

~~LAW ENFORCEMENT SENSITIVE~~

**Management Alert -
Unclear Rules Regarding
Executive Protection
Details Raise Concerns**

(REDACTED)

~~LAW ENFORCEMENT SENSITIVE WARNING: The information in this document marked LES is the property of the Department of Homeland Security and may be distributed within the Federal Government (and its contractors) to law enforcement, public safety and protection, and intelligence officials and individuals with a need to know. Distribution to other entities without prior Department of Homeland Security authorization is prohibited. Precautions shall be taken to ensure this information is stored and destroyed in a manner that precludes unauthorized access. Information bearing the LES marking may not be used in legal proceedings without prior authorization from the originator. Recipients are prohibited from posting information marked LES on a website or unclassified network.~~

~~LAW ENFORCEMENT SENSITIVE~~



Homeland
Security

**September 14, 2017
OIG-17-103-MA**



LAW ENFORCEMENT SENSITIVE

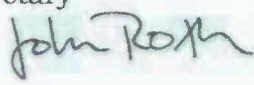
OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

September 14, 2017

MEMORANDUM FOR: The Honorable Elaine C. Duke
Acting Secretary

FROM: John Roth 
Inspector General

SUBJECT: Management Alert – Unclear Rules Regarding
Executive Protection Details Raise Concerns

I. Overview

As a result of whistleblower complaints, we examined the use of executive security and logistics details by Department of Homeland Security (DHS) component leadership. We determined that two DHS components —Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) — have created their own internal authorizations for executive protection details, staffed them, and funded them, without clear legal authority.

Because these security details incur substantial monetary and personnel costs, provide transportation and logistical services not necessarily tied to any demonstrated security concern, and are often authorized by those receiving the services, these details give the appearance to some observers of being more related to executive convenience and status than protection. Since they operate without departmental guidance or written approval, and are subject to the appearance of impropriety, and have significant cost implications, we make several recommendations at the conclusion of this memorandum.

II. Insufficient Legal Authority

Except for the Secretary, the Deputy Secretary, and the Commandant of the Coast Guard, there is no statutory authority for the use of protection details. Both ICE and CBP rely on the generic legacy Customs statute, 19 U.S.C. § 1589a, which permits “an officer of the customs” to “perform any other law enforcement duty that the Secretary of the Treasury may designate.” The designations for both ICE and CBP rely on this statute. ICE’s protection detail, known within ICE as the “Executive Logistics and

LAW ENFORCEMENT SENSITIVE



LAW ENFORCEMENT SENSITIVE

OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Security Detail” (ELSD), was authorized by a single-page summary order issued by the Deputy ICE Director in his capacity as Acting Director in February 2014.¹ Similarly, CBP relies on an internal, unsigned “draft” directive of its own. Both documents reference the broad legal authority delegated to each component for the performance of their functions, rather than any specific statutory authority for a security detail. The components also cite to a forty-year-old opinion of the Comptroller General that considered the practice of the Treasury Secretary using a Secret Service detail without statutory authorization. Although that nonbinding opinion concerned the Secretary, a cabinet-level official, it stated in dicta that other officials could be entitled to protection if threatened and in danger²

In contrast to ICE and CBP, other law enforcement agencies rely on express statutory language for their authorizations. Thus, agents of the Department of Justice and the Department of State are authorized specifically to provide protective services to specified senior leadership³ In contrast, the statute governing non-Secret Service DHS law enforcement agents omits any such authorization.⁴ Likewise, the statute governing the Secret Service provides a list of Executive Branch and other protectees, using straight-forward language authorizing protective activities.⁵ Again, neither the ICE Director nor the Commissioner of CBP is included in the Secret Service statute.

Given that Congress has clearly provided for security details for some positions and not others, we do not believe that these general provisions authorize permanent security details comprised of special agents and a fleet of vehicles for the leadership of ICE or CBP in the absence of a showing of specific, credible threats to those executives.⁶

¹ See Appendix A, Director’s Designation No. 10005.1 (Feb. 28, 2014).

² See 54 Comp. Gen. 624, modified by 55 Comp. Gen. 578.

