

MEMORANDUM

To: Members of the Senate Homeland Security and Governmental Affairs Committee

From: Senator Ron Johnson, Ranking Member
Subcommittee on Oversight of Government Management

Date: October 19, 2012

Re: Potential discrepancies regarding Cartagena

Executive Summary

In April United States Secret Service (USSS) personnel solicited and hired prostitutes while on official duty during a presidential visit to the Summit of the Americas in Cartagena, Colombia. The secrecy of these transgressions unraveled when one of the prostitutes argued with one of the agents involved over money she claimed that he owed her. Their quarrel soon became conspicuous and others took notice. Soon the police and the United States Embassy were involved. In the immediate aftermath, the USSS found out that more agents and prostitutes were involved in prohibited conduct. Those agents were removed from the country. The USSS then began its own investigation which included interviews of the agents involved and issue-related polygraphs for five of the 13 agents.¹

Public concern regarding the events grew, as did concern for the safety of President Obama, the safety of others overseas, and the safety of sensitive security information. On May 10 Chairman Joseph Lieberman and Ranking Member Susan Collins held a closed door briefing with Members of the Senate Committee on Homeland Security and Governmental Affairs (the Committee) and Director Mark Sullivan. Concern surrounding the events then culminated in a hearing before the Committee on May 23. In that hearing, USSS Director Sullivan and Department of Homeland Security Acting Inspector General (DHS OIG) Charles Edwards testified. On April 25, DHS Secretary Janet Napolitano testified before the Senate Judiciary Committee answering questions regarding the matter.

The White House also responded to press inquiries regarding the involvement of staff associated with the White House in misconduct in Cartagena.

As a result of a request by Committee Chairman Joe Lieberman and Ranking Member Susan Collins, the DHS OIG began an independent investigation into the events in Cartagena. Phase one of that investigation was completed on Sept. 26 and was provided to Secretary Napolitano for action. Minority Staff of the Committee's Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia (OGM Minority Staff) have reviewed the DSH OIG report of investigation (ROI). The ROI has not been made public and is marked as law enforcement sensitive. Minority Staff reviewed the ROI at the offices of the DHS OIG and staff never possessed the ROI outside of the DHS OIG's location. Minority Staff then

¹ October 18, 2012 – 9:41AM e-mail from USSS Staff to Minority Staff

compared their notes with statements made by Administration officials to Congress and the public. Unfortunately, there are discrepancies between the statements made and the information in the ROI. Accordingly Senator Ron Johnson made requests to the Administration for clarifying information, but for varying and unclear reasons, the requests have been refused or ignored.²

Importantly, this memo is compiled largely from notes taken while OGM Minority Staff reviewed the DHS OIG ROI on Oct. 2 and 3. This was supplemented by subsequent conversations with DHS OIG staff. The DHS OIG maintained complete independence and remained impartial throughout. Discussions included the appropriateness of certain information in the ROI for public consumption. Accordingly, any information or summaries contained in this memorandum related to the ROI are in accordance with this standard. No report was given to OGM Minority Staff for its possession. Recognizing the sensitivity of this information, and the fragility of public reputations, we reveal these concerns only to highlight the need for more information and review.

Of primary importance in this memorandum is information related to the USSS decision to continue its investigation even after the DHS OIG asked the agency to cease in order to ensure the OIG's effort was fully independent and transparent.³ Further, the DHS OIG has been unable to interview foreign nationals or access foreign records because the Department of Justice denied its request for a Mutual Legal Assistance Treaty (MLAT) due to the fact that there is not a criminal proceeding underway regarding the matter.⁴ Without a MLAT, the DHS OIG is unable to access the hotel records of 14 of the 15 hotels where U.S. personnel stayed in Cartagena and is unable to interview the prostitutes, hotel staff, and employees of local establishments in Cartagena where relationships with female foreign nationals were formed.

OGM Minority Staff are informed by DHS OIG that a determination has not been made regarding turning the case into a criminal proceeding because the OIG is in a "holding pattern" because they have "not been able to deliver [their] ROI to DOJ" as the DOJ trial attorney is working another case.⁵ The ROI has been complete since Sept. 26. It is unclear why the workload of one trial attorney at DOJ would prevent the Department from making a determination that would enable the OIG to conduct a full and independent investigation into such an important matter. It is crucial that these barriers be removed to allow the DHS OIG full access to foreign nationals and foreign records, and to ensure that the OIG's efforts are truly independent prior to the office commencing the next phase of its investigation.

