



Office of the Inspector General
United States Department of Justice

Statement of Michael E. Horowitz
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before the

U.S. House of Representatives Committee on Appropriations
Subcommittee on Commerce, Justice, Science and Related Agencies

concerning

"The Department of Justice Office of the Inspector General's Fiscal Year 2024 Budget Request"

March 23, 2023

Chairman Rogers, Ranking Member Cartwright, and Members of the Subcommittee:

Thank you for inviting me to testify today regarding the Department of Justice (Department or DOJ) Office of the Inspector General's (OIG) fiscal year (FY) 2024 budget request. At the outset, I want to thank the Subcommittee for its continued support of our oversight work.

The OIG's mission is to promote integrity, efficiency, and accountability within the Department. To carry out this mission, we provide comprehensive, objective, and fact-based reviews and investigations of Department programs and employees. Our goal is to shed light on the most sensitive and important issues facing the Department and to give Congress and the public clear, factual information to better assess critical issues and controversies, such as the FBI's Handling of the Clinton Email Investigation, the Department's FISA surveillance of Carter Page, and the FBI's handling of sexual abuse allegations against Lawrence Nassar.

In addition to these higher profile matters, the OIG protects the U.S. taxpayers' investment in the Department by conducting audits, inspections, and reviews of DOJ components. During FY 2022, the DOJ OIG issued 89 reports, which made 463 recommendations and identified over \$7.8 million in questioned costs. During this same timeframe, the DOJ OIG opened 190 new misconduct investigations, and our investigative work resulted in 80 arrests, 129 administrative actions, and over \$23.5 million in recoveries. These audits, reviews, inspections, and investigations cover all DOJ components, with the exception of professional misconduct by DOJ attorneys, which I will discuss in greater detail in this statement.

Each year, these oversight efforts are guided by our assessment of the Department's [Top Management and Performance Challenges](#) (TMPC). Our 2022 TMPC report identified nine top challenges for the Department: 1) Enhancing Cybersecurity and Countering Cybercrime, 2) Enhancing the Department's Response to the Opioid Crisis, 3) Strengthening Public Trust in the Department, 4) Safeguarding and Promoting National Security, 5) Managing the Post-Pandemic Impact on the Department's Operations, 6) Strengthening Police-Community Partnership and the Response to Violent Crime, 7) Effective Management of Department of Justice Contracts and Grants, 8) Managing Human Capital, and 9) Improving Management of the Federal Prison System. The TMPC report provides a description of each of these challenges, as well as the OIG's reports and recommendations that assist the Department in meeting and overcoming these challenges. Some of our most recent efforts to improve the Department's management of the BOP are described below.

Oversight of the Federal Bureau of Prisons

One of the Department's biggest ongoing challenges, as we have regularly noted in our annual TMPC reports, is the significant operational issues facing the Federal Bureau of Prisons (BOP). The OIG has ongoing oversight work at most of BOP's facilities across the country, and BOP-related investigations encompass about 50 percent of the work of the OIG's Investigation Division. As an example, my office has an ongoing and widespread criminal investigation into sexual assaults at the BOP's all-female Federal Correctional Institution in Dublin, California, that has already led to the conviction of the former Warden and plea agreements involving 3 additional staff members, including the prison chaplain, and our investigation remains ongoing. We are also completing, and will soon be releasing, our investigation into the BOP's handling of Jeffrey Epstein's incarceration at the Metropolitan Correctional Center in New York.

Additionally, we regularly perform numerous audits, evaluations, and inspections of BOP operations that routinely identify significant issues. For example, last month we issued a report about inmate on staff

sexual assault and sexual harassment, and we so will be releasing reports assessing the BOP's ability to identify and remedy operational issues; and the BOP's difficulty in maintaining and constructing facilities. Further, on Tuesday of this week, we publicly released a *Capstone Review of the Federal Bureau of Prisons' Response to the Coronavirus Disease 2019 Pandemic* report. This report synthesizes the OIG's body of work overseeing the BOP's response to the COVID-19 pandemic, including remote inspections of 16 BOP facilities, multiple surveys of BOP staff and inmates, and a collection of interactive data dashboards. This *Capstone* report also identifies topics that have emerged following that oversight work, challenges that the BOP will likely continue to face during and after the pandemic, and actions that the BOP should undertake to prepare for future potential healthcare emergencies.

