and I, first and foremost, are concerned about the safety of our employees. I don't want to put employees in a situation where it is volatile. No matter how many directives I issue, I don't want employees in that position. So we need to let that investigation that is ongoing now complete, and then we will know how to move forward; and we will move forward expeditiously. We need to fix this situation and we need to have our employees be able to do their job, whether it is the IG, whether it is Agent Heller, or anyone else.

Chairman ISSA. I appreciate that. A woman was assaulted. A magistrate issued an arrest warrant. There was a decline to prosecute. He is still on the job, he is still assaulting people, he is creating a hostile environment, and you are working on it, and I appreciate that.

Ranking member.

Mr. CUMMINGS. First of all, to Ms. Heller, I think one of the most alarming things that I have heard in being in Congress for 17 years is what you just described. Nobody should have to go through that, period, woman or man; and I am so sorry that that happened, and we have to do everything that we can to make sure that does not happen. That is not a part of your job description, to go through that kind of hell, and we are going to try to address that. It is very, very important to me and I am sure every member of this panel.

Mr. Sullivan and Ms. Heller, you mentioned that the EPA administrator, Gina McCarthy—and I don't want to put words in your mouth, so correct me if I am wrong—requested that the OIG stand down on his investigation of OHS and the OHS special agent. Is that accurate, Mr. Sullivan?

Mr. SULLIVAN. Yes, the investigation we were conducting was non-criminal, it was administrative. The investigation and the interview of Mr. Martin concerned his authority to act as a criminal investigator in the Office of Homeland Security. We had received a legal opinion from an attorney within the EPA Office of Environmental Compliance and Assurance that Mr. Martin was out of scope; in other words, he was liable personally for a Bivens action and the Agency was liable under the Federal Tort Claims Act because he was operating outside of the scope of his authority. That was the allegation and we were looking into Mr. Martin's authority to do what he was doing and, overall, the OHS's authority to be conducting investigations ostensibly within the purview of the OIG; why were they doing that.

Mr. CUMMINGS. Does the administrator to have the authority to step down an investigation? Where would that authority come from?

Mr. SULLIVAN. Well, the administrator asked my boss, Mr. Elkins's concurrence to stand down temporarily until there was a potential resolution of the issue.

Mr. CUMMINGS. All right. But it would still have been the IG's. The IG said no. They could have gone on with the investigation?

Mr. SULLIVAN. That is correct. Mr. Elkins decided to temporarily suspend it, but he made it clear it was a temporary suspension.

Mr. CUMMINGS. All right, Mr. Perciasepe and Mr. Sullivan, I do believe that both of your offices are honorable and you are right, and I said it earlier, that we have great Federal employees, all of you, and I thank you. Over the past 10 days my staff has worked with each of your offices to find areas of agreement. You know, a good friend of mine, a judge friend used to say in disputes, he would say when elephants battle and fight, the grass suffers. And I believe, you know, there is a way to resolve this, and I am hoping that we can get there because I want everybody to be able to do their jobs. I don't want the so-called grass to suffer. And when I say the grass here, we are talking about the people of the United States getting their taxpayer dollars worth of services out of the agencies.

So, Mr. Sullivan, can you please tell me, first of all, do you think the involvement of my staff was helpful to you? Did it help identify the issues that needed to be resolved?

Mr. SULLIVAN. Yes, sir, it was illuminating. But to be candid here, we have been trying to resolve this issue internally for many, many, many months. We had no progress whatsoever. Your staff, over the weekend, as you know, I spoke to your staff many times over the weekend and they made a sincere effort and I was very happy to hear that on the part of the Agency, or at least what was—I didn't speak directly to anyone from the Agency, but your staff did, and I thought it was very encouraging.

Mr. CUMMINGS. Now, Mr. Perciasepe, what do you think about what has been accomplished?

Mr. PERCIASEPE. You know, I want to be clear also that I agree with the IG. Our Office of Homeland Security has no independent authority to do investigations in the classic law enforcement. They certainly have the ability, under general purposes, to analyze intelligence and do things of that nature, but they don't. And, to my knowledge, they do not do investigations independently; they are assisting the FBI. And here is what I think—and I do that as a prelude, Ranking Member Cummings, because the idea that we have right now—and I am appreciative of what Patrick said about how difficult it has been to try to come to grips with this, but Administrative McCarthy is going to meet with Arthur Elkins and with the head of counterintelligence at the FBI on Friday of next week and we are going to try to get a framework on how we can get the law enforcement activities going on, because it is clear to me, and I think this is a really important thing, that when there is a national security issue that the FBI has asked EPA to help them with, analyzing information, gathering information, perhaps even interviewing people, that there is a possibility, maybe not in every case, but a possibility—and I want to point out also these are very rare that we do—that that person or that activity could also be employing misconduct that is completely in the wheelhouse of the inspector general. So the question really is how can we get the FBI and the Office of Inspector General together so that we can stand down on our side as to what it is we need to do to get those

two legitimate and appropriate things to do, because the people we are talking about are—we are not trying to hide behind national security, they are working—

Mr. CUMMINGS. So you agree that the FBI needs to be involved.

Mr. PERCIASEPE. Absolutely, the FBI needs to be involved.

Mr. CUMMINGS. Would you agree, Mr. Sullivan, that the FBI needs to be involved?

Mr. SULLIVAN. Yes, sir. But there are other issues that do not involve the FBI, that involve the Secret Service, the U.S. Marshal Service, Capitol Police. So it is really across the broad spectrum of Federal law enforcement where OHS is restricting our information, not just with the FBI.

Mr. CUMMINGS. I see. Before I forget this, Mr. Perciasepe—

Mr. PERCIASEPE. You guys can just call me Bob P.

[Laughter.]

Mr. CUMMINGS. Okay, Mr. P, let me ask you this. Some kind of way, if we got employees who are watching pornography for four hours to six hours a day, or whatever was testified to, we have to address that. Mr. P, did you hear me? Did you hear what I said?

Mr. PERCIASEPE. Yes, I did.

Mr. CUMMINGS. That needs to be addressed. And I think the chairman asked you whether that person is still earning a salary and you said yes.

Mr. PERCIASEPE. You all have more information than I do on this case. The IG has informed me of this case, but I have no other information on it. I don't know what sites they were looking at. So I have no report, I have no information. I have nothing to act upon other than a meeting in my office telling me that they are investigating this person. Now, I am happy to sit down with them and look at it further. I am happy to look at what administrative processes we can take, but remember—

Mr. CUMMINGS. Mr. P, I am just trying to send a message back to the Agency.

Mr. PERCIASEPE. I hear you.

Mr. CUMMINGS. We have to deal with that. That makes absolutely no sense.

And do you both agree that the EPA's Office of Homeland Security has an intelligence support function to perform, including intelligence analysis? Mr. Sullivan?

Mr. SULLIVAN. Yes, sir, I do, but in a limited role, without having someone with a gun and a badge conducting investigations.

Mr. CUMMINGS. What about you, Mr. P?

Mr. PERCIASEPE. I agree that they have the authority to do the analysis and the work. I think the key is what can they do with the FBI and how do we work that out. And I don't disagree with Mr. Sullivan that there may be other law enforcement agencies involved with this. But this is the key one. We need to get the FBI and the OIG, and then we will be in the support role we need to be in.

Mr. CUMMINGS. Do you both agree that if the FBI is not leading an investigation into employee misconduct, it is properly the role of the IG, and not the role of the EPA Office of Homeland Security, to lead that investigation?

Mr. PERCIASEPE. I agree 100 percent.

Mr. CUMMINGS. What about you?

Mr. SULLIVAN. Yes, sir. But again the devil is in the details. If there is misconduct, we should be told on the front end, not the back end.

Mr. CUMMINGS. Okay. I have run out of time, but we have to resolve this, gentlemen. We have to find a way to get this done, because, as I said in my opening statement, legislatively I don't see it happening. I would like to think it would happen, but I doubt it. So I am hoping that all the agencies——

So, Mr. Sullivan, are you saying that more than the FBI has to be brought into the discussion to get these issues resolved? Or else we will be back here in the next six months going over the same thing.

Mr. SULLIVAN. Mr. Cummings, I am saying that OHS has to recognize that they must share information with us if it is from the Secret Service or the U.S. Capitol Police or the U.S. Marshal Service. Right now they are sharing nothing with us.

Mr. CUMMINGS. Mr. P? Then I am finished.

Thank you, Mr. Chairman.

Mr. PERCIASEPE. On the threat issue that Patrick brought up, Mr. Sullivan brought up earlier, it is my understanding, and, of course, Mr. Sullivan, I am happy to dig into it deeper, but when that threat issue came up from another intelligence agency that was not properly and quickly reported to the inspector general, I was under the understanding that our deputy chief of staff and your office have worked out procedures last fall to rectify that problem. But if that is not the case, you haven't told me that yet. I am happy to do more.

Mr. CUMMINGS. You know, it is a damn shame that we had to come to a hearing for you all to communicate.

Mr. SULLIVAN. Well, I can stake here under oath I have received zero information from the Office of Homeland Security concerning any threat at any time, and none of my agents have ever received any information from the Office of Homeland Security concerning any threat at any time.

Mr. CUMMINGS. We can do better, Mr. P. We can do better. Would you agree?

Mr. PERCIASEPE. Yes. But I thought we had procedures in place. I will have to go back.

Mr. CUMMINGS. All right.

Thank you very much, Mr. Chairman.

Chairman ISSA. If I can have the ranking member's indulgence for just a follow-up. I want to understand. This office is an office, I understand, that essentially is simply an administrative part of the administrator's headquarters, is that right? Because we keep talking about it. I was told this was about 10 people and it exists inside Gina McCarthy's suites, if you will, there. Is that correct? I just want to understand. When we talk about it like it is some agency somewhere that does certain things, this is 10 people who work for the administrator and have this tasking that I guess almost goes to sources and methods kind of thing. Is that right?

Mr. PERCIASEPE. Yes. The office was created by Christy Whitman after 9/11, when President Bush issued a number of Homeland Security presidential directives, when that whole system was being



set up. EPA has some roles under those. We are not a major player, and I think everybody will realize that, but we are not an absent player; we are involved with chemical decontamination, we are involved with confidential business information that may have some security risks and hazardous chemical work, and a number of other responsibilities, and critical drinking water infrastructure. EPA, for instance, was intimately involved with decontaminating the Hart Office Building from anthrax. We were one of the lead agencies on that. So we have a——

Chairman ISSA. Don't forget about Longworth.

[Laughter.]

Chairman ISSA. We won't. Both sides of the Capitol were contaminated.

Mr. PERCIASEPE. I am sorry. I am sorry. All of that. So my only contextual comment here for the benefit of the committee is that there is a context to the creation of this coordinating office in the Office of the Administrator to coordinate these activities across the Agency.

Chairman ISSA. And I didn't want to take excessive time. I just want people to understand Christine Todd Whitman creates essentially 10 assistants to her that operate in her offices, and it has a title and it goes on, but it is not a statutory creation of Congress, per se, that is mandated; it could go away today, is that correct?

Mr. PERCIASEPE. We would have to have alternative ways to coordinate and make sure our functions and responsibilities are——

Chairman ISSA. Right. But you could assign it to the IG, effectively, if you wanted to.

Mr. PERCIASEPE. I don't think we can assign programmatic activities to the IG. I think that wouldn't work.

Chairman ISSA. Okay. But there are remedies.

Mr. PERCIASEPE. There are remedies to the issues we are talking about, but we couldn't assign, I think, all the functions of that to the IG, and I think they would agree.

Chairman ISSA. But employee misconduct they certainly could do. Okay, thank you.

Mr. Mica.

Mr. MICA. Well, I think you have confirmed for the people that I represent that there is a three-ring circus going on in EPA and it is quite embarrassing. I hope not too many people who are on depressant medications are watching the hearing, because this could get you awfully depressed. You have people who don't work and get paid for it. You have people who have broken laws and stay on the payroll and get paid.

Who knows, Mr. Sullivan, Mr. Williams, somebody, how much does a GS-14 employee make? Isn't that fairly high? What is the range?

Mr. WILLIAMS. I believe it is around \$120,000, \$125,000.

Mr. MICA. \$125,000.

Mr. WILLIAMS. I believe that is the range.

Mr. MICA. And that is the unnamed GS-14 employee who is sitting there for—it says 2010. When did we discover that he was looking at the porno?

Mr. WILLIAMS. I believe the information came to us within the last six months we acquired that information.

Mr. MICA. So this guy is making \$120,000, spending two to six hours a day looking at porno. The information I have is he received performance awards during the time period?

Mr. WILLIAMS. He possibly did, yes, sir.

Mr. MICA. Well, he did or he didn't.

Mr. WILLIAMS. I am not sure.

Mr. MICA. There is a guy back there with a tie on, stripes, and he is nodding his head yes.

Mr. SULLIVAN. Mr. Mica, yes, he did receive performance awards.

Mr. MICA. It is just unbelievable.

