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DCIS FORM 79

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REPORT OF INVESTIGATION

2015000059-07-OCT-15-HQ-FF0

July 16, 2015

DISTRIBUTION: EPA OIG (AIGI Patrick Sullivan); EPA (General Counsel Avi Garbow).

EXECUTIVE SUMMARY

Allegation

DCIS initiated this investigation based on a request for assistance from the Environmental Protection Agency (EPA), Office of Inspector General (OIG). Specifically, it was alleged that on October 24, 2013, SA Elisabeth Drake, now known as SA Elisabeth Heller, EPA OIG, conducted an interview of [redacted] Office of Homeland Security (OHS), EPA. Subsequent to that interview, Heller realized she had forgotten to have [redacted] sign a Non-Disclosure Agreement (NDA), so she went to the OHS office space to have [redacted] sign the form. Heller reported that upon arriving at OHS, she advised [redacted] that he was not permitted to discuss the details of his OIG interview with anyone except his attorney. While she was speaking to [redacted] Mr. Steven Williams, Senior Intelligence Officer, EPA, allegedly assaulted and intimidated her. It was further alleged that during a separate, subsequent incident later that day, Williams was abusive towards other OIG personnel and interfered with OIG SA [redacted] and [redacted] attempt to interview another OHS employee, [redacted], about the alleged assault of Heller. Jonathan Biran, Williams' attorney, alleged that the OIG engaged in a campaign of intimidation and harassment of OHS leading up to the events of October 24, 2013. Specifically, Biran alleged that the OIG launched an "ultra vires" investigation of OHS to intimidate and retaliate against Williams and other OHS personnel as part of a turf war between the OIG and OHS.

Scope and Findings

The following issues and findings delineate the scope of the DCIS investigation:

1. Did SA Heller improperly attempt to prevent [redacted] from disclosing details of his interview when she told him he was not permitted to discuss details of the interview with anyone other than his attorney?

   DCIS substantiated that SA Heller violated the EPA Table of Offenses, Number 22a, "Negligent performance of duties where damage or waste to Government property is insubstantial", by performing her duties in a negligent manner.

2. Did SA Heller improperly communicate with someone she knew to be represented by counsel without counsel present?

   DCIS substantiated that SA Heller violated EPA OIG Policy 207, Section 4-1, "Legal Representation."

3. Did Williams violate EPA Table of Offenses Number 8 "Abusive or offensive language, gestures, or other conduct", during his interaction with SA Heller?

DCIS did not substantiate that Williams violated EPA Table of Offenses Number 8 during his interaction with SA Heller.

4. Did (b)(6), (b)(7)(C) violate EPA-OIG policy Number 207, "Record Reviews, Interviews, Advisement of Rights, Oaths, and Statements", by causing (b)(6) (b)(7)(C) to reasonably perceive that he was in a custodial situation?

   DCIS substantiated that (b)(6) (b)(7)(C) violated EPA Policy Number 207, Part 3.1 during his interaction with (b)(6) (b)(7)(C)

5. Did Williams violate EPA Table of Offenses Number 16 "...refusal to testify or cooperate in an official proceeding", or 20 "Insubordinate defiance of authority, disregard of directive, refusal to comply with proper order", during his second interaction with the OIG on October 24, 2013?

   DCIS did not substantiate that Williams violated Table of Offenses Number 16, and did not substantiate that Williams violated Table of Offenses Number 20.

STANDARDS

The following standards, while not exhaustive of standards applicable to the facts presented, were the standards primarily considered during this investigation.

1) **EPA Policy Number 207: Record Reviews, Interviews, Advisement of Rights, and Statements, Part 3-1.**

3-1. GENERAL. As appropriate, Special Agents will advise a subject, a suspect, or a witness of his or her rights in accordance with the circumstances (i.e., custodial vs. non-custodial situation; Federal employee vs. non-employee; criminal vs. administrative investigation).

Unless taken in to custody, persons interviewed by the OIG are free to leave an interview at any time. Occasionally, circumstances might evolve under which an interviewee could reasonably perceive that a custodial situation had arisen. Special Agents should take care to prevent such situations from arising.

2) **EPA OIG Policy Number 207; Record Reviews, Interviews, Advisement of Rights, Oaths, and Statements; part 4-1.**

4-1. LEGAL REPRESENTATION.

a. In accordance with Section 3 herein, Special Agents should notify an individual of the right to an attorney only when the individual is in custody and is the subject or suspect in a criminal investigation.

b. OIG policy permits an employee who is not in custody to have an attorney present at an interview if the employee so requests. Should the employee make such a request, the Special Agent will advise the employee that any expense for an attorney is the responsibility of the employee.

c. The Special Agent will allow the individual a reasonable opportunity to arrange for an attorney to be present at the interview.

d. The function of the attorney is to furnish advice and provide assistance to the individual during the interview. Off-the-record consultations are permitted. If the attorney significantly disrupts the interview by exceeding this function and the interview becomes unproductive, the Special Agent should state the role of the attorney and explain how the attorney is exceeding his or her role. The Special Agent should inform the employee that the interview cannot proceed under such circumstances. If an agreeable compromise cannot be reached, and the interview continues to be unproductive, the Special Agent should terminate the interview.

e. The Special Agent should be alert to any potential conflicts of interest. For example, a conflict of interest may exist if the attorney represents more than one subject or suspect in a case with conflicting defenses or also represents a witness. The Special Agent should inform the appropriate government officials (Assistant United States Attorney, trial attorney, OIG Office of Counsel, etc.) with a need to know about potential conflicts of interest at the earliest opportunity.

3) 5 U.S.C. §555, Ancillary Matters

(a)This section applies, according to the provisions thereof, except as otherwise provided by this subchapter.

(b)A person compelled to appear in person before an agency or representative thereof is entitled to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative. A party is entitled to appear in person or by or with counsel or other duly qualified representative in an agency proceeding. So far as the orderly conduct of public business permits, an interested person may appear before an agency or its responsible employees for the presentation, adjustment, or determination of an issue, request, or controversy in a proceeding, whether interlocutory, summary, or otherwise, or in connection with an agency function. With due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude a matter presented to it. This subsection does not grant or deny a person who is not a lawyer the right to appear for or represent others before an agency or in an agency proceeding.

(c) Process, requirement of a report, inspection, or other investigative act or demand may not be issued, made, or enforced except as authorized by law. A person compelled to submit data or evidence is entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that in a nonpublic investigatory proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony.

(d) Agency subpoenas authorized by law shall be issued to a party on request and, when required by rules of procedure, on a statement or showing of general relevance and reasonable scope of the evidence sought. On contest, the court shall sustain the subpoena or similar process or demand to the extent that it is found to be in accordance with law. In a proceeding for enforcement, the court shall issue an order requiring the appearance of the witness or the production of the evidence or data within a reasonable time under penalty of punishment for contempt in case of contumacious failure to comply.

(e) Prompt notice shall be given of the denial in whole or in part of a written application, petition, or other request of an interested person made in connection with any agency proceeding. Except in affirming a prior denial or when the denial is self-explanatory, the notice shall be accompanied by a brief statement of the grounds for denial.

4) **28 U.S.C. §530B, McDade-Murtha Amendment: Ethical Standards for Justice Department Attorneys.**

(a) An attorney for the Government shall be subject to State laws and rules, and local Federal court rules, governing attorneys in each State where such attorney engages in that attorney's duties, to the same extent and in the same manner as other attorneys in that State.

(b) The Attorney General shall make and amend rules of the Department of Justice to assure compliance with this section.

(c) As used in this section, the term "attorney for the Government" includes any attorney described in section 77.2(a) of part 77 of title 28 of the Code of Federal Regulations and also includes any independent counsel, or employee of such a counsel, appointed under chapter 40.

5) **18 U.S.C. §111, Assaulting, resisting, or impeding certain officers or employees**

(a) In General.— Whoever—

(1) forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person designated in section 1114 of this title while engaged in or on account of the performance of official duties; or

(2) forcibly assaults or intimidates any person who formerly served as a person designated in section 1114 on account of the performance of official duties during such person's term of service,

shall, where the acts in violation of this section constitute only simple assault, be fined under this title or imprisoned not more than one year, or both, and where such acts involve physical contact with the victim of that assault or the intent to commit another felony, be fined under this title or imprisoned not more than 8 years, or both.

6) **DC Code Section 22-404, Assault or threatened assault in a menacing manner; stalking**

(a) (1) Whoever unlawfully assaults, or threatens another in a menacing manner, shall be fined not more than the amount set forth in § 22-3571.01 or be imprisoned not more than 180 days, or both.

(2) Whoever unlawfully assaults, or threatens another in a menacing manner, and intentionally, knowingly, or recklessly causes significant bodily injury to another shall be fined not more than the amount set forth in § 22-3571.01 or be imprisoned not more than 3 years, or both. For the purposes of this paragraph, the term "significant bodily injury" means an injury that requires hospitalization or immediate medical attention.

7) **EPA Conduct and Discipline Manual, Table of Offenses**

7. Conduct which is generally criminal, infamous, dishonest, immoral or notoriously disgraceful.
8. Abusive or offensive language, gestures, or other conduct.
16. Deliberate misrepresentation, falsification, concealment or withholding of a material fact, or refusal to testify or cooperate in an official proceeding.
18a. Threatening or attempting to inflict bodily harm.
20. Insubordinate defiance of authority, disregard of directive, refusal to comply with proper order.
22a. Negligent performance of duties. . .Where damage or waste to Government property is insubstantial.

8) **EPA Memorandum "Cooperation with the Office of the Inspector General", dated August 7, 2009.**

"It is imperative that, upon request, Agency personnel provide OIG auditors, evaluators and investigators with full and unrestricted access to personnel, facilities, records (including, but not limited to, reports, databases and documents), or other information or material that is needed by the OIG to accomplish its mission. Unrestricted access means that managers and staff are not to impose burdensome administrative requirements or screening procedures that could impede OIG access to needed employees and materials. Management should not attempt to control or influence the free flow of information to and from the OIG or to frustrate the full and unfettered exchange between EPA personnel and the OIG during the active phase of audits.

My expectation is that we will cooperate with the OIG as follows:
1. Managers and staff are to expeditiously provide materials responsive to an OIG request;
2. Materials should be provided to the OIG in the manner requested, rather than routed through an intermediary for review prior to disclosure;
3. EPA managers and staff must not conceal information or obstruct OIG audits, investigations or other inquiries. Doing so is against EPA policy, and may be in violation of federal law;
4. At any time, the OIG may have access to available information such as policy, guidance, procedures or existing reports and other general information to focus its plans. In the context of specific OIG audits, evaluations or other reviews, the OIG will ordinarily issue a notification letter or kick-off memo to EPA management announcing the objectives of the OIG activity. Frequently, a meeting will be scheduled with EPA management and the OIG staff to discuss the activity. Under all circumstances, EPA managers and staff are to provide complete cooperation upon receipt of such notification; and
5. EPA staff are not required to obtain permission from or inform managers before they speak with OIG representatives during audits, evaluations, investigations or other OIG reviews. Staff may, at their own discretion, contact their manager with any questions regarding their responsibility to cooperate with the OIG or their scheduling

of meetings with the OIG, unless, in the context of an investigation, they are instructed otherwise by OIG. In the context of investigations, managers should not question staff about their interactions with the OIG.

The OIG, for its part, has indicated its intent to respect the multiple demands made upon EPA managers and staff and, to the extent possible, to seek to accommodate scheduling difficulties or other time constraints that managers and staffs might face. Also, the OIG is committed to honoring requests for confidentiality to the extent permitted by the law and to handling all EPA documents and information in an appropriate manner."

NARRATIVE

1. DCIS initiated this investigation based on a letter dated January 24, 2014, from the Honorable Arthur Elkins, Inspector General, Environmental Protection Administration (EPA), to the Honorable Phyllis Fong, Chair, Council of the Inspectors General for Integrity and Efficiency (Exhibit 1). In his letter, Elkins requested the assistance of an Office of Inspector General (OIG) to conduct an independent investigation of an alleged assault of Special Agent Elisabeth Drake, now known as and referred to throughout this report as Special Agent Elisabeth Heller, EPA, OIG, by a Senior Intelligence Officer employed by the EPA's Office of Homeland Security (OHS), later identified as Steven Williams. The alleged assault occurred on October 24, 2013. It was further alleged that subsequent to that incident, Williams was abusive towards other OIG personnel and interfered with their attempt to interview another OHS employee. Attached to Elkins' letter was a letter from Jonathan Biran, Williams' attorney, alleging that the OIG was conducting a "campaign of intimidation and harassment" against OHS. In his letter, Biran cited several examples of the alleged intimidation and harassment.

2. On March 20, 2014, the EPA OIG and the Department of Defense OIG entered into a Memorandum of Understanding whereby the DoD OIG agreed to investigate the incident described in Elkins' letter (Exhibit 2). The DoD OIG assigned this matter to the Defense Criminal Investigative Service (DCIS), the criminal investigative arm of the DoD OIG. In letters dated February 26, 2014 and September 18, 2014, the EPA granted DCIS Special Agents (b) (6), (b) (7)(C) [redacted] authority under the Inspector General Act of 1978 to investigate this matter (Exhibit 3).

3. From March through August 2014, the DoD OIG and the EPA clarified questions regarding investigative authorities. An agreement was reached that the DoD OIG, acting as EPA OIG agents for the purpose of this investigation, had the authority to investigate matters involving OHS.

4. On May 7, 2014, Heller testified before the U.S. House Oversight and Government Reform (HOGR) Committee regarding the events of October 24, 2013 (Exhibit 4).

5. On September 18, 2014, Biran sent a letter to the Honorable Regina McCarthy, EPA Administrator; the Honorable Jon Rymer, DoD Inspector General; and Fong (Exhibit 5). In his letter, Biran alleged misconduct by the EPA OIG pertaining to and leading up to the events of October 24, 2013.