The *Capstone* report identified serious failures with the BOP's use of single cell assignments during the pandemic. We found that, contrary to BOP guidance, numerous BOP facilities housed inmates in single cells during COVID-19 modified operations. The BOP reported to us that from March 2020 through April 2021, seven inmates died by suicide while single-celled in COVID-19 quarantine units. We also found that, contrary to BOP guidance, psychology staff did not assess the appropriateness of single-cell assignments for at least five of these seven inmates. We also concluded that the BOP did not fully utilize its home confinement authorities to help address inmate population issues at prisons with COVID-19 outbreaks, and that the pandemic exacerbated the effects of preexisting BOP staffing shortages, an issue the DOJ OIG has identified since at least 2015.

To further enhance our oversight of the BOP, and with the direct support of an additional \$4 million from this Subcommittee in our FY 2023 appropriation, the DOJ OIG has recently taken steps to establish our first ever BOP interdisciplinary oversight team. Drawing on these additional resources, we are in the process of standing up this team comprised of special agents, a victim-witness advocate, auditors, program analysts, and inspectors, all of whom are experienced in different aspects of BOP operations and oversight. This team will combine the DOJ OIG's expertise in BOP misconduct investigations, evaluation of systemic BOP-wide issues through advanced data analytics, targeted inspections of specific BOP institutions to assess compliance with correctional policies and standards, and a risk-based approach to identify waste, fraud, and abuse in BOP programs and contracts.

Thus far, we have filled nearly all of the positions on the team, and we have completed the DOJ OIG's first unannounced inspection of a BOP-managed institution. In 2023, we expect to conduct 2 additional unannounced inspections; release approximately 10 BOP audit, program evaluation, and inspection reports; and increase our BOP investigative caseload by 10 percent. We will also continue to leverage data analytics to identify problematic institutions and individuals to help aid our investigative efforts and our complaint processing and triage, and to develop risk assessment tools to inform our routine inspections and future audits.

We are grateful for, and have been extremely encouraged by, the support our appropriators have given to this initiative. I look forward to providing updates on the interdisciplinary team's accomplishments in the future.

Importance of Data Analytics in Preventing and Detecting Pandemic Related Fraud

Effective oversight of the more than \$5 trillion in pandemic relief spending calls for a whole-of-government approach. In addition to serving as the DOJ Inspector General, I also serve as Chair of the Pandemic Response Accountability Committee (PRAC). In late January, the PRAC issued a Fraud Alert regarding the use of over 69,000 questionable Social Security Numbers (SSNs) to obtain \$5.4 billion in pandemic loans and grants. The PRAC's team of data scientists identified this potential fraud and identity theft by using advanced data analytics to review over 33 million pandemic funding loan applications to identify a group of questionable SSNs included in those applications. This type of advanced data analytics work is the future of government oversight and, with this Subcommittee's support, we have greatly expanded the DOJ OIG's data analytics capabilities during my tenure. My role as PRAC Chair informs my work as the DOJ Inspector General, as we learn as a community how to better utilize data analytics to identify fraud, and we share tips for identifying fraud across oversight agencies. In fact, the DOJ OIG is using its own data analytics capabilities to identify Department employees who fraudulently obtained pandemic related assistance, including Paycheck Protection Program, COVID-19 Economic Injury Disaster Loans, or unemployment insurance, while continuing to collect a paycheck from the U.S. Government.

Contract Criminal Detention Centers (Executive Order 14006)

The DOJ OIG also plays an important role in ensuring that Department components adhere to governing law, policy, and executive orders—and are effective stewards of the public fisc. This week, the DOJ OIG also publicly released a report on our *Review of Concerns Raised Related to the United States Marshals Service's Implementation of Executive Order 14006*. Executive Order 14006 (EO 14006), which was issued in January 2021, calls for DOJ to cease renewals of contracts with privately operated criminal detention facilities.