³ See 22 U.S.C. § 2709(a)(3) (authorizing Diplomatic Security agents to “protect and perform protective functions directly related to maintaining the security and safety of [...] listed officials); 28 U.S.C. § 533 (authorizing the Attorney General to appoint “investigative and other officials [...] to assist in the protection of the person of [the President and the Attorney General]”).

⁴ 19 U.S.C. § 1589a.

⁵ 18 U.S.C. § 3056(a) (“the United States Secret Service is authorized to protect the following persons ...”).

⁶ The legal maxim “*expressio unius est exclusio alterius*” (the expression of one thing means the exclusion of others) supports this point, given the specific inclusion of protection authority for some agencies and not for others. See e.g. Middlesex City Sewerage Auth. v. National Sea Clammers Ass’n, 453 U.S. 1, 14-15 (1981). Likewise, under the legal maxim *ejusdem generis* (general terminology takes its meaning and limits from the specific terms listed), it would be hard to conclude that Congress intended protective details to be included in the “other duties”

LAW ENFORCEMENT SENSITIVE



LAW ENFORCEMENT SENSITIVE

OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Our concern that the details are operating without sufficient legal authority is further supported by the fact that neither the ICE Director nor the Commissioner of CBP presently qualify for home-to-work use of a government vehicle. The “passenger carrier use” statute prohibits home-to-work use of a government vehicle, subject to limited statutory exceptions. The first category of exceptions concerns specified senior government officials entitled to home-to-work use of a government vehicle by virtue of their position, including cabinet officials,⁷ the FBI Director, the Director of the Bureau of Alcohol Tobacco and Firearms, the Administrator of the Drug Enforcement Agency, and the Commandant of the Coast Guard.⁸ Neither the Director of ICE nor the Commissioner of the CBP are cabinet officials, nor are they listed elsewhere in the passenger carrier use statute.

The passenger carrier use statute provides for three other exceptions to the home-to-work prohibition: (1) when the Secretary personally determines in writing that “highly unusual circumstances present a clear and present danger, that an emergency exists, or that other compelling considerations make such transportation essential to the conduct of official business”; or (2) when it is “required” for field work; or (3) when it is “essential” for intelligence, counter-intelligence, protective service, or law enforcement. The “passenger carrier use” statute is emphatic in that any determination of home-to-work authorization may not be made solely or principally for the comfort or convenience of the employee.⁹

Neither the Director of ICE, nor the Commissioner of CBP are entitled by this statute to use government vehicles, [REDACTED], for transportation between their homes and offices. Nor has the Department to date determined that such transportation is necessary for reasons of safety, or essential for them to perform their jobs. [REDACTED], the heads of these two agencies [REDACTED]

language of customs officers (see 19 U.S.C. § 1589a(4)). According to the Supreme Court, “[w]hen a statute creates an office to which it assigns specific duties, those duties outline the attributes of the office.” Gomez v. United States, 490 U.S. 858, 864 (1989). Moreover, “[a]ny additional duties performed pursuant to a general authorization in the statute reasonably should bear some relation to the specified duties.” Gomez, 490 U.S. at 864. ICE commented to us that, in its view, the relative youth of ICE and CBP as agencies, and the lack of an updated statute for ICE and CBP agents, have created this discrepancy, which Congress should remedy.

⁷ Specifically, “officers compensated at Level I of the Executive Schedule pursuant to section 5312 of Title 5” are authorized home-to-work transportation under 31 U.S.C. § 1344(b)(3)(A).

⁸ 31 U.S.C. § 1344(b).

⁹ See 31 U.S.C. § 1344. Our review does not reveal any evidence that CBP failed to comply with the passenger carrier use statute in connection with the security detail.