We talked about some of this stuff. I had no idea you had 10 people in an Office of Homeland Security. You have EPA leadership obstructing the inspector general and some of their activities. It sounds like it is completely out of control. We really need to sit down and talk in a bipartisan manner about getting Civil Service under control. I chaired it for four years. To date, I can probably count all the people on two hands I have seen fired. But something needs to be changed when people are breaking the law, when you have this GS-14 sitting there, abusing his position, his salary, ripping off the taxpayers. Somebody told me he is still on the payroll. Is he on the payroll, Mr. Williams?

Mr. WILLIAMS. Yes, he is.

Mr. MICA. This is so offensive it is unbelievable. But we need some way to fire these folks, and your hands are tied right now, Mr. Williams. You know, we set up Civil Service to protect them against political intervention or improper dealing with Federal employees, try to give them some job security, not make it a political circus, but they have made it a merry-go-round for ripping off the taxpayers and we can't get rid of them. Is that right?

Mr. WILLIAMS. Yes, sir. To take administrative action is the responsibility of the Agency solely. The IG can just gather the facts and provide that information to the Agency.

Mr. MICA. And this Office of Homeland Security within the Agency, how many other agencies, does anyone know, have similar setup?

Mr. SULLIVAN. Sir, most cabinet level agencies have similar. They are not called the same, Office of Homeland Security, but there is something similar that does intelligence function.

Mr. MICA. Well, I can't say they don't belong in every one, but it seems like, from a standpoint of better operations, some of these things could be handled within the existing structure and some can be investigated from your standpoint, right, Mr. Sullivan?

Mr. SULLIVAN. Yes, sir.

Mr. MICA. At far less cost, less bureaucracy, and less turmoil. I mean, look at the non-disclosure agreements and this whole three-ring circus we have here described today of agencies trying to function in contravention of themselves. Did you tell us, too, they have never found an instance in which there was some security issue?

Mr. SULLIVAN. What I said, Mr. Mica, was that the Office of Homeland Security—I have been the Assistant Inspector General for three years. They have never given us one piece of information concerning a threat. At no time, ever, did they do that. And Mr. Perciasepe is correct, I did meet with his deputy chief of staff and

was told they were going to try to work out the threat information part, but it never happened.

Mr. MICA. I bet you most of the folks that work, those 10 people, are all in the GS-14 range, making more than \$100,000. I would probably be right in that assumption.

Chairman ISSA. The gentleman's time has expired, but you can answer if you know their ratings.

Mr. SULLIVAN. I do not know. I know that there were two SESers, there were some GS-15s, some GS-14s, and some lower rank people.

Chairman ISSA. And SESers, Senior Executive Service, make over \$200,000.

Mr. MICA. They are way up there.

Chairman ISSA. Thank you.

The gentleman from Massachusetts, Mr. Tierney.

Mr. TIERNEY. Thank you, Mr. Chairman. I not that our military observers left, so apparently they weren't too impressed with the oversight nature that is going on here, but let me try to distill this, because I think it is a little bit confusing.

Mr. Perciasepe, we had, apparently, during President Bush's term, after 9/11, Christy Todd Whitman, the then administrator, set up a small division of 10 people within the EPA to sort of get analysis and intelligence, and things of that nature, right?

Mr. PERCIASEPE. Yes, sir. And also—

Mr. TIERNEY. And Administrator McCarthy sort of inherited this.

Mr. PERCIASEPE. That is correct. As did Administrator Jackson.

Mr. TIERNEY. All the way through.

Mr. PERCIASEPE. Right.

Mr. TIERNEY. And what seems to be a problem here is that within the Section 811 of the Intelligence Authorization Act for Fiscal Year 1995, there is a question as to when things, disputes that involve whether or not someone is disclosing classified information has to be referred to the FBI or other agencies and what is EPA's obligation to include the Office of Inspector General in that process, right?

Mr. PERCIASEPE. That is correct.

Mr. TIERNEY. All right, so that is what the minority staff is trying to work with you and Mr. Sullivan and others to get resolved. I, for the life of me, don't understand the title of this hearing on that basis.

Mr. Williams, your testimony briefed us on four different misconduct cases, right, that involved time and attendance issues.

Mr. WILLIAMS. Yes, sir.

Mr. TIERNEY. The majority of the allegations of fraud that your office receives, do they lead to significant amounts of fraud in cases like that?

Mr. WILLIAMS. Time and attendance, sir?

Mr. TIERNEY. Yes.

Mr. WILLIAMS. Really, we just don't know what we don't know.

Mr. TIERNEY. So the four is what you are dealing with.

Mr. WILLIAMS. Well, there are many. We have about 80 employee integrity cases right now nationwide.

Mr. TIERNEY. But in the EPA?

Mr. WILLIAMS. Yes, within EPA, yes.

Mr. TIERNEY. Okay. So that is a common problem and it has internal controls that need to be addressed?

Mr. WILLIAMS. Yes.

Mr. TIERNEY. Have you made recommendations with regard to that?

Mr. WILLIAMS. Well, as far as the Office of Investigations, sir, we just gather the facts and then we do a report and provide that to the agency; we don't make recommendations as far as investigations.

Mr. TIERNEY. So you don't give them any idea what internal controls would improve their situation, you leave that up to them?

Mr. WILLIAMS. Not the Office of Investigations. The Office of Audit may.

Mr. TIERNEY. Okay.

Mr. Perciasepe, have you done anything, as EPA, with respect to the fact-findings that have been shared with you from the Inspector General's Office on those time and attendance issues?

Mr. PERCIASEPE. We have initiated our own audit as well, or review, and we have provided that information to the inspector general. But on the individual cases that they have concluded, within the last month several of them have been concluded, they have provided that information to us and the supervisors that are involved are now reviewing it to take the proper administrative actions. I want to say that since 2009 we, working with the IG and in part on some of their findings, there have been 71 criminal actions that have been taken, 111 civil actions that have been taken, and 240 administrative actions. So the idea that we don't do anything with these things, but we—

Mr. TIERNEY. So when they are investigated and when there is a finding on that, you take action.

Mr. PERCIASEPE. We need to get the findings of the investigation to be able to proceed with the administrative procedures, if it is going to be proceeding administratively.

Mr. TIERNEY. And that is what they are doing, the Office of the Inspector General.

Mr. PERCIASEPE. They are doing it.

Mr. TIERNEY. And they are doing a good job?

Mr. PERCIASEPE. Yes.

Mr. TIERNEY. And they have given you the information.

Mr. PERCIASEPE. When they are done.

Mr. TIERNEY. And you are taking action on it. Since 2009, you have all those numbers that show the data that show that you have taken action on it.

Mr. PERCIASEPE. Yes.

Mr. TIERNEY. That is the way it should work, right?

Mr. PERCIASEPE. Exactly the way it works. I believe, personally, again, as Patrick said, under oath, that we have a very good relationship with the IG on these matters.

Mr. TIERNEY. When you look at all of those, have you changed some of your processes and controls to deal with this issue at large? Or are you still dealing with it on a case-by-case situation?

Mr. PERCIASEPE. Well, the case-by-case and our own sort of—what we did in our support for the work that they are doing is we used a survey technique to look across the agency, not based on a

complaint. We went and did a survey and found similar patterns in some areas.

Mr. TIERNEY. And you addressed those?

Mr. PERCIASEPE. Well, where they appropriately needed some action, but what we are doing is this is informing our systemic changes, which I reported on a little bit in our hearing in October, changing our HR system, changing our computer triggers—

Mr. TIERNEY. As you should. Let's face the damage that the case that Mr. Williams talks about to put a black mark on the entire Agency, with that kind of conduct goes on and people still have their job after looking at sites and things of that nature. I think we all understand it does damage to all the people in the agency that are working hard and trying to get the job done and doing a relatively good job on that basis.

But I want to clarify for the record, Mr. Williams, outside of issues dealing with that 10-person subsection of EPA, what they call the Office of Homeland Security, these fraud and time and attendance issues, has there been any EPA obstruction on your going after those matters?

Mr. WILLIAMS. No, sir.

Mr. TIERNEY. So all those cases that you are dealing with, the four you reported or whatever, you are getting cooperation from the Environmental Protection Agency.

Mr. WILLIAMS. Well, we are conducting our investigations and then we relay the information to the Agency.

Mr. TIERNEY. But they are not impeding you in your investigation.

Mr. WILLIAMS. No, they are not impeding our investigations.

Mr. TIERNEY. So the whole dispute here, despite the title of this hearing, which I think is totally misleading, deals with the Office of Homeland Security, when EPA reports things to that office, when the FBI or other agencies get involved. That is pretty much the context of the dispute, is that right, Mr. Perciasepe?

Mr. PERCIASEPE. I would say that is a major part of it.

Mr. TIERNEY. Okay. All right.

I have no further questions.

Chairman ISSA. I thank the gentleman. I am going to have a copy of some of the sites that that gentleman visited given to you for your use in camera to make sure you have it. I am not going to place it in the record; it would seem to be counterproductive to have any advertising come out of this hearing that could lead to others, in or out of the Government, going to those sites.

Mr. PERCIASEPE. Mr. Chairman, thank you for that. The normal course of affairs on these matters is once it is in the IG's hand, we do wait for their investigation to be completed, because they may decide, for reasons we have already talked about, to pursue it in a criminal matter. So that parses out, and as soon as we get their report, and whichever direction they feel it needs to go in, we will follow it.

Chairman ISSA. No, I appreciate that. And they said you are not obstructing their investigation, but it is within the administrator and your purview and the deputy's purview to immediately put somebody on administrative leave, take them away from computers, take away their passes if the prima facie, if you will, is,

yeah, they were doing it. And that authority we often—we actually, quite frankly, and I know the gentleman from Massachusetts would join me, we often criticize long periods of full pay of people who have done wrong, but long periods of remaining on the job for somebody who clearly has done something wrong is perhaps, between the two, the greater of the two, and I think that is part of the reason that in addition to the obstruction that we believe the stand-down and some of these other activities that we are concerned about because of a small subagency, that we are also looking at the question of what is the result when something egregious has happened, such as the assault on Ms. Heller. The question is why is that person not relieved, particularly if they continue to assault or to create a hostile environment. Zero tolerance is what it is often called, and a zero tolerance for workplace violence, abuse, and creating a hostile environment is pretty much something that has become widely accepted not just in Government, but in the private sector. And your authority, and I think the gentleman—

Mr. TIERNEY. Would the chairman yield for a second?

Chairman ISSA. Of course.

Mr. TIERNEY. I hear what you are saying. I just look at this title, Is the EPA Leadership Obstructing Its Own Inspector General, as a total separate matter. I think we all agree now that they have not been obstructing the Office of—

Mr. CHAFFETZ. Will the gentleman yield? Will the gentleman yield?

Mr. TIERNEY. In a second, please.

—that the matter differs as to how quickly they react on a disciplinary basis. We can all talk about that ought to be faster, it ought to be no tolerance on that basis, but it is not an indication that they are obstructing the Office of Inspector General's work on that.

Mr. CHAFFETZ. Will the gentleman yield?

Mr. TIERNEY. And I want to know is it a contention of the chairman or the majority that in fact they have been obstructing this particular investigation.

Chairman ISSA. I think I will do the best thing in this case and say, Mr. Sullivan, in some cases, do you feel you have been obstructed, denied information, or in some way unable to do your job?

Mr. TIERNEY. Well, I think that should be Office of Homeland Security—

Chairman ISSA. Well, wait a second. Well, but the whole point is the Office of Homeland Security, an unauthorized person with a gun, the assault that came during that investigation, that is the main feature that caused the title. But we are not going to have a hearing in which we bring these people in and ignore a pervasive failure to discipline and to take immediate action for such things—

Mr. TIERNEY. Then the title should be Is the EPA Disciplining Its People Quickly Enough and In a Proper Way.

Mr. CHAFFETZ. Will the chairman yield?

Chairman ISSA. I can't get 4,000 letters for a headline; it just doesn't work that way. The fact is that the obstruction of the IG, the failure of the IG to do their job and be fully informed is the primary reason, and these individuals are both from investigations.

Yes, this committee is deeply disappointed that when someone has done wrong they stay on the job. When someone has falsified documents for 20 years as to somebody working when they are not, they are still on the job. Those management considerations are here because the information was provided.

Mr. TIERNEY. That would be a shared concern, Mr. Chairman, on that, but it is not obstructing the Office of Inspector General's job;—

Mr. CHAFFETZ. Will the chairman yield?

Mr. TIERNEY.—it is failing to do the disciplinary process in a way that we might all agree ought to be expedited.

Mr. CHAFFETZ. Will the chair—

Chairman ISSA. Thank you.

Yes, the chairman would yield.

Mr. CHAFFETZ. On this topic, Mr. Chairman, I would ask unanimous consent to enter into the record from Administrator Gina McCarthy a letter on her letterhead, the United States Environmental Protection Agency, dated October 28, 2013. It is to the inspector general, Mr. Arthur Elkins. In it, she says, "Therefore, I request that the OIG temporarily halt its review until the process I have described is complete." That is halting and stopping, and I believe obstructing their ability to do their job.

Mr. TIERNEY. I assume the gentleman has been here for the entire hearing.

Chairman ISSA. Without objection, the document will be placed in the record.