Understanding that the Full Committee membership shares the primary concern of ensuring American leaders and national security are not placed into potential jeopardy, and to determine if this kind of activity is more prevalent than the Committee initially understood, this memo highlights key concerns identified by the OGM Minority Staff in attempt to highlight the need for additional oversight on this matter.

² See Attachments 1-4

³ There were allegations of this in the DHS OIG-USSS Cartagena Review and OGM Minority Staff confirmed it in subsequent phone calls with the USSS.

⁴ Executive Summary, DHS OIG-USSS Cartagena Review (I12-USSS-OSI-0080)

⁵ October 18, 2012 – 4:41PM email with DHS OIG Staff and OGM Minority Staff.

Key Concerns

1. There are discrepancies between public statements and information uncovered in the independent investigation led by the Department of Homeland Security Office of Inspector General (DHS OIG) that suggest the Administration misled or withheld information from Congress.

- **The DHS OIG report of investigation (ROI) revealed that senior United States Secret Service (USSS) officials were aware of intelligence community (IC) interest in the name of one female foreign national but failed to report it either to the OIG or to Congress until after the OIG became aware of the issue during its investigation.**⁶ But during the May 23 hearing before this Committee, Director Sullivan testified that he had sent the names of “all of the women” to the intelligence community to identify if any had connections with terrorist, human trafficking or drug cartel organizations. Sullivan stated, “...all of the information that we’ve received back has concluded that there was no connection either from a counter-intelligence perspective or a criminal perspective.”⁷

The ROI, however, provides information related to the names of two female foreign nationals (FFN) that came back as “hits” with the IC database. This means that certain indicators of the FFNs matched certain indicators of individuals in the database. Upon further review it was determined that one of these women was not the same woman identified in the database. One of the women, however, is still of concern to the IC.⁸

- **The DHS OIG ROI uncovered hotel records that “...suggested female foreign nationals signed in as guests to rooms registered to one White House Communications Agency employee (an officer with the Department of Defense) and one reported member of the White House staff and/or advance team.”**⁹ But on April 23, White House Press Secretary Jay Carney informed the American public that the White House Counsel’s office conducted a review and “*came to the conclusion that there’s no indication that any member of the White House advance team engaged in any improper conduct or behavior.*” He went on to say, “*So, simply out of due diligence, over the last several days that review was conducted, and it produced no indication of any misconduct.*”¹⁰

⁶ Summary of information contained in the DHS OIG-USSS Cartagena Review (I12-USSS-OSI-0080)

⁷ May 23, 2012 hearing of the Senate Committee on Homeland Security and Governmental Affairs, “Secret Service on the Line: Restoring Trust and Confidence,” available at <http://www.hsgac.senate.gov/hearings/secret-service-on-the-line-restoring-trust-and-confidence>

⁸ October 16, 2012 – 3:00PM phone call with DHS OIG Staff and OGM Minority Staff

⁹ Executive Summary, DHS OIG-USSS Cartagena Review (I12-USSS-OSI-0080)

¹⁰ White House Daily Press Briefing, April 23, 2012, available at <http://www.whitehouse.gov/the-press-office/2012/04/23/press-briefing-press-secretary-jay-carney-42312>

On September 21 a “senior administration official” went on to indicate that one of these individuals was a “*White House volunteer for the advance team*” and that the White House review had concluded that “*the hotel record was erroneous.*”¹¹

Further, when Secretary Napolitano was questioned by Chairman Patrick Leahy during an April 25 Senate Judiciary Committee hearing on whether there was “*any evidence that the president’s advance team was involved in (this) misconduct,*” she responded “*I’ve not been informed of any such evidence.*”¹²

Finally, House Homeland Security Chairman Peter King sent a written inquiry to Director Sullivan on April 20 that asked if “*any members of the Executive Office of the President (EOP) were involved in the alleged incident (in Cartagena)?*” Sullivan responded, “*No. The USSS uncovered no information suggesting that any member of the EOP was involved in the incident.*”¹³

As the DHS OIG was unable to investigate the involvement of White House personnel, Ranking Member Collins sent a letter on September 28 inquiring as to the identity of the White House-affiliated staff identified by the DHS OIG. The White House has not responded to her inquiry. Senator Johnson also sent a letter to White House Chief of Staff Jacob Lew ([Attachment 1](#)) that asked for information related to these employees and requested information related to the White House Counsel review conducted into the matter. The White House has yet to respond to Senator Johnson’s inquiry either.