LAW ENFORCEMENT SENSITIVE



LAW ENFORCEMENT SENSITIVE

OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

IV. Consequences of Questionable Security Details

The resources spent on these executive protection details are not inconsequential. For example, ICE has [REDACTED] special agents for handling the Director's logistics and protection while in Washington. CBP's protection detail recently increased from [REDACTED] agents. According to CBP, the personnel costs for a [REDACTED] protection detail, exclusive of travel and operational expenses, is \$700,000 per year. In addition, both agencies have paid to acquire multiple SUVs or other vehicles of a similar nature to provide the protection details.¹⁰

Additionally, we found that there could be a significant drain on field office resources when a component head travels. This can lead to diversion of resources away from priority criminal enforcement, creating operational challenges and degrading morale. For example, the former Director traveled to her home city of Dallas more frequently than any other city, at times for six-day stays, requiring the ICE field office to divert [REDACTED] agents from working cases for visits which would last, on average, six days. A special agent told OIG investigators that one lengthy executive visit had "drained resources" from the already busy HSI Dallas Field Office. Another agent described supporting the details as a "massive undertaking."

In addition to the diversion of resources from mission-related activity, extensive protective details expose component leadership to allegations that the protective details are largely for status and convenience, rather than being motivated by protection considerations.

In our review, we found a number of special agents who stated that they viewed the former ICE Director's detail as more about convenience and logistics than security. One agent stated: "It's definitely more about convenience and logistics [than security]. It's all about [the Director's] convenience. Nights, weekends, we have to send agents out. We're just treated like we are expendable." Another agent noted the inconsistency from a security perspective of the times and places that the detail was provided to the Director. There was "absolutely no protection at times ... then [she would require] rides to the airport." Agents also performed tasks not directly

¹⁰ We believe that both ICE and CBP do not capture the full costs of their protection details in their estimates. For example, according to the OMB-approved DHS cost model for calendar year 2016, the fully-burdened annual cost of a GS-13 (step 1) law enforcement agent in the DC area is about \$275,000. Given [REDACTED] and other costs not included, such as travel and vehicles, we believe the true annual cost of each detail could exceed \$1 million.

LAW ENFORCEMENT SENSITIVE



LAW ENFORCEMENT SENSITIVE

OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

security-related, such as airport expediting services and collecting luggage at airports and using additional government vehicles and personnel to deliver it separately to the ICE Director's destination.

As with any government employee, component heads may use government vehicles while on official government business, whether that is within the Washington, D.C., area or to visit various field offices.¹¹ However, absent specific threats, such transportation arrangements rarely justify elaborate security arrangements, including multiple car convoys, diverting multiple agents and officers for extended time periods, and the establishment of stand-alone protection and logistics offices.

V. Recommendations

It is axiomatic that no government employee can use government resources for his or her own private benefit, and every government employee has the duty to protect and conserve government resources and only use them for authorized purposes.¹² The current situation is based on questionable legal authority and invites abuse.

Therefore, we recommend that the Secretary of Homeland Security direct that:

1. The CBP and ICE security details be discontinued pending a legal review by the DHS Office of General Counsel of the legal sufficiency for such protective details, unless the Secretary makes a written finding of physical security threats meeting the requirements of 31 U.S.C. § 1344, the only explicit authority currently available without a specific risk assessment.

DHS Response: Non-concur. While the Department will review further the CBP Commissioner's and ICE Director's security details, DHS believes that a reasonable basis exists to maintain the status quo during the review of these security details. The Department believes that sufficient legal authority exists for security details—if the requisite risk is determined to exist—such that the status quo should remain in place pending further review.

OIG Analysis: For the reasons stated below, we consider this recommendation open and unresolved.

While DHS' response demonstrates an intent to address the issues raised by

¹¹ 41 C.F.R. § 301-10.201.

¹² 5 C.F.R. §§ 2635.702, 2635.704.

LAW ENFORCEMENT SENSITIVE



LAW ENFORCEMENT SENSITIVE

OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

our findings and that a preliminary review of the legal sufficiency and risk basis for continuation of the security details has already occurred, we believe it important to assess the final review before we can resolve this recommendation. Although we are sympathetic to the situation presented, in the absence of a documented threat assessment conducted by an entity outside of the component head's chain of command, or statutory authorization similar to that of other federal law enforcement organizations, we believe that the significant funds spent on such protective details are unauthorized. This recommendation will remain open and unresolved until DHS provides us with its final review of the legal sufficiency for the CBP and ICE protective details.