Mr. TIERNEY. You were here for the hearing, so I assume you heard it; you are not being disingenuous. You may be just not reading—

Mr. CHAFFETZ. I heard every word—

Mr. TIERNEY. She made a request, which is not an obstruction, and the Office agreed to that request.

Mr. CHAFFETZ. The administrator of the EPA is saying to temporarily halt its investigation.

Mr. TIERNEY. And they did.

Mr. CHAFFETZ. True or not? True or not?

Mr. TIERNEY. And they did.

Mr. CHAFFETZ. And I think that is wrong. That is why we are having a hearing. That is why Congress is involved.

Chairman ISSA. Well, I am certain the gentleman does see obstruction. If he doesn't, then that is a good reason for the title to be the part that we spent a lot of debate on. But I thank the gentleman for not debating that somebody surfing pornography sites, people falsifying documents, that these should lead to terminations, not to bonuses and promotions.

Mr. TIERNEY. There would be no disagreement on that.

Chairman ISSA. And with that it is my pleasure to recognize the gentleman from Utah.

Mr. CHAFFETZ. Prior to that, Mr. Chairman, I would just ask to be able to—

Chairman ISSA. Without objection, it will be placed in the record.

Mr. CHAFFETZ. Placed in the record. And the second thing I would say is I think it is equally as wrong that the inspector general agreed to that. They should never agree to halt an investiga-

tion. I don't care who asks them. I think that is equally as wrong. But don't deny that the administrator asked them in writing to halt their investigation.

Mr. TIERNEY. That's not obstruction.

Mr. CHAFFETZ. Halting an investigation you don't think is obstruction? You and I totally disagree.

Chairman ISSA. I am shocked that this could happen in this committee.

[Laughter.]

Chairman ISSA. Mr. Chaffetz, I look forward to your round of questioning. You are recognized.

Mr. CHAFFETZ. Thank you.

Appreciate you all being here.

Special Agent Heller Drake, I appreciate your service and your sharing your personal story. After the incident, my understanding is that the Federal Protective Service investigated, is that correct? Can you walk us through that real briefly, please?

Ms. HELLER DRAKE. Yes, sir. The Federal Protection Service investigated the assault and, like I said in my testimony, they interviewed me and they interviewed Agent Dorman, and then another individual from the Office of Homeland Security.

Mr. CHAFFETZ. And did they come to any conclusions?

Ms. HELLER DRAKE. They felt that there was probable cause for an arrest warrant, which is—I am going to assume they felt there was probable cause; that is why they took the affidavit to the magistrate.

Mr. CHAFFETZ. And then what happened?

Ms. HELLER DRAKE. The magistrate sent it back to the—my understanding is the magistrate sent it back to the Agency for administrative action.

Mr. CHAFFETZ. What did you think of that, personally?

Ms. HELLER DRAKE. Well, I was disappointed, certainly, but I do understand that the U.S. Attorney's Office is often busy and they have priorities.

Mr. CHAFFETZ. Did they give you any excuses as to why they chose not to pursue this?

Ms. HELLER DRAKE. No. I don't know.

Mr. CHAFFETZ. Did they ever talk to you about it?

Ms. HELLER DRAKE. No.

Mr. CHAFFETZ. So they didn't talk to you, they didn't explain, they just referred it back. And now where does it stand?

Ms. HELLER DRAKE. I don't know where it stands right now. As far as I know, there has been no action taken against Mr. Williams. I have just learned there has been basically counter-allegations made, I guess. I am not 100 percent sure.

Mr. CHAFFETZ. Mr. Perciasepe, you said that without exception, without exception. Do you think this is an exception or not?

Mr. PERCIASEPE. I think Administrator McCarthy, in that letter that you are pointing out, had first and foremost in her mind the safety of the employees. There are complaints of hostile work environment on the employees placed to us by the employees of the Office of Homeland Security. There is clearly the incident and the feelings and the stress that Special Agent Heller is expressing here, which is real and needs to be dealt with. The——



Mr. CHAFFETZ. So the investigation is halted.

Mr. PERCIASEPE. The investigation of what to do with that employee that has an 1811 employee, that investigation has halted. What has——

Mr. CHAFFETZ. You said without exception, they are moving forward without exception. That sounds like an exception.

Mr. PERCIASEPE. It was by mutual agreement. It was by mutual agreement. If the IG wants to change their mind about that, then maybe——

Mr. CHAFFETZ. Mr. Sullivan, what do you say about that?

Mr. SULLIVAN. My boss, the inspector general, Mr. Elkins, did agree to temporarily halt the investigation, but I know he did that under the caveat that there would be immediate ongoing negotiations and discussions to resolve the situation.

Mr. CHAFFETZ. Were there?

Mr. SULLIVAN. There was an attempt to, but it broke down fairly quickly afterwards.

Mr. CHAFFETZ. So are you doing the investigation or not?

Mr. SULLIVAN. No, not right now we are not. However——

Mr. CHAFFETZ. Maybe not Mr. Elkins, but I don't understand that.

Mr. SULLIVAN. However, the allegation about Ms. Heller being assaulted and the subsequent counter-allegations made by Mr. Williams against agents in my office, that whole parcel of allegations has been referred to the Department of Defense Inspector General, and they are conducting an investigation looking into the original allegations by Ms. Heller and my agents, and then the counter-allegations being made by Mr. Williams and other members of OHS.

Mr. CHAFFETZ. Guys, take some action. Grab this thing and make it happen. It shouldn't take an act of Congress to have to get you to all do your jobs. I am sorry, but you have a professional agent doing her job, it gets a criminal, then nothing happens. This guy looking at porn, how long has that been going on since?

Mr. PERCIASEPE. You all, again, have more information——

Mr. CHAFFETZ. Is the answer 2010?

Mr. PERCIASEPE. I do not know. I do not know.

Mr. CHAFFETZ. How can I know and you don't?

Mr. PERCIASEPE. Because the inspector general has not told me.

Mr. CHAFFETZ. How many direct reports do you have? How many people directly report to you?

Mr. PERCIASEPE. Maybe five. I don't know the answer.

Mr. CHAFFETZ. Maybe five. You don't know? Is it four, five, six? What about human resources, who does human resources report to? Do they report to you?

Mr. PERCIASEPE. They report to the administrator.

Mr. CHAFFETZ. And you are not in that——

Mr. PERCIASEPE. The administrator and I are in the same box, so to speak, okay. So direct reports—I thought you were talking about my management assistant and people who—obviously, I am the deputy——

Mr. CHAFFETZ. Does human resources, or whatever the name is over there, do they not share this information with you? If you are in the same box as Gina McCarthy, are you telling me that she didn't know about it either?

Mr. PERCIASEPE. The first time I learned about it was a meeting with the inspector general.

Mr. CHAFFETZ. You don't think that is wrong?

Mr. PERCIASEPE. When?

Mr. CHAFFETZ. This is a big deal. Yeah, when was that?

Mr. PERCIASEPE. Within the last several months. And they are in——

Mr. CHAFFETZ. Is it against the rules? Is it against the department policies to watch porn at your office?

Mr. PERCIASEPE. It is.

Mr. CHAFFETZ. Then fire him. Fire him. What is the question?

Mr. PERCIASEPE. Need to wait.

Mr. CHAFFETZ. For what?

Mr. PERCIASEPE. For the inspector general's report. I don't know if they are going to send him a criminal notice.

Mr. CHAFFETZ. Is there any doubt in your mind that this guy is watching porn on a regular basis in his office? Is there any question?

Mr. PERCIASEPE. I have no reason to doubt it because I trust the IG.

Mr. CHAFFETZ. So what are you doing about it? I would like an answer to that question. What is he doing about it?

Mr. PERCIASEPE. I am not personally doing anything about it.

Mr. CHAFFETZ. That is the problem. That is the problem. Ding, ding, ding, ding.

Chairman ISSA. Okay.

Mr. CHAFFETZ. Yield back.

Chairman ISSA. I thank the gentleman.

Ms. Kelly, we are going to go to you. I just want one thing for the record is, when the IG comes to you with anything, including this gentleman surfing these inappropriate sites, you have the ability to follow up, ask for additional questions. So the fact that you don't know more is not because he would withhold it; you have the right to ask for it.

Mr. PERCIASEPE. I didn't mean to insinuate that.

Chairman ISSA. Okay.

Mr. PERCIASEPE. I am sorry if I did.

Chairman ISSA. You have a lot of things going on. You have a large organization. I understand that. I just want to make it clear that you could know more. We don't have some information that you couldn't have; it is just a question of asking.

Mr. PERCIASEPE. I am pretty certain that that is correct, yes, sir.

Chairman ISSA. I thank you.

Ms. Kelly.

Ms. KELLY. Thank you, Mr. Chair.

I understand that the EPA's Office of Homeland Security entered into a memorandum of understanding with the FBI to spell out how the agency and the Bureau would cooperate in instances where classified information may have been disclosed to a foreign power. That is what we mean by Section 811 referrals and 811 refers to a statute.

Mr. Perciasepe, is that your view of what the MOU does?

Mr. PERCIASEPE. The MOU is, basically sets out the parameters of cooperation with the FBI on national security matters, including assistance we would provide to the FBI.

Ms. KELLY. Mr. Sullivan, one of your concerns about the MOU is that it touches upon the Office of Inspector General's Oversight and Investigation responsibilities regarding employee misconduct, is that right?

Mr. SULLIVAN. Yes, Ms. Kelly. The problem, the basic problem with the MOU is that the responsibilities and the authority of the IG is silence, not mentioned. Our contention is in order to have a national security investigation targeting an EPA employee, he or she must be engaged in some kind of serious misconduct. And our position is and always has been, as soon as OHS or any other EPA employee knows about an allegation of serious misconduct, they must immediately report it to the IG.

After that notification is made to us, we will work very closely with OHS and the FBI and any other entity. The problem is right now, OHS is using that as an excuse to not tell us about misconduct.

Ms. KELLY. I know Ranking Member Cummings has been working intensively with both the IG and the EPA, and there's a lot of common ground. You both agree that the roles need to be clarified, and you agree in large part on those roles, and you agree that information should be shared. You also agreed that the FBI needs to be part of the discussion.

Do you both agree that the high level meeting taking place next week with top leadership at the office of Inspector General, the EPA and the FBI, is the right venue for working out these issues? Both of you can answer.

Mr. PERCIASEPE. I think we need to break the logjam. If indeed there is a logjam that has occurred since October, we need to break the logjam. So bringing the Director of National Intelligence from the FBI, the Administrator of the Environmental Protection Agency and the IG together, I am not going to guess that they are going to come up with every answer in that meeting. But if they can frame out how we want to move forward on these issues we are talking about, I think it will be short order after that that everyone else can work out the details.

So I think, Administrator McCarthy, bringing the FBI and the OIG leadership together is an important step and obviously whatever level we had been working it, it needed to be bumped up.

Ms. KELLY. Mr. Sullivan?

Mr. SULLIVAN. Yes. I concur with what Mr. Perciasepe said. However, the 811 part of that memorandum with the FBI is a small subset. OHS uses that memorandum to expand it way beyond 811 referrals. The other issue is, we can't be put in a position where someone else is negotiating away the OIG's authorities. Nor could we legally negotiate away our own authorities. We have to be involved in misconduct investigations, period.

Ms. KELLY. All right. Mr. Perciasepe, shouldn't the OIG perspective and concerns be addressed at this meeting? Would you agree with that?

Mr. PERCIASEPE. I'm sorry, I couldn't hear.

Ms. KELLY. Shouldn't the OIG's perspective and concerns be addressed at this meeting?

Mr. PERCIASEPE. The IG is the lead, the lead and the responsible authority for employee misconduct at EPA. I am going to guess that there will be some sequencing on how things are done once we have a better framework. But they are the ones that are responsible for misconduct. The confusion that comes in is that misconduct happening in the commission of a national security breach of some kind. And I want to make it clear, the Office of Homeland Security does not have the authority to issue any do not disclose orders. Those come from the FBI.

But the key here is how to sequence the proper investigations when there may be both an employee misconduct investigation and a national security investigation that is obviously being enabled by the misconduct itself. So those things need to be coordinated. I am not an expert in law enforcement deconflicting. But this happens every day in one way or another. And I have high confidence, Mr. Chairman, that we will be able to do this if we can get the right people together.

Ms. KELLY. I hope you are correct.

I will yield back, Mr. Chairman.

Mr. CHAFFETZ. [Presiding] Thank you. I now recognize the gentleman from Michigan, Mr. Walberg, for five minutes.

Mr. WALBERG. Thank you, Mr. Chairman. Might I suggest, Mr. Chairman, that maybe a headline for this hearing ought to be something like The Atmosphere and Environment of the EPA is Polluted.

[Laughter.]

Mr. WALBERG. Mr. Sullivan, following that train of thought, it appears that there are other examples of EPA obstruction of your office. Beth Craig lied to the OIG. Is that true or not?

Mr. SULLIVAN. Yes, that's correct.

Mr. WALBERG. She is a deputy administrator at OIR in EPA.