6. On September 30, 2014, (b)(6) (b)(7)(C) [redacted] interviewed Heller (Exhibit 6). Heller stated that in April or May 2013, she and (b)(6) (b)(7)(C) [redacted] began an investigation involving the EPA Office of Homeland Security (OHS). The scope of that investigation "started pretty narrowly, and it expanded very quickly." Heller explained that the investigation was based on a complaint the EPA OIG received about an EPA employee – possibly pertaining to (b) (6), (b) (7)(C), (b) (7)(A) [redacted]. When the OIG contacted the FBI to deconflict the allegation, they learned (b) (6), (b) (7)(C), (b) (7)(A) [redacted]

(b) (6), (b) (7)(C), (b) (7)(A) Heller opined that (b) (6), (b) (7)(C), (b) (7)(A) OHS had withheld allegations of employee misconduct from the OIG. Heller further stated that OHS had withheld allegations of employee misconduct from the OIG once before, citing the John Beale investigation. Heller stated, "So it became apparent to us that now this is the second time OHS had been working with the FBI for some time on an employee misconduct investigation and they withheld that information from us, which is a violation of our policy, potentially obstruction of justice. And so we wanted to look into that."[1]

Heller provided her Case Initiation for the obstruction of justice investigation (Exhibit 7). The Case Initiation included an attached email thread between (b) (6), (b) (7)(C), (b) (7)(A) EPA-OIG, and (b) (6), (b) (7)(C), (b) (7)(A), FBI, in which (b) (6), (b) (7)(C), (b) (7)(A) Heller explained that (b) (6), (b) (7)(C) was named as the subject of the investigation because "he was the person that we were, he was the person that was having the interactions with OHS. . .So when I drafted this that was the case. But we didn't know who within OHS it was going to be. . . Whether somebody was telling him that he had to do that or what." Heller stated that her management assigned the investigation to her, and they were aware she and (b) (6), (b) (7)(C), (b) (7)(A) were running the case. The OIG sent a routine notification about the investigation to the FBI, but the case was not presented to a prosecutor.

Heller stated that shortly after the OIG began looking into the allegations that OHS withheld information from the OIG, the OIG learned about the (b)(6) (b)(7)(C) Memo," which Heller generally described as a memo written by an EPA labor attorney regarding (b)(6) (b)(7)(C) and his authority to be an (b)(6) (b)(7)(C) (Exhibit 8). Heller stated that the (b)(6) (b)(7)(C) memo "brought a new issue up for us and it kind of became apparent that we weren't going to be able to work forward or move forward with the original issue of the potential obstruction without addressing the. . .issue of (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) However; Heller stated the topic of (b)(6) (b)(7)(C) authority, as it was discussed in the (b)(6) (b)(7)(C) Memo, was not an official OIG case. Rather, it was "sort of an offshoot of it[.]" She stated, "At the time we also found out that. . . (b)(6) (b)(7)(C) was basically (b) (6), (b) (7)(C) And so it just raised this big issue of, coupled with the John Beale information it . . . became apparent that there were probably many cases in which they weren't providing employee misconduct information to the OIG. So we were looking at it from that perspective." Heller further stated, "So all of the sudden, not all of the sudden but it became apparent that we, well, we wanted to know. (b) (6), (b) (7)(C) was out there potentially (b) (6), (b) (7)(C) that we don't know about. We should know what employees (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) authority to be doing this? And so that's, and so we started looking into that, too. But we did not open up a new investigation for it." Heller explained that all of these matters involving OHS were incorporated into her case "by evolution."

[1] EPA 6500, Functions and Activities of the Office of Inspector General, Chapter 3, Paragraph 2, states "Each employee is responsible for promptly reporting indications of wrongdoing or irregularity to the OIG and for cooperating and providing assistance during any audit or investigation."

Heller stated that prior to interviewing [redacted] on October 24, 2013, she had conducted interviews of employees within the EPA Criminal Investigation Division (CID) to determine if [redacted] was working for EPA CID or OHS, and [redacted] – the author of the [redacted] Memo." In preparation of [redacted] interview, the OIG created a list of interview questions that were "narrowly scoped" to [redacted] job and his duties; the questions were reviewed several times by OIG management (Exhibit 9). SA Heller and others from the OIG attempted to schedule the interview with [redacted] for several weeks. SA Heller documented her efforts in a Memorandum of Activity, including email attachments (Exhibit 10). Heller stated that an employee's managers are the only ones who can take action against an employee who does not cooperate in an OIG investigation, and since Matthew Fritz, Deputy Chief of Staff, EPA, was [redacted], the OIG sought his assistance in arranging [redacted] interview. Heller believed that Fritz had contacted [redacted] to inform him that he would be interviewed by the OIG, but Heller did not know for a fact whether Fritz notified [redacted]

On October 24, 2013, SAs Heller and [redacted] interviewed [redacted] with his attorney, [redacted] present. The agents gave [redacted] a written Kalkines warning, which [redacted] signed (Exhibit 11). SA Heller stated they did not obtain a declination from a prosecutor prior to administering the Kalkines warning. Heller characterized the purpose of the interview as being "administrative" in nature, and she believed [redacted] would not consent to an interview without a Kalkines warning. However, Heller later testified that the interview was not purely administrative; she stated, "No. . . "I wouldn't say that it was and I wouldn't say that it wasn't. . . Cases can evolve from administrative to criminal and they can go back and forth, up and down the scale." Heller did not know whether the OIG's policy required a prosecutive declination from the Department of Justice before administering a Kalkines warning.

The interview of [redacted] lasted three or four hours. Heller stated, "So of that three to four hours, maybe one hour of it he was actually providing us with information. The rest of it was us leaving the room for 20 minutes while they [redacted] and his attorney) were having a conversation, which is fine. That's fair enough. I would have been here all night. But that's why it took so long."

Heller stated that the OIG was not required to allow [redacted] attorney, [redacted] to be present for the interview because [redacted] was a witness and the matter under investigation was administrative in nature, but they allowed [redacted] presence as a courtesy. Heller stated, "I would say generally speaking if I were in that same situation in another employee misconduct investigation where we're talking about an administrative interview, et cetera, I would have asked her to leave because she was so disruptive. But giving him the benefit of the doubt and giving him all of the extended courtesies that we could possibly give him, we endured." Heller said during the interview, [redacted] refused to answer certain questions that he said were related to his work with [redacted] refused to disclose the number of [redacted].

When (b)(6) (b)(7)(C) told the OIG agents he had to leave due to child care issues, the agents responded they were not finished with the interview and still had a lot of questions. Heller and (b)(6) (b)(7)(C) left the room, and (b)(6) (b)(7)(C) was in the room with (b)(6) (b)(7)(C) and (b)(6) (b)(7)(C) Other OIG managers walked in and out of the room. Heller described the scene at the end of the interview as "completely just a show." At some point, (b)(6) (b)(7)(C) left and (b)(6) (b)(7)(C) escorted (b)(6) (b)(7)(C) out of the building. Heller stated that within five minutes of realizing that (b)(6) (b)(7)(C) had left, Heller realized that she did not have him sign a Non-Disclosure Agreement (NDA) (Exhibit 12). Heller wanted (b)(6) (b)(7)(C) to sign a NDA because she did not want (b)(6) (b)(7)(C) discussing the interview with anybody except for his attorney, especially not his coworkers. Heller testified, "[A]s a routine we have all employees sign non-disclosure agreements when we're conducting employee misconduct cases. However, this particular interview was anything but routine, especially towards the end. It was completely just a show. There were so many moving parts that I just forgot. And as soon as I realized it I believe I called his lawyer." Heller did not know what phone number she dialed when she tried to reach (b)(6) (b)(7)(C), but she stated, "I would imagine I had her card." Heller stated she did not recall trying to call (b)(6) (b)(7)(C) to reach (b)(6) (b)(7)(C), "I thought that I called her. It could have been that I didn't really have service and I tried to call her and I realized I didn't have service. And so it could have been and then I didn't call (b)(6) (b)(7)(C) . . . I even remember I want to say it was ringing, but I'm not sure. And then when I didn't get a hold of her like I just knew that every second counted as far as him getting back to his office and potentially discussing it with others. And so because I wasn't going to be asking him any questions and because the fact that he had his attorney being present was a courtesy to begin with, I didn't feel it was necessary to have his attorney present for him to sign that non-disclosure and to advise him of the fact that he shouldn't be discussing the interview with anybody. So I didn't think she needed to be there to begin with, but my initial reaction was just to call her." Heller stated she did not intentionally wait for (b)(6) (b)(7)(C) to leave before having (b)(6) (b)(7)(C) sign the NDA.

Heller stated she did not know whether the OIG Agent's Manual contained policy regarding the use of NDAs. However, she stated it was their routine operating procedure to use NDAs, and she has issued approximately 25-30 of them to EPA employees during her tenure at the OIG. Heller stated she has encountered employees who refused to sign the NDA, "But it doesn't change the fact that I've advised them."

At 6:00 or 6:30 p.m., within approximately five minutes of (b)(6) (b)(7)(C) departing the OIG office after his interview, Heller and (b)(6) (b)(7)(C) went to the OHS office. Heller stated their purpose in going to OHS was "To advise him (b)(6) (b)(7)(C) not to discuss what we had talked about in the interview with anyone and to have him sign the non-disclosure agreement." Heller took (b)(6) (b)(7)(C) because it is standard practice in the OIG for agents to do things in pairs for protection and to have a witness. Heller and (b)(6) (b)(7)(C) walked to the OHS office, which is in a separate wing of the EPA complex. When they arrived, Heller noted the door to the suite was unlocked. She called out, "Hello," but she did not get a response. She eventually encountered a man, who she later learned was (b)(6) (b)(7)(C), standing in a cubicle. She then noticed (b)(6) (b)(7)(C) standing in the hallway by the doorway of an office. He was with a woman, who Heller later learned was (b)(6) (b)(7)(C). Heller heard (b)(6) (b)(7)(C)

talking about his interview with the OIG, at which point (b)(6) (b)(7)(C) began walking towards Heller. Heller told (b)(6) (b)(7)(C) that she needed to speak with him, and she wanted to ask him to sign the NDA. (b)(6) (b)(7)(C) responded that he did not want to speak to Heller without his attorney. Heller stated that she needed to talk to him about an administrative matter, and she did not intend to ask him any questions. Heller stated to (b)(6) (b)(7)(C) "'Well, I just need to advise you of something and I just don't want to do it in front of everybody because this is kind of a private matter. If we could step outside that would be great." (b)(6) (b)(7)(C) responded, "Anything you want to say to me you can say in front of everybody." Heller testified, "And then I told him that I wanted, that I needed to advise him that he was not allowed to discuss what we had talked about in the interview with anybody except for his attorney. . .But almost as soon as I said that (b)(6) (b)(7)(C) and Steve Williams started yelling at me." Heller continued, "So they're yelling that I can't tell him that. . . I couldn't advise him of the fact that he couldn't discuss this information with what appeared to me to be them. And I told (b)(6) (b)(7)(C) for example, "I heard you talking to them about the interview when I walked in and that has to stop right now. You're not to talk with them about what we just discussed."

Heller testified, "All of a sudden Steve (Williams) was up in my face, and by up in my face I mean like within probably 12 inches of me, pointing at me, yelling at me. And he may have just been speaking really loudly. He may not have actually been screaming at the top of his lungs, but that's how I heard it. 'Put it in writing. Put it in writing. You can't be here. You can't be here.' And just yelling at me." Heller stated she took a few steps back and tried to de-escalate the situation by introducing herself and asking Williams who he was. When Williams identified himself, Heller responded that it was nice to finally meet him, she identified herself, and she put out her hand to shake his. Williams refused to shake Heller's hand, and he said, "I don't want to know you." Williams continued yelling, "Put it in writing," "You can't be in here," and "Get out of my office space." At some point during this interaction, (b)(6) (b)(7)(C) left the office and Heller realized they were not going to get the NDA signed, so she and (b)(6) (b)(7)(C) left. Heller later stated that she believed "if taken one step higher he would have acted out aggressively, violently, in putting hands on me. Like, I wouldn't have put that past him." Therefore, Heller believed they needed to "egress and reassess the situation."

Heller stated that (b)(6) (b)(7)(C) and possibly (b)(6) (b)(7)(C) witnessed Williams come within 12 inches of her, but she believed (b)(6) (b)(7)(C) was down the hall. Heller noted that (b)(6) (b)(7)(C) who was also a law enforcement officer, did not try to intervene and calm Williams down. Heller reenacted the altercation during the interview, and she demonstrated that Williams stood within one foot of her at his closest point, and his finger was within an inch of her. Heller stated that she took steps backward, which she later noted was because she felt threatened. Heller testified that she had auditory exclusion and tunnel vision, and while she could hear what Williams was saying, she was unsure of whether (b)(6), (b)(7)(C) "was continuing to scream." Heller stated she did not recall what she did with her hands, but she stated, "I hope they were in like a fighting stance position because that's how I've been trained, but I don't know." She stated that the whole incident from the time she and (b)(6) (b)(7)(C) entered OHS to the time they left was less than 10 minutes. She estimated the exchange with

Williams lasted 30 seconds to a minute. Heller did not recall whether (b)(6) (b)(7)(C) said anything during the exchange. Heller did not believe Williams used any profanity, and he did not threaten to hurt or hit her. However, Heller felt that Williams' "physical presence in my space and the way that he was, I felt like we needed to leave in order to save ourselves from a potentially bad situation." Heller stated, "He was sweating. His face was red. His veins were bulging. He was like spitting." She stated that Williams' hands were up, and she clarified that she noted that one of his fingers was pointing at her, but she did not know what he was doing with his other hand.