- **The DHS OIG ROI revealed that solicitation of prostitutes may be more prevalent than Congress was led to believe, and that there may be a culture of acceptance inside of USSS.** During the DHS OIG investigation one USSS agent involved in misconduct in Cartagena self-reported to having solicited prostitutes both in El Salvador and Panama in the 2008-2009 timeframe. The investigation further uncovered allegations of similar misconduct in China and Romania. In addition to these specific allegations of misconduct, the ROI revealed that at least 11 USSS personnel admitted to having knowledge of similar misconduct occurring on other occasions. Sullivan testified before the Committee that “nearly 60 percent of our employees” responded that they would report “unethical behavior.”¹⁴ If that percentage were higher, it is possible there would have been even more reports of misconduct to the DHS OIG.

¹¹ “White House Denies Inspector General’s Suggestion Advance Team Volunteer Was Possibly Involved in Colombia Scandal,” available at <http://abcnews.go.com/blogs/politics/2012/09/white-house-denies-inspector-generals-suggestion-advance-team-volunteer-was-possibly-involved-in-colombia-scandal/>

¹² April 25, 2012 hearing of the Senate Committee on the Judiciary, “Oversight of the Department of Homeland Security,” available at <http://www.judiciary.senate.gov/hearings/hearing.cfm?id=94b860a84caa1261bbab1aa47716acc4>

¹³ Letter from House Homeland Security Committee Chairman Peter King, April 20, 2012, available at <http://online.wsj.com/public/resources/documents/KingLtrtoDirectorSullivan20120422.pdf>

¹⁴ May 23, 2012 hearing of the Senate Committee on Homeland Security and Governmental Affairs, “Secret Service on the Line: Restoring Trust and Confidence,” available at <http://www.hsgac.senate.gov/hearings/secret-service-on-the-line-restoring-trust-and-confidence>

The ROI also revealed that while USSS personnel were still on the ground in Cartagena, one of the supervisors that had also engaged in misconduct was alerted that his actions had become known. He in turn communicated with USSS personnel on the ground in Cartagena and warned them that they should not bring prostitutes back to their hotel rooms.¹⁵ This act creates the impression that USSS personnel needed to be instructed not to solicit prostitutes, which suggests there may be a culture of acceptance inside of the agency.

Yet, as it related to whether or not USSS personnel had ever solicited prostitutes in the past and the notion of a culture of acceptance inside of the USSS, Sullivan told the Committee, “*I have 100 percent confidence in our men and women, and I just do not think that this is just something that is systemic within our organization.*” Sullivan went on to say, “*...I never one time had any supervisor or any other agent tell me that this type of behavior is condoned.*”¹⁶

Sullivan specifically denied questions posed by the Committee as to whether USSS personnel had solicited prostitutes in El Salvador (in 2011): “*...El Salvador – we were unable to prove any of these allegations...*” Not only did a USSS agent self-report as to soliciting a prostitute in El Salvador, it was an individual that was also involved in misconduct in Cartagena, drawing into question Sullivan’s statement that “*...we have not found that this type of behavior was exhibited by any of these individuals before.*”¹⁷

Secretary Napolitano also denied the possibility that agents had solicited prostitutes before during the April 25 Senate Judiciary hearing when she testified that “*First, not everybody else was doing it. And second, this behavior is not part of the Secret Service way of doing business. They’re very professional.*”¹⁸

2. Actions taken by the USSS, the DHS, the Department of Justice (DOJ), and the White House prevent information related to the events Cartagena from being known.

- **The DOJ refused the DHS OIG’s request for a Mutual Legal Assistance Treaty (MLAT) that would have authorized the DHS OIG to interview foreign nationals and access foreign records as part of its independent investigation.** As part of the DHS OIG phase one investigation into Cartagena, the DHS OIG made a request for a Mutual Legal Assistance Treaty (MLAT) from the DOJ on June 4. The DOJ denied this request on July 27.¹⁹ A MLAT, once agreed to, would have authorized the DHS OIG to interview foreign nationals and access foreign records. The DHS OIG stated:

“We made an official Mutual Legal Assistance Treaty (MLAT) request from the Department of Justice so we could interview the female Colombian nationals and