Mr. SULLIVAN. She was. She has been reassigned to another position now.

Mr. WALBERG. Another position. Region 9 Administrator Jared Blumenfeld lied about personal email use, is that correct?

Mr. SULLIVAN. Sir, I have no knowledge of that. I do not know if he lied. Mr. Blumenfeld was never interviewed by my office or my agents concerning an email. That might have been our auditors, but I have absolutely no knowledge of that.

Mr. WALBERG. It was the Office of Audit, I am just told.

Nancy Dunham refused to be interviewed. Is that correct?

Mr. SULLIVAN. That is correct. Again, that was a request by Office of Audit, and they did personally discuss that with me.

Mr. WALBERG. I think we need to point those few examples out, that we continue to have to deal with. And one thing about history, if we don't learn from it, we are bound to repeat it.

So I want to go back to the secret agent man from the CIA, EPA. Whatever he determined himself to be. And Mr. Perciasepe, how did the EPA Office of Homeland Security become involved in the John Beale matter? Again, we are going back in history, lengthy history, to see if we have learned for the present or if there are some similar things that are taking place right now.

Mr. PERCIASEPE. I can tell you that nobody's been claiming they are working at the CIA at EPA right now. That part of the history I hope we will never have to live again.

Mr. WALBERG. But they are working at other places, and without working.

Mr. PERCIASEPE. I would like to say here hindsight is always 20-20. But I like your approach better, that what are we learning how are we getting over it.

Mr. WALBERG. Right.

Mr. PERCIASEPE. When the John Beale matter, again, as you pointed out, it was going on for a good decade before that with many other people involved. But when that first started to come up, like, this can't be right kind of come up, the first instinct people had was to find out if this person really did work for the FBI. I mean, I am sorry, the CIA.

So I think there is where we got tangled up. I am using hindsight and what lessons have been learned.

Mr. WALBERG. This was the EPA Office of Homeland Security.

Mr. PERCIASEPE. Well, it was originally the Office of, the Personnel Office, the HR Office, is there any record of this. They asked the senior intelligence officer, the agency involved with, the unit in the agency that communicates with the intelligence community, whether they had any information. And that went on for a couple of months.

Mr. WALBERG. And how many interviews did OHS conduct of John Beale?

Mr. PERCIASEPE. I do not know the answer to that. So then once they figured out there is no record anywhere of this, that is when it was turned over by the General Counsel and Homeland Security to the IG. That is my recollection.

Now, if I had to live that through again, same lesson learned, I would have given it to the IG right away.

Mr. WALBERG. Right away.

Mr. PERCIASEPE. But I didn't know we were looking into this.

Mr. WALBERG. What you are saying is that the EPA Office of Homeland Security interviewed John Beale before the OIG?

Mr. PERCIASEPE. I don't know what they did. All I know is that they tried to find out if he worked for the CIA. Again, I testified in October that I can see the logic that this would be a human resources thing, is there any record of this. They went to the liaison with the intelligence community saying, do you have any record that this went on.

Mr. WALBERG. Mr. Sullivan, did you have first crack at interviewing Mr. Beale, or did EPA Office of Homeland Security have first crack at it?

Mr. SULLIVAN. The Office of Homeland Security interviewed Mr. Beale at least three times before we even knew about the case.

Mr. WALBERG. How did that impact your investigation?

Mr. SULLIVAN. Well, it severely impacted us, because Mr. Beale then was alerted that his fraud had been discovered before the proper authorities, being the IG Office of Investigations, had been alerted. And he was able to backtrack, potentially destroy records, potentially build an alibi.

And then when we first approached him, he was expecting an interview and he referred us to his attorney.

Mr. WALBERG. So it harmed your inspection process, the process you are defined to do, capable of doing, authorized to do. It hindered.

Mr. SULLIVAN. It hindered. Yes. It clearly harmed our investigation. It delayed it and harmed it.

Now, had OHS simply done as Mr. Perciasepe suggested, a records check with the CIA, we would have been perfectly fine with that. That's part of their analytical job. Their job is not to interview employees. That is our job.

Mr. WALBERG. That is your job.

Mr. SULLIVAN. That is my job.

Mr. WALBERG. Mr. Chairman, if I could ask one more question, in deference to all the time I have had to sit here and wait for others that went way overboard.

Let me ask this question, Mr. Sullivan. Is the handling of the employees in question today that we are talking about that Ms. Heller had to suffer through and all the rest, is it significantly different process that is going on now compared to Mr. Beale's? Relative to your responsibility, your authority.

Mr. SULLIVAN. Mr. Walberg, I could tell you as of right now, I have zero visibility on what OHS is doing. I have no idea what they are doing, I have no idea what cases they are working on. I have no idea what employees they are interviewing.

Mr. WALBERG. That is the problem. The atmosphere and environment around the EPA is polluted. And it is affecting your impact. I yield back.

Mr. CHAFFETZ. I thank the gentleman. I now recognize the gentleman from North Carolina, Mr. Meadows, for five minutes.

Mr. MEADOWS. Thank you, Mr. Chairman.

Mr. Perciasepe, let me come to you. We have heard about pornographic sites being looked at, we have heard about people being paid without showing up for work, we have heard about CIA agents, we continue to hear stories. Would you not say that the EPA has a management problem, a systemic failure in management?

Mr. PERCIASEPE. EPA has 16,000 employees.

Mr. MEADOWS. That is not the question. I understand that. Do you have a management problem, a systemic problem within management to allow these kinds of things to go on?

Mr. PERCIASEPE. No.

Mr. MEADOWS. Okay. I am troubled by that, because as we continue to hear these things unfold and unfurl, let me turn your attention to Region 4, of which covers my district of North Carolina.

In 1990, the EPA came in and conducted a test on one of my constituents' piece of property without her permission and took samples and found that there was toxic, hazardous substance on her property. Do you think that it would have been proper to go onto her piece of property without her permission? Yes or no. Is it proper to go onto somebody's property without their permission?

Mr. PERCIASEPE. I don't know.

Mr. MEADOWS. Okay. Let me go on further. Do you think it was proper, when they found that, that they did not tell her for over

nine years that there was toxic stuff on her property? Yes or no? Would you want to be informed if you had toxic stuff that was found on your property? Would you want to be informed by the EPA that it was there?

Mr. PERCIASEPE. Yes.

Mr. MEADOWS. Okay. So do you not think that that would be a good thing to do?

Mr. PERCIASEPE. I really have no idea what the circumstances you are talking about. I want to be responsive here. I don't know whether it was under some court order, I have no idea. I am happy to drill deeper.

Mr. MEADOWS. Okay, well let me tell you, you have been drilling deep, because the IG has been involved, and this is a contaminated site, a Superfund site, of which it has been there for 25 years. And yet we have not even started to clean it up. Do you think that that is a problem?

Mr. PERCIASEPE. That is a budget problem.

Mr. MEADOWS. Oh, that is a budget problem. So we have a tremendous budget, and so we have known toxic water with contamination in water, we have a budget problem, but we are spending billions of dollars on other things, but we can't clean up a site in Asheville, North Carolina.

Mr. PERCIASEPE. EPA's Superfund budget has been cut through the years.

Mr. MEADOWS. So let me go on a little bit further. Here is a report that you should have had. This was a call center who received a call from a constituent in my district in September of 2009, in April, it was a hot line. And they said that there was contamination. Do you know when that phone call was returned? Never. Do you know when the voice mail was checked? September of that year. Five months.

Now, this is a hot line. Do you not see that as a problem.

Mr. PERCIASEPE. Yes.

Mr. MEADOWS. Okay, you see that as a problem. So let me in the time remaining go on a little bit closer because this is Region 4, this is water quality. We have a Superfund site that is not being cleaned up. And yet what we decided to do, and I say we, because it is the government, I certainly wouldn't have decided to do this, it appears that we gave a \$63,000 bonus to the Water Quality guy in 2013 for a job well done. Are you aware of that? Sixty-two thousand nine hundred and eighty-five dollars, to be exact. This is on top of his \$179,000 salary. Do you think that this is part of a job well done?

Mr. PERCIASEPE. Well, I don't think Superfund is part of the Water Division's work.

Mr. MEADOWS. But he is managing, it is Water Quality. I have been involved with it, I know it extremely well. Do you think he deserved a \$63,000 bonus? What do I tell the single moms back in Asheville, North Carolina, when a Federal Government employee is getting a \$63,000 bonus?

Mr. PERCIASEPE. I have no idea whether that person had any involvement with this project at all. So you are asking me a question I can't answer.

Mr. MEADOWS. So you justify a \$63,000 bonus on any, so he is making \$240,000, you think that is a—

Mr. PERCIASEPE. I don't even know what the bonus was for, sir. So it is very difficult for me to be able to be responsive to you here.

Mr. MEADOWS. Okay. When do we start to change the management process within the EPA to allow the American taxpayers to trust that somebody is going to get fired when these things go on? How many people have been fired so far based on the actions that we have heard about today? How many have been terminated?

Mr. PERCIASEPE. Can I answer?

Mr. MEADOWS. Sure.

Mr. PERCIASEPE. Employees have rights. And we take, all of the things that have been talked about today are in an administrative or IG investigation process. Taking final actions on employees' termination, suspension, or docking of pay or whatever is available to be done can't be done without those processes. And more importantly, and I want to be clear about this, me saying what I think should happen here today while those are still going on will prejudice those reviews.

Mr. MEADOWS. Okay.

Mr. PERCIASEPE. So I am not going to do it.

Mr. MEADOWS. That is an explanation. That is not an answer. How many have been terminated?

Mr. PERCIASEPE. None.

Mr. MEADOWS. That is what I was afraid of. I will yield back.

Mr. CHAFFETZ. Mr. Perciasepe, is it, could you provide to the committee how many people have been fired in the last, say, five years? Is that fair? I am not asking for names.

Mr. PERCIASEPE. I will provide, up to firing, I will provide all of our disciplinary actions in the last five years. I will do that.

Mr. CHAFFETZ. And you will provide that to this committee?

Mr. PERCIASEPE. Yes, I will.

Mr. CHAFFETZ. Very good, thank you.

I will now recognize the gentleman from California, Mr. Cardenas, for five minutes.

Mr. CARDENAS. Thank you very, very much, Mr. Chairman.

Mr. Sullivan, you say that it is important for EPA's Office of Homeland Security to share with the IG any information it may come across concerning potential criminal misconduct of an EPA employee. This information is not only necessary because you believe that the OIG has jurisdiction to investigate these cases but also because, as a practical matter, your office needs the information for deconfliction purposes. Is that correct?

Mr. SULLIVAN. Yes, sir.

Mr. CARDENAS. Can you explain to us what you mean by deconfliction and why it is so important?

Mr. SULLIVAN. Yes, sir. There is a basic tenet in law enforcement that you don't want to step on another agency's case. But most importantly, you don't want to put your agents or the agents or the officers of another agency at risk. It is critically important in drug investigations or counterfeiting investigations where we have an undercover officer. But it is also equally important in instances where you have a target where two agencies may be targeting the same individual for alleged criminal activity.



It just does not bode well when the agencies aren't talking with each other. Nothing good happens from that and a lot of bad things can happen.

Mr. CARDENAS. Thank you for your answer.

Mr. Perciasepe, I find Mr. Sullivan's argument for information sharing relevant. Do you agree that the IG should be informed whenever there is a national security investigation involving an EPA employee?

Mr. PERCIASEPE. I think we did talk about this a little bit earlier. We are having a meeting on Friday of next week with the head of counterintelligence of the FBI and the Inspector General and the Administrator is bringing them together to see if we can come up with how we deal with that. Because you have zeroed in on, I think there are many issues being discussed here, but we zeroed in on one key one that I feel is workable and we can figure out what the proper sequences are. And that is when the misconduct is occurring in the conduct of a national security issue, and how that goes about.

I believe as I think you are alluding to that law enforcement agencies do this kind of deconflicting all the time. And we just need to get the proper protocols and standard operating procedures in place to make sure that they happen appropriately.

Mr. CARDENAS. Is one of the things that is on the minds or concern of respective departments when it comes to investigations, is one of the concerns that if you don't follow appropriate protocols that actually there could be a lawsuit on behalf of an employee, and unfortunately their chances of winning might be increased because you weren't being careful enough?

Mr. PERCIASEPE. I would argue there are probably many complications. Those could be some of them that have to be carefully weighed when there is overlapping jurisdiction that needs to be worked out.

Mr. CARDENAS. One other thing is if one of you could clarify for us when a person is a government employee, do they inherently give up their rights that we have as American citizens?

Mr. SULLIVAN. No. Everyone has their constitutional rights if you are accused of a crime. However, as a government employee, if any inspector general wants to question you, in your role as a government employee, there is a warning that we issue called a Kalkines warning, which in effect tells the person being interviewed that you cannot be prosecuted for the statement you are going to give us. Nothing you say can be used against you unless you lie to us. You are compelled to speak to us, and if you don't speak to us you will be subject to disciplinary action up to and including removal.

And that is across the board in the entire Federal Government, whenever the IG approaches someone, as long as you are not under criminal investigation or criminal exposure.