The walk from OHS back to the OIG office took approximately 5-7 minutes, and Heller did not recall what she and (b)(6) (b)(7)(C) discussed during their walk. They went straight to AIGI Patrick Sullivan's office. She recalled Sullivan and (b)(6) (b)(7)(C) were present when she recounted the events at OHS. Heller did not recall exactly what Sullivan said in response, but "it became an issue of did this employee just assault one of our agents and we need to move forward and get some statements right now as far as what just happened." Heller stated that she believed she had been assaulted. She did not recall whether she first used the word "assault" or if one of the other agents first used that word to describe what had happened. She defined assault as, "Actions taken towards somebody that would make them feel afraid or intimidated. . .Actions, verbal or physical actions. So that could be. . .'I'm going to hurt you' in a calm tone of voice, or it can be screaming at somebody up in their face.'" When asked whether Heller believed Williams might hurt her or make physical contact with her during the incident, Heller responded, "Honestly, I couldn't even think."

Heller was aware other OIG agents were sent to OHS following the incident between her and Williams; she was aware (b)(6) (b)(7)(C) and (b)(6) (b)(7)(C) were among the agents who were sent, but she did not know who else went. She was not really involved in the discussions about sending those agents to investigate what had happened because she was focused on documenting what had happened. Heller stated that she wrote a statement that evening (Exhibit 13).

The following day, on October 25, 2013, Heller was interviewed by agents of the Federal Protective Service (FPS). The interview lasted at least an hour, and the agents prepared a report (Exhibit 14).

Heller stated that prior to October 24, 2013, she was aware Williams had made complaints about the OIG pertaining to agents having SCI clearances, but she did not know to whom he complained. Heller stated she had no knowledge of the history between OHS and the OIG when she started her investigation, and she thought (b)(6) (b)(7)(C) also had no knowledge. Therefore, she thought it was good they were running the investigation.
When asked to clarify why she suggested in her Congressional testimony that Williams may have attacked and intimidated her because she was a female, Heller stated, "Because of the two of us standing there he was yelling at me and he got up in my face, and I 100 percent believe that if I were a man he wouldn't have done that. He didn't get in (b)(6) (b)(7)(C) face. He didn't yell at him. He didn't even look at him. Probably because (b)(6) (b)(7)(C) who he probably didn't want to mess with." Heller stated (b)(6) (b)(7)(C) was standing

next to her during the interaction with Williams, and she did not recall whether (b) (6), said anything. Heller was asked about the portion of her Congressional testimony where she said she might have arrested Williams if they had been on the street. She explained that the distinction between being on the street and being in the OHS office was that she was aware of the "highly political" nature of her investigation, how long it had taken to arrange the interview with (b)(6) (b)(7)(C) and the fact that "anything that I drafted that went out anywhere had to be reviewed by somebody because it was so highly political" led to her not taking immediate action against Williams.

Heller testified that approximately a month and a half ago, (b) (6), (b) (7)(C)

It had nothing to do with my role as an OIG agent. And I ended up speaking with (b)(6), (b)(7)(C) Steve Williams." (b)(6), (b)(7)(C) Williams (b)(6), (b)(7)(C) Williams (b)(6), (b)(7)(C) Heller (b)(6), (b)(7)(C)

7. On October 8, 2014, (b)(6) (b)(7)(C) attempted to interview (b)(6) (b)(7)(C) but he declined to be interviewed without being compelled.

8. On October 8, 2014, (b)(6) (b)(7)(C) interviewed (b)(6), (b)(7)(C) EPA-OIG (Exhibit 15). On October 26, 2013, (b)(6), (b)(7)(C) prepared a written statement outlining his recollection of the events that occurred at OHS on October 24, 2013 (Exhibit 16). (b)(6), (b)(7)(C) explained that he did not work in the same section of the OIG as Heller, so he was unsure if he had been aware that Heller and (b)(6), (b)(7)(C) interviewed (b)(6) (b)(7)(C) on October 24, 2013. (b)(6) (b)(7)(C) office was in the same area as where the agents were interviewing (b)(6) (b)(7)(C) so he noticed them coming in and out of the interview and that the interview lasted a long time. (b)(6), (b)(7)(C) was not aware that Heller had gone to find (b)(6) (b)(7)(C) so she could have him sign a NDA. (b)(6), (b)(7)(C) stated it is routine practice at the OIG for agents to ask witnesses in sensitive cases to sign NDAs to prevent them from collaborating on their stories.

(b)(6), (b)(7)(C) stated that he and (b)(6), (b)(7)(C) were in Sullivan's office when Heller and (b)(6), (b)(7)(C) returned from OHS. (b)(6), (b)(7)(C) testified that Heller was "visibly upset," and she told them, "I was just assaulted here;" and "I couldn't do my job." (b)(6), (b)(7)(C) did not recall how Heller described what had just happened to her, and he recalled (b)(6), (b)(7)(C) "kind of agreeing with Agent Drake (Heller)." (b) further stated, "And I -- again, my memory here -- I believe (b)(6), (b)(7)(C) came back with her as well, and he was – 'yeah, hey, this just

happened.' And she was talking about, you know, her chest and being pointed at, I guess. And who else was in there? I can't say for sure if anyone else was in there."

(b)(6), (b)(7)(C) testified that based on Heller's report, Sullivan decided OIG agents needed to go and get witness statements. Therefore, (b)(6), (b)(7)(C) [redacted], and [redacted] were dispatched to OHS to interview Williams, (b)(6), (b)(7)(C) and anyone else who was there. Upon arriving at OHS, (b)(6), (b)(7)(C) noted that the door to the suite was locked, but nobody answered when the agents called out, "Hello." According to (b)(6), (b)(7)(C) statement, Williams and (b)(6), (b)(7)(C) "came briskly down the hall" and "was blurting out, 'What's going on here?'" (b)(6), (b)(7)(C) had been in meetings with Williams and (b)(6), (b)(7)(C) before, so they knew the agents worked for the OIG. (b)(6), [redacted] stated that the volume of Williams' voice was "elevated" compared to the other times they had interacted; (b)(6), (b)(7)(C) further stated that he believed Williams respected the agents' positions, but once they tried to separate the OHS employees and interview them, Williams "got loud and boisterous" and said, "I'm calling the FBI."

(b)(6), (b)(7)(C) stated he and (b)(6), (b)(7)(C) attempted to interview (b)(6), (b)(7)(C), but Williams was "being loud and not wanting anyone to talk to anybody." Meanwhile, (b)(6), (b)(7)(C) wanted to hear what Williams was saying. (b)(6), (b)(7)(C) stated, "What I remember is us just trying to calm the situation down. I've been in law enforcement for over (b)(6), (b)(7) years, and we were trying to de-escalate -- everyone that I – 'hey, we're just trying to get statements and talk to people on what happened.'" (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) separated (b)(6), (b)(7)(C) from Williams and (b)(6), (b)(7)(C) and brought him into a conference room in the OHS suite. (b)(6), (b)(7)(C) initially wanted to cooperate, but Williams made statements such as, "are you comfortable? I'm this person's team lead[.]" (b)(6), (b)(7)(C) stated, "I felt it was interfering with an investigation. . . because we were trying to talk to a person, and we weren't able to do that because he moved into that area. And he was not cooperative with the other agents because they wanted to talk to him." (b)(6), (b)(7)(C) did not feel Williams' conduct was intimidating, but "it was very disruptive." (b)(6), (b)(7)(C) indicated there was no physical contact between Williams and the agents. (b)(6), (b)(7)(C) testified, "I think he recognized who I was and he recognized (b)(6), (b)(7)(C) [redacted] because we had met with him on different issues, you know, on -- with security and such. And I think he respected us enough." (b)(6), (b)(7)(C) stated, "I didn't feel threatened or intimidated. I felt disrupted."

While (b)(6), (b)(7)(C) [redacted] were in the OHS space, (b)(6), (b)(7)(C) was "kind of the cool head, if you will -- and, 'hey, a lot has happened can we do this another day[.]'" (b)(6), (b)(7)(C) did not recall (b)(6), (b)(7)(C) saying anything to Williams or trying to calm him down.

9. On October 16, 2014, (b)(6), (b)(7) [redacted] conducted an interview of (b)(6), (b)(7)(C) [redacted] (Exhibit 17). [redacted] stated that he has been a law enforcement officer for approximately (b)(6), years, of which approximately (b)(6), (b)(7) years was as an officer with (b)(6), (b)(7)(C) [redacted] (b)(6), (b)(7)(C) stated that during his time as (b)(6), (b)(7)(C) [redacted] he was involved in "dozens of use of force incidents…physical altercations, fights…I've seen and been involved in many, many."

(b)(6), (b)(7)(C) stated that on the evening of October 24, 2013, he was in the office and was asked to accompany Heller to get a document signed by a witness in the EPA Office of Homeland

Security (OHS). (b)(6), (b)(7)(C) had no recollection of any discussion with Heller during the approximately five minutes it took for Heller and (b)(6), (b)(7)(C) to walk to OHS. (b)(6), (b)(7)(C) stated that he was unarmed during this assignment, and did not have handcuffs in his possession. He did not know whether Heller was armed and did not know whether Heller had handcuffs in her possession.

(b)(6), (b)(7)(C) stated that when he and Heller entered the OHS office space, he heard voices engaged in what he referred to as "banter".[3] (b)(6), (b)(7)(C) recalled encountering a male in the office, later identified as (b)(6), (b)(7)(C) and introducing themselves to (b)(6), (b)(7)(C). While speaking with [redacted] (b)(6), (b)(7)(C) stated that Heller recognized (b)(6) (b)(7)(C) talking with others in the office. Heller engaged (b)(6) (b)(7)(C) advising that she wanted him to sign a non-disclosure document. (b)(6) (b)(7)(C) replied that he would not sign anything without his attorney present. (b)(6), (b)(7)(C) recalls that Heller then advised (b)(6) (b)(7)(C) not to discuss with "any other EPA employee"[4] the interview they engaged in earlier that day. (b)(6), (b)(7)(C) stated that Steve Williams approached Heller, (b)(6), (b)(7)(C) and (b)(6) (b)(7)(C) (b)(6), (b)(7)(C) described Williams as "belligerent and such".[5] (b)(6), (b)(7)(C) stated that Williams was "ranting, and raving, and spitting, and acting so far out of the scope of what's normal behavior that…it took me some time to wrap my mind around what exactly was going on." He stated that Williams was screaming for them to get out of the office, and that Heller took a step back because Williams was pointing at her breasts. (b)(6), (b)(7)(C) stated that at that point, Heller tried to introduce herself to Williams, and tried to shake his hand. Williams allegedly responded "I don't want to know you."[6] (b)(6), (b)(7)(C) recalls (b)(6) (b)(7)(C) leaving during this exchange. (b)(6), (b)(7)(C) expressed concern that the interaction between Heller and Williams was escalating, and was thinking to himself "I don't have handcuffs. But, if this guy puts his hands on her, I'm going to have to act." According to (b)(6), (b)(7)(C), Heller then "somehow" de-escalated the situation, and she and (b)(6), (b)(7)(C) departed.

(b)(6) (b)(7)(C) then engaged in a reenactment of the scene with (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) playing the roles of Williams and Heller, respectively. In this reenactment, (b)(6) (b)(7)(C) placed Williams approximately one foot away from (b)(6) (b)(7)(C) during the encounter, and placed Williams pointing finger as approximately one to two inches from Heller. (b)(6) (b)(7)(C) described himself as standing behind and to the right of Heller. (b)(6), (b)(7)(C) described Williams' voice as a "solid nine to ten" on a one to ten meter, "like he's at the top of his lungs." (b)(6), (b)(7)(C) was unable to recall whether Williams used any expletives. (b)(6), (b)(7)(C) stated "I saw spittle…but I never saw physical contact."

(b)(6), (b)(7)(C) acknowledged that there came a time when he felt an attack was "imminent". He questioned whether Heller "was going to be able to deescalate the situation" and described the incident as very similar to a domestic disturbance. "You know, you got two people. You can't deescalate the situation. There's yelling, there's pointing. There's screaming. The next thing you know it's a full on physical assault. And I thought that's what's coming."[7] (b)(6), (b)(7)(C) stated that he "didn't say one word" during the encounter. "I literally just stood there and kind of watched this thing."

At this point in the interview, (b)(6), (b)(7)(C) formally adopted a statement he drafted on October 24, 2013, soon after the incident occurred (Exhibit 18). In this statement, (b)(6), (b)(7)(C) indicated that in his estimation, Williams' conduct rose to a criminal violation of 18 U.S.C. § 111, "Assaulting, resisting, or impeding certain officers of employees".[8] When asked to articulate his reasoning, (b)(6), (b)(7)(C) stated that Williams' "activity and his behavior was, uh, intended only to interfere with her, uh, official investigation"... "I think that he, his intent was to impede through intimidation." When asked why he didn't arrest Williams, (b)(6), (b)(7)(C) indicated that because Williams was a senior official, and because he never touched Heller, and arrest "would make it a bigger deal than it already was."

> Agent's Note: In (b)(6), (b)(7)(C) adopted statement, he indicates that Williams was pointing at Heller's face, not her breasts. He also described Williams as "sweating profusely", an observation he did not make during his interview on October 16, 2014. The statement further identifies a female, later identified as (b)(6), (b)(7)(C) who was in an office who (b)(6), (b)(7)(C) indicated stated "that's not right". (b)(6), (b)(7)(C) suggested that because (b)(6), (b)(7)(C) was in an office the entire time, her view was obstructed and he did not think she saw Williams' threatening actions.

