



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

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

April 14, 2020

The Honorable Bennie G. Thompson, Chairman
Committee on Homeland Security
U.S. House of Representatives
H2-176 Ford House Office Building
Washington, DC 20515

Dear Chairman Thompson:

Thank you for your March 26, 2020, letter regarding the Department of Homeland Security (DHS) Office of Inspector General's (OIG) investigations of the deaths of two migrant children while in custody of Customs and Border Protection (CBP). Your letter raises six specific questions with regard to our investigations, which we answer below.

1. By what date will the OIG amend the public summary of its review of the 8-year-old child's death to include additional information regarding the circumstances of the child's death, including, at a minimum, the fact that the child was diagnosed with Influenza B and that complications of Influenza B were cited as a cause of death in the autopsy report on the child's death?

The amended summary is included as an attachment to this letter. It is posted to the OIG's website and was emailed to the congressional recipients of the original public summary.

2. Why were the investigations of the children's deaths limited to criminal investigations? What specifically does malfeasance mean in the context of the investigations? Which standards or criteria were CBP's actions evaluated against? How were those evaluations conducted and by whom?

On December 17, 2018, U.S. Customs and Border Protection (CBP) notified the DHS OIG of the death of a 7-year-old child while in CBP custody. On that same day, the DHS OIG's Office of Investigations opened an investigation regarding that matter. On December 25, 2018, U.S. Customs and Border Protection (CBP) notified the DHS OIG of the death of an 8-year-old child in CBP custody. That same day, the Office of Investigations opened an investigation regarding that matter.



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The scope of our investigations was to determine the circumstances surrounding the in-custody deaths of both children, including any form of misconduct by CBP personnel, and if misconduct was found, to determine whether those acts were criminal or administrative. In the context of the investigations, malfeasance means knowingly committing “wrong doing.” We evaluated CBP’s actions against Title 18, United States Code, “Crimes and Criminal Procedure,” and applied a reasonableness standard, meaning, we evaluated whether CBP personnel took reasonable actions to ensure the children obtained medical treatment.

3. Given that several more children have died in CBP custody since the 7-year-old and the 8-year-old died in December 2018, will the OIG conduct a thorough review of the adequacy of CBP’s TEDS standards for guiding the care of children held in detention, including when such detention lasts longer than 72 hours? If so, by what date will this review be completed?

We initiated an audit of detention facility policies and processes for handling medical intervention. Our planned audit objective is to determine whether CBP (1) has sufficient policies and procedures to address identifying serious medical conditions of detained migrants; and (2) is implementing those policies and procedures to ensure the detained migrants with serious medical conditions are identified and their health needs are properly addressed. Because of the pandemic, we are restricted in our ability to conduct the audit and because the audit is in the early stages, we are unable to provide a completion date for the audit. We will keep the Committee apprised of our progress.

4. During a briefing with Committee staff, OIG officials indicated that the Inspector General’s office is conducting investigations into the deaths of two additional minors in CBP custody. Will you commit to releasing to the public the reports of investigation into these deaths?

As with our prior investigations, the OIG is committed to protecting the privacy of the deceased minors as well as their families. Thus, as has been our practice in these unique circumstances, we will commit to releasing public summaries of our investigations. Upon receipt of a Chairman’s request letter, we will provide the Reports of Investigation to congressional committees of jurisdiction.



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5. By what date will the Inspector General's office adopt written protocols reiterating the OIG's independence from the agencies of DHS it is charged with overseeing and making clear that personnel from agencies under investigation may never participate in the OIG's investigation of that agency?

The OIG conducts all investigations in accordance with the Council of the Inspectors General on Integrity and Efficiency (CIGIE) Quality Standards for Investigations (QSI), which provide the established framework for OIGs to conduct high-quality investigations. The QSI provide three general standards that address qualifications, independence, and professional care. There are also four qualitative standards: planning, execution, reporting, and information management. The OIG maintains independence in all of its investigative work consistent with the QSI.

In 2016, a CIGIE Investigative Peer Review highlighted that our agency was complying with the CIGIE QSI and applicable Attorney General Guidelines. The corresponding Quality Assessment Report documented that these safeguards and procedures provided reasonable assurance that our investigations conformed to professional standards in the planning, execution, and reporting of our investigations.

We are in a department, which contains various component internal affairs investigative functions.¹ As such, when warranted, we leverage their capabilities and resources in support of our investigations.² This augmentation enhances our efficiencies in the investigative process and results in a decreased investigative lifecycle.

In all joint efforts with DHS component agencies, the OIG is the lead investigative entity.³ This ensures the integrity, impartiality, and objectivity of the investigative process. OIG maintains its independence in those categories of joint investigations by:

¹In keeping with the oversight responsibilities mandated by the Inspector General Act of 1978, as amended, our office evaluates and reviews DHS component internal affairs offices to ensure their compliance with agency and departmental policies, standards, and procedures.

² The IG Act contemplates circumstances when, due to internal resource or other limitations, the IG is authorized to request assistance from any federal, state, or local agency as may be necessary to carry out the duties of the OIG. On December 25, 2018, the date the investigation was opened into the 8-year-old's death, our Office of Investigations had 251 employees, 1,122 open investigations, and 22 personnel vacancies, many of which were located in our southwest border offices. By that time, nine OIG personnel were actively engaged in the investigation into the death of the 7-year-old. Therefore, our office sought assistance from CBP Office of Professional Responsibility personnel to augment our assigned staff in conducting our investigation into the 8-year-old's death.

³ My 30-year career in the IG community spans service in the Department of Homeland Security, the Department of Justice (DOJ), the Department of Defense, and the Department of the Air Force. It is a generally accepted practice for component internal affairs personnel, on a case-by-case basis, to augment OIGs. In fact, during a portion of my tenure in the DOJ OIG, we were *required* to work certain types of investigations jointly with the respective component's internal affairs personnel.



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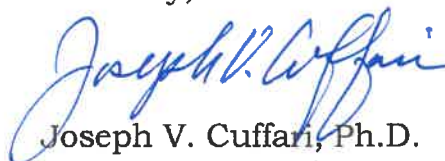
- Establishing the overall scope, strategy, and process for conducting the investigation.
- Requiring that all information that partner agencies gathered such as reports of interview, notes, and evidence, are provided in their entirety to the OIG for review.
- Referring criminal misconduct allegations to appropriate officials for a prosecutorial decision.
- Drafting, editing, and finalizing the corresponding report of investigation.

6. Does the Committee have your commitment that you, personally, will testify at the Committee's hearing to examine the deaths of children in CBP custody when it is rescheduled?

Yes.

Please call me with questions, or a member of your staff may contact Gwen Schrade, Office of External Affairs, at (202) 981-6000.

Sincerely,


Joseph V. Cuffari, Ph.D.
Inspector General

Enclosure

cc: The Honorable Mike Rogers, Ranking Member