Mr. CARDENAS. So in other words, there is the allowance within the relationship between Federal employees and management and/or investigative authorities at the Federal level to get down to the bottom of improving what is going on within agencies, and they do have access to those employees. Yet at the same time, it sounds like those employees can't be treated with impunity on how those investigations or how that questioning takes place.

Mr. SULLIVAN. Yes, but the issue of the Kalkines warning is within the purview of the Inspector General's office. It would not be appropriate for other entities within an agency to issue that warning. That is reserved for IG business to collect the facts to ensure that we have relevant information and people are truthful to us.

Mr. CARDENAS. So basically, unfortunately, for some people who think that it is simplistic, it isn't simplistic, it is a bit complicated.

Mr. SULLIVAN. It certainly is complicated, sir. Yes. But they are workable problems, but it is complicated.

Mr. CARDENAS. Okay, thank you very much.

Thank you, Mr. Chairman, I yield back my time.

Mr. CHAFFETZ. I thank the gentleman.

We will now recognize the gentleman from Michigan, Mr. Bentivolio, for five minutes.

Mr. BENTIVOLIO. Thank you very much, Mr. Chairman.

Yesterday I attended a field hearing in my district in Michigan that dealt with how Federal regulations are impeding the growth of small businesses and manufacturers. One common theme throughout the hearing related to regulations being imposed by the EPA which do not solve any relevant problems and will cause these businesses billions of dollars to comply.

I am not discounting the EPA. Throughout history when serious problems have arisen, we have put in place appropriate and effective regulations that protect Americans. The impact of regulations can be good. However, I am back here today attending another hearing regarding the EPA, only to discover the EPA is involving themselves in areas that they should not be involved in. Things are occurring at the EPA which cause me great concern about the leadership and how work is being conducted or maybe not conducted.

Maybe the EPA has too much time on their hands or too many employees working for the agency because instead of concentrating on determining what regulations are needed and would be effective to safeguard Americans and not cost businesses billions of dollars, thus regulating America out of business, the agency is involved in questionable activities. In an article published September in 2013 prior to the government shutdown, the EPA announced that only 1,069 of its employees out of the 16,205 employed were essential.

So basically, EPA acknowledges that over 90 percent of its employees were not essential. I think maybe this confirms my point that the EPA might have too many employees and too much time on their hands, and that this has created an environment that encourages misconduct.

With that being said, I have a few questions. Mr. Perciasepe, that being said, you have 15,000 employees that you basically said were non-essential. Have you completed an audit to determine how many employees are essential to protect our environment?

Mr. PERCIASEPE. First of all, let me say the determination of an exempt and non-exempt employee during a cessation of appropriations is a very different thing than whether they are needed to implement the laws that Congress has enacted. It is whether or not they are needed to stay behind and run the risk of not being paid, depending on the outcome of Congress' resolution of the budget, because of a danger to the public's assets or an immediate damage that might occur.

Mr. BENTIVOLIO. Mr. Perciasepe, you have John Beale, an unnamed GS-14 EPA employee viewing pornography at work for two to six hours a day, you have people working—holy cow—that are getting paid, not at work, don't even have a building pass, don't even really have a computer hooked up to the EPA. You have Renee Page, who has received a prestigious Presidential rank award in 2012, a cash award of \$35,000, who hired 17 family members and friends for paid intern positions, sold jewelry and weight loss products during her leisure time during work hours, her daughter was an employee at the EPA, received a cash bonus from Ms. Page's budget account, inappropriately influenced a contract. We will hear more about that, I am sure, later.

Beth Craig, which is, oh, Mr. Beale's travel expenses I think she approved. Another GS-15 employee getting paid while in a retirement home. Retention bonus abuses, one thing after another. But you know, the other thing that I heard in my district from many people saying that the EPA is looking for a new mission. Because what I am hearing complaints from, I am from Michigan and you can travel seven miles in any direction and hit a body of water. Thousands of lakes and rivers and streams. And we have a lot of those lakes that have a small, seasonal marina. They rent rowboats for fishermen to fish during the day for about \$15, \$20 per day. And the EPA is visiting them and causing havoc. Some of these people have told me they are going to have to shut down to meet those requirements.

So once again, have you completed an audit to determine how many employees are essential to protect our environment? Because it appears, sir, that they have more time on their hands and they are looking for a mission.

Now, I want to be clear, I grew up in a time when we have Love Canal and rivers that caught on fire. EPA was a great champion. But you have 16,000 employees, it appears, looking for a new mission.

Sir, have you conducted an audit and if not, will you some time in the future?

Mr. PERCIASEPE. I really don't know what that audit would be. But we haven't done an audit. I am just going to answer you straight up. We don't have an audit on trying to determine whether each employee is essential or not essential.

Mr. BENTIVOLIO. I strongly suggest you do so.

Mr. Perciasepe, you said to my colleague, Mr. Meadows, that your employees have rights. I want to tell you, Mr. Perciasepe, I want you to know, my constituents have rights, too. And they take precedence over the rights of your employees.

Thank you, Mr. Chairman.

Chairman ISSA. [Presiding] Thank you. The gentleman's time has expired.

Mr. Perciasepe, is there something you wanted to say in response?

Mr. PERCIASEPE. I appreciate that, Mr. Chairman. On the, getting back to the substance of the small marina operators, I am happy to look into that if you want me to.

Mr. BENTIVOLIO. Thank you very much. I look forward to your visit, we will give you a tour of the many Michigan lakes and streams.

Chairman ISSA. The gentleman's time is expired.

Mr. PERCIASEPE. As long as I can do some muskie fishing, I will be happy.

Mr. BENTIVOLIO. Very good.

Chairman ISSA. You didn't come to Cleveland for walleyed pike. [Laughter.]

Chairman ISSA. And with all due respect, what came out of those boats that burned on the Cuyahoga has been greatly over-exaggerated. And you Michigan folks going after us Clevelanders, I have a problem with that, a little bit. But we will get into that at another time.

With that, we go to Mr. Woodall.

Mr. WOODALL. Thank you, Mr. Chairman.

Mr. Perciasepe, I appreciate your training us up on name pronunciation. I am a big believer in training folks up. I have only been here three years and I can still be trained up. And I think that is true government-wide. My recollection of Mr. Beale's case is that he was discovered because of a change in EPA leadership that folks who had not become accustomed to his ways began to ask questions and that change led to better outcomes for us as a Nation.

I appreciate the work of the folks at OIG. It is a hard job. And whether you are a Republican administration or a Democrat Administration, you have an IG there and the IG's job is to train you up. And we don't have an IG on individual members' offices here. If we did and they came by my office, I would like to think I am 100 percent the best fellow on Capitol Hill, but I am convinced that if I brought in some folks, they could train me up.

But it is hard to accept constructive criticism, because you do want to do the best you can with what you have to work with. Tell me about the culture at EPA. Do you view the three folk sitting to your right as part of a team whose responsibility is to make you better every day and a responsibility that you value? Or is it a different relationship with the folks who sit to your right?

Mr. PERCIASEPE. As you just pointed out, there is always going to be some differences of opinions. We have been talking today about a significant one that I think can be worked out.

But on a general matter, I pointed out earlier that since 2009, since I came back in December of 2009, there has been about, a little over 2,600 different audits, reports, analyses done by the IG that we have cooperated on. We do 50 significant, I recall, audits a year, roughly. I think that is about right, Patrick and the rest of the gang here. And the vast majority of those are done in a way that we are learning every step of the way. We are learning and responding. In the questions we are leaning and putting together the action plan.

Not only that, we have a pretty open management structure at EPA. For instance, I chair a group called the Executive Management Council, which is made up of all the career deputies, including the career deputy of the Office of Inspector General. They are full participants in that discussion. We have an annual process

under the Federal Managers Financial Integrity Act, FMFIA, where the IG comes in and makes presentations to the entire senior leadership of the agency on where they see our weaknesses. It is kind of to have a culture that is open.

Mr. WOODALL. I appreciate that. And that is exactly the question I was asking, I appreciate your answering it in that way. But I have to ask the folks from the Inspector General's office, was this a tale of a lot of collaboration and a lot of working together, but the reports I have in my folder this morning are things that I would hope would have never been written, because we would have never had those problems, because we would have had a structure in place that those didn't occur to begin with.

Is the structure that Mr. Perciasepe describes, Mr. Sullivan, of cooperation and collaboration, is he describing his own view, or is he describing the EPA culture?

Mr. SULLIVAN. We have an excellent working relationship with the rest of the agency. However, it is extremely dysfunctional at the Office of Homeland Security. That is why we have to resolve that.

Mr. WOODALL. Tell me about that, Mr. Perciasepe. Because you spoke with great fondness about the collaboration that goes on there. Here we have a single office within a giant agency, a single office that we can agree has impeded the spirit of collaboration and cooperation that you provided. The tale that Ms. Heller had to tell about her encounter, we would have had that person fired this afternoon.

Now, we don't have the same workplace protections in Congress that you have at the EPA. But that would not be tolerated. Why does it require a Congressional hearing to solve this issue when you have that collaborative relationship? And we are talking about one subdivision of dysfunction in an otherwise functioning agency.

Mr. PERCIASEPE. It needs to be, it needs to be reconciled and worked through. And we have made attempts to do it. And we have now elevated it inside the agency. And Administrator McCarthy and Randall Coleman, who is the head of, works at the FBI as the head of counterintelligence for the United States and the Inspector General are going to get together next week and they are going to try to put the framework together to deal with what kind of standard operation procedures or protocols we are going to need to have to deconflict this issue. And the tensions, and the confrontations that may occur are all derivative of these mission problems, I believe. We are going to have to deal with individuals' behavior as we get information on that.

Mr. WOODALL. You would agree with me then that again, within this very collaborative process that you have described, cooperative process, there is no set of circumstances where this really persists. Not should persist, but will persist. We will in fact solve this because we can.

Mr. PERCIASEPE. That is the intent, is to do that. Just listening to today, when I get back to the office I am going to direct the Office of Homeland Security to seek permission to share the information that Mr. Sullivan is talking about with them.

Chairman ISSA. Would the gentleman yield?

Mr. WOODALL. I would be happy to yield to the Chairman.

Chairman ISSA. Well, as long as you are going to do that, Mr. Perciasepe—

Mr. PERCIASEPE. This is permission from the FBI.

Chairman ISSA. Well, as long as you are going to do that, I would certainly hope that you would hear out what Mr. Sullivan said and we knew from the previous investigation, that the interference by an entity that had no business being in the middle of Mr. Beale's corrupt activity, a man who was the direct report to the Administrator, worked for her for years. That interference, you know and I know and the American people know, reeked of her personal staff, these 10 people that worked for her in an entity she created, or sorry, she continued but redirected, that interference in the investigation of Mr. Beale is exactly the kind of interference that makes it look like the IG is okay as long as they are doing stuff that she doesn't care about or that you don't care about.

But quite frankly, I heard it here today and I saw it in the investigation. Mr. Beale should have been discovered a long time ago. The Administrator herself deserves a lot of culpability, not just for the years that she didn't see it, but after she knew it and it could have been stopped sooner and it wasn't.

I hope you are taking that back, because I know Mr. Sullivan and Mr. Williams, and I hope the Inspector General himself, are concerned that that is part of the obstruction that has to end. And I am sorry, but you can't have a management discussion about it. It never should have happened. It should have been zero tolerance. That type of interference with the IG is not deconflicting. Do you understand that here today? If you have any disagreement, please say it now in front of us and the IG.

Mr. PERCIASEPE. I can't remember everything you said, Mr. Chairman, but—

Chairman ISSA. Your squad, this 10-man unit, interfered in the Beale investigation with the IG. That is already in our taillights. But it is exactly the kind of thing that has to be deconflicted.

Mr. PERCIASEPE. Yes.

Chairman ISSA. Thank you. Mr. Sullivan?

Mr. SULLIVAN. Yes, sir, I would just like to underscore, though, that the issue with the FBI is one part of the issue. The other issue is the Office of Homeland Security receiving allegations of misconduct and then independently vetting those allegations, conducting an investigation, with or without the FBI, without telling us. Our position is and always has been, as soon as OHS or another employee receives an allegation, they must immediately inform the IG.

Chairman ISSA. Exactly. It is outside their purview the moment they hear about it. It is no different, Mr. Perciasepe, than if you heard about it, your job is to call the IG. Your job is not to send it to some entity created for a completely different purpose. That is what the ranking member I know has been trying to work on with his staff on a unilateral basis, and I respect that if he can get it done, that is great. This hearing is about the fact that it hasn't gotten done.

Thank you, and I thank the gentleman for yielding. This is the second round now, so I will go to Mr. Chaffetz, and then the gentleman from California. Mr. Chaffetz?

Mr. CHAFFETZ. I thank the chairman.

Mr. Perciasepe, Renee Page, are you familiar with Renee Page?

Mr. PERCIASEPE. Yes, I am.

Mr. CHAFFETZ. She is the, as I understand it, the Director of the Office of Administration at the EPA, correct?

Mr. PERCIASEPE. I don't know her exact title.

Mr. CHAFFETZ. But she is still employed at the EPA?