When asked about his observations of (b)(6), (b)(7)(C), (b)(6), (b)(7)(C) stated she was "screaming something about 'uh, that's not right.'" (b)(6), (b)(7)(C) described (b)(6), (b)(7)(C) and Williams as "fueling each other." When questioned about that assertion, (b)(6) (b)(7)(C) stated "That's me talking. I, I don't know that...I don't know all the dynamics."[9]

When asked about his observations of (b)(6), (b)(7)(C) identified him as "...a kid. And I don't mean that in any disrespectful term. He's a young man." (b)(6), (b)(7)(C) described (b)(6), (b)(7)(C) as "in the same boat" as (b)(6), (b)(7)(C), "What the hell is going on here? This is out of control."

(b)(6), (b)(7)(C) had no recollection of (b)(6), (b)(7)(C), or (b)(6) (b)(7)(C) making comments to Williams about his behavior, but again suggested that (b) (6), (b) (7)(C) was egging him (Williams) on...she was fueling whatever his fire was."

When asked to describe Heller's demeanor on the walk back to EPA OIG office spaces after the incident with Williams, (b)(6), (b)(7)(C) described her as "upset", but not "overly irate", summing up his observation as "nothing remarkable."

With regard to his observations possibly conflicting with Heller's observations, (b)(6), (b)(7)(C) indicated that Heller's account is "more accurate probably than what I recall...She probably gave you more detail than what I saw. Because my thought was "what the hell is going on here? This is out of control." That's, that was my perspective."

10. On October 23, 2014, (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) interviewed (b)(6), (b)(7)(C) (Exhibit 19). (b)(6), (b)(7)(C) indicated that he was assigned as co-case agent to Heller's investigation that involved the interview of (b)(6) (b)(7)(C) (b)(6), (b)(7)(C) described the scope of that investigation as

investigating allegations that OHS was operating outside of its authorities; that [redacted] was operating outside of his authority; and OHS' use of non-disclosure agreements. [redacted] indicated, though, that the scope of the [redacted] interview on October 24, 2013, was very narrow, focusing only on his roles and duties within OHS.

With regard to the decision to provide Kalkines warnings to [redacted] without first obtaining a declination from the Department of Justice, [redacted] stated "So [EPA-OIG] management thought it was best to issue Kalkines and that's what we did." With regard to EPA OIG agent's use of a non-disclosure agreement, [redacted] stated that "it was up to our discretion, you know, as to who we had, you know, sign them or not."

After the interview with [redacted] escorted [redacted] attorney out of the building, then returned to AIGI Sullivan's office. He was in the office when Heller and [redacted] returned from OHS. [redacted] described Heller as "upset. You know, she was very upset…" When asked to articulate what he observed, [redacted] stated "I don't know if she had been crying or was getting ready or, you know, on the verge of crying, but you know, I could tell there was some wells in her eyes. She was…her hands were shaking a bit. She was…you know, there was…her voice was trembling. You know, she was very upset."

[redacted] stated that he was likely the first one to use the term "assault" to describe Heller's experience with Williams. [redacted] indicated that he then looked at AIGI Sullivan and said "we've just had an assault on a federal agent…we've got to do something about this. We've got to handle this situation." Sullivan then dispatched [redacted] to OHS to investigate.

[redacted] stated that he walked in to the OHS suite first and was met by Williams, who walked toward [redacted] "very aggressively". [redacted] then walked toward Williams "very aggressively". Words were exchanged, during which Williams allegedly questioned [redacted] authority to be in the office. [redacted] described Williams at this point as "extremely, visibly upset. He was pissed. His face was red and he was just…he was angry. You could tell. I mean you know when you see an angry man. He was an angry man." Later, [redacted] was asked how he saw a red face on a black person. [redacted] stated "So maybe I misrepresented that there…", but [redacted] further indicated Williams had a relatively light complexion.

As words were exchanged between [redacted] and Williams, [redacted] stepped up to [redacted] and told [redacted] that he [redacted] would deal with Williams, instructing [redacted] to focus his attention on [redacted] described Williams as "yelling and he's just going ballistic that we're in there." On a scale of 1 to 10 in loudness with 1 being normal conversation, [redacted] put Williams at an 8. As [redacted] attempted to talk with [redacted], Williams allegedly stated "You don't have to talk to them. Don't say anything to them. Don't talk to them." [redacted] then told [redacted] "You do need to talk to me. You're required by EPA policy to talk to me about this. You're not the subject of this investigation. You know, there's a …you're directed by your administrator to talk to me." [redacted] stated that [redacted] repeatedly told him that he did not want to talk, that he wanted to go home. [redacted] then told [redacted] "Okay. I'll report this to the administrator tomorrow and then we'll go from there." [redacted] stated at that

point, (b)(6), (b)(7)(C) said that he wanted to talk to (b)(6), (b)(7)(C) lead (b)(6), (b)(7)(C) in to a conference room along with (b)(6), (b)(7)(C) At that point, Williams allegedly came in to the conference room saying "Don't say a word to them. You don't have to talk to them. You're not going to talk to them." (b)(6), (b)(7)(C) addressed Williams, warning Williams "if you don't get out of here right now, you're going to jail tonight...You're interfering with an investigation and I'm not going to have it..." (b)(6), (b)(7)(C) then lead Williams out of the conference room, and (b)(6), (b)(7)(C) again attempted to interview (b)(6), (b)(7)(C) Williams entered the room again, at which point (b)(6), (b)(7)(C) allegedly pulled out his handcuffs and stated "You're going to jail tonight." (b)(6), (b)(7)(C) stated that (b)(6), (b)(7)(C) stopped him by placing his hand on (b)(6), (b)(7)(C) chest and stated "No, we're not going to do this." At that point, the four agents left OHS spaces.

(b)(6), (b)(7)(C) stated that all four agents then met in Sullivan's office. When Sullivan asked what happened (b)(6), (b)(7)(C) stated "my supervisor stopped me from affecting an arrest, that's what happened." (b)(6), (b)(7)(C) indicated that at some later time, (b)(6), (b)(7)(C) apologized to him for stopping the arrest, acknowledging that he took away from (b)(6), (b)(7)(C) authority.

With regard to his knowledge of EPA-OIG agents compelling interviews, (b)(6), (b)(7)(C) was asked whether the EPA-OIG had the authority to compel an interview of an employee, or whether that authority resided with the employee's supervisor. (b)(6), (b)(7)(C) stated "The EPA-OIG, I'm fairly certain...there was a policy within EPA that they were required to cooperate with the IG on administrative investigations and that they could be terminated if they did not."

With regard to the EPA Inspector General's role in the (b)(6), (b)(7)(C) interview, (b)(6), (b)(7)(C) related that at one point during that interview, he and Heller became frustrated because (b)(6), (b)(7)(C) was refusing to answer questions. (b)(6), (b)(7)(C) and Heller went to see Sullivan, and advised him that (b)(6), (b)(7)(C) was not answering questions. According to (b)(6), (b)(7)(C) Sullivan paid a visit to the Inspector General. (b)(6), (b)(7)(C) and Heller were then told that the IG was instructing (b)(6), (b)(7)(C) to answer the questions. (b)(6), (b)(7)(C) was unable to recall who advised him of the IG's direction. He knew it was not Sullivan, and he knew it was not the IG.

On November 24, 2014, (b)(6), (b)(7)(C) sent an email to (b)(6), (b)(7)(C) with an attached signed, written statement (Exhibit 20). In his email, (b)(6), (b)(7)(C) verified that the statement was written on October 24, 2013 and signed by him on November 21, 2014.

11. On October 30, 2014, (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) interviewed (b)(6), (b)(7)(C) (Exhibit 21). In October 2013, (b)(6), (b)(7)(C) was the (b)(6), (b)(7)(C) at EPA-OIG who was responsible for, among other offices, the Office of Professional Responsibility (OPR). OPR was investigating a complaint that the EPA OIG received from (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) alleging that (b)(6), (b)(7)(C) was conducting investigative activities outside of his authority. (b)(6), (b)(7)(C) stated that Heller was interviewing (b)(6), (b)(7)(C) on October 24, 2013 to determine the scope of (b)(6), (b)(7)(C) duties. (b)(6), (b)(7)(C) understood that upon the conclusion of the interview, Heller forgot to give (b)(6), (b)(7)(C) a non-disclosure advisement. Sometime after the interview concluded, Heller and (b)(6), (b)(7)(C) went to the Office of Homeland Security (OHS) office spaces to administer that advisement to (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C) was in AIGI Sullivan's office when Heller and (b)(6), (b)(7)(C) returned from OHS. (b)(6), (b)(7)(C) described Heller as "distraught" and stated that she had been assaulted by Williams. When asked to articulate what he saw that made him describe Heller as distraught, (b)(6), (b)(7)(C) stated that she was "very upset". Upon follow up, (b)(6), (b)(7)(C) stated that he could not recall whether Heller first used the word "assault", only that the word was used at some point after she returned. (b)(6), (b)(7)(C) recalled that Heller described some sort of confrontation with Williams, but he could not recall any of the specifics of the confrontation. (b)(6), (b)(7)(C) further stated that when asked (b)(6), (b)(7)(C) what happened, (b)(6), (b)(7)(C) was left with the impression that "I don't think he saw or was privy to exactly what happened."

After hearing what had occurred, AIGI Sullivan wanted OPR agents to return to OHS and determine the facts of what happened. (b)(6), (b)(7)(C) stated that he directed (b)(6) (b)(7)(C) (b)(6), (b)(7)(C) and one other agent he couldn't recall to accompany him back to OHS spaces to determine the facts. When asked if any of the four seemed upset during the walk over to OHS space, (b)(6), (b)(7)(C) identified (b)(6), (b)(7)(C) as "fairly upset", but not "unduly upset".

Upon entering the OHS space, the four encountered an individual later identified as (b)(6), (b)(7)(C) and were then approached by Williams and (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) engaged with Williams and (b)(6), (b)(7)(C) while (b)(6), (b)(7)(C) and the fourth agent engaged with (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) stated that "the minute Steve Williams saw us he, uh, became very belligerent." (b)(6), (b)(7)(C) further described Williams "hollering" for them to get out of his space. Williams then allegedly attempted to interfere with the interview that (b)(6) (b)(7)(C) and the fourth agent were conducting with (b)(6), (b)(7)(C) described Williams "repeatedly" interrupting the interview of (b)(6), (b)(7)(C), telling (b)(6), (b)(7)(C) either not to talk to the agents, or that he didn't have to talk to the agents. (b)(6), (b)(7)(C) stated that between Williams' belligerent unprofessional behavior and his interference with the agents' job, he considered arresting Williams but instead decided to leave the space and follow up through other channels.

(b)(6), (b)(7)(C) stated that (b)(6), (b)(7)(C) was not the first to make contact with Williams, and that (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) were always in between (b)(6), (b)(7)(C) and Williams. (b)(6), (b)(7)(C) had no recollection of (b)(6), (b)(7)(C) warning Williams to stop interfering or risk being arrested and had no recollection of (b)(6), (b)(7)(C) approaching Williams with intent to effect an arrest.

In describing the level of Williams' voice, using a scale of 1 (normal conversation) and 10 (outrageous), (b)(6), (b)(7)(C) described Williams voice as an eight or a nine. He did not recall any expletives used by Williams. (b)(6), (b)(7)(C) described (b)(6), (b)(7)(C) as being very upset, but did not recall her providing any legal guidance to anyone. (b)(6), (b)(7)(C) agreed that (b)(6), (b)(7)(C) did not create problems for him, and later described her as calm.

12. On November 6, 2014, (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) conducted a second interview of (b)(6), (b)(7)(C) to clarify aspects of Williams' and (b)(6), (b)(7)(C) conduct on October 24, 2013 (Exhibit 22). (b)(6), (b)(7)(C) stated that he did not recall the door to the conference room being closed when he and (b)(6), (b)(7)(C) attempted to interview (b)(6), (b)(7)(C) stated it was "heated" that evening at OHS, but he did not recall (b)(6), (b)(7)(C) telling Williams, "If you don't stop what you're doing, I'm going to arrest you," nor did (b)(6), (b)(7)(C) recall (b)(6), (b)(7)(C) taking out his handcuffs. (b)(6), (b)(7)(C)

indicated [redacted] made the decision not to arrest Williams. [redacted] recalled that after the event, he and AIGI Sullivan discussed that perhaps they should have arrested Williams for interrupting their investigation. However, they decided that because they were in an office setting, they were dealing with EPA employees, and "tensions were hot," they did not arrest him. [redacted] also pointed out that an attorney [redacted] was present, and she stated she would have preferred that the interviews take place the next day.

13. On November 6, 2014, [redacted] and [redacted] interviewed [redacted] (Exhibit 23). Prior to the interview, [redacted] provided the agents with a 7 page "Memorandum for Record" dated November 6, 2014 (Exhibit 24). [redacted] prepared this memo from notes, an initial memorandum he began creating right after the incident, and an email he drafted to Juan Reyes at 11:10PM on October 24, 2013 (Exhibit 25). [redacted] stated that he did not actually complete the memorandum until November 6, 2014.

