

The Honorable Richard Durbin
Chairman, Senate Judiciary Committee United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member, Senate Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Grassley:

As a group of organizations that span the ideological spectrum and support a more accountable federal government, we write to encourage you to support and work toward expeditiously passing the Inspector General Access Act (S. 426).¹ As you know, S. 426 is identical to S. 685, which was reported favorably by the Senate Judiciary Committee in June 2020 with strong bipartisan support.²

The Inspector General Access Act is commonsense legislation that would make a simple yet vital revision to the Inspector General Act of 1978 that will enhance the accountability of the Department of Justice (DOJ) by allowing the DOJ inspector general to investigate allegations of misconduct by federal attorneys.

Unlike most federal agencies with inspectors general, the DOJ inspector general does not have the authority to investigate matters of alleged professional misconduct by DOJ attorneys under current law. However, by striking this jurisdictional carve-out from Section 8E of the Inspector General Act of 1978, the Inspector General Access Act would bring DOJ in line with standard federal agency practice and mitigate real and perceived issues of accountability around the conduct of federal attorneys, including federal prosecutors. Such instances of potential misconduct have been brought into sharp focus in recent months, including through a report delving into potential abuses of the FISA process from the Department of Justice's Office of Inspector General³ and reports of serious potential malfeasance at DOJ in the wake of the 2020 presidential election.⁴

This reform is not a solution in search of a problem. Under current policy and practice, alleged professional wrongdoing or other issues relating to professional misconduct by DOJ attorneys are handled by an internal and non-independent entity, the Office of Professional Responsibility.

A review of the Office of Professional Responsibility's reports and data demonstrates that the office has found a significant amount of prosecutorial misconduct and other professional lapses by DOJ attorneys in recent decades.⁵ Unfortunately, these instances have been paired with a persistent and pernicious lack of

¹ Inspector General Access Act of 2021, S. 426, 117th Cong., (2021). <https://www.congress.gov/bill/117th-congress/senate-bill/426?s=1&r=9>

² Senate Committee on the Judiciary. Executive Business Meeting. (June 25, 2020) <https://www.judiciary.senate.gov/meetings/06/25/2020/executive-business-meeting-1>

³ Department of Justice Office of Inspector General, *Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation*, December 2019. <https://www.justice.gov/storage/120919-examination.pdf>

⁴ Katie Benner, "The Justice Dept.'s inspector general opens an investigation into any efforts to overturn the election," *New York Times*, January 25, 2021. <https://www.nytimes.com/2021/0...>

⁵ Nick Schwellenbach, *Hundreds of Justice Department Attorneys Violated Professional Rules, Laws, or Ethical Standards*, Project On Government Oversight (March 13, 2014). <https://www.pogo.org/report/2014/03/hundreds-of-justice-department-attorneys-violated-professional-rules-laws-or-ethical-standards/>

consistency in the office’s investigations, including relatively little accountability in the face of clear misconduct.⁶ Without meaningful oversight, there is little public accountability for Justice Department attorneys who engage in reckless or willful misconduct.

Just as problematic, DOJ does not generally allow the names of attorneys who have engaged in professional misconduct or the details of the relevant cases to be made public. In other words, the Office of Professional Responsibility has clearly shown itself to be insufficiently willing to adequately hold DOJ attorneys accountable when appropriate.

By definition and longstanding practice, inspectors general are best suited to facilitate investigations into waste, fraud, and abuse within their relevant agency jurisdictions. As a result, inspectors general are a valuable resource for the American taxpayer, as well as for the health of the federal government.

Given that DOJ attorneys are among the most powerful federal employees—with the ability to make life-and-death decisions—it is imperative that their professionalism and official actions be beyond reproach. It is therefore critical for an independent watchdog, such as an inspector general, to have the statutory authority to investigate any allegations that may call into question the actions and conduct of DOJ attorneys.

By working toward Senate passage of this legislation, you would be taking an important step toward alleviating public concern around these issues while also providing the potential for a more robust environment of accountability at DOJ.

We encourage you to advance the bill as it is currently drafted, without amendment. Put another way, the bill is straightforward in both its structure and intent and does not require further revision. Doing so would risk undermining the legislation and watering down its pro-accountability effects.

Sincerely,

American Civil Liberties Union
Americans for Prosperity
Brennan Center for Justice at NYU School of Law
Demand Progress
Due Process Institute
Freedom Works
Government Accountability Project
Government Information Watch
Innocence Project
National Association of Criminal Defense Lawyers
National Taxpayers Union
Open the Government
Project On Government Oversight (POGO)
Protect Democracy
Public Citizen
R Street Institute
The Sentencing Project

⁶ Nick Schwellenbach, “Acosta-Epstein Deal Sparks Calls for Independent DOJ,” Project On Government Oversight, January 10, 2019. <https://www.pogo.org/analysis/2019/01/acosta-epstein-deal-sparks-calls-for-independent-doj-misconduct-investigations/>