Mr. PERCIASEPE. She is employed, but she has been removed from that responsibility during the conduct of the review of the report.

Mr. CHAFFETZ. Do you know what she is doing right now?

Mr. PERCIASEPE. I do not. She is not managing that program. We are in the process of reviewing the report we got from the IG a couple of weeks ago.

Mr. CHAFFETZ. I don't know if it is Mr. Williams or Mr. Sullivan, can one of you please explain what it is you found about her?

Mr. SULLIVAN. Mr. Chaffetz, there was an issue, we have to be very careful here because of the Privacy Act. Ms. Page was not charged with a crime. And she has certain rights as an employee. So we did not publicly release her name. So we are very uncomfortable discussing her by name.

Mr. CHAFFETZ. This is a person who earned a cash award of some \$35,000. Now, that alone to me, I am sorry, but as a Federal employee, unless you are personally helping to take out, as some people did, Osama bin Ladin and others, a \$35,000 cash award seems, it seems obscene, in my opinion. Given that this is still under review, I will, I am just deeply concerned about what is happening here.

My understanding is that, you did the investigation, it was then referred to, who did you refer it to?

Mr. WILLIAMS. It was referred to EPA management.

Mr. CHAFFETZ. How long ago was that?

Mr. WILLIAMS. About two months ago, I believe.

Mr. CHAFFETZ. What is a reasonable amount of time, what is a reasonable amount of time so you can come to the conclusion? Two months?

Mr. PERCIASEPE. Again, I am in a similar situation here of what I can say and can't say. There are things going on——

Chairman ISSA. Would the gentleman suspend, please?

Mr. PERCIASEPE. I really can't, Mr. Chairman.

Chairman ISSA. If the gentleman will suspend, stop the clock. I have been advised by counsel and have previously been advised by counsel that you are not in a forum in which that statute applies. Now, we will not ask you, yes, the privacy of this woman by name is not a question that you can say I can't answer in this forum. You are being asked before a hearing about an individual by name.

Now, criminal referrals and the details that are beyond the scope of what the gentleman's questions are, I would ask him not to ask and you not to answer, because I think that could impede the criminal investigation. But the facts such as her activities, her sales, the bonus and so on, all of that is within the scope of this committee and is not covered by a law that was written not to apply to us and not to apply to her investigation. I want to make

that clear in this forum. Because we go through this in depositions and transcribed interviews.

Additionally, the fact that DOJ has declined to prosecute is not something that is going to be withheld. The American people have a right to know that allegations were made, they were sent to the department of Justice, that is where we have our source of these allegations. They declined to prosecute it, it is now back for an administrative decision. She may not have committed any crimes, but the elements that were sent there which were fact-based and the decline and now that it is before administrative, all of those elements of her activities are fair and reasonable for the gentleman to ask and to expect a full and complete answer.

So the gentleman will continue.

Mr. CHAFFETZ. Let me just simply say, the allegations are very serious. And we have outlined a host of them. And Mr. Perciasepe, you make a point, it is a good point, it is a large agency with 16,000 employees. But what you have heard here over the course of the last several hours are very senior people. We are not talking about some newbie who is in the bowels of the administration somewhere. We are talking about senior management level people. Mr. Beale had a very senior level. This person I just referenced had a very senior position in the administration.

And that is the concern. And there is this overarching feeling and concern that justice doesn't ever play out. We heard that in the case of the person sitting right next to you, Special Agent Howard Drake. Where and when do people actually get fired? When is there accountability?

I think that has a much more detrimental effect on the rest of the 16,000 employees who are good, hard-working, patriotic people, they work hard, they are doing good for their country. But when they don't see justice served, they are left to think that there is no justice. And that is fundamentally wrong, and that is the overarching point.

I am not trying to pick on any one person. But when somebody is giving bonuses to their own daughter out of their account, that is a problem. And I don't know why it takes months to figure it out. We have an employee who is looking at over 600 porn sites in a four-day period and it is there in black and white, fire them. That is the message I guess we are trying to convey back. And I look forward to working with you. I appreciate your sitting here. You are braver than most to come in and chat with Congress. Coming before Congress is not necessarily a fun thing.

But that is our concern, is holding people accountable.

Mr. PERCIASEPE. First of all, on the last comment, I want you all to understand, I view this as my sacred responsibility, to work with you. So you can ask me whatever you want. What I don't want to do is not so much a legal thing, as the Chairman alluded to, I don't want to say something, as one of the leaders of the agency, that could bias and give an out or something else for somebody who is going to undergo an administrative process.

Mr. CHAFFETZ. I understand. And I think the point has been made, and I know you have heard it. The IG has a critical function. There are no ifs, ands or buts, excuses to not give the IG. They



should have the first crack at that. They are the ones who are trained professionals in doing that.

And my only message again to Mr. Sullivan and Mr. Williams, don't let them push you around. Don't go entering into some voluntary "we are going to stand down." You never stand down. That is what I need to hear from the IG. I yield back.

Chairman ISSA. I thank the gentleman. The gentleman from California seeks recognition. The gentleman is recognized.

Mr. CARDENAS. Thank you, Mr. Chairman.

Concern for national security played a significant role on how the John Beale case was handled. Last October, we explored how fears about blowing Mr. Beale's cover with the CIA allowed him to penetrate a fraud against the agency and the government.

It may be hard to understand now, but at the time, EPA officials believed Mr. Beale did not suspect him of lying to them, therefore they were trying to protect his cover story, not prove that it was a fraud. Mr. Perciasepe, given what people thought at the time, what was the logic in tapping the OHS and deciding not to inform the IG immediately about Mr. Beale?

Mr. PERCIASEPE. So, I think you had some of the context there. This obviously had been going on for 10 years through multiple administrations, many different assistant administrators, different parties. This has just been going on. In many respects, it is a classic confidence game, where you gain everybody's confidence and then you abuse that confidence. It is probably more complicated than that, but I am just being simple here.

So when this really started to come to a head and we were saying, how could this be, people were raising the questions as has been pointed out here several times, that the sense was, and again, I already testified here that in hindsight I would have asked people to do something differently. But in this instance, whenever I was asked about it, and I think other people, it was like, there must be some human resources record-keeping here that would say whether he is or isn't doing these things.

And when most folk didn't have any records, the General Counsel's office asked the office that is the liaison with the intelligence community, the Office of Homeland Security, what they knew about it. And here is where we get into the situation I think that Mr. Sullivan brought up. If they had just tried to check their records to see what was going on, I don't think the IG would have had an issue with that. What they had an issue with, they went and interviewed the guy.

Now, as it turns out, and I want to be really clear about that, because the fears of what could happen when you do that and you tip people off are real, and I think they are more expert in those potential problems than I am. But in this case, I am personally pleased in terms of the message sending and everything else that this employee is now spending almost three years in jail and has paid back not only \$900,000 that we discovered he defrauded, but \$500,000 more in calculating what he might have financially benefitted from having that other money.

So he has paid back already to the Federal Treasury \$1.4 million and he is spending three years in jail. I wish things had gone smoother when we got through that, but that is the current situa-

tion we are in. That is the best rationale I could give you, which is probably not the best one in hindsight, but that is how I think it got into the Office of Homeland Security.

Mr. CARDENAS. So Mr. Perciasepe, once OHS discovered that Mr. Beale was not affiliated with the CIA, how long did it take for EPA to refer the matter to IG?

Mr. PERCIASEPE. My memory is not precise on this, but I think they looked at it for maybe three months and then they turned it over to the Office of Inspector General.

Mr. CARDENAS. Mr. Sullivan, could you confirm with us, how long was your investigation once the IG was involved?

Mr. SULLIVAN. We were informed on February 11th, 2013, and we immediately put a number of agents on the case. And within three months, three and a half months, we had a plea agreement with Mr. Beale and his attorney and the U.S. Attorneys office. So within three and a half months, we had kind of brought it to at least the initial conclusion. And then it went through the process of him, the formal plea and then the formal sentencing.

Mr. CARDENAS. Okay. So Mr. Sullivan, in your testimony you stated you cannot assure us that the IG is doing everything possible to root out other John Beales who may be at the EPA. Are you suggesting that there could be people masquerading as CIA employees currently working at the EPA?

Mr. SULLIVAN. No, sir, I have no visibility on that, and I don't expect that would be true. But I do have a very real, abiding concern that the Office of Homeland Security is interviewing employees, collecting information on employees engaged in misconduct and not telling us. And that is a major issue for me and my staff, and a major issue for the Inspector General.

Mr. CARDENAS. Mr. Perciasepe, are there any valid reasons why the EPA would not cooperate timely in a fully and timely manner with the IG under their investigations?

Mr. PERCIASEPE. I think we got into this, is this an exception, before. But I think our standard operating procedure is that we always do that, we always cooperate with the IG fully. In this case, and again I think another year in the future, maybe we will have a joint different view of it, but in this case, we have temporarily, by mutual agreement, have delayed completing the investigation of the issues in the Office of Homeland Security.

Mr. CARDENAS. I yield back the balance of my time, Mr. Chairman.

Chairman ISSA. Thank you. I recognize myself now.

Three months that they knew this guy was a fraud and they didn't turn it over to the IG. Would you agree, Mr. Perciasepe, that that is three months longer than it should ever happen? Three months to the minute that they knew this was a matter of a fraudulent employee and not a national security individual?

Mr. PERCIASEPE. I don't know when during that time period they made that revelation to themselves. But I have already testified that I think in hindsight, I would have recommended, to the extent that I would have had a role in that, to do something different.

Chairman ISSA. And of course, hindsight is always good, in hindsight we know that basically the Administrator, cabinet-level position, makes one phone call in a secured environment and finds out

whether somebody is in fact a clandestine agent that for some reason the entity who has a responsibility to tell them that that is their agent, because the agency head is to be informed, in fact would be told, no, that isn't, and we can verify that.

Reading the law, you now know as the deputy that if you have any embedded individuals in that category, you have to be informed.

Mr. PERCIASEPE. As I understand it, although I have to admit, and maybe this is my problem, I did not know that. That law had changed since I came back to the Federal Government. But as I understand it, and I will look behind me and in front of me here, that if that ever was the case, that the Cabinet-level person and their general counsel are to be informed.

Chairman ISSA. Now, I understand that Mr. Sullivan and Mr. Williams, you can't say whether there is or isn't another Beale embedded. But there are people who are being paid and they are not working. You have recently discovered, you said like 71 cases. You know that, in fact, bosses are falsifying documents so that people get paid who are not working. Is that right? You have enough of these examples that you clearly know, if there is this many, there is more, right?

Mr. SULLIVAN. Well, you don't know what you don't know, Mr. Chairman. But we do have a number of cases in which employees have not shown up for work but have been paid, yes.

Chairman ISSA. So when you keep seeing that eventually what you see is that at least two things exist. One is, it has happened enough times that it probably will happen again, if it is not happening today. And secondly, because the Justice Department has declined to prosecute again and again, including the example of a 20-year, five years completely unable even to log in, no prosecution. You know that to be true.

Mr. SULLIVAN. Yes, sir, unfortunately for us as investigators, we collect the facts presented to the U.S. Attorney's office and they make a decision based on our resources. But it is quite common to get a declination, that is correct, sir.

Chairman ISSA. And Mr. Perciasepe, when you have somebody who bonuses with taxpayer dollars their own daughter, in a way that was designed clearly to circumvent anyone knowing that, because whether she hired the employee herself or simply made sure that the money out of her budget got there to make a bonus available, and there is a decline to prosecute, do you believe it is your obligation to go back to Justice to ask them to reconsider, and did you do that?

Mr. PERCIASEPE. I have no authority to go back to Justice and ask them to do something.

Chairman ISSA. You mean you can't say, as the number two at the EPA, to the number two at the Attorney General's office, are you guys sure you don't have a case? Is this a matter of, you don't have a case or that you are just too busy to deal with these white collar crimes? Do you have the authority to ask that question?

Mr. PERCIASEPE. I misunderstood your question. I don't know what the exact thing that the IG does when they send it to the U.S. Attorneys. I think it is like a warrant.

Chairman ISSA. I assume it is a criminal referral.

Mr. SULLIVAN. Yes, Mr. Chairman.

Mr. PERCIASEPE. My answer was only, I don't have the authority to do a criminal referral.

Chairman ISSA. They have done a criminal referral, it has come back as a decline to prosecute. You have a management problem, which is, you have multiple people, and Ms. Heller, I am going to hear from you in a moment, including people with anger management problems. Because they are not prosecuting, it comes back to you. That means you have a management problem.

The political appointees over at Department of Justice are supposed to be sympathetic to your management problem if crimes were committed and it is affecting your ability to do your job. Because it takes you a long time, if at all, to get rid of somebody who is a criminal but technically not being prosecuted. Isn't that the case?

Mr. PERCIASEPE. I don't know what instances we have where somebody is a criminal and—I don't know.