We found that to replace an expiring contract with a private contractor, the U.S. Marshals Service (USMS) entered into an intergovernmental agreement (IGA) with a local government entity, which then contracted with the same contractor to continue to house the detainees at the same facility. The IGA increased the USMS's costs—potentially by as much as \$6 million per year—and provided the USMS with less direct oversight of the facility than when the USMS contracted directly with the private contractor. We told the USMS it should take steps to assess these identified concerns to ensure the proper stewardship of taxpayer dollars when implementing EO 14006 as future contracts expire. In March 2022, we alerted the Department to our concerns, and since that time no other such IGAs have been entered into by the USMS to address expiring contracts with privately operated criminal detention facilities.

Strengthening OIG Oversight

I would like to talk now about reforms that will help strengthen the DOJ OIG's oversight of all DOJ components and employees.

Consistency in the Oversight of DOJ Attorneys

While the OIG has jurisdiction to review alleged misconduct by non-lawyers in the Department, it does not have jurisdiction over alleged misconduct committed by Department attorneys when they act in their capacity as lawyers—namely, when they are litigating, investigating, or providing legal advice. In those instances, the Inspector General Act of 1978, as amended, grants exclusive investigative authority to the

Department's Office of Professional Responsibility. As a result, these types of misconduct allegations against Department lawyers, including any that may be made against the most senior Department lawyers (including those in departmental leadership positions), are handled differently than those made against agents or other Department employees. The DOJ OIG has long questioned this distinction between the treatment of misconduct by attorneys acting in their legal capacity and misconduct by others, a distinction not made in other federal agencies and a limitation not imposed on any other OIG.

As I have stated many times in past Congressional testimony, there is no principled basis for authorizing OIG oversight of DOJ law enforcement personnel, such as agents of the Federal Bureau of Investigation (FBI), while excluding DOJ lawyers from that same OIG oversight. Providing the DOJ OIG with the authority to exercise jurisdiction in attorney professional misconduct cases will enhance the public's confidence in the outcomes of these investigations and provide the OIG with the same authority as every other Inspector General. The House of Representatives has passed legislation, the IG Access Act, numerous times on a bipartisan basis to address this gap in the DOJ OIG's oversight jurisdiction. The Senate has also demonstrated overwhelming bipartisan support for this reform but has been unable to pass the legislation because of one hold placed on the bill. I look forward to working with both chambers of Congress and the administration to pass this important legislation in the 118th Congress.

Testimonial Subpoena Authority for the DOJ OIG

Another critical government reform needed for my office is the authority to subpoena witnesses for testimony in DOJ OIG investigations and reviews. As I have noted on multiple occasions in congressional testimony, I strongly support granting Inspectors General testimonial subpoena authority because the absence of such authority hinders the ability of OIGs to conduct complete oversight. Without this authority, OIGs are unable to obtain potentially critical evidence from former federal employees, employees of federal contractors and grant recipients, and other non-government witnesses unless they voluntarily agree to be interviewed. Although concerns have been raised about providing this authority to the entire OIG community, Congress has provided testimonial subpoena authority on a bipartisan basis to individual OIGs based on demonstrated need, including to the Defense Department OIG and, most recently, to the Inspector General for the Department of Veterans Affairs. I believe the DOJ OIG has demonstrated a significant need for this authority and, because we are part of the Justice Department with direct oversight by the Attorney General, the use of this authority can be appropriately safeguarded so it is not misused and does not interfere with any ongoing DOJ criminal investigation.

