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Statement of
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before the

Subcommittee on National Security
House Oversight and Government Reform Committee

on

"Oversight of the Department of Defense Office of Inspector
General's Military Whistleblower Reprisal Investigations"

Good afternoon Chairman DeSantis, Ranking Member Lynch, and members of the Subcommittee. Thank you for inviting me to appear before you today to discuss the work of the Department of Defense Office of Inspector General (DoD OIG) regarding military whistleblower reprisal investigations.

Whistleblowers are important to exposing waste, fraud, and abuse in government programs, and they are instrumental in saving taxpayers' money and improving the efficiency of government operations. They need to be protected from reprisals for their protected disclosures. The DoD OIG is responsible for conducting investigations when whistleblowers allege they have suffered reprisal. We are also responsible for overseeing the investigative work of DoD Component IGs whenever they exercise delegated authority to investigate allegations of military reprisal or restriction, or certain types of civilian reprisal allegations. Without such investigations to protect whistleblowers from reprisal, individuals who can help save taxpayers' money – and possibly even save lives – may not report crucial information about wrongdoing and waste.

The DoD OIG therefore seeks to conduct thorough, fair, and timely investigations into allegations of whistleblower reprisal complaints. It is a challenging task, particularly given the burgeoning whistleblower reprisal caseload within DoD, as well as the flat level of resources for the OIG. However, we are committed to this critically important mission. In this regard, the DoD OIG regularly considers how to improve our programs, which I will describe below.

First, however, it is important to understand the increasing caseload. In the DoD OIG Semiannual Report (SAR) to Congress for the period ending March 31, 1997, the OIG reported having received 180 reprisal complaints and closed 95 cases. In the SAR report for the period

ending March 31, 2005, that number had increased – the DoD OIG received 284 reprisal complaints and closed 212 cases. In the 12 years since, the number of complaints has more than quadrupled. For the latest SAR for the period ending March 31, 2016, we reported having received 797 complaints and closed 610 cases. For the entire FY16 reporting period, we project approximately 1600 and 1200 respectively. At present, the DoD OIG has 192 open cases, and there are over 800 open cases across the Department.

Yet, growth in DoD OIG resources has lagged. The DoD OIG budget has not kept pace with the growth in the DoD's budget, and our budget clearly has not grown commensurate with our increased responsibilities, particularly in the whistleblower area. Nevertheless, we increased the resources we have devoted to whistleblower reprisal cases, and have steadily increased staffing our Whistleblower Reprisal Investigations (WRI) Directorate. In 2010, WRI had a staff of 28. By 2016, the WRI staff grew to 54 – the Director and Deputy Director; 32 investigators who conduct and supervise reprisal investigations; 13 investigators who perform and supervise oversight of investigations conducted by the military services and DoD Components; 4 program personnel who perform training, outreach, policy and statistical analysis responsibilities; and 3 investigative support personnel. However, these increases have still not been sufficient to keep up with the workload, which has not only increased in terms of the total number of complaints, but also increased in the number of complaints that require full investigation.

To address this need for increased staff, for FY 2018 we are seeking funding for 29 additional personnel for WRI, which we believe will help to improve the timeliness and effectiveness of reprisal investigations.

With respect to the focus of today's hearing, I would like to first address the two Government Accountability Office (GAO) reports regarding the OIG's military whistleblower protection program – one report was completed in 2012 and the other in 2015. GAO is currently conducting another review on the DoD civilian and contractor employee whistleblower protection program.

In the two completed reports, the GAO issued 18 recommendations for improvement. We have taken GAO's recommendations very seriously. Since release of the 2015 GAO report my senior staff and I are meeting with GAO on a quarterly basis to ensure we are making appropriate progress in the areas GAO identified for improvement.

In this regard, GAO acknowledged to us the many improvements the DoD OIG has made. As reflected in Ms. Atkinson's testimony, GAO has already closed as implemented, 15 out of the 18 recommendations from both its 2012 and 2015 reports. The final three recommendations are in the process of being implemented.

Indeed, I want to point out additional steps and progress we have made toward improving whistleblower reprisal investigations. In some cases these steps go beyond what GAO has recommended.

Examples of our progress include:

- We provided specialized training in whistleblower reprisal investigations to OIG employees, as well as to over 1,000 personnel from DoD Component IGs and other Federal Agency OIGs.