Chairman ISSA. Bonusing your own daughter? Crime. Signing false—you know it signing five years of somebody who isn't working, you know they are not working, the fact is, they are unable to work, they should be put on disability. Claiming for a year that somebody, multiple years, that somebody in a nursing home is, in fact, telecommuting, I have deep concerns about telecommuting because it definitely opens up the ability for somebody sick, lame, lazy or dead to get paid if we have no checks and balances on people who sign off saying this person is doing work.

So I will leave that for a moment, I will go on to the main event. Well, let me rephrase that.

Ms. Heller, I said I would give you time and I want to make sure that I give you time. You are a victim of somebody with anger management problems. That entire case is sitting there waiting for another investigation, another IG to look into it. And that individual is still doing their job and you are unable to get back to the job, you and the other people from the Inspector General, that you were doing when you were assaulted, isn't that correct?

Ms. HELLER DRAKE. That is correct, sir.

Chairman ISSA. Now, you said this in your opening statement, you are a woman with a gun. You are somebody who is law enforcement trained. And this was incredibly frightening to you. This was something that really put you in a feeling of, this man could go off in the worst possible way, and it shocked you, is that correct?

Ms. HELLER DRAKE. That is correct, sir.

Chairman ISSA. And you are not easy to shock, are you?

Mr. HELLER DRAKE. Not at all.

Chairman ISSA. Now, the thousands of women at EPA who don't enjoy your level of training and preparation, including how to normally diffuse, who don't carry a firearm, somebody like this in the workplace, including his direct reports, they are still being potentially assaulted every day in the workplace, aren't they?

Ms. HELLER DRAKE. Yes, sir.

Chairman ISSA. How do you feel about that?

Ms. HELLER DRAKE. It is extremely disconcerting.

Chairman ISSA. I never want to feel like there is nothing I can do. So I am going to tell you that this is going to be an ongoing,

daily part of communication with the EPA. Additionally, my office will be sending out, I will ask the ranking member to join me, to every Cabinet position an inquiry based on what we heard today, asking how many other administrative delays in which somebody who has been accused, apparently very validly, of inappropriate behavior, not once but multiple times, is still on the job.

I know that the ranking member, if he were sitting here still, would agree that zero tolerance is what the President has promised us. It is what the Administrator, I am sure, would promise us. And I am going to do everything I can to keep the Administration focused on cleaning house, at least of people still being managers and in the workplace after the kind of thing you experienced.

Ms. HELLER DRAKE. Thank you.

Chairman ISSA. I am going to close, I will give all of you a last word.

Deputy Administrator Perciasepe, I have a problem that needs to be resolved and closed. Your agency has, in fact, failed to comply with subpoenas. You know it, it has been a long time. This is your second trip back, failure to comply.

Additionally, your process for collecting information is unacceptable. And I am just going to go through it briefly.

Mr. Sullivan, if you are looking for emails, my understanding, Mr. Williams, you access EPA computers and you draw the emails you need based on key word search, is that correct?

Mr. WILLIAMS. Yes, sir, it is.

Chairman ISSA. Would you ever ask the gentleman, I use that word loosely, that assaulted Ms. Heller, would you ever ask him and others to look and see if they have emails responsive to some inquiry into them that you are doing?

Mr. WILLIAMS. No, sir, we would not.

Chairman ISSA. And Administrator, why is it that when we send you a subpoena, your procedure is self-search? You essentially call up the people who we're looking into and you ask EPA employees to self-search their emails. And by the way, your self-searching, if they believe that they have documents that are potentially responsive, rather than having your general counsel or your IGs or anybody else who is by definition not under investigation, do the search and deliver us the documents? Do you understand how that procedure is inherently open and fraught with obstruction, that an individual who gets to search their own emails gets to keep you from being culpable in obstructing, but, in fact, may very well be taking the documents out that we most want to have and deserve to have. Do you understand that?

Mr. PERCIASEPE. I can see that possibility.

Chairman ISSA. Do you understand that if you do not fully comply with a subpoena of this committee or any committee of the Congress that you can and will be held in contempt?

Mr. PERCIASEPE. I can't imagine a situation where we will not comply.

Chairman ISSA. You have not complied. Do you know when October was? Okay.

Mr. PERCIASEPE. I am hoping just last year, right?

Chairman ISSA. Yes, just last year, although Lois Lerner's emails haven't been provided by Treasury, either. My patience has ex-

pired. I want full cooperation and discovery and delivery of all relevant documents, and I will be asking that you certify in a letter, signed letter, that you believe you have fully complied and that you do so within one month total. It is my intention to bring to this committee a contempt if that is not done.

Mr. PERCIASEPE. Okay.

Chairman ISSA. It is necessary, because running the clock of, we will get you something sometime, is going on. In the case of Lois Lerner's emails from Treasury, either myself or a special prosecutor needs to have all those emails. That is another Cabinet position. But understand here today that the Speaker's willingness to work with and allow delay has expired, and that is why we have requests for a special prosecutor in the IRS case, and in Benghazi on the House Floor today, we will be taking the next step with a select committee.

This branch of government's time and willingness to cooperate with delay and denial has expired. It is clear that the President you work for and the Administration you work for has a delay and deny capability and plan and has since the beginning. It is now very clear from other documents. So it is time for you to realize that your time is limited. I do not expect you to run the clock until the end of the month, or for a month. Because in a month from now, I will have scheduled a contempt. So we expect immediate cooperation. If you have any technical problems, please work with us. But notwithstanding a technical limitation, we will expect full compliance.

And I said I would give you all a final word. I will start with you, Administrator.

Mr. PERCIASEPE. First of all, thank you. And I understand what you just said. My understanding is that there are dialogues going on with the staff, but I will obviously go back and push ahead.

Let me say in somewhat conclusion to the overall discussion that we have had here today, people ask me about concerns with management at EPA. I am the Deputy Administrator. I am always concerned about management at EPA. And my partner in helping me deal with management at EPA is the IG. And in fact, since the Beale occurrence happened, we have been able to dissect many different weaknesses that have sat in the agency for years and we are in the process of correcting them. Some of the things on time and attendance that you just talked about, we are putting in systems that will not enable that to go on the way it has been. To provide tools for the managers so that they get these exception reports and then they have to elevate them.

So while we have had the policies, and I think we talked about this last time, I think you have very good personal knowledge on how systems can help managers manage better, we are trying to run into that as fast as we can. And we are trying to do it in a way, in partnership with the IG as we get their reviews of the different administrative procedures.

So I think upgrading management at EPA is definitely something I am working personally on for the Administrator. We have done things already. There is more that we have to do. And I also want to make sure I commit to the committee here that the Administrator's meeting next week is designed to break the logjam so we

can move forward on some of the issues that you have heard about today.

And as soon as we can get done with the work with the Department of Defense, we will move expeditiously on whatever that discovers in terms of Special Agent Heller.

Chairman ISSA. I appreciate that. I want to make sure the record is clear that some of your employees, in working with the staff, have asserted that there may be an executive privilege claim in the case of documents with the White House. We have recently seen White House documents as to the false and misleading statements after Benghazi about the video that wasn't a factor at all, but was being led.

It is the intent of the Speaker, clearly, that documents that are appropriate, even if they go to the White House, are discoverable, such as those. In this case, these are documents that you will have to assert and provide a privilege law if one exists. Otherwise, we expect full discovery. And we cannot accept, "We may on some have executive privilege." Document by document, the President must assert executive privilege. He is not reluctant to do it, but we expect him to do it or we expect discovery.

So I want to make it clear, working with staff is a discussion. Producing document by document claiming executive privilege is in fact something that the President has to decide with the Administrator.

Ms. Heller, any closing remarks?

Ms. HELLER DRAKE. Sir, I don't have any closing remarks, except to say thank you so much for inviting me today and allowing me to share my experience.

Chairman ISSA. Thank you for coming here. It is always courageous to come as an individual and as a victim of workplace violence or harassment. And I appreciate it, and thank you for your service.

Mr. Williams?

Mr. WILLIAMS. Mr. Chairman, I just want to thank you for the opportunity to discuss our employee integrity cases, and we appreciate this opportunity. Thank you.

Chairman ISSA. Thank you.

Mr. Sullivan?

Mr. SULLIVAN. Mr. Chairman, I would just like to underscore my previous testimony that in general, our relationship with Administrator McCarthy and Deputy Administrator Perciasepe is outstanding. However, in this one area, involving the Office of Homeland Security it is completely dysfunctional. I want to underscore that we will, in fact, look forward to the meetings in the future.

Bottom line is this, though, sir, we cannot negotiate away our authority into the IG Act, and we absolutely will insist that we be notified immediately of any allegation of misconduct.

Chairman ISSA. I appreciate that, and I will close by saying, the ranking member has been working on an ex parte basis to try to resolve it, and obviously it didn't work before this. My intention is, of course to be inclusive of the ranking member, but I will be talking to SIGI, which has a coordination obligation. Because it is my opinion that very clearly, and you are right, Mr. Sullivan, an IG cannot negotiate away or defer on that which is the independent

responsibility. And an administrator asking for a stand-down has at least the whiff, the air of a failure to respect the independence of the IG.

A day or a week is not uncommon. People can certainly go work on other things. But this has gone on long enough that it now represents a real question about the integrity of that investigation that has been on hiatus. So I will be talking to SIGI later today. I will talk to the ranking member. But this is an ongoing interest of this committee that every day that goes by we will be asking key staff to ask you, has it been resolved. And I expect that at least there will be a, this is what we did today or this is what we will do tomorrow.

So I want to thank you. This is not an easy hearing. Some even questioned the title. But I think the title reflected at least a portion of what is, in fact, an agency that we want to stay active and engaged with on a number of issues in order to do our job of oversight and make sure that the systems you want to put into place are put into place in a timely fashion.

I want to thank all the witnesses, and we stand adjourned.

[Whereupon, at 12:18 p.m., the committee was adjourned.]



## **APPENDIX**

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MATERIAL SUBMITTED FOR THE HEARING RECORD

DARRYL E. ISSA, CALIFORNIA  
CHAIRMAN

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STAFF DIRECTOR

ONE HUNDRED THIRTEENTH CONGRESS

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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**Opening Statement**

**Rep. Elijah E. Cummings, Ranking Member**  
**Hearing on "Is EPA Leadership Obstructing Its Own Inspector General"**

**May 7, 2014**

The EPA Office of Inspector General has expressed serious concerns that deserve serious attention by this Committee. The IG asserts that information he considers relevant to his mission is being withheld by the EPA. The IG also believes that the EPA's Office of Homeland Security is engaged in investigations that exceed its authority.

These concerns are symptoms of a jurisdictional dispute caused by a difference in interpretation of two statutes: the Inspector General Act of 1978 and the Intelligence Authorization Act for Fiscal Year 1995.

Under the Inspector General Act, the IG has broad authority to investigate cases of employee misconduct. Yet federal courts have ruled that this authority may be limited in certain cases involving national security.

In addition, under the Intelligence Authorization Act and various Presidential Executive Orders and directives, the EPA has certain national security responsibilities to refer cases to the Federal Bureau of Investigation.

The dispute lies at the intersection of these two laws. The two offices do not agree on what role the IG should play in these cases or what obligations the EPA has to keep the IG informed of actions relating to referrals made to the FBI.

Passions have run high during this dispute and even resulted in an altercation between Special Agents of the IG and staff of the Office of Homeland Security.

There are several ways to resolve this issue. One way is to wait for a federal court to decide the matter. Another way is for Congress to enact new legislation. Both of these options will take a long time, and cooperation between the EPA, the IG, and the FBI will suffer in the meantime.

A better way is to find a practical solution that will allow all parties to win. I believe this Committee can do that by helping them craft a plan that would clarify their roles and

responsibilities, require the most information-sharing possible, and ensure better cooperation going forward.

In preparation for today's hearing, I asked my staff to work with all of the parties to help find a solution. My staff spent many hours discussing the issues with various stakeholders, trying to find not only common ground, but higher ground. Based on my staff's discussions with the parties, I believe there are significant areas of agreement, and I would like to confirm this progress here today:

- First, I believe all parties agree that the FBI, as the lead agency for national security investigations, should be directly involved in the discussion to resolve these concerns.
- Second, if the FBI is not leading an investigation into employee misconduct, it is properly the lead role of the IG, and not the EPA's Office of Homeland Security.
- Third, the Office of Homeland Security has an intelligence support function to perform, including intelligence analysis.
- Fourth, better information sharing between the EPA and the IG will help ensure that de-confliction occurs, which will protect investigations from being compromised or agents from being endangered.

Those are the areas of agreement I think we have achieved. If you all can confirm those today, I believe we will have a very strong foundation for a positive resolution.

I was also pleased to hear that yesterday, senior leadership of the EPA and the IG, as well as the FBI, scheduled a meeting next week to work towards a resolution of this dispute. This is very promising news.

I believe it is the job of this Committee to encourage reconciliation and resolution where parties may be at odds with each other and their dispute hampers their ability to perform their functions. This work is hard, often tedious, and seldom comes with headlines, but it is critical to improving the effectiveness and efficiency of our government.

Thank you.

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Contact: Jennifer Hoffman, Communications Director, (202) 226-5181.

(ii) Sections 8335(b), 8336, 8344, 8414, 8468, and 8425(b).

