

October 15, 2019

The Honorable Mike Lee  
United States Senate  
361A Russell Senate Office Building  
Washington, DC 20510

The Honorable Marsha Blackburn  
United States Senate  
357 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Charles Grassley  
United States Senate  
135 Hart Senate Office Building  
Washington, DC 20510

The Honorable Lisa Murkowski  
United States Senate  
522 Hart Senate Office Building  
Washington, DC 20510

The Honorable Marco Rubio  
United States Senate  
284 Russell Senate Office Building  
Washington, DC 20510

Dear Senators Lee, Blackburn, Grassley, Murkowski, and Rubio:

As a group of organizations that span the ideological spectrum and support a more accountable federal government, we write to thank you for your leadership in introducing the Inspector General Access Act of 2019 (S. 685).<sup>1</sup> 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.<sup>2</sup>

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.

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.

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

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

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.<sup>3</sup> Unfortunately, these instances have been paired with a persistent and pernicious lack of efficacy and consistency in the office's investigations, including relatively little accountability in the face of clear misconduct.<sup>4</sup> The result is that DOJ attorneys are getting away with reckless or intentional misconduct, with little or no meaningful opportunity for public scrutiny.

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 advancing this legislation, you have taken 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 applaud your leadership on this matter, and support your efforts to advance this legislation in the 116th Congress.

Sincerely,

ACLU  
Americans for Prosperity  
Brennan Center for Justice  
Campaign for Liberty

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<sup>3</sup> 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/>

<sup>4</sup> 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/>

Cause of Action Institute  
Coalition for Humane Immigrant Rights  
Demand Progress  
Due Process Institute  
FAMM  
Government Accountability Project  
Innocence Project  
NAACP  
National Association of Criminal Defense Lawyers  
National Freedom of Information Coalition  
National Security Counselors  
Network Lobby for Catholic Social Justice  
Niskanen Center  
Open the Government  
Project On Government Oversight  
Protect Democracy  
Public Citizen  
Republicans for the Rule of Law  
R Street Institute  
Stand Up Republic