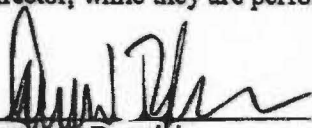
2. If the Office of General Counsel determines that there is sufficient statutory authority for such security details, the Undersecretary for Management issue a directive on the scope and circumstances under which a security detail is permitted for component heads, including the requirement for Departmental-level authorization. Such a directive should also require periodic reporting on the travel of covered individuals, including domestic travel, and the cost of maintaining and operating the security details.

DHS Response: Concur. The DHS CSO will lead efforts, involving others across the Department, to develop a DHS directive outlining an approval process for senior leadership executive protective details and Headquarters oversight, as appropriate. ECD: June 20, 2018.

OIG Analysis: DHS's response does not meet the intent of this recommendation. DHS has not articulated the reasons a fairly simple policy should take a year to issue, particularly given the fact that the Department has been aware of the issue since at least November of 2016. This recommendation will remain open and unresolved, until DHS provides evidence that it has completed its directive.

LAW ENFORCEMENT SENSITIVE

Appendix A

Department of Homeland Security U.S. Immigration and Customs Enforcement		Director's Designation	
ORDER NUMBER: 10005.1	ISSUE DATE: FEB 28 2014	EFFECTIVE DATE: FEB 28 2014	
SUBJECT: Designation of a Protective Detail for Law Enforcement Purposes			
DESIGNATED BY: Acting Director U.S. Immigration and Customs Enforcement			
SOURCES OF AUTHORITY: <ul style="list-style-type: none">• 19 U.S.C. § 1589a• Homeland Security Act of 2002, Pub. L. No. 107-296 (as implemented through Reorganization Plans dated November 25, 2002 and January 30, 2003)• Department of Homeland Security (DHS) Delegation Order 7030.2, Delegation of Authority to the Assistant Secretary for U.S. Immigration and Customs Enforcement (ICE) (November 13, 2004), or as updated		SUPERSEDED DOCUMENTS: None	
DESIGNATION: By virtue of the authority granted to me by law and by the Secretary of DHS in Delegation No. 7030.2, or as updated, I hereby designate that there be created within ICE a protective detail, comprised of Special Agents with customs officer authority, dedicated to provide protective services to anyone occupying the position of Director, while they are performing official duties of that office.  _____ Daniel H. Ragsdale Acting Director U.S. Immigration and Customs Enforcement			

**Appendix B
Management's Response**


U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

June 8, 2017

MEMORANDUM FOR: John Roth
Inspector General

FROM: Jim H. Crumacker, CIA, CFE 
Director
Departmental GAO-OIG Liaison Office

SUBJECT: Management's Response to OIG Draft Report: "Management Alert - Unclear Rules Regarding Executive Protection Details Raise Concerns" (Project No. 17-084-OGC-DHS)

Thank you for the opportunity to review and comment on this draft report. The Department of Homeland Security (DHS/the Department) appreciates the work of the Office of Inspector General (OIG) in planning and conducting its review and issuing this report.

The Critical Need for Executive Protection

It is vital that DHS protects its senior leadership from acts which may jeopardize their safety and security and thus impede their ability to safeguard the American people, our homeland, and our values as they relate to accomplishing our core missions of preventing terrorism and enhancing security, managing our borders, administering immigration laws, securing cyberspace, and ensuring disaster resilience. This includes protecting these leaders from *threats* (i.e., a declaration or indication of imminent danger or harm), *risks* (i.e., a possible injury or loss), and *vulnerabilities* (i.e., an injury or loss that is possible but not necessarily probable or improbable) associated with terrorism and/or criminal acts, which could result in serious injury or death.

Both the U.S. Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) leadership positions have been the subject of a number of incidents of harassing and menacing behavior from a variety of individuals. In May 2016, for example, the CBP Information Center received threats directed at the Commissioner of CBP instructing him to "resign or please die soon" and threatening to rape his wife and sexually molest his grandchildren. Similarly, in May 2015, the CBP Information Center received emailed threats directed at the Commissioner and members of his family. These threats included a statement that the Commissioner would "pay," and a series of tacit threats to rape and murder the Commissioner's wife and mother.

