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United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

November 29, 2022

VIA ELECTRONIC TRANSMISSION

The Honorable Alejandro Mayorkas
Secretary
U.S. Department of Homeland Security

Dear Secretary Mayorkas:

On April 7, 2022, you released a memorandum announcing the creation of a working group to review employee accountability processes within the Department of Homeland Security (DHS).¹ According to a DHS press release, the group was established in response to allegations that the DHS Office of Inspector General (OIG) suppressed reports from a 2018 survey, which covered years 2011-2018, in which thousands of employees indicated that they had experienced sexual harassment or misconduct in the workplace.² We are concerned about DHS OIG's handling of this survey, and we recognize that you responded by establishing a working group to examine sexual harassment at DHS. Given the seriousness of the issues raised by the survey, Congress requires details with respect to the working group's examination. Accordingly, we write today to seek information regarding the working group's established mission, findings, and recommendations.

The survey paints a disturbing picture of the culture at DHS. For example, between 2011 and 2018, 6,774 employees, a quarter of DHS employees surveyed agreed that sexual harassment occurred "frequently" or "sometimes" within their agency, and another 4,967 employees responded similarly in response to sexual misconduct.³ Only about one third of respondents "strongly agree[d]" that their agency informs employees about what constitutes sexual harassment or misconduct in the workplace.⁴ Over 10,000 employees experienced sexual harassment or misconduct, but unfortunately 8,148 of the victims did not report it.⁵ Of those who did not report, 2,296 employees felt they would not be supported by DHS management, 2,012 employees feared

¹ Memorandum from Dep't of Homeland Security Secretary Alejandro Mayorkas to DHS Component and Office Leaders (Apr. 7, 2022), <https://int.nyt.com/data/documenttools/s1-memo-to-leadership-employee-accountability-04-07/637ab9cc9e04e351/full.pdf>.

² Press Release, Dep't of Homeland Security, Secretary Mayorkas Directs DHS to Reform Employee Misconduct Discipline Process (June 16, 2022), <https://www.dhs.gov/news/2022/06/16/secretary-mayorkas-directs-dhs-reform-employee-misconduct-discipline-processes>; The DHS OIG has claimed that the 2018 survey results, when presented in late 2020, did not meet the currency requirement of Inspectors General reports, and has since reissued the same survey for current data. The data included survey results obtained from 2011 to 2018. In our staff's discussions with the Inspector General's office, they did not indicate that the data was inaccurate.

³ Project on Gov't. Accountability, Draft Homeland Security Watchdog Survey on Sexual Misconduct, 40-41 (2018) (unpublished report), <https://www.pogo.org/document/2022/04/draft-homeland-security-watchdog-survey-on-sexual-misconduct>.

⁴ *Id.* at 31.

⁵ *Id.* at 34-35; Courtney Bubl , *DHS is Making 'Significant Reforms' to the Employee Discipline Process*, Gov't Executive (June 16, 2022), <https://www.govexec.com/management/2022/06/dhs-making-significant-reforms-employee-discipline-process/368307/>.

retaliation, and 1,799 employees believed that the alleged harasser would not be investigated even if reported.⁶ Simply put, the numbers are beyond unacceptable and demand immediate changes.

The new working group was assigned to the Department's General Counsel, and it was tasked with a 45-day review of the employee misconduct discipline processes at DHS and providing recommendations for improvements.⁷ Following the group's review period, on June 16, 2022, you announced that DHS would "implement significant reforms," such as "centralizing the decision-making process for disciplinary actions" by assigning misconduct allegation reviews to a "dedicated group of well-trained individuals," rather than the employees' immediate supervisors, and "overhauling . . . disciplinary penalties" by "providing more specific guidance."⁸

DHS has indicated that the recommended changes are already underway; however, we are seeking specific details on the steps you have taken and the reforms you have implemented to end the scourge of misconduct within your department. Protecting the Department's workforce and addressing all allegations of sexual harassment and misconduct must remain a top priority. Accordingly, we ask that you provide a copy of the working group's findings and recommendations no later than December 16, 2022. In addition, please answer the following:

1. Please explain how the DHS General Counsel's office determined the working group's size and scope of responsibility.
2. Please list each DHS component that was represented in the working group and their respective roles. How many representatives were from each agency? Was there equal representation? If not, why not?
3. With respect to the "dedicated group of well-trained individuals," who makes up that group, how did you choose them and what is the full scope of their responsibilities?
4. Which recommendations have been implemented? For those that have not been implemented, why not?
5. Will there be policy changes in every DHS component? If so, are the policy changes uniformly implemented across each component? If not, please identify and explain the varying policies.
6. How will you address the specific allegations of sexual harassment and misconduct against DHS employees in the report? Have you opened any investigations in response? If so, please provide all data relating to the disciplinary actions you have taken. If you have not taken any steps to discipline misconduct, why not?

⁶ Project on Gov't. Accountability at 36.

⁷ Press Release, Dep't of Homeland Security, Secretary Mayorkas Directs DHS to Reform Employee Misconduct Discipline Process (June 16, 2022), <https://www.dhs.gov/news/2022/06/16/secretary-mayorkas-directs-dhs-reform-employee-misconduct-discipline-processes>.

⁸ *Id.*

Thank you for your attention to this important matter. Should you have questions, please contact Ranking Member Grassley's staff at 202-224-5225 or Chair Durbin's staff at 202-224-7703.

Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Judiciary



Richard J. Durbin
Chair
Committee on the Judiciary