On the evening of October 24, 2013, [redacted] was working in his cubicle when [redacted] entered the space and began talking with Williams and [redacted] in Williams' office. [redacted] observed that [redacted] appeared "upset" and "emotional". Agents Heller [redacted] learned her name when she introduced herself to Williams) and [redacted] learned his name from an investigative report drafted by the Federal Protective Service) entered the office through the main door. [redacted] had never seen either agent previously, and didn't know who they were. When [redacted] heard them, he approached them and the three met in front of [redacted] cubicle. [redacted] stated that [redacted] was leaning against a cubicle wall, Heller was standing to his left, and [redacted] was standing in front of them. Heller was asking to speak with [redacted] privately, and [redacted] responded that he wouldn't speak with them without his attorney present. According to [redacted] there were multiple iterations of Heller asking this question, and [redacted] responding the same each time. [redacted] indicated that [redacted] said nothing during these exchanges. At some point, both Williams and [redacted] engaged with Heller, questioning Heller's purpose and reiterating that [redacted] was not going to speak with the agent without his attorney. [redacted] was able to see [redacted] Heller and [redacted] but was unable to see Williams and [redacted] at this time. At that point, [redacted] told Heller that she could say whatever needed to be said in front of [redacted] Williams, and [redacted] Heller told [redacted] he was not allowed to disclose any of the information regarding a recent interview to anyone. Heller mentioned that when she entered the space, she heard [redacted] discussing the interview with Williams and [redacted] [redacted] responded with questions to clarify this direction, such as whether he could speak to any EPA personnel, his wife, etc. Heller told him that he could not speak with anyone except his attorney. Heller did not produce any document for [redacted] signature, nor did she use the words "non-disclosure agreement" or "disclaimer". Rather, she simply told [redacted] what he was allowed and not allowed to do. [redacted] noted that [redacted] appeared to be getting increasingly upset and frustrated. Williams began questioning Heller's authority, and asked her to put her request in writing. [redacted] also made a few statements at this point, expressing confusion as to what Heller's authority was. At some point, [redacted] threw up his hands and walked away.

Williams then moved closer to Heller and said that the agents needed to leave the OHS office space. [redacted] noted that at this point, he could see [redacted], Heller and Williams clearly. He

placed Williams three to four feet away from Heller during this exchange. He estimated this distance based on his later observation of Heller attempting to shake hands with Williams, describing that distance as "shaking distance". (b)(6), (b)(7)(C) observed Williams pointing with his right hand at an angle from Heller, toward the main door of the office space as he directed the agents to leave. (b)(6), (b)(7)(C) described Heller standing at Williams' 12:00 and pointing at Williams' 2:00. (b)(6), (b)(7)(C) stated that Williams did not point directly at Heller, and pointed toward the door with his arm bent and not straight. (b)(6), (b)(7)(C) stated that from his perspective, Williams' hand never came any closer than 18 inches away from Heller. (b)(6), (b)(7)(C) observed "Agent Drake (Heller) did not appear threatened in any way that I could tell. I didn't see any, you know, sudden reaction or movements on her behalf. I didn't notice any steps backward, nor did I notice Steve Williams closing any space." (b)(6), (b)(7)(C) noted that if Heller had taken steps backward, she would likely have left his field of view.

(b)(6), (b)(7)(C) described (b)(6), (b)(7)(C) and Heller's demeanor as "insistent, but professional. There was nothing I would characterize as unprofessional about their demeanor…The content of their statement I would view as unprofessional and I don't understand what the rationalization would be for not providing the documentation that's referred to, but their demeanor and the way they carried themselves was professional."

Heller attempted to introduce herself and put her hand out to shake Williams' hand. It was at this point that (b)(6), (b)(7)(C) noticed the three to four foot separation between them. (b)(6), (b)(7)(C) recalled that Williams did not accept the hand shake. Williams then stated that the agents needed to "leave the OHS space now." Heller said something cordial, (b)(6), (b)(7)(C) said "Have a good night." and the two then left the space.

During the encounter between Williams and the agents, (b)(6), (b)(7)(C) described Williams voice as "more elevated than a conversational tone, but more of the tone was, I will say, in the emphasis as opposed to the volume…more of a tone of authority, as like a military commander or a senior government official would have when emphasizing a point that is not getting through." (b)(6), (b)(7)(C) did not notice any spittle coming from Williams' mouth, nor did he notice any profuse sweating or bulging veins, nor did he notice anything that looked like Williams' face turning red. (b)(6), (b)(7)(C) noted "He has a very loud voice; however, I've never seen him use a loud voice when expressing a point or trying to make a …discussing an item of professional relevance. Only time I've ever seen him, you know, loud or use a booming voice is when he's excited or telling a story and doing something in a much more relaxed and easygoing manner."

(b)(6), (b)(7)(C) stated that during the entire encounter, (b)(6), (b)(7)(C) never adjusted his posture – he continued leaning against the cubicle wall. According to (b)(6), (b)(7)(C) "There was no reaction or indication of physical tension or believing that any kind of physical activity was potential or imminent."

At the agent's request, (b)(6), (b)(7)(C) made a sketch of the relative locations for himself, (b)(6), (b)(7)(C) Heller, Williams, and (b)(6), (b)(7)(C) This sketch is included as (Exhibit 26).

Approximately 25 minutes after Heller and [redacted] departed, four individuals entered the space. They approached [redacted] and informed him that they were investigating an assault that occurred previously. [redacted] indicated that none of the individuals produced credentials or identified himself. An agent later identified by [redacted] as [redacted] asked [redacted] if he was present earlier in the evening, to which [redacted] stated that he was. [redacted] told [redacted] they were investigating an assault and would need to speak with [redacted] [redacted] had no idea what assault could have occurred. Williams and [redacted] then came out of Williams' office and all four individuals went to meet them. Two agents, later identified as [redacted] and [redacted] then broke away to speak with [redacted] [redacted] advised that [redacted] had to submit to an interview at that time. [redacted] indicated that given the time, he did not want to submit to an interview and would prefer to reschedule for another time. [redacted] told [redacted] "We need to speak to you now." [redacted] described [redacted] as "very insistent and aggressive in his tone with me…Agent [redacted] became more insistent and started threatening that I would be obstructing an IG investigation if I did not provide them immediate testimony and that administrative penalties can include me losing my job…" [redacted] asked [redacted] what regulation or requirement compelled him to cooperate at that moment, but [redacted] did not produce any such requirement, but rather continued insisting that [redacted] had to comply or would be in obstruction of an IG investigation. On two occasions, [redacted] stated "I'm compelling you to testify." At no point did [redacted] provide any written advisements or warnings to [redacted] When [redacted] stated "So you're obstructing the investigation" and began writing things down, [redacted] agreed to the interview.

[redacted] led [redacted] and [redacted] in to a conference room and closed the door. As [redacted] was asking the first question, the door to the conference room was opened and Williams stood in the doorway, asking if [redacted] was okay. [redacted] stated he was okay. Williams looked at the agents in the room, then asked [redacted] again if he was okay. [redacted] answered that he preferred to be interviewed at another time at which point Williams stated "All right, this is over." At that point, an agent later identified as [redacted] somehow signaled to the other agents, and they departed. [redacted] stated that he never saw or heard anything that suggested to him that Williams might be arrested by the agents that night, and when Williams opened the conference room door, he didn't hear [redacted] say anything to him. [redacted] described Williams' demeanor and tone of voice as "normal" during this entire episode. He recalls that Williams opened the conference room door only once. With regard to his decision to submit to the interview, [redacted] stated "The only reason I submitted to providing that interview and that witness testimony at that time was because I was repeatedly threatened with my job…he said if I did not provide testimony immediately, that I would be obstructing an inspector general investigation and that penalties go up to and include losing my job."

The following week, [redacted] was interviewed by the Federal Protective Service (FPS) about the incident on the evening of October 24, 2013. Matthew Fritz later provided [redacted] with a copy of the FPS investigative report and the FPS affidavit in support of an arrest warrant for Williams (Exhibit 27). When he reviewed the FPS report and affidavit, "I was somewhat incredulous at how my testimony to them was characterized and I believe misrepresented." [redacted] identified the following discrepancies between what he told FPS and what FPS later reported:

The FPS reports that (b)(6), (b)(7)(C) demonstrated to FPS that Williams stood approximately 12 inches away from Heller. (b)(6), (b)(7)(C) stated that he told FPS that when Williams was pointing toward the door, his hand may have been within 12 inches of Heller.

The FPS report stated (b)(6), (b)(7)(C) "informed agents that Williams' demeanor did not appear threatening; however, he did feel that it was unwelcoming and demonstrated in a demeanor which would not be appropriated (sic) in an office environment." (b)(6), (b)(7)(C) stated "I didn't believe that his behavior was inappropriate then or now and I don't know what part of my statement could've been construed to say that…This did not rise to anywhere near the bar of anything close to inappropriate, nor certainly threatening."

(b)(6), (b)(7)(C) was asked about a section of his memorandum titled "Discrepancies with the Federal Protective Service (FPS) Record of my testimony to them". (b)(6), (b)(7)(C) was asked whether the FPS report attributed statements to him that he did not say and were not true, to which he responded "I do characterize them as inaccurate or…yeah, misrepresentations is how I…or discrepancies. The only thing I feel was, you know, almost, you know, completely counter to what I stated was the appropriateness of the discussion. I didn't believe Steve Williams' behavior was inappropriate for an office environment. That's very much the opposite of what I stated."

14. On November 13, 2014, (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) interviewed (b)(6) (b)(7)(C) (Exhibit 28). (b)(6) (b)(7)(C) explained that he is (b)(6) (b)(7)(C) and the (b) (6), (b) (7)(C) to the EPA Administrator. In the summer of 2013, (b) (6), (b) (7)(C) was assisting the FBI (b) (7)(A) The OIG learned of the investigation and contacted the FBI agent (b) (7)(A) and informed him they wanted to be involved. The FBI had a memorandum of understanding with OHS (Exhibit 29), and they were already working with (b) (6), (b) (7) (C) so the FBI declined the OIG's offer to work together. The FBI further informed the OIG that they should contact (b) (6), (b) (7)(C) to de-conflict the matter, to which the OIG responded that they were going to (b) (7)(A) to meet with the FBI about their case. (b) (6), (b) (7)(C) stated that he did not tell the FBI to exclude the OIG from the (b) (7)(A) investigation; rather, the FBI made that decision and told the OIG "repeatedly and emphatically" that they did not want the OIG to participate. Sometime thereafter, the EPA Inspector General sent an email to Deputy Chief of Staff John Reeder, EPA, stating that the OIG was going to begin interviewing people they believed were involved in the (b) (7)(A) investigation. (b) (6), (b) (7)(C) ultimately received that email, and he provided it to the FBI, which led to a series of meetings including one on August 1, 2013, during which personnel from FBI Headquarters met with personnel from the EPA Office of General Counsel and the OIG and informed the OIG that they needed to stand down from the (b) (7)(A) investigation, and any information (b) (6), (b) (7)(C) possessed related to that investigation belonged to the FBI and was not authorized for release. Associate Administrator Juan Reyes prepared a record of the meeting (Exhibit 30).

Following that meeting, the OIG ceased contacting the FBI. However, they subsequently obtained emails belonging to (b)(6) (b)(7) (C) Reyes, and (b)(6), (b)(7) (C) from the EPA email system.

(b)(6) (b)(7)(C) believed the OIG was "just fishing for information related to the FBI investigations." (b)(6) (b)(7)(C) stated, "[T]his (b) (7)(A) episode kind of brings it all to a head, and then from there starts a series of audits and investigations and evaluations, which lead up to this request for me to be interviewed about (b) (6), (b) (7)(C)"

(b)(6) (b)(7)(C) stated that he received an email from Drake (Heller) stating that she needed to interview him. He initially responded that he, Williams, and (b)(6), (b)(7)(C) would meet with Heller, but Heller responded that she only wanted to meet with (b)(6) (b)(7)(C) and she did not wish to meet with Williams and (b)(6), (b)(7)(C). (b)(6) (b)(7)(C) questioned his leadership about the matter, including Reyes and Deputy Chief of Staff Matt Fritz, and Fritz confirmed that the OIG wanted to interview (b)(6) (b)(7)(C) concerning his duties in OHS and the reason for having a (b) (6), (b) (7)(C). (b)(6) (b)(7)(C) thought it would be more appropriate for the OIG to contact Human Resources or others involved in the hiring process because (b)(6) (b)(7)(C) simply applied for and was offered his job. Nevertheless, the OIG insisted on interviewing (b)(6) (b)(7)(C) described the OIG as "cagey," and he surmised that they did not want him to know what the interview would be about. (b) (7)(A), (b)(6) (b)(7)(C) (b) (7)(A), (b)(6) (b)(7)(C) so he informed his management prior to the interview that he would not be able to talk about those matters. While Fritz and Reyes were aware of the interview, they never directed (b)(6) (b)(7)(C) to participate. "They said at some point it would be a good idea (for (b)(6) (b)(7)(C) to be interviewed), 'We would like you to do it,' something like that, but they never put their foot down and said, "You will go talk to them, you know, tomorrow."" In fact, Reyes, Williams, (b) (6), (b) (7)(C) and possibly Fritz informed (b)(6) (b)(7)(C) that he was not required to participate in the interview. (b)(6) (b)(7)(C) discussed the OIG's authority with (b)(6) (b)(7)(C), (b) (7)(A) b who informed him that "IGs don't directly manage you or supervise you. They can't tell you to do this or to do that. They have to go through your management to do that. They can't directly discipline you. They can encourage or recommend to your supervisors discipline based on facts or investigations or audits, whatever they're doing." Nevertheless, nobody told (b) (6), (b) (7)(C) that he should not participate in the interview.

In September 2013, a series of emails ensued between Heller and (b)(6) (b)(7)(C) in which Heller attempted to schedule the interview. (b)(6) (b)(7)(C) testified that Heller instructed him to show up on certain date, and he responded that he wanted to talk to an attorney because "this sounds like more than just a casual conversation." (b)(6) (b)(7)(C) stated, "So at some point, she basically expected me to show up on X date and I didn't show up and Steve Williams and (b)(6), (b)(7), and (b)(6) (b)(7)(C), all knew that I wasn't going to show up and I believe somebody even communicated that to Drake (Heller), but she then wrote me back and basically the next day or maybe after the time had passed and said, you know, 'We're concerned that you didn't show up. You're required to cooperate with an IG investigation. If you don't do that, you could face sanctions, including, you know, termination,' or something like that."