CBP's headquarters is also the site of numerous protests, at least one per month, with unknown protesters sometimes entering the building and remaining just outside of CBP office space. Even within that office space, agency leadership could easily become the target for an insider threat. For example, during the course of imposing routine discipline, CBP management regularly encounters employees, some of whom are armed law enforcement officers, who are discontented with the real or perceived loss of their livelihood, opportunity for advancement, and reputation. On many

occasions, discontented employees have directly emailed the Commissioner to express their anger, claims, and allegations.

The former Directors of ICE have been the victims of similarly aggressive behavior while in office. Recently, a former ICE Director and an Acting Director have been victims of “doxxing,” whereby personal information such as home addresses and telephone numbers are published on the Internet in order to facilitate harassment or violence. In 2017, ICE identified numerous social media postings inciting potential acts of violence against ICE officers, generally. In 2007, the ICE Assistant Secretary received more than a dozen emails containing vulgar comments directed at her.

For both the Commissioner of CBP and the Director of ICE, the high profile and contentious work that they oversee, combined with the incidents of threats and abuse that have been directed at them, give rise to legitimate concerns for their safety and security, that could impair their ability to carry out their duties to the detriment of their agencies, the Department, and the United States.

The Appropriate Legal Standard for Executive Protection

The DHS Office of the General Counsel is assessing currently the relevant authorities related to security details and the points made in the OIG’s draft report. At this time, however, while further review is ongoing, we believe that an arguable basis for maintaining the status quo exists.

While we understand the OIG looked to the home-to-work transportation standard found in 31 U.S.C. § 1344(b)(9) (clear and present danger), we believe it is unlikely that the § 1344 standard applies. First, the § 1344 standards only apply to determine whether home-to-work transportation may be authorized. Section 1344 specifically prohibits such transportation at the Government’s expense except as specifically authorized by the statute.¹ Home-to-work transportation is not at issue in the present matter. Thus, DHS is not legally required to apply the § 1344 standards to the instant inquiry concerning protective details during an official’s hours of duty.

Second, the standards in 31 U.S.C. § 1344(b)(9) are unsuitable for the present situation because they are specifically tailored to address Government vehicle use for home-to-work transportation. In particular, § 1344(b)(9) addresses safety concerns that reach beyond an official’s work day, duty station, and official responsibilities such that the agency must provide home-to-work transportation for the official’s daily commute. Section 1344(b)(9) is highly restrictive as a result of its narrow scope and purpose.² The standards articulated in 31 U.S.C. § 1344(b)(9) would limit the ability of CBP and ICE to protect their officials during duty hours to only the highly unusual clear and present danger circumstances which may authorize home-to-work transportation.

The OIG’s draft report is certainly correct in noting that the Government Accountability Office (GAO) opinions are not binding on the Executive Branch. Those opinions, however, especially in light of agency practice, can be highly persuasive. As relevant to this inquiry, the Comptroller General of the United States has advised that an agency may authorize the use of its appropriated funds, personnel, and assets to protect agency officials, without specific statutory authority, where

¹ See, 31 U.S.C. § 1344(a)(1)-(2), (b).

² See 31 U.S.C. § 1344(b)(9) (2012) (“an officer or employee with regard to whom the head of a Federal agency makes a determination, in accordance with subsection (d) of this section and with regulations prescribed pursuant to paragraph (1) of subsection (e), that highly unusual circumstances present a clear and present danger, that an emergency exists, or that other compelling operational considerations make such transportation essential to the conduct of official business.”).

(1) there are indications that the official may be in danger giving rise to legitimate concerns for the official's safety, and (2) it is administratively determined that the risk is such as to impair the official's ability to carry out his or her duties and may thereby adversely affect the efficient functioning of the agency.³ Where these conditions have been met, an agency may utilize its appropriated funds to provide security for the relevant official.