- We issued policy guidance to DoD Component IGs to properly notify complainants when military reprisal investigations will not be completed within 180 days.
- We deployed the Defense Case Activity Tracking System (D-CATS) within DoD OIG for transmitting, storing, retrieving data and documentation, and for managing and monitoring investigations.
- We issued a D-CATS User Guide, a D-CATS Data Entry Guide, and an expanded version of the Data Entry Guide, to staff, all accompanied by mandatory training to all WRI staff.
- We developed a properly-coordinated implementation plan to further develop and deploy D-CATS to DoD Component IGs as a standardized enterprise case management system throughout DoD.
- We publicly issued the new “Guide to Investigating Military Whistleblower Reprisal and Restriction Complaints” in October 2014, which includes downloadable templates for use by DoD Component IG investigators in the field.
- We reissued DoD Directive 7050.06, “Military Whistleblower Protection,” on April 17, 2015, which requires DoD Component IGs to complete military reprisal intakes within 30 days, to submit military reprisal reports of investigation for oversight within 150 days of the filing of the complaint, and to make recommendations of specific remedies to make whistleblowers whole in substantiated cases.

- We developed an automated alert to help ensure compliance with the statutory notification requirement to provide service members with accurate information regarding the status of their reprisal investigations within 180 days of receipt of an allegation of military reprisal. This automated alert was implemented in the current release of D-CATS, as of April 22, 2016.
- We formed a working group, led by the Director of WRI and composed of key representatives from DoD Component IGs to seek agreement on universally defined investigative stages and more standardized processes. The working group has met five times, most recently on July 20, 2016, and is scheduled to meet again next week.
- We issued our new Administrative Investigations manual in March 2016 that includes a description of the oversight process by DoD OIG of DoD Component IGs procedures.
- We posted our entire Administrative Investigations manual on our public web page to increase transparency of how we conduct whistleblower reprisal and military restriction investigations and how we provide oversight of such investigations conducted by DoD Component IGs.

As a result of these and other actions the GAO closed 15 of its 18 recommendations. We are also addressing the three remaining GAO recommendations. With regard to the three remaining recommendations, GAO recommended that we regularly report to Congress on the timeliness of military reprisal investigations, including the number of cases exceeding the 180 days provided by law. We agree with the need and benefit of providing regular reports to Congress on the timeliness of military whistleblower reprisal investigations, and we will provide

this information to our Congressional oversight committees of jurisdiction on a semiannual basis. We do not believe such information should be reported in the Semiannual Report to Congress (SAR), as the GAO originally suggested, because the Inspector General Act describes in detail what should be included in the SAR. However, we agree with the GAO's recommendation to provide the timeliness statistics to Congress every six months, in a separate letter to Congress. We will provide the first such report on October 31, 2016.

Second, GAO recommended that we regularly report to Congress on the frequency and type of corrective action taken in response to substantiated reprisal claims. We agree with this recommendation and currently report that information in a narrative fashion in our SAR. Additionally, we have tasked the D-CATS developers to modify the database system in a manner that will allow us to run queries identifying missing corrective actions or remedies. Once these changes are implemented to D-CATS, we will be able to better analyze trends with respect to corrective actions taken in substantiated cases and specify the frequency and trends in types of corrective actions taken across the Department.

Third, GAO recommended that the Secretary of Defense, in coordination with the DoD OIG, direct the Military Service IGs to follow standardized investigative stages and issue guidance clarifying how the stages are defined. We agree with GAO that the Secretary of Defense has broad authority to establish investigative policy for whistleblower reprisal investigations throughout the Department, and we will work with the Secretary to implement this recommendation. Before such direction is issued, we are working with the Military Service IGs to seek standardized investigative stages for them to implement.

In addition to the initiatives detailed above, I want to highlight other significant improvements we have made to our whistleblower reprisal investigative program:

- I have elevated the importance of the role of our Whistleblower Protection Ombudsman by making it a fulltime, GS-15 position rather than a collateral duty.
- I have made clear that we should be expansive in our interpretation of whistleblower protection statutes. For example, on April 11, 2016, I reviewed a letter from several members of Congress regarding a contractor employee case which the DoD OIG had originally dismissed on narrow, technical grounds concerning the content of the employee's disclosure. I concluded that we should have opened an investigation in the case and been more expansive in our interpretation of the statute. We therefore re-opened that case and a related case filed by a co-worker. I also directed OIG staff to institute a more expansive approach to evaluating disclosures by contractor and subcontractor employee whistleblowers and actions alleged to have been taken against them in reprisal. We are currently conducting 32 investigations under the contractor/subcontractor employee reprisal statute, 10 U.S.C. 2409.
- I have reinforced to our investigators the need to consider both circumstantial and direct evidence of reprisal in their case analysis.
- I have promoted the need for greater transparency in the outcomes of whistleblower reprisal and other OIG administrative investigations. In particular, at my direction, the OIG obtained a change to our Privacy Act System of Records Notice (SORN) routine uses, which now allows the OIG to proactively release investigative reports in which the public's right to know outweighs the individual's privacy rights. As a result, we are proactively conducting the balancing test and publicly releasing the

results of investigations, when appropriate, even before receipt of a FOIA request. While our proactive release policy is new, we have already publicly released one substantiated whistleblower reprisal investigative report, and we intend to release another such report in the near future.