(iii) All provisions relating to the Senior Executive Service (as determined by the Office of Personnel Management), subject to paragraph (2).

(2) For purposes of applying section 4507(b) of title 5, United States Code, paragraph (1)(A)(ii) shall be applied by substituting “the Council of the Inspectors General on Integrity and Efficiency (established by section 11 of the Inspector General Act) shall” for “the Inspector General who is the head of an office referred to in clause (i) shall, with respect to such office,”.

(e)(1) In addition to the authority otherwise provided by this Act, each Inspector General, any Assistant Inspector General for Investigations under such an Inspector General, and any special agent supervised by such an Assistant Inspector General may be authorized by the Attorney General to—

(A) carry a firearm while engaged in official duties as authorized under this Act or other statute, or as expressly authorized by the Attorney General;

(B) make an arrest without a warrant while engaged in official duties as authorized under this Act or other statute, or as expressly authorized by the Attorney General, for any offense against the United States committed in the presence of such Inspector General, Assistant Inspector General, or agent, or for any felony cognizable under the laws of the United States if such Inspector General, Assistant Inspector General, or agent has reasonable grounds to believe that the person to be arrested has committed or is committing such felony; and

(C) seek and execute warrants for arrest, search of a premises, or seizure of evidence issued under the authority of the United States upon probable cause to believe that a violation has been committed.

(2) The Attorney General may authorize exercise of the powers under this subsection only upon an initial determination that—

(A) the affected Office of Inspector General is significantly hampered in the performance of responsibilities established by this Act as a result of the lack of such powers;

(B) available assistance from other law enforcement agencies is insufficient to meet the need for such powers; and

(C) adequate internal safeguards and management procedures exist to ensure proper exercise of such powers.

(3) The Inspector General offices of the Department of Commerce, Department of Education, Department of Energy, Department of Health and Human Services, Department of Homeland Security, Department of Housing and Urban Development, Department of the Interior, Department of Justice, Department of Labor, Department of State, Department of Transportation, Department of the Treasury, Department of Veterans Affairs, Agency for International

Development, Environmental Protection Agency, Federal Deposit Insurance Corporation, Federal Emergency Management Agency, General Services Administration, National Aeronautics and Space Administration, Nuclear Regulatory Commission, Office of Personnel Management, Railroad Retirement Board, Small Business Administration, Social Security Administration, and the Tennessee Valley Authority are exempt from the requirement of paragraph (2) of an initial determination of eligibility by the Attorney General

(4) The Attorney General shall promulgate, and revise as appropriate, guidelines which shall govern the exercise of the law enforcement powers established under paragraph (1).

(5)(A) Powers authorized for an Office of Inspector General under paragraph (1) may be rescinded or suspended upon a determination by the Attorney General that any of the requirements under paragraph (2) is no longer satisfied or that the exercise of authorized powers by that Office of Inspector General has not complied with the guidelines promulgated by the Attorney General under paragraph (4).

(B) Powers authorized to be exercised by any individual under paragraph (1) may be rescinded or suspended with respect to that individual upon a determination by the Attorney General that such individual has not complied with guidelines promulgated by the Attorney General under paragraph (4).

(6) A determination by the Attorney General under paragraph (2) or (5) shall not be reviewable in or by any court.

(7) To ensure the proper exercise of the law enforcement powers authorized by this subsection, the Offices of Inspector General described under paragraph (3) shall, not later than 180 days after the date of enactment of this subsection, collectively enter into a memorandum of understanding to establish an external review process for ensuring that adequate internal safeguards and management procedures continue to exist within each Office and within any Office that later receives an authorization under paragraph (2). The review process shall be established in consultation with the Attorney General, who shall be provided with a copy of the memorandum of understanding that establishes the review process. Under the review process, the exercise of the law enforcement powers by each Office of Inspector General shall be reviewed periodically by another Office of Inspector General or by a committee of Inspectors General. The results of each review shall be communicated in writing to the applicable Inspector General and to the Attorney General.

(8) No provision of this subsection shall limit the exercise of law enforcement powers established under any other statutory authority, including United States Marshals Service special deputation.

(9) In this subsection, the term "Inspector General" means an Inspector General appointed under section 3 or an Inspector General appointed under section 8G.

(f)(1) For each fiscal year, an Inspector General shall transmit a budget estimate and request to the head of the establishment or designated Federal entity to which the Inspector General reports.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OCT 28 2013

THE ADMINISTRATOR

Mr. Arthur Elkins  
Inspector General  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Mr. Juan Reyes  
Acting Associate Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Dear Mr. Elkins and Mr. Reyes:

As you are each aware, the Office of the Inspector General has been conducting a review concerning certain employment functions or qualifications resident in the Office of Homeland Security. That review has focused on the role of the position currently inhabited by John Martin in certain ongoing OHS activities, and his status as a Section 1811 series employee. Following an interview conducted by OIG agents of Mr. Martin on Thursday, October 24th, there was an apparent confrontation between OIG Agents and several employees of OHS and OGC. This incident is of particular concern because, as leaders, we must first and foremost ensure the safety of our employees and work to de-escalate conflicts between our employees.

These incidents are unfortunately indicative of the growing discord, distrust, and conflict between members of your respective Offices. This is having a damaging effect on your abilities to carry out your respective duties, and I am very concerned that recent actions have raised significant concerns about your offices' abilities to proceed with respect to these matters in an objective fashion.

I take each of these matters seriously, and am committed to seeking an appropriate resolution of each. We need to understand the propriety of the roles of OHS that may be the subject of an OIG review, and we need to address any and all complaints that have or may arise from the conduct of all parties on the evening of October 24th. But we must do these things in an objective manner that strives for the truth, and accountability, rather than perpetuating acrimony and perceived bias.

I rely heavily on each of you as senior leaders at EPA. To that end, I request that you both take

immediate steps to diffuse the situation. This can and must be done in a manner that protects the safety and well-being of our valued employees, and also does not compromise the integrity of any ongoing or imminent activities.

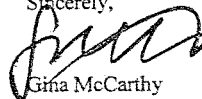
With respect to the investigation of the incident last Thursday evening, I have sought the assistance of the Federal Protective Service. I understand that they have jurisdiction to investigate any complaints that may arise from that incident, and they can pursue all possible leads in an unfettered and objective manner.

With respect to the review of certain OHS functions that I referenced earlier, to date, I have not received a clear explanation for the goal of that particular review or the methodology chosen for that review. I do, however, understand that the OIG has raised questions about the OHS's role in national security investigations. As you both know, I have asked my General Counsel to lead a dialogue between the two of you to resolve those questions. I am committed to dealing with the root cause of the OIG's concerns in a timely, accelerated manner, and am prepared to seek the assistance of third parties, if necessary. I am committed to consulting with the FBI expeditiously to get their advice on whether we must have an 1811 employee in OHS during the time of this dialogue. I believe this is the most appropriate approach to moving this issue forward. Therefore, I request that OIG temporarily halt its review until the process I have described is complete.

With regard to the conduct of your staffs, my expectation is that you, as the senior managers for your two offices, actively manage your staff to de-escalate this situation. For the immediate future, communication between your two offices should be between the two of you, and staff should be instructed to limit their communications about these issues and with employees in the other office until an appropriate path forward can be reached.

Again, I am committed to an expeditious fact-finding exercise that addresses all of the underlying issues. But that should be done in a manner that best ensures the integrity of any outcome, and best preserves the well-being of all of our employees. Most of all, at this important time, I need your leadership and management skills, as we strive to move forward in an open and honest way. If you have any questions or concerns about your ability to comply with my requests, please contact me immediately, and certainly before any further action on these issues occurs.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Gina McCarthy', is written over the printed name.

Gina McCarthy

McHenry Statement: OGR Hearing: EPA Leadership Obstructing It's Own Inspector General?*May 7, 2014*

Thank you to Chairman Issa for holding this hearing. Also, I thank each witness for coming before the Committee to testify.

The subject of today's hearing is an important one. Inspectors General are among the most critical members of our federal bureaucracy, serving as an objective examiner and genuine check on any Administration's power. IG operations are so vital to government accountability that, in 1978, Congress passed the Inspector General Act to shield IGs from interference from the agencies that they are tasked with investigating. In order for our government to better serve all citizens, it is imperative that Congress, Federal agencies, and the White House preserve the independence and uninterrupted investigations of our Inspectors General.

Unfortunately, it does not appear that the EPA could uphold this code of government. The revelations of agency leaders at the EPA obstructing investigations into waste and mismanagement of taxpayer dollars are deeply troubling, potentially illegal, and they must be stopped.

This is an issue that is of particular concern to my constituents in Western North Carolina. Located in my district, and impacting residents of both my district and the district of Congressman Meadows, is a former manufacturing plant that leaked industrial waste that contaminated area groundwater and caused many of our constituents to suffer horrible illness including cancer.

Beginning in 1987, the EPA tested groundwater in the area for contamination. Even after these tests came back positive, the agency did nothing to inform local residents of the dangers this might pose to their health. It took twelve years, fast-forward to 1999, until residents discovered that contaminated drinking water had permeated the community. It then took the EPA another thirteen years after then, 2012, to finally add the site to its Superfund list. The magnitude of incompetence for the EPA to sit on the case for twenty-five years, after first testing for groundwater contamination, to finally add the CTS site to its Superfund list is beyond comprehension.

In light of these gross failings by the EPA, in April 2013, I formally requested an EPA OIG investigation into the issue. The constituents of Western North Carolina and I expect the EPA OIG to issue a report in the near future on this matter; but until then, I must admit that the revelations of interference with other OIG investigations by EPA that are being discussed at the today's hearing give me grave concerns that such misconduct could be broader than many first thought.

Again, I thank Chairman Issa for calling this hearing. I look forward to getting to the bottom of these claims and ensuring that there is no interference into this important investigation for my constituents in Asheville.



## HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

**“Is EPA Leadership Obstructing Its Own Inspector General?”**

Questions for the Record

For the hearing held on May 7, 2014

Mr. Patrick Sullivan, Assistant Inspector General for Investigations and  
 Mr. Allan Williams, Deputy Assistant Inspector General for Investigations  
 U.S. Environmental Protection Agency

**Questions Submitted by Rep. Patrick T. McHenry**

The Office of Inspector General (OIG) has been asked to review EPA Region IV's handling of the CTS Superfund Site in Asheville, NC. The purpose of the request is twofold: (i) to identify problems with Region IV's original investigation of site contamination to help ensure past mistakes are not repeated and (ii) to ensure the site testing and cleanup is handled effectively and quickly going forward. Given the seriousness of the contamination at the CTS site and the ongoing potential impact on the health and safety of the community, there is an immediate need for the information and guidance that can be derived from a thorough OIG review.

**1) Does OIG prioritize investigations based on the immediacy of the potential impact?**

*Yes, we do prioritize our investigations based on the immediacy of potential impact; however, based on the context of your letter, clarification is necessary. “Investigations” is a term of art in the Inspector General community. The OIG’s Office of Investigations investigates potential criminal activity, and the OIG’s Office of Audit and Office of Program Evaluation, respectively, conduct audits and evaluate programs, also known as “reviews” as referenced in your statements above. Many audits and evaluations have a direct nexus to human health and the environment, whereas, most investigations conducted by the OIG’s Office of Investigations do not have a direct nexus to human health and the environment.*

*The OIG’s Office of Program Evaluation is aware of the potential impact on the health and safety of the community from the CTS Superfund site as well as the recent evacuation event. The Office of Program Evaluation has completed three prior reviews of activities and conditions at the CTS Superfund site and is considering a new review of the EPA’s work at the CTS Superfund site based on recent developments. Any decision to move forward will be announced via a notification memorandum to the EPA, which would simultaneously be made public.*

**2) Are investigations that involve ongoing EPA regulatory or enforcement actions related to public health given priority over investigations unrelated to ongoing EPA actions? Please explain how such prioritization is determined and the specific, identifiable level of (and/or rank in) priority (among other outstanding investigations) given to CTS Superfund Site in Asheville, NC.**

*Information we provide in response to Question 1 above regarding the important distinctions between an "investigation" and an audit or evaluation also apply here. In addition, there are two law enforcement organizations associated with the EPA: the OIG's Office of Investigations and the Criminal Investigations Division (CID), which is not part of the OIG. Both organizations have full law enforcement authority.*

*The OIG's Office of Investigations conducts investigations of financial fraud involving EPA programs and funds (contract and grant fraud, etc.); theft of property and funds within EPA facilities; impersonating EPA officials and counterfeiting or misuse of EPA official insignia, logos or credentials; employee misconduct; and threats or assaults against EPA employees, contractors, facilities and assets.*

*The EPA CID's sole jurisdiction is environmental crimes – enforcement of the nation's laws by investigating cases and providing legal guidance to assist in the prosecution of criminal conduct that threatens human health and the environment.*

*As you and other members of Congress have expressed serious concerns regarding the issues associated with the CTS site, and the OIG is aware of recent events at the site, we certainly will keep you informed on this subject when we can do so. The OIG does apply evaluation factors and criteria to our decisions to undertake new work. Risk to human health and the environment are among the factors we apply.*