In terms of our oversight needs, a federal employee's resignation or retirement enables the former employee to avoid being interviewed by an OIG about serious misconduct the former employee allegedly engaged in while working for the federal government. It also has an impact on the ability of law enforcement components to adjudicate misconduct cases. Indeed, a September 2021 DOJ OIG review found that, in more than 10 percent of the misconduct cases pending before the FBI's Office of Professional Responsibility in FY 2017 and FY 2018, the FBI employee retired or resigned prior to the disciplinary process being completed. We further found that the FBI's Office of Professional Responsibility closed those cases without regularly documenting substantiation decisions. Further, an OIG's inability to compel testimony from federal contractors and grant recipients can result in the OIG being unable to gather sufficient evidence to hold the contractor or grant recipient accountable for waste, fraud, and abuse in connection with the use of federal funds, and therefore affects our ability to recover misused federal funds. In addition,

an OIG's access to relevant testimony from witnesses who are former federal employees, or employees of contractors and grant recipients, is often essential in order for OIGs to conduct complete investigations of employees, including conducting effective whistleblower retaliation investigations.

Testimonial subpoena authority would greatly enhance the DOJ OIGs' ability to access important evidence. This authority can—and should—be accompanied by appropriate safeguards to protect against both misuse by an Inspector General and any negative impact to DOJ's criminal law enforcement equities.

The DOJ OIG's oversight of Department attorneys and testimonial subpoena authority, both of which have been supported on a bipartisan basis across different Congresses and administrations, would further the DOJ OIG's mission to promote integrity, efficiency, and accountability within the Department, and would provide even greater transparency to Congress, the public, and other stakeholders.

FY 2024 Budget Request

Let me now turn to our FY 2024 budget request. As a result of this Subcommittee's consistently strong and bipartisan support for independent oversight, we have been able to hold accountable DOJ employees who have abused their positions of trust; improve the effectiveness and operations of DOJ programs; identify and help remediate waste, fraud, and abuse; and ensure that whistleblowers are supported and protected from retaliation for bringing forth evidence of misconduct. Our FY 2024 budget is designed to allow us to continue, and build upon, our work on behalf of the public and taxpayers, and to address new challenges. The DOJ OIG's FY 2024 budget request is \$161.636 million, which includes \$10 million for Crimes Victim Fund oversight (the same amount that has been appropriated since FY 2015) and \$4 million carryover authority. After mandatory base adjustments, the DOJ OIG's FY 2024 request is a 5.1 percent increase from our FY 2023 enacted appropriation. I would like to highlight a few items from this year's request that will enhance the DOJ OIG's ability to carry out our mission.

Civil Rights Violations, Cybercrime, and Fraud Investigations

Our FY 2023 request includes a \$1.889 million program enhancement to support complex criminal investigations and allow the DOJ OIG to investigate highly sensitive matters relating to allegations of waste, fraud, abuse, and misconduct involving DOJ programs and personnel. The additional funding will enable our Investigations Division (INV) to hire 8 Special Agents in multiple office locations across the country. These resources will enable INV to broaden its oversight by opening more investigations involving official corruption, including expansion of our capability to handle cases involving the BOP; civil rights violations committed by DOJ law enforcement personnel; and fraud by recipients of grants and contracts funded by the DOJ. Not surprisingly, as the number of DOJ employees has increased over the years, including at the FBI, and the amount of grants and contracts has increased, so has the demand and need for additional OIG oversight. The additional resources will also enhance our Investigation Division's ability to keep pace with the increasing number of digital evidence items that are associated to the majority of our investigations, and the analysis of the digital evidence. We estimate that these additional resources will allow INV to open between 55-65 additional cases on top of our average current case inventory of 580 cases.

Cybersecurity and Technology Enhancement

The DOJ OIG's requested \$4.865 million cybersecurity and technology program enhancement will focus on three crucial areas. First, \$2.76 million would support modernization of the DOJ OIG's mission and business processes through the deployment of software automation. This would allow the OIG to develop and implement innovative, scalable, digital services that would transform the current manual DOJ OIG business and mission processes into a modern, flexible architecture that maximizes the use of limited resources.