Eventually, the EPA Office of General Counsel got involved in the negotiations to establish "parameters" for (b)(6) (b)(7)(C) interview. (b)(6) (b)(7)(C) was advised that he was not accused of any wrongdoing, and they wanted to discuss his duties in OHS. (b)(6) (b)(7)(C) explained from the outset that he would not be able to answer questions related to his work (b) (6), (b) (7)(C), (b) (7)(A)

On October 24, 2013, [redacted] was interviewed by Heller and [redacted] had his attorney present because "it was pretty clear that this wasn't going to be a friendly interview." The agents gave him a written Kalkines warning prior to the interview. At the beginning of the interview, the agents asked [redacted] questions about his employment history, training, and duties. However, they progressed into questions about his work [redacted] and witnesses [redacted] how many NDAs [redacted] characterized the questions as "very specific probing questions about FBI investigations and the techniques that they're using." [redacted] testified that he refused to answer those questions because [redacted] explicit instructions to not disclose information about information related to [redacted] Approximately five to ten times during course of the interview, Heller and [redacted] told [redacted] he could be fired if he did not cooperate with them. [redacted] attorney assured the agents that they did not need to use that kind of language, and that she and [redacted] were there to cooperate.

[redacted] testified that Heller asked him whether he kept files or anything related to his work [redacted] When [redacted] responded that he had some files [redacted] Heller said "The IG Act gives me access to all records or documents held at EPA." [redacted] countered that the [redacted] and [redacted] could not release them to the EPA OIG without [redacted] permission. [redacted] stated, "[A]nd that was one of the times she would get upset and say, 'The IG Act says we can do whatever we want. We have access to all EPA papers. You're not being cooperative. You know, you could be fired from your job if you don't cooperate with us.' So that's kind of how it went back and forth for, you know, four-and-a-half hours."

[redacted] testified that when he consulted with his attorney, Heller and [redacted] would leave the room and speak to their leadership – Sullivan, [redacted] Towards the end of the interview, Heller and [redacted] informed [redacted] "The Inspector General and the Assistant Inspector General for Investigations have some questions you need to answer." They asked [redacted] if he worked for the EPA, who paid his salary, whether he was familiar with John Beale, whether he was [redacted] and whether he was [redacted] At that point, [redacted] asked to speak privately with his attorney. When the agents returned, he answered those questions, but the OIG agents pressed him for [redacted] At that point, the interview had lasted over four hours and [redacted] told the OIG agents that he needed to get home [redacted] Heller responded, "You can't leave. . .You're not leaving here until you give me [redacted] Heller also stated, "You're going to come back here tomorrow and the next day and the next day and the next day until we get through all of these questions." [redacted] relented and provided Heller and [redacted] with [redacted] After [redacted] answered those final questions, [redacted] told him to stand outside the room so she could speak to Heller and [redacted]. [redacted] instructed [redacted] to go back to his office if she did not call him back into the room. When she did not call him back into the room, [redacted] left. During the interview, the agents did not give [redacted] a NDA or any kind of admonishment that he could not discuss his interview with others.

When [redacted] returned to the OHS office after his interview, Williams, [redacted] and [redacted] were there. Williams and [redacted] asked why he was gone for so long, and [redacted] began telling them about some of the questions the agents had asked him. Approximately five to ten minutes after [redacted] returned to his office, Heller arrived at OHS with [redacted] As [redacted] was speaking to Williams and [redacted], he heard Heller call to him from down the hall. Heller told [redacted] that she needed to speak to him, and [redacted] responded that he did not wish to speak to her without his attorney. Heller persisted telling [redacted] that he needed to speak to him, and [redacted] told her again that she needed to contact his attorney. During this exchange, Williams stood up and told Heller to put her request in writing. Heller ignored Williams and told [redacted] again that she needed to speak with him. She then told [redacted] that he could not tell others about their interview. [redacted] asked Heller if he could talk to his family about it, and she said that he could not speak to anyone about it.

At that point, Williams told Heller that she needed to put her request in writing, that [redacted] already told her he had an attorney, and that she should not be there. Heller extended her hand to shake Williams' hand, and she stated, "Mr. Williams, Elisabeth Drake, nice to meet you," and Williams said something to the effect of, "I don't want to know you[.]" [redacted] testified, "He was certainly using an assertive tone" as he told Heller to "put it in writing" and to leave the OHS office. However, Williams was not screaming or shouting. [redacted] testified, "I would liken it to what you would do to your kids. . . Not screaming, but certainly, 'I mean business, do what I'm telling you to do.'" [redacted] described the volume of Williams' voice as "a little bit louder" than conversational. [redacted] testified that Williams did not scream, curse or use threatening words. Williams was not sweating, his veins were not bulging, and [redacted] did not observe spittle coming from Williams' mouth. [redacted] testified that Williams "may be five-two on a good day. You know, Drake (Heller) is five-eight/five-nine and in shoes, probably a little bit taller than that. So he certainly was not right up against her looking up. You know, he was a good two to three feet away at all times and sometimes further." [redacted] stated that he recalled Williams "gesturing," but he did not recall Williams pointing at Heller. Williams "was definitely not jabbing her in the chest. . .like I said, he wasn't close enough to do that." [redacted] stated that the closest Heller and Williams came to each other was when Heller stuck out her hand to shake Williams' hand, and she moved toward Williams.

[redacted] testified, "I've been a [redacted] a [redacted] for [redacted] years almost. You know, he never cursed at her. He never was within two feet of her the whole time. He never threatened her. He never said, you know, get out of my office or I'm going to kick your ass. You know, he never said anything other than put it in writing, you know, basically you shouldn't be here. He may have said leave the office, something to that effect, and, you know, at that point, I was done with them. They were in another -- you know, they were still going round and round about putting it in writing, get out of here, whatever. I just simply said, "Hey, I'm out of here." [redacted] went to his office, retrieved his gym bag, and left the OHS suite. As he left, Williams and Heller were still "going back and forth," but [redacted] noted that their interaction could not have lasted more than another 10-15 seconds because it did not take him long to retrieve his gym bag and walk to the elevator, and while [redacted] was waiting for the elevator, Heller and [redacted] exited OHS. As they walked past

(b)(6) (b)(7)(C) Heller told him in a "smart ass" manner, "I'll see you tomorrow." (b)(6) (b)(7)(C) got on the elevator and left. (b)(6) (b)(7)(C) stated Heller appeared "composed" when she walked past him. "She certainly wasn't distraught or crying or breathing heavy or nervous or hysterical. She was being a smart ass, and so, to me, she was composed and under control and being a smart ass, frankly."

(b)(6) (b)(7)(C) did not believe Williams was too heated in his conduct toward Heller. (b)(6) (b)(7)(C) stated, "I think he was being somebody who, in his mind, is a team leader and somebody who has -- as a military man understands what it means to kind of protect your team and make sure that everything's being done by the book."

(b)(6) (b)(7)(C) stated the entire interaction between the OIG agents and the OHS personnel occurred outside the cubicle where (b)(6), (b)(7)(C) was located. (b)(6), (b)(7)(C) did not say anything during the event; "He didn't tell Steve to be quiet, to back off, to knock it off. He literally stood there completely silent the whole time I was there." (b)(6), (b)(7)(C) "was either standing or leaning against this cube, but he was kind of right off her shoulder basically the whole time." Referring to (b)(6), (b)(7)(C) demeanor (b)(6) (b)(7)(C) testified, "And, you know, for context and (b) (6), (b) (7)(C) if my partner is standing there and saying nothing, you know, how bad can it be for me really at the end of the day?" (b)(6) (b)(7)(C) stated (b)(6), (b)(7)(C) stood behind Williams and was "mostly quiet" during the event, but she stated things such as, "You shouldn't be here, and, "This isn't right."

(b)(6) (b)(7)(C) stated that Heller's Congressional testimony was "completely false" when she testified that Williams' "veins were bulging and he was sweating profusely, you know, making it seem like he was this crazy lunatic." (b)(6) (b)(7)(C) stated, "I've been an (b)(6) (b)(7)(C) I've been a (b) (6), (b) (7)(C) I've seen, you know, what it means to be cursed at and spit on and smacked and wrestle with people. You know, somebody being two to three away -- two or three feet away telling you to get out of an office, that's just not assault." (b)(6) (b)(7)(C) stated that at no time during the incident did he believe a physical attack by Williams was imminent. (b)(6) (b)(7)(C) characterized Williams as "measured," "composed," and "specific with what he was saying" to Heller. He had no recollection of Heller backing up to distance herself from Williams.

(b)(6) (b)(7)(C) provided a sketch of the OHS space and the locations of those who were present for the interactions between the OIG and OHS personnel (Exhibit 31). (b)(6) (b)(7)(C) noted that the incident that occurred in OHS would not have happened if Heller had not contacted him without his attorney present, knowing that (b)(6) (b)(7)(C) was represented by counsel.

On October 26, 2013, (b)(6) (b)(7)(C) emailed EPA leadership, including Williams, expressing concerns about the OIG's requiring him to attend a second interview on the following Monday; later that day, Williams forwarded (b)(6) (b)(7)(C) email to EPA leaders and expressed concern about the OIG's "harassment" of his team (Exhibit 32). (b)(6) (b)(7)(C) prepared a statement in an email dated October 27, 2013, documenting the events of October 24, 2013 (Exhibit 33).

15. On November 24, 2014, (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) interviewed Steven Williams (Exhibit 34). Williams recalled that on October 24, 2013, (b)(6) (b)(7)(C) began his interview with the OIG agents at approximately 2:00PM. Williams, (b) (6), (b) (7)(C) and (b)(6), (b)(7)(C) were in the OHS office space at approximately 6:15PM when (b)(6) (b)(7)(C) returned. Williams described (b)(6) (b)(7)(C) as "visibly distraught". Williams stated that (b)(6) (b)(7)(C) described being held in an office by the agents for four hours, with the agents telling him that he had to disclose (b) (6), (b) (7)(C), (b) (7)(A) on various issues in which OHS (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), (b) (7)(A) Williams described this as "semi-custodial interrogation", which Williams described as a term used by the OIG agents when they questioned EPA employees, sometimes for long periods of time, who had malware on their computers. Williams identified this problem as having existed within EPA for his entire tenure. Williams expressed his concern that, in (b)(6) (b)(7)(C) case, the OIG was continuing its practice of keeping employees in an interview "where, while the employee was likely free to leave, the IG agents made it clear that if they did leave, there would be difficulties for the employee…" Of further concern to Williams was the types of questions that the OIG agents asked of (b)(6) (b)(7)(C), which Williams believes were outside of his understanding of the scope of the interview. Williams thought the scope of the interview was limited to an administrative review of (b)(6) (b)(7)(C) duties (b) (6), (b) (7)(C) He based this belief on a series of emails between himself and SA Heller that occurred over the preceding month. On October 24, 2013, Williams "did not have good confidence that the process (for the interview) had been reviewed, or that my subordinate for purposes of casting as his team leader, was being taken care of by management."

With regard to specific information sought by the OIG agents that Williams believed exceeded the scope of the agreed upon interview, Williams stated that (b)(6) (b)(7)(C) was hesitant to share details of the interview because he had been warned by the agents not to discuss the interview with anyone, but Williams understood that the OIG agents were attempting to elicit (b) (6), (b) (7)(C), (b) (7)(A) cases that OHS was working (b) (7)(A), (b)(6) (b)(7)(C) (b) (6), (b) (7)(C), (b) (7)(A) (b) (6), (b) (7)(C), (b) told Williams that the agents advised "he would be with them 12 hours the next day, and 12 hours the following day, until he gave them everything they wanted." As Williams, (b) (6), (b) (7)(C) were discussing these concerns, two individuals unknown to Williams entered the OHS space.

(b)(6) (b)(7)(C) immediately identified SA Heller, telling Williams and (b)(6), (b)(7)(C) they must have followed him from the OIG office where the interview occurred. Heller was calling for (b)(6) (b)(7)(C) and (b)(6) (b)(7)(C) began walking toward her. Williams and (b)(6), (b)(7)(C) followed (b)(6) (b)(7)(C) As he approached (b)(6) (b)(7)(C) and Heller, Williams observed a second, male, unknown individual standing next to her. Williams heard (b)(6) (b)(7)(C) say words to the effect of "I'm not going to discuss anything with you without my attorney." Heller requested that (b)(6) (b)(7)(C) step outside the office with her. (b)(6) (b)(7)(C) responded that she could say whatever needed to be said in the presence of (b) (6), (b) (7)(C) Williams, and (b)(6) (b)(7)(C). As Heller continued to insist that (b)(6) (b)(7)(C) accompany her outside the office, Williams stepped up and told Heller "He does not wish to speak to you outside of the presence of his attorney." As Heller continued to refer to (b)(6) (b)(7)(C) as (b)(6) (b)(7)(C) Williams admonished Heller "It is (b)(6) (b)(7)(C) Show some respect." At about this point during this interaction, (b)(6) (b)(7)(C) departed out of Williams' sight. Williams

recalls repeating the same statements several times, that (b)(6) (b)(7)(C) did not wish to speak with Heller without his attorney present, and that Heller should put her directives in writing.

Heller then introduced herself to Williams, and asked him who he was, extending her hand to shake his. Williams stepped back, not wanting to make any physical contact with her. Williams described this point as the closest he got to Heller, asserting that he maintained a three foot distance between himself and Heller.

Williams described Heller as "approximately five ten, I'm guessing. She was wearing heals. She was very tall, by my perception, that evening." He related his normal habit of maintaining some distance between himself and those with whom he is interacting. He does this so that his relatively short stature is not so prominent. From a reasonable distance, he can look another person in the eye without having to "look up" to that person. In this case, he estimated that he stood approximately four feet from Heller, and may have moved in as close as three feet at some point.

As Heller continued stating that (b)(6) (b)(7)(C) needed to accompany her, Williams told her to speak with her manager. He then directed her to leave the office. After directing her to leave several times, Heller and the other male, later identified as (b)(6), (b)(7)(C), departed. Williams had no specific recollection of Heller's demeanor when she departed, other than that she seemed "very dismissive of the entire event."