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ April 25, 2012 hearing of the Senate Committee on the Judiciary, “Oversight of the Department of Homeland Security,” available at

<http://www.judiciary.senate.gov/hearings/hearing.cfm?id=94b860a84caa1261bbab1aa47716acc4>

¹⁹ October 18, 2012 – 12:39PM e-mail from DHS OIG staff to OGM Minority Staff

secure other investigative records. However, the Department of Justice declined our request because the information was sought for a Congressional proceeding rather than a U.S. criminal matter.”²⁰

The DOJ’s decision to deny the request for a Mutual Legal Assistance Treaty means that the DHS OIG could not access hotel records for 14 of the 15 hotels in Cartagena where U.S. personnel stayed. DHS OIG also could not interview the prostitutes, hotel employees or employees of the establishments where U.S. personnel solicited prostitutes. Further, the DOJ’s denial of the request for a MLAT renders the DHS OIG unable to corroborate whether the FFN identified by the IC is in fact a person of interest.

Conversely, the USSS was allowed to interview foreign nationals as part of its internal investigation. It is unclear why an organization led by a political appointee should be granted this access while the independent Office of the Inspector General is denied it. Without the ability to interview foreign nationals and access hotel records, it is impossible to determine if names associated with White House personnel are recorded as having checked in overnight female guests during their stay in Colombia.

Senator Johnson sent a letter on Oct. 12 to the DOJ requesting information related to their decision to deny the DHS OIG request for a MLAT ([Attachment 2](#)). A response was due on Oct. 15, but a DOJ Attorney Advisor contacted OGM Minority Staff at approximately 5 p.m. on the 15th and informed the Subcommittee that DOJ could not meet that deadline and further that a response may not be forthcoming at all.²¹

- **The USSS may not have conducted an effective internal investigation.** The USSS conducted interviews of implicated personnel both on the ground in Cartagena directly following the incident and then in the following days in the United States. The USSS also provided polygraphs to some, but not all, of the involved personnel. This portion of the USSS investigation was complete in April, approximately one month before USSS Director Mark Sullivan testified before the Committee.

If the USSS investigation had been effective, similar revelations regarding the occurrence of prostitution inside of the agency would have come to light and been briefed to the director before he testified. The DHS OIG also received allegations that disciplinary actions for individuals involved in the Cartagena incident were not consistent and varied based on relationships implicated personnel had with management.

- **USSS may have interfered with the transparency of the DHS OIG investigation.** During the May 23 hearing before the Committee, Director Sullivan said:

“Since the beginning of this investigation, we have been transparent and forthcoming with the Department of Homeland Security’s Office of Inspector General. I have instructed our Office of Professional Responsibility to cooperate

²⁰ DHS OIG-USSS Cartagena Review (I12-USSS-OSI-0080)

²¹ October 15, 2012 – 5:15PM phone call from DOJ Attorney Advisor to OGM Minority Staff

fully with DHS Acting Inspector General Edwards, as his office conducts its own comprehensive review of the matter.”²²

Yet the DHS OIG received allegations during its investigation that senior Secret Service officials attempted to interfere with the OIG investigation. Ten senior USSS officials refused to be interviewed by the DHS OIG and eight current and former employees related to the Cartagena incident were unreachable.

Finally, the DHS OIG asked the USSS to cease its own internal investigation once the OIG investigation commenced to ensure independence and transparency, however USSS has not complied. In fact, on Oct. 5, OGM Minority Staff were informed that the USSS could not provide information related to its internal investigation because the investigation was still ongoing.²³ Again on Oct. 10 OGM Minority Staff were informed by the USSS Chief Counsel that the internal USSS internal investigation was still ongoing.²⁴ On Oct. 11 Director Sullivan confirmed once again in a phone call with Senator Johnson that the investigation was in fact ongoing.²⁵ If the USSS did not cease its investigation per the DHS OIG request, then it may have impeded the OIG’s ability to conduct a transparent investigation.

- **The DHS has refused to allow the USSS to release information related to its internal investigation of the events in Cartagena.** In order to determine if senior Administration officials were aware of discrepancies between statements made to Congress and the findings in the DHS OIG report, Senator Johnson sent a letter to Director Sullivan requesting a copy of the USSS internal investigation and associated materials ([Attachment 3](#)). This information would reveal if the USSS was aware of other incidents of prostitution or a culture of acceptance at the time Director Sullivan testified before the Committee. USSS staff informed Minority Staff that transcripts of interviews conducted and a list of questions asked by USSS during interviews do not exist.