More specifically, the Comptroller General advised that agencies may use their resources to provide protection for their officials in the absence of specific legislative authority.⁴ The Comptroller General explained that

if a government official were threatened or there were other indications that he was in danger, and if it were administratively determined that the risk were such as to impair his ability to carry out his duties, and hence to affect adversely the efficient functioning of the agency, then funds of his agency, the use of which was not otherwise restricted, might be available to protect him, without specific statutory authority.⁵

Further, the Comptroller General opined that the GAO "would not object" to an agency providing protection services to its officials "where there is legitimate concern over the safety of an official and where the agency's functioning may be impaired by the danger to that official – to an agency."⁶ Relying on this rationale, the GAO opined that the "Secretary [of the Treasury] – in a proper case – may arrange for his protection by personnel of the Department of the Treasury or by the Secret Service, but in the latter case only on a reimbursable basis" even when the Secretary was not one of the officials the Secret Service was authorized to protect under 18 U.S.C. § 3056.⁷

The Comptroller General's reasoning has formed the basis for a number of other GAO reviews of agency-provided protective measures.⁸ The GAO determined that the Drug Enforcement Administration (DEA) could enclose and secure a carport at the DEA Administrator's residence because the nature of the DEA's mission and documented threats against the Administrator created a legitimate concern for the Administrator's safety.⁹ Similarly, the GAO determined that U.S. Customs Service could provide home and automobile security devices for officers because the nature of the Customs officers' work and past threats aimed at Customs personnel, among other factors, formed a legitimate concern for the officers' safety.¹⁰

³ See e.g., *In re the Secret Serv. Prot. for the Sec'y of the Treasury*, 54 Comp. Gen. 624, 628-29, B-149372 (Jan. 28, 1975), as modified, 55 Comp. Gen. 578, B-149372 (1975); see also, U.S. GOV'T ACCOUNTABILITY OFF., GAO/GGD/OSI-00-139, SECURITY PROTECTION, STANDARDIZATION ISSUES REGARDING PROTECTION OF EXECUTIVE BRANCH OFFICIALS, B-283892, at 12 (July, 2000) (noting that agencies may provide protection to their officials "if it is administratively determined that the efficiency of the agencies would be affected because of threats or other legitimate concerns over the safety of officials that would impair their abilities to carry out their duties").

⁴ 54 Comp. Gen. 624.

⁵ *Id.* at 628.

⁶ *Id.* at 629.

⁷ *Id.* at 630.

⁸ See e.g., 1 U.S. GOV'T ACCOUNTABILITY OFF., GAO-04-261SP, PRINCIPLES OF FEDERAL APPROPRIATIONS LAW (3rd ed. 2004) (citing favorably to 54 Comp. Gen. 624 and *Matter of: Home & Auto. Sec. Sys. for U.S. Customs Serv. Pers.*, B-251710 (July 7, 1993) in which the Comptroller General determined that the U.S. Customs Service may provide security devices for agents based on the risk created by their law enforcement responsibilities, the threat environment, and past threats against Customs personnel).

⁹ See *Drug Enforcement Admin. – Permanent Improvements to Leased Property*, 71 Comp. Gen. 4, B-243866 and 243866.1 (Oct. 3, 1991).

¹⁰ See *Home and Auto. Sec. Sys. for U.S. Customs Serv. Pers.*, B-251710 (Comp. Gen. July 7, 1993).

Moreover, the Comptroller General's reasoning has formed the basis for security details in numerous agencies that do not have specific statutory authority to provide security services to their officials.¹¹ As the GAO has noted, "[f]rom fiscal years 1997 through 1999, security protection was provided to officials holding 42 executive branch positions at 31 executive branch agencies."¹² The GAO catalogued security services provided to 14 Cabinet secretaries, 4 deputy or under secretaries, and 24 other high-ranking officials.¹³ Of these, "[o]nly two executive branch agencies . . . —the Secret Service and the State Department—had specific statutory authority to protect executive branch officials, including the authority to carry firearms in carrying out their protective responsibilities."¹⁴ The GAO in its review explained that "[a]lthough none of the other agencies cited specific statutory authority to protect their officials, that does not mean that the agencies are not authorized to provide such services."¹⁵ The GAO further cited to its prior opinions for the proposition that:

"agencies can expend appropriated funds to protect their officials as a necessary expense. Such protection is warranted if it is administratively determined that the efficiency of the agencies would be affected because of threats or other legitimate concerns over the safety of officials that would impair their abilities to carry out their duties."¹⁶ The justification for these security services at the agencies reviewed by the GAO varied. Some agencies provided security to respond to specific or perceived threats and others provided security because of available protective intelligence."¹⁷

Accordingly, we believe that the GAO's standard, not the home-to-work transportation standard found in 31 U.S.C. § 1344(b)(9), is likely the prevailing standard used across the Government for protection of agency officials, during duty hours, who do not otherwise have protection provided by statute. Against this historical backdrop, we are not aware of Congress expressing its disagreement through legislation that changes the applicable rules or standards. But, we note that the review of this matter continues.

The draft report contained two recommendations, one with which the Department non-concurs and the other with which it concurs. Attached please find our detailed response to each recommendation.

Again, thank you for the opportunity to review and comment on this draft report. Technical comments were previously provided under separate cover. Please feel free to contact me if you have any questions. We look forward to continuing our work with OIG to improve the effectiveness and efficiency of DHS programs, operations, and activities.

Attachment

¹¹ See SECURITY PROTECTION, STANDARDIZATION ISSUES REGARDING PROTECTION OF EXECUTIVE BRANCH OFFICIALS, B-283892.

¹² *Id.* at 2.

¹³ *Id.* at 7.

¹⁴ *Id.* at 11.

¹⁵ *Id.* at 11.

¹⁶ *Id.* at 11-12.

¹⁷ *Id.* at 14-17.

**Attachment: DHS Management Response to Recommendations
Contained in OIG Project No. 17-084-OGC-DHS**

The OIG recommended that the Secretary of Homeland Security direct that:

Recommendation 1: The CBP and ICE security details be discontinued pending a legal review by the DHS Office of the General Counsel (OGC) of the statutory authorization for such protective details, unless the Secretary makes a written finding of physical security threats meeting the requirements of 31 U.S.C. § 1344.

Response: Non-concur. While the Department will review further the CBP Commissioner's and ICE Director's security details, DHS believes that a reasonable basis exists to maintain the status quo during the review of these security details.¹⁸ The DHS Chief Security Officer (CSO) will oversee the completion of a Personal Security Vulnerability Assessment (PSVA) for each of these leaders by the Component's Office of the CSO, working with U.S. Secret Service (USSS), as well as other subject matter experts across the Department, as needed. The scope of these PSVAs will be tailored to account for the differing environments and needs of each leader, and upon completion, decisions about the continuation of these security details will be made, as appropriate.

It is important to note that the very nature of both the CBP and ICE positions subject them to intense attention and hostility, and increases the likelihood that they may be the subjects of attack while performing their official duties at any number of events or publicly known government offices.¹⁹ According to a study conducted by the U.S. Department of Justice's National Institute of Justice and the USSS, would-be assassins often commit violence as a means of solving a perceived problem or as a result of some triggering event or change in circumstance.²⁰ An attacker's motives may include avenging a perceived wrong; retaliating against a perceived injury; and bringing attention to a personal or public problem.²¹ The study found that "[a]lthough some threateners may pose a real threat, usually they do not. However, most importantly, those who pose threats frequently do not make threats."²²

¹⁸ When describing instances in which Department officials received security details, the OIG report focuses primarily on security details that took place while the ICE Director was on TDY in Texas. While the Department shares the OIG's concerns regarding those particular instances, the Department does not have information that would lead to the conclusion that the circumstances of those security details were typical of DHS security details generally.

¹⁹ See ROBERT A. FEIN AND BRYAN VOSSEKUIL, NAT'L INST. OF JUSTICE, PROTECTIVE INTELLIGENCE THREAT ASSESSMENT INVESTIGATIONS: A GUIDE FOR STATE AND LOCAL LAW ENFORCEMENT OFFICIALS at 19 (1998) ("NIJ Study") (stating that, "Many attackers and near-lethal approachers craved attention and notoriety, while others acted to bring attention to a particular problem. A number of assailants of public officials and figures were consumed with seeking revenge for perceived injuries or harm.").