Williams described (b)(6), (b)(7)(C) demeanor during this entire episode as "relaxed", becoming more relaxed and "less imposing" as the discussion between Heller and Williams progressed.

Williams acknowledged that he has both watched Heller's testimony before congress and has read the transcript of her testimony. With regard to Heller's contention that she stepped backwards from Williams, and that Williams stepped forward to close the distance, Williams stated that her testimony is inaccurate, stating "I did not approach her, causing her to step back." With regard to Heller's contention that Williams was pointing at her, Williams stated that he was actually pointing toward the front door of the office suite as he directed her to leave. Williams described pointing not with a single finger, but rather with four fingers, gesturing toward the front door. He described his pointing as offset from Heller, who was standing in front of him, by approximately 70 degrees. Williams denied pointing directly at Heller, and denied having his hand within inches of her body. "I didn't get close enough to be within inches of her body." With regard to the tone and volume of his voice, Williams stated "When I am in a position where I would like to emphasize that it is important or official, I speak in a voice that is precise. I was using a slightly large, louder volume than I'm using to you now…I was never yelling at her but I would say that my voice was slightly louder than it is now, but not at a yell. And it was not designed to intimidate her in any manner. It was merely designed to convey to her that she had entered into the office, she had, in my view, created difficulties for an employee of mine, and that she was outside the scope of what I had known to be agreed to." Williams denied feeling angry during this encounter, but was concerned with what he perceived as harassment from the OIG agents. Williams categorically denied that spittle ever came out of his mouth during this interaction.

"I don't recall ever having spittle, bulging veins, profuse sweating. The descriptor that was given before congress in testimony is a visual, essentially of an individual having a stroke. I believe that the agents created a visual, in an effort to convey what they wanted the audience to hear, that there was a reason for them to be afraid. I don't believe that visual is accurate."

Williams noted that neither Heller nor (b)(6), (b)(7)(C) ever produced credentials to identify themselves. (b)(6), (b)(7)(C) came to the encounter "incredibly inappropriately dressed" in jeans and a "muscle T-shirt." (b)(6), (b)(7)(C) never identified himself during the entire encounter. Williams believe that (b)(6), (b)(7)(C) entire role was to intimidate (b)(6) (b)(7)(C) "And a Google of me doesn't demonstrate a 32 year career to the government and the multiple military tours I served. A Google of me today demonstrates an individual who has been tried in the court of public opinion and a Congressional committee as having committed an act, that we're only today having a non-biased, neutral investigation, to determine the facts around."

After the agents departed the office suite, Williams and (b)(6), (b)(7)(C) returned to Williams' office and began typing an email to EPA management to inform them of what had happened (Exhibit 35). Williams typed the email with input from (b)(6), (b)(7)(C). Williams recalls (b)(6), (b)(7)(C) mentioning that she had never been subjected to that lack of professionalism in her entire career. While Williams and (b)(6), (b)(7)(C) were typing the email, Williams received a call from (b)(6), (b)(7)(C), who was very upset over what had occurred to (b)(6), (b)(7)(C). (b)(6), (b)(7) wanted assurances from Williams that he would do his job and protect (b)(6) (b)(7)(C) Williams described this as a very difficult telephone call, one that made him realize the extent to which (b)(6) (b)(7)(C) (b)(6) (b)(7)(C) were impacted by the actions of the OIG agents.

In response to questions from his attorney, Williams stated that to his knowledge, EPA management never compelled (b)(6) (b)(7)(C) to attend the interview on October 24, 2013. Williams also stated that at no time did Heller or (b) (6), (b) (7)(C) advise him that his behavior was out of line or threatening.

At approximately 7:15PM, as Williams and (b)(6), (b)(7)(C) were working on the email, they heard voices in the front of the office. Williams and (b)(6), (b)(7)(C) walked toward the front of the office and encountered four individuals. Williams recognized (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C), but did not recognize the other two. The agent who seemed to be in charge, later identified as (b)(6), (b)(6), (b)(7)(C), and (b)(6), (b)(7)(C) approached Williams and (b)(6), (b)(7)(C), directing them to "step back". Williams has no recollection of first being approached by (b)(6), (b)(7)(C). As Williams was engaging with (b)(6), (b)(7)(C), he could see another agent, later identified as (b)(6), (b)(7)(C), taking a "very aggressive approach" with (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) informed Williams and (b)(6), (b)(7)(C) that he was investigating a report of a female agent who was assaulted earlier in the evening. Williams recalls (b)(6), (b)(7)(C) stating to him "You, sir, assaulted a female agent." (b)(6), (b)(7)(C) attempted to separate Williams and (b) (6), (b) (7)(C). During this encounter, Williams consistently described (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) as "laid back".

While addressing Williams, (b)(6), (b)(7)(C) "started telling me and attributing to me a series of characteristics or activities that I thought he was seeking to establish, that I didn't feel were the case." Williams attributed the following statements to (b)(6), (b)(7)(C): "Sir, you're very

aggressive right now. You need to relax. Sir, you're very aggressive. You're very angry." Williams responded to him "You need to stop that. I'm not acting aggressive. This is the normal tone of my voice. I am perfectly relaxed…I know what you're trying to do. You need to stop that."

Williams continued noticing (b)(6), (b)(7)(C) interactions with (b)(6), (b)(7)(C). He observed (b)(6), (b)(7)(C) pointing in (b)(6), (b)(7)(C) face, "forcing movement" by getting in very close proximity and causing (b)(6), (b)(7)(C) to back up toward the conference room. Williams heard (b)(6), (b)(7)(C) yelling at (b)(6), (b)(7)(C) "You will talk to me. I'm investigating it."

Williams then stated to (b)(6), (b)(7)(C) "It's obvious that no one wants to speak to you at this point. Do you have management approval to be here? I understand you have to have management approval to do whatever it is you're doing." (b)(6), (b)(7)(C) then interjected "Do you see a felony being committed in your presence at this moment? I just recommend to you that you go talk to your management. This has been an ongoing problem between the offices. They don't want to talk to you. I don't want to talk to you. I think that you should leave." At this point, (b)(6), (b)(7)(C) produced his credentials and identified himself. Williams "saw an opportunity" and walked past (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) to get closer to (b)(6), (b)(7)(C). Williams saw (b)(6), (b)(7)(C) attempting to close the door of the conference room, but was having difficulty doing so. Williams saw (b)(6), (b)(7)(C) in very close proximity to (b)(6), (b)(7)(C) in a corner of the conference room, and heard (b)(6), (b)(7)(C) say "You will talk to me, or you will be fired." (b)(6), (b)(7)(C) told Williams to back away and allow the agents to conduct the interview with (b)(6), (b)(7)(C). Williams asked (b)(6), (b)(7)(C) three times if (b)(6), (b)(7)(C) was alright. The first time, (b)(6), (b)(7)(C) looked back at Williams "in trauma". After asking the second time (b)(6), (b)(7)(C) told Williams "You need to get out of here." Williams replied that he was asking his team member a question, to which (b)(6), (b)(7)(C) responded by walking around the table toward Williams and stating "What time is it? That's obstruction. Mark down the time. You're obstructing me." Williams then asked (b)(6), (b)(7)(C) a third time if he was alright, and (b)(6), (b)(7)(C) said he was not. Williams then turned to (b)(6), (b)(7)(C) and said "We're done. You need to call your management." (b)(6), (b)(7)(C) then approached and told the other three agents that they were departing. At no time did Williams recall an agent threatening to arrest him.

Williams believes that this encounter was over by 7:40PM. After checking on the well-being of both (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C), describing both as "very shaken", he immediately began drafting a second email to notify his management of what had occurred (Exhibit 36).

Williams attempted to explain the impact of the second encounter on him, (b)(6), (b)(7)(C), and (b)(6), (b)(7)(C): "So when they came in at 7:15, my assessment immediately was there's a problem. They all came in…they were controlling the environment. Perhaps they viewed that as a perfectly appropriate law enforcement activity. However, the effect on my office was hugely destructive. They're trying to separate us, they're giving directions. They don't identify themselves. They're speaking in a very, you know, "we can go anywhere we want, we can talk to anyone we want. So what if it's 7:15?"

Williams stated that he was never interviewed by investigators from the FPS concerning this event. Months later, after (b)(6), (b)(7)(C) received a copy of the FPS report, he told Williams that the

report attributed statements to him that he never made, and that the report misstated some of his representations.

Williams then escorted the agents through the OHS office suite, and walked the agents through what happened and where it happened on October 24, 2013. Photographs were taken to document this visit (Exhibit 37).

16. On December 3, 2014, [redacted] (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) interviewed Deputy Chief of Staff John Reeder, EPA (Exhibit 38). Reeder stated that on the night of the alleged assault, (b)(6), (b)(7)(C) and another OIG agent – possibly (b)(6), (b)(7)(C) came to Reeder's office and informed him that Williams had just assaulted an OIG agent. When Reeder asked if Williams had hit or threatened the agent, the agents responded, "No, but he interfered with an investigation." The agents further informed Reeder that interfering with an investigation could be considered assault. When Reeder expressed his surprise that it could be considered an assault if Williams did not hit or threaten the agent, they responded, "[T]hat's what they're saying back at the office." Reeder was "troubled" because it sounded to him that the OIG agents had already formed an opinion that what had happened in OHS was an assault, which should be a "legal question." The agents informed Reeder that they were going to go to OHS to investigate the matter.

Reeder testified that he previously had concerns about the "tactics" of the EPA OIG. Reeder recalled that in February 2012, Elkins informed Reeder that the OIG needed an above ground parking space to "respond as part of a Federal law enforcement response to an incident, whatever that might be." Reeder noted that EPA policy limited the above ground parking spaces to the Administrator, the Deputy, and the Chief of Staff. Nevertheless, Elkins asked Reeder "incessantly" about the parking space. At one point, Elkins called Reeder on the telephone and told him, "They're telling me, back in the office, here that you could be found to be interfering with law enforcement, by not allowing us to have this parking spot." Reeder interpreted Elkins' statement as a "veiled threat" that he could be found to be impeding law enforcement if he did not grant the parking space. Reeder stated it was "pretty clear" that Sullivan was "pushing" Elkins to get the above ground parking space. Reeder explained that the incident about the parking space was an example of the "aggressiveness and intimidation factor that some people have felt, from the IG. I felt it."

Reeder testified that the employees in OHS felt "harassed" by the OIG, and the OIG never gave Reeder a "straight answer" about what they were investigating when they interviewed (b)(6) (b)(7)(C) for four hours. Reeder noted that normally, the OIG provides EPA leadership with a "formal notice" when they are going to be looking at an issue, unless the matter is criminal in nature. EPA leadership did not receive such a notice pertaining to the investigation of OHS. Reeder also noted that the OIG has not provided their rationale for obtaining the emails of OHS employees during their investigation.

(b)(6) (b)(7)(C) [redacted]

Subsequent to his interview, Reeder provided a memorandum with exhibits to (b)(6), (b)(7)(C) detailing concerns about the EPA OIG and additional information about the events of October 24, 2013 (Exhibit 40).

17. On December 24, 2014, (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) interviewed Sullivan (Exhibit 41). Sullivan testified that he was involved in Heller's investigation involving OHS prior to her interview of (b)(6) (b)(7)(C) on October 24, 2013. Sullivan explained that Heller's investigation did not target any individual – including (b)(6) (b)(7)(C) Rather, "the investigation centered around OHS's authority." The OIG had received information from an attorney in the EPA's Office of Environmental Compliance and Assurance that (b)(6) (b)(7)(C) was acting outside the scope of his authority (b) (6), (b) (7)(C) in OHS. In addition to investigating (b)(6) (b)(7)(C) authority, the OIG also investigated OHS' "overall authority to conduct investigations, since they have no authority to conduct investigations or any law enforcement activities." Sullivan stated that the investigation could have been considered an "evaluation" and given to the OIG's Office of Program Evaluation, but the Inspector General decided to allow the Office of Investigations to conduct the investigation.

Sullivan testified that he and his deputies were aware Heller was going to be interviewing (b)(6) (b)(7)(C) on October 24, 2013. Sullivan testified that "it was a very long, drawn-out, somewhat painful process to get (b)(6) (b)(7)(C) to even agree to do an interview," and the OIG "bent over backwards" for (b)(6) (b)(7)(C) for example, allowing him to have any attorney although he was not entitled to one. They also set parameters on the interview whereby the OIG agreed to not solicit (b) (7)(A) from [redacted] or to ask him questions that would be construed as discussing (b) (7)(A) Sullivan testified that he discussed with Heller some of the questions she intended to ask (b)(6) (b)(7)(C) prior to the interview, but he was not sure if he read every question. Sullivan stated he knew "the general theme of what we were looking for" to determine whether (b)(6) (b)(7)(C) was (b) (6), (b) (7)(C), (b) (7)(A) (b) (6), (b) (7)(C), (b) (7)(A) The questions included whether (b)(6) (b)(7)(C) traveled with (b) (6), (b) (7)(C), (b) (7)(A) (b) (6), (b) (7)(C), (b) (7)(A) (b) (6), (b) (7)(C), (b) (7)(A). Sullivan testified, "So you can't have it both ways. You can't have (b) (6), (b) (7)(C), (b) (7)(A) and claim to (b) (6), (b) (7)(C), (b) (7)(A), in my opinion." Sullivan stated that (b)(6) (b)(7)(C) was not cooperative during the interview, and that he refused to answer many questions. Some questions (b)(6) (b)(7)(C) refused to answer included the (b) (6), (b) (7)(C), (b) (7)(A); the

(b)(6) (b)(7)(C) [redacted]

(b) (7)(A), (b)(7)(E) [redacted] Sullivan testified that the OIG was not trying to obtain (b) (7)(A) [redacted] rather, they "were asking general questions to try to figure out 'What do you do every day, (b)(6) (b)(7)(C) [redacted]?'"

