

The Honorable Lindsey Graham
Chairman, Senate Judiciary Committee United States Senate

The Honorable Dianne Feinstein
Ranking Member, Senate Judiciary Committee

June 3, 2020

Dear Chairman Graham and Ranking Member Feinstein:

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 allow the Senate Judiciary Committee to markup the Inspector General Access Act of 2019 (S. 685).¹ As you know, S. 685 is an identical companion bill to H.R. 202, which passed out of the House of Representatives in January of 2019 with 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 we believe 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 from the Department of Justice's Office of Inspector General.³

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.⁴ Unfortunately, these instances have been paired with a persistent and pernicious lack of efficacy and consistency in the office's investigations, including

¹ Inspector General Access Act of 2019, S. 685, 116th Cong., (2019). <https://www.congress.gov/bill/116th-congress/senate-bill/685>

² Inspector General Access Act of 2019, H.R. 202, 116th Cong., (2019). <https://www.congress.gov/116/bills/hr202/BILLS-116hr202rfs.pdf>

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 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/>

relatively little accountability in the face of clear misconduct.⁵ 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 ill-equipped and insufficiently independent to adequately hold DOJ attorneys accountable when necessary. This lack of transparency at DOJ continues to undergird an environment of opacity and impunity.

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 supporting and allowing this legislation to receive a markup, 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. To the extent that you or other members of the committee consider amendments to the bill, we urge you to only support those changes that will strengthen the accountability that the legislation aims to provide, and to oppose those that would undermine it.

If you have any questions or wish to follow up on this letter, please contact Dylan Hedtler-Gaudette at the Project On Government Oversight at dylanhg@pogo.org.

Sincerely,

Alianza Americas
Alianza Nacional de Campesinas
American Civil Liberties Union (ACLU)
American Conservative Union
Americans for Prosperity
Brennan Center for Justice
Cause of Action Institute
Demand Progress

⁵ 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/>

Democracy 21
Due Process Institute
Freedom Works
Government Accountability Project
Innocence Project
La Asociación Campesina de Florida
National Association of Criminal Defense Lawyers
National Council of Jewish Women
National Security Counselors
Niskanen Center
Open the Government
Project On Government Oversight
Protect Democracy
Public Citizen
Right on Crime
R Street Institute
The Sentencing Project
Wind of the Spirit
Witness to Innocence