²⁰ NIJ Study, at 15-19 (stating that, "Most people who attack others consider violence the means to a goal or a way to solve a problem. The problem may be that the potential perpetrator feels unbearably unhappy, enraged, overwhelmed, or bereft. . . . Violence—especially assassination—is an event in which a person, triggered by an event or change, and operating in a situation that facilitates, permits, or does not prevent violence, takes action against a designated target.").

²¹ See NIJ Study, at 19.

²² NIJ Study, at 14.

As the USSS noted, a lack of articulated threats directed at an official does not necessarily indicate a lack of actual threats to that official.²³ Further, as noted by the GAO, “research on protective intelligence and threat assessments suggest that the number of threats received against protected officials may not be the most accurate measure of the level of threat against officials.”²⁴ CBP and ICE leadership oversee large law enforcement agencies that regularly incite emotional, familial, and professional turmoil among their enforcement targets and affiliated individuals. It is reasonable to assume that some of those adversely affected by ICE and CBP may seek to lash out at a visible, high-profile figure representative of the agency.

We believe that sufficient legal authority exists for security details—if the requisite risk is determined to exist—such that the status quo should remain in place pending further review.

Estimated Completion Date (ECD): December 31, 2017.

Recommendation 2: If the Office of General Counsel determines that there is sufficient statutory authority for such security details, the Undersecretary for Management issue a directive on the scope and circumstances under which a security detail is permitted for component heads, including the requirement for Departmental-level authorization. Such a directive should also require periodic reporting on the travel of covered individuals, including domestic travel, and the cost of maintaining and operating the security details.

Response: Concur. The DHS CSO will lead efforts, involving others across the Department, to develop a DHS directive outlining an approval process for senior leadership executive protective details and Headquarters oversight, as appropriate. ECD: June 30, 2018.

²³ SECURITY PROTECTION, STANDARDIZATION ISSUES REGARDING PROTECTION OF EXECUTIVE BRANCH OFFICIALS, B-283892, at 15-16 (citing, “*Protective Intelligence and Threat Assessment Investigations*, U.S. Secret Service, July 1998,” and noting that, “According to the Secret Service, persons who pose actual threats often do not make threats, especially direct threats. In the Secret Service’s study of the 83 attackers and near-lethal approachers of prominent public officials and figures from 1949 to 1996, less than one-tenth communicated a direct threat to the target or to a law enforcement agency”).

²⁴ SECURITY PROTECTION, STANDARDIZATION ISSUES REGARDING PROTECTION OF EXECUTIVE BRANCH OFFICIALS, B-283892, at 15.



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Appendix C
Report Distribution

Department of Homeland Security

Secretary
Deputy Secretary
Chief of Staff
Deputy Chiefs of Staff
General Counsel
Under Secretary for Management
Executive Secretary
Director, GAO/OIG Liaison Office
Assistant Secretary for Office of Policy
Assistant Secretary for Office of Public Affairs
Assistant Secretary for Office of Legislative Affairs
DHS Component Liaison

Office of Management and Budget

Chief, Homeland Security Branch
DHS OIG Budget Examiner

Congress

Congressional Oversight and Appropriations Committees

ADDITIONAL INFORMATION AND COPIES

To view this and any of our other reports, please visit our website at: www.oig.dhs.gov. For further information or questions, please contact Office of Inspector General Public Affairs at: DHS-OIG.OfficePublicAffairs@oig.dhs.gov. Follow us on Twitter at: [@dhsoig](https://twitter.com/dhsoig).



OIG HOTLINE

To report fraud, waste, or abuse, visit our website at www.oig.dhs.gov and click on the red "Hotline" tab. If you cannot access our website, call our hotline at (800) 323-8603, fax our hotline at (202) 254-4297, or write to us at:

Department of Homeland Security
Office of Inspector General, Mail Stop
0305 Attention: Hotline
245 Murray Drive, SW
Washington, DC 20528-0305