- I have also emphasized the priority for aggressive and thorough investigations of whistleblower reprisal complaints involving sexual assault. The DoD OIG has decided to now handle all DoD reprisal cases stemming from reporting of a sexual assault. We have also created a dedicated investigative unit to investigate such sexual assault reprisal cases. This unit has received training on Sexual Assault Prevention Response Office (SAPRO) policies and procedures. In fact, this week this team will receive specialized training in sexual assault trauma from a recognized expert in the field. This specialized training fulfills a recommendation of the Judicial Proceedings Panel that this work should be handled exclusively by DoD OIG investigators who have received specialized training in sexual assault trauma.
- We are emphasizing that sexual assault reprisal cases are a priority and that military members are aware that complaints of this type will be handled by our specialized team. For example, in July 2016 at DoD OIG's observance of National Whistleblower Appreciation Day, we invited a military sexual assault victim, whose reprisal complaint was substantiated by the DoD OIG earlier this year, to address a worldwide audience throughout the Federal Hotline and DoD OIG community about the retaliation she experienced and lessons learned following the investigative process.

- We are instituting an alternative dispute resolution program, like that administered by the Office of Special Counsel, to pursue settlement of whistleblower cases separate and apart from the investigation process. This voluntary program can help reduce the cost and time for resolving certain whistleblower cases, and it can also allow limited investigative resources to be allocated to completing investigations in a timely manner.

As noted above, the DoD OIG also conducts oversight reviews of military reprisal and restriction, and certain civilian reprisal, investigations conducted by DoD Component IGs. However, we can do better in this area, particularly in the area of timeliness of our oversight reviews. An important part of our new approach to oversight is a program we are implementing that will assess, at a minimum of every 3 years, the overall quality of the whistleblower protection programs run by DoD Component IGs. Initially, this program will focus on the whistleblower protection programs run by those DoD Component IGs handling the greatest volume of whistleblower reprisal cases. Such reviews, similar to peer reviews conducted within the federal IG community, will assist us in identifying systemic issues, recommendations for improvement, and best practices for DoD Component IGs to implement.

Finally, I want to emphasize that a critical responsibility for the OIG, when conducting whistleblower reprisal investigations, is to follow the facts wherever they lead. If the evidence shows that an individual has been reprisal against because of a protected communication or disclosure, we need to conduct that investigation fully, fairly, timely, and substantiate the allegation. By the same token, if the evidence shows that the subject of the complaint did not reprise against the complainant, we need to find that, and clear the subject, in a timely manner.

Both missions are important. I also recognize that we are likely to receive criticism from either or both parties in a case. But such criticism should not deter us from timely and thoroughly investigating the case and reaching objective conclusions based on the evidence. That is what we strive to do, and the measures that I have described are designed to improve our processes to meet that goal.

In sum, conducting whistleblower reprisal investigations is a critically important part of the OIG's work. We are committed to continuously improving how we handle these challenging duties. Thank you for the opportunity to discuss how we are seeking to fulfill this important mission.

This concludes my statement and I would be glad to answer questions.



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Principal Deputy Inspector General



Glenn A. Fine was named the Department of Defense Principal Deputy Inspector General on June 1, 2015. He is currently Performing the Duties of the Inspector General. Prior to joining the Department of Defense Office of Inspector General, he was a partner at Dechert LLP in the White Collar and Securities Litigation Practice.

Mr. Fine previously served as Inspector General of the Department of Justice (DOJ) from 2000 to 2011. He also served as Special Counsel to the DOJ Inspector General and as Director of the Special Investigations and Review Unit (1995 to 2000).

Mr. Fine earned a Bachelor of Arts degree in economics from Harvard College and his Juris Doctorate from Harvard Law School, graduating magna cum laude both times. He also obtained bachelor's and master's degrees from Oxford University where he was a Rhodes Scholar.

While at Harvard, Mr. Fine served as co-captain of the Harvard varsity basketball team and was later a 10th-round draft pick by the San Antonio Spurs.