On Oct. 10 USSS Counsel informed Minority Staff that DHS had concerns with sharing the information.²⁶ This decision was contrary to statements made both by the Secretary and Director Sullivan promising to keep Congress informed of the review, including this statement made by Director Sullivan at the May 23 hearing:

“From the beginning of this incident, we have strived to keep members of Congress and our committees of jurisdiction up to date as information became available. While my written testimony provides an overview of our findings to date, I am committed to keeping you informed as our review continues.”²⁷

²² May 23, 2012 hearing of the Senate Committee on Homeland Security and Governmental Affairs, “Secret Service on the Line: Restoring Trust and Confidence,” available at <http://www.hsgac.senate.gov/hearings/secret-service-on-the-line-restoring-trust-and-confidence>

²³ October 5, 2012 – 5:00PM phone call with OGM Minority Staff and USSS Staff

²⁴ October 10, 2012 – 10:30AM phone call with OGM Minority Staff and USSS Chief Counsel

²⁵ October 11, 2012 – 2:45PM phone call with USSS Director Sullivan and Senator Ron Johnson

²⁶ October 10, 2012 – 10:30AM phone call with OGM Minority Staff and USSS Chief Counsel

The same day Senator Johnson sent a letter to DHS Secretary Napolitano to request an explanation for the decision to withhold information related to the internal investigation conducted by the Secret Service ([Attachment 4](#)). The letter also asked what actions the Secretary plans to take as a result of the ROI.

On Oct. 11 Director Sullivan initiated a phone call with Senator Johnson. During this phone call Director Sullivan stated that he had not yet seen the ROI and was not aware of its contents. He reiterated that to his knowledge he had not made any false or inaccurate statements to Congress. At the end of this phone call, and in accordance with statement he had made to the Committee, Director Sullivan extended an offer to have the Minority Staff report to USSS the following morning to review the USSS Office of Professional Responsibility file of the incident in Cartagena.²⁸

Unfortunately, USSS staff called the following morning to rescind the offer to review the information citing that DHS had refused to allow Director Sullivan to release this information due Privacy Act concerns.²⁹ The DHS IOG, however, had no such concerns when releasing similar information from its independent investigation to Minority Staff. It is unclear why there is a discrepancy in the application of the Privacy Act between the DHS and the DHS OIG.

3. USSS personnel did not regularly report contacts with foreign nationals as required between Dec. 2008 – June 2012.

As part of its independent investigation, the DHS OIG reviewed USSS reports of contact with foreign nationals between Dec. 16, 2008, and June 15, 2012. Before the Cartagena incident, there were 105 reports of contact with foreign nationals during that timeframe. Following the incident and a reminder to USSS personnel of the policy, 423 new reports of contact were filed. Only one report was filed for the Cartagena trip. The nature of these foreign contacts is unclear, as is any possible relation to other incidents of the solicitation of prostitutes or relationships with female foreign nationals. It is further unclear if any disciplinary action was taken with personnel that have failed to report foreign contacts.³⁰

4. It is possible that USSS personnel who took female foreign nationals back to their hotel rooms in Cartagena are still on the USSS payroll.

It is possible that U.S. personnel who brought female Colombian nationals back to their rooms but did not pay them are still on the USSS payroll.³¹ Even if USSS personnel did not pay women for sex acts, bringing any foreign national to a hotel room where sensitive security information could be held is a potential national security risk. The risk elevates if alcohol is involved. It is further unclear how many individuals that left the agency in the wake of the

²⁸ October 11, 2012 – 2:45PM phone call with USSS Director Sullivan and Senator Ron Johnson

²⁹ October 11, 2012 – 8:30AM phone call with OGM Minority Staff and USSS Staff

³⁰ Executive Summary, DHS OIG-USSS Cartagena Review (I12-USSS-OSI-0080)

³¹ Some women did not ask to be paid, and some women asked to be paid but USSS personnel refused.

Cartagena incident were allowed to keep their security clearance because they chose to voluntarily resign rather than be forcibly dismissed. Allegations were made to DHS OIG that USSS personnel implicated in Cartagena were not disciplined consistently. Some agents believed that colleagues who had engaged in similar misconduct were left off easy based on the relationships they had with USSS management.³²

³² Summary of findings, DHS OIG-USSS Cartagena Review (I12-USSS-OSI-0080)