Second, \$1.99 million would enhance the DOJ OIG's security footprint and eDiscovery capabilities by implementing artificial intelligence (AI) and machine learning. This program enhancement would allow the DOJ OIG to develop an AI and machine learning program to harden the DOJ OIG information technology infrastructure from cyber threats. It would also provide cloud-based AI services to build cognitive intelligence into DOJ OIG applications for eDiscovery¹ purposes, which would decrease the DOJ OIG's time to issue, complete, and close reports.

Third, \$115,000 of the program enhancement would support updating and maintaining the DOJ OIG's Body Worn Camera (BWC) Program. The DOJ OIG is dedicated to upholding the rule of law and ensuring the transparency and accountability of its law enforcement agents. This program enhancement would allow the DOJ OIG to maintain software licenses necessary for the technical aspects of the BWC program, address growing data storage needs from operation of the program, and add enhancements to its BWC program over time.

Crime Victims Fund

The DOJ OIG's FY 2023 request also includes a \$10 million transfer to support the DOJ OIG's continued oversight of crime victim-related programs and activities funded by the Crime Victims Fund (CVF). Since FY 2015, Congress has provided \$10 million annually to the DOJ OIG for this oversight, which represents a small portion of the FY 2023 \$2.6 billion CVF obligation cap. These funds for DOJ OIG oversight are necessary because the DOJ grant-making components have limited capacity for grant monitoring. For this reason, the DOJ OIG plays an important role in detecting and deterring waste, fraud, and abuse in programs designed to improve how crime victims receive the support and assistance they need.

Over the last 8 years, as a result of the \$10 million annual appropriation, the DOJ OIG has built a robust victim-centered oversight program that dedicates approximately 45 OIG personnel (nearly 9 percent of the DOJ OIG workforce) to help ensure CVF funding is effectively and appropriately managed on behalf of victims. The annual CVF appropriation to the DOJ OIG has proven to be an excellent value for the taxpayer. Since FY 2016, we have audited approximately 21 percent of CVF funds awarded (\$4.2 billion audited of \$20.7 billion awarded).

The DOJ OIG's CVF work has had a tremendous impact. Since 2015, the OIG has released over 100 audits of CVF grant recipients who were awarded a total of \$4.2 billion from the CVF, resulting in nearly 800 recommendations to enhance the Office of Justice Program's (OJP) administration and monitoring of CVF awards, improve state-level monitoring of thousands of subrecipients, improve subrecipients' administration of CVF-funded grants, and enhance the functioning of crime victim-related programs. In

¹ eDiscovery, also known as electronic discovery, is the process of taking large amounts of electronic data and organizing the relevant information, pursuant to a litigation, arbitration, investigation or other legal action.

addition, since 2015, the OIG has conducted CVF fraud-related investigations resulting in over \$1 million in restitution, more than \$5 million in civil settlements, and numerous criminal convictions, some resulting in sentences of imprisonment. For example, in July 2022, a DOJ OIG investigation led to the indictment of the former President of a social services organization on 18 counts of theft from an employee benefit plan based on his having used nearly \$40,000 in CVF grant funds to settle personal claims, pay for legal fees and restaurant bills, and make direct payments to himself.

The DOJ OIG's plans for future CVF oversight include initiating an audit of DOJ's financial management of the CVF. This audit will assess DOJ's controls over the deposits and tracking of court-ordered payments into the fund, which will help ensure that DOJ adequately safeguards the CVF balance and exercises proper stewardship over CVF transactions. The DOJ OIG will also evaluate available data and information, including any DOJ strategy or guidance, regarding DOJ's use of CVF collections as a tool for administering justice and helping victims of crime. Additionally, the OIG recently launched an initiative to focus our audit efforts on CVF subrecipients, where funds are often at higher risk of misuse, and this work will result in recommendations to improve the services that these subrecipients provide victims of crime.

Conclusion

Thank you again for your continued support for our mission, which allows the OIG to conduct objective, fact-based, and thorough oversight of the Department and provide transparency for the public and Congress. I look forward to continuing to work closely with the Subcommittee to help ensure that DOJ operates with integrity, efficiency, and accountability.

That concludes my prepared remarks, and I would be pleased to answer any questions that the Subcommittee may have.