Sullivan believed that following Heller's interview of (b)(6) (b)(7)(C) [redacted], he asked her if (b)(6) (b)(7)(C) [redacted] signed a NDA, and Heller responded that they had forgotten to have (b)(6) (b)(7)(C) [redacted] sign one. Within approximately five minutes of the conclusion of the interview, Heller and (b)(6), (b)(7)(C) [redacted] went to OHS to have (b)(6) (b)(7)(C) [redacted] sign the NDA.

When Heller and (b)(6), (b)(7)(C) [redacted] returned from OHS, Sullivan "could tell something had happened." Heller was "very upset;" her face was red, and Sullivan could hear tension in her voice. She did not have tears in her eyes. [redacted] "had a very concerned look on his face," and his demeanor suggested that (b)(6), (b)(7)(C) [redacted] "knew that this was a big deal." Heller and (b)(6), (b)(7)(C) [redacted] informed Sullivan that there had been a confrontation with Williams. At that point, Sullivan gathered [redacted], (b)(6), (b)(7)(C) [redacted], and (b)(6), (b)(7)(C) [redacted] and Heller and (b)(6), (b)(7)(C) [redacted] briefed them on what had happened. (b)(6), (b)(7)(C) [redacted] may have also been present. Heller informed them that when she and (b)(6), (b)(7)(C) [redacted] arrived at OHS, (b)(6) (b)(7)(C) [redacted] was telling Williams and (b)(6), (b)(7)(C) [redacted] about the interview. Heller then told (b)(6) (b)(7)(C) [redacted] that she needed to speak to him and have him sign a NDA, but (b)(6) (b)(7)(C) [redacted] did not wish to sign the NDA. Sullivan testified, "And that led to Mr. Williams coming out and screaming at her to get out of the office. And then, she described Mr. Williams verbally threatening and physically gesturing in a very -- the way she described it me, he almost made physical contact with her breasts by pointing at her. And he was spitting at the mouth. . .veins bursting, being very, very argumentative and confrontational, and screaming very loudly at her."

Sullivan testified that Heller told him, "I feel like I've been assaulted, and I feel he's interfered with our ability to do our job." When Sullivan asked (b)(6), (b)(7)(C) [redacted] what had happened, (b)(6), (b)(7)(C) [redacted] responded, "Yes, he was completely out of control, completely unprofessional, completely out of line." (b)(6), (b)(7)(C) [redacted] did not independently give an account of what had happened, but after hearing Heller's description of the incident, he confirmed what she said. Sullivan testified, "[W]e're not used to being treated that way. We're used to be treated professionally." Based on Heller's report, Sullivan dispatched (b)(6), (b)(7)(C) [redacted], (b)(6), (b)(7)(C) [redacted], and (b)(6), (b)(7)(C) [redacted] to OHS "immediately" to conduct witness interviews to find out what had happened. Sullivan also instructed Heller and (b)(6), (b)(7)(C) [redacted] to immediately write statements "so it was fresh in their memory exactly what had happened." Simultaneously, Sullivan notified the Inspector General about what had occurred.

Based on Heller's description of what had occurred, Sullivan "wasn't quite sure if it met the definition of an assault" as defined in U.S. Code, but he believed it "met the definition of interfering with a federal agent in the course of his duties." However, FPS subsequently informed Sullivan that Williams conduct met their definition of an assault under the DC Code.

When (b)(6), (b)(7)(C), and (b)(6), (b)(7)(C) returned from OHS, they informed Sullivan that (b)(6) (b)(7)(C) had already left the office, Williams was "still very upset, very animated, still screaming, still acting very unprofessional." (b)(6), (b)(7)(C) was present, and she told the agents she was too upset to speak. Another employee whose name Sullivan could not recall (whom the reporting agent knows to be (b)(6), (b)(7)(C) was also present. While the agents attempted to interview "the other employee" (b)(6), (b)(7)(C), Williams interfered with their interview. Sullivan testified, "(Williams) didn't push anybody or you know, as far as I was told, he didn't physically interfere. He just verbally interfered with telling the agents to stop and telling the young man, "Don't talk to these people. You don't have to talk to them." Since the agents determined "nothing was going to be accomplished that night, because Mr. Williams was going to interfere with everything we were trying to do," the agents left OHS and returned to the OIG office. Sullivan testified that none of the agents who responded to OHS told him they believed Williams assaulted them. When (b)(6), (b)(7)(C) (b)(6), (b)(7)(C), and (b)(6), (b)(7)(C) returned from OHS, Sullivan instructed them to prepare written statements about what had occurred.

Sullivan recalled that (b)(6), (b)(7)(C) was "very upset" because he thought they should take more action regarding Williams. Sullivan recalled (b)(6), (b)(7)(C) thought they should have continued the interview of (b)(6), (b)(7)(C). Sullivan did not recall hearing that (b)(6), (b)(7)(C) produced his handcuffs as if to effect an arrest. Sullivan had a general recollection that (b)(6), (b)(7)(C) thought they should have arrested Williams, and Sullivan made the definitive statement, "We're not arresting anybody tonight." Sullivan described (b)(6), (b)(7)(C) as "upset and frustrated, because of the way Heller had been treated, and the way he had been treated, by going back to try to do that witness interview, and being interfered with."

The following day, Sullivan made the decision to call FPS to investigate Heller's allegations against Williams jointly with the OIG. He involved FPS in the case because they were a neutral party. Initially, the OIG assigned an agent to the investigation, but at the request of the EPA administrator, the OIG eventually withdrew from the investigation completely.

Sullivan explained that OIG agents typically use NDAs when they have other interviews to conduct, and they do not want the interviewee to tell others what the questions were asked. The case agent or his/her supervisor generally decides whether to use a NDA for a particular interview. Sullivan did not recall whether he was aware (b)(6) (b)(7)(C) would be given a NDA prior to his interview, but he assumed one would have been given. He indicated the use of NDAs was routine for the OIG.

Sullivan stated all OIG agents have the authority to issue a Kalkines warning and compel an employee to be interviewed. If the employee refuses to be interviewed, the OIG "cannot strap the employee in the chair." Rather, the agents would present the matter to the agency to discipline the employee. The OIG does not have the authority to impose discipline on EPA employees.

Sullivan noted that prior to the events of October 24, 2013, there had been "longstanding"

problems between the OIG and OHS. He stated that Williams believes the OIG has no jurisdiction regarding national security matters. For example, Williams once told Sullivan, "You have no authority over the SCIF or over classified information. If there's a problem, I'm calling the FBI, I'm not calling you." Sullivan believed Williams was incorrect about the OIG's authority, but Williams' bosses did not correct him.

18. On January 8, 2015, for the purpose of issuing a Kalkines warning to (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) presented this matter to Assistant United States Attorney (b)(6) (b)(7)(C) District of Columbia. (b)(6) (b)(7)(C) declined prosecution of (b)(6) (b)(7)(C) (Exhibit 42).

19. On February 10, 2015, (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) interviewed (b)(6), (b)(7)(C) (Exhibit 43). (b)(6), (b)(7)(C) attorney, (b)(6), (b)(7)(C) participated in the interview via speakerphone. Prior to the interview, (b)(6), (b)(7)(C) was given a Kalkines warning based on his previous request to be compelled (Exhibit 44). (b)(6), (b)(7)(C) provided a copy of a written statement he prepared (Exhibit 45). (b)(6), (b)(7)(C) stated that he was Heller's (b) (6), (b) (7)(C) when she was conducting the investigation involving OHS. However, he was minimally involved in that investigation because he had a related yet tangential investigation, so Heller was taking direction from (b)(6), (b)(7)(C) and Sullivan. (b)(6), (b)(7)(C) and "everybody" in the OIG was aware Heller was going to interview (b)(6) (b)(7)(C) on October 24, 2013. (b)(6), (b)(7)(C) was aware the scope of Heller's investigation included whether OHS had the authority to have law enforcement personnel conducting investigations. (b)(6), (b)(7)(C) was aware there were difficulties between the OIG and (b)(6) (b)(7)(C) "getting on the same page" to do the interview. He was also aware that the OIG agents were not able to finish all of their questions before the interview was finished, and it was (b)(6), (b)(7)(C) understanding that the interview was never completed. (b)(6), (b)(7)(C) did not recall interacting with (b)(6) (b)(7)(C) his attorney, and the other OIG managers at the end of the interview.

(b)(6), (b)(7)(C) testified that the OIG routinely uses NDAs to "protect the identity of the individual" and to "keep the sanctity of the investigation." (b)(6), (b)(7)(C) was informed that "legal" had approved of the OIG's authority to use NDAs, and the use of NDAs was "perfunctory."

Subsequent to her interview of (b)(6) (b)(7)(C) Heller and (b)(6), (b)(7)(C) went to the OHS suite to have (b)(6) (b)(7)(C) sign a NDA because Heller had forgotten to have him sign one during his interview. When Heller returned from OHS, (b)(6), (b)(7)(C) could tell she was "upset." (b)(6), (b)(7)(C) could not recall specifically what Heller stated upon returning from OHS because he has read her Congressional testimony and heard other "dribs and drabs" of information since that time. (b)(6), (b)(7)(C) likely spoke to (b)(6), (b)(7)(C), but he did not recall what (b)(6), (b)(7)(C) said happened at OHS.

(b)(6), (b)(7)(C) testified that he, Sullivan, (b)(6), (b)(7)(C), and (b)(6), (b)(7)(C) were present when Heller and (b)(6), (b)(7)(C) returned from OHS. (b)(6), (b)(7)(C) thought Heller used the term "assault" to describe what had happened, but he was not certain that Heller was the first person to use that terminology because "that word was used in the entire dialogue of people talking." Sullivan directed (b)(6), (b)(7)(C) and others to go to OHS to get witness statements about what had happened because what had happened was "way out of the norm." At that point, (b)(6), (b)(7)(C)

had not formed an opinion of whether Heller had, in fact, been assaulted. Rather, he took her claim that she had been assaulted, and he intended to gather facts to see if an assault had occurred.

Based on Sullivan's direction, [redacted], and [redacted] went to OHS to investigate what had happened. When they arrived, the door was open and they quickly encountered [redacted]. Shortly thereafter, Williams met them with [redacted] behind him. [redacted] was not present at OHS when [redacted] arrived there. [redacted] described Williams as having "an elevated voice," and he was pointing with two or three fingers together. [redacted] asked Williams to lower his voice; [redacted] believed Williams did not realize his voice was raised or "maybe that's just the way he talks." Williams stated that he was going to call the FBI, and he seemed to question the OIG's authority to be in the OHS office space. Meanwhile, the OIG agents viewed the whole situation as a routine matter of having [redacted] sign the NDA. [redacted] stated, "I think the whole OHS-EPA, this disconnect, you know, that was maybe part of that, you know, perception that they had. I don't know."

[redacted] testified that Williams was upset, and Williams pointed his finger at [redacted] torso. [redacted] believed Williams did not realize he was pointing at [redacted] did not want to characterize Williams' conduct as misconduct, but Williams' "actions were not consistent normally with the multitude of interviews that we do every single day here, and the forms that we fill out and everything." [redacted] testified that he did not feel intimidated by Williams' conduct, but Williams "had my full attention." [redacted] indicated that he and Williams were a couple feet from one another, and Williams' finger was approximately a foot from [redacted]

[redacted] stated, "There just seemed to be a disconnect whether we're law enforcement or not," as Williams informed the OIG agents that he was going to contact the FBI. "At the end of the day, SA Heller was trying to just go issue a nondisclosure, which is a form that -- it's the -- you know, it's our standard form that we do. They obviously perceived it as something wildly different."

[redacted] testified that [redacted] was upset during this interaction, which he surmised from [redacted] statement that "it had been an emotional time" for her. [redacted] and [redacted] knew each other previously, so the two of them spoke. [redacted] described [redacted] as having "a very reasonable demeanor."

[redacted] testified that while he was speaking with Williams, [redacted] attempted to interview [redacted] in a side room – possibly with [redacted] While the agents attempted to interview [redacted] Williams attempted to communicate with [redacted] over [redacted] objections, which "hastened the conclusion of their conversation" with [redacted] However [redacted] did not recall what Williams said to [redacted] or exactly what transpired, nor did he recall [redacted] producing his handcuffs during the exchange with Williams and [redacted] [redacted] did not recall preventing [redacted] from arresting Williams. The aspects of Williams's conduct that [redacted] considered "uncooperative" were the elevation of Williams' voice, Williams' hand

being elevated, and his interruption of (b) (6), (b) (7) (C) interview. (b)(6), (b)(7) (C) stated, "He probably had his reasons. I think, from what he stated, his reasons are that he believed it's his space, that he works (b) (7)(A) that I think there's a disconnect whether he recognizes our law enforcement authority. If he is correct, then -- then, you know, that's a different story."

(b)(6), (b)(7) (C) decided to "de-escalate" the situation and he and the other agents left OHS. However, (b)(6), (b)(7) (C) recalled that after they left OHS, (b)(6), (b) (7)(C) expressed that he believed they could have arrested Williams for interfering with them. (b)(6), (b)(7) (C) noted that interference is "a sliding scale." (b)(6), (b)(7) (C) testified, "[H]e wasn't abiding by what we were saying. But lots of times people don't abide exactly by what we say, so it becomes now a -- a more of a threshold and a level. . . if it had gone beyond that, I would have (arrested Williams)." (b)(6), (b)(7)(C) stated, "But I tried to factor in all the circumstances and be sensitive to even the fact that -- where they're coming from. There's obviously a big disconnect. And I could tell that they were, you know, probably not even cognizant, to some degree, of how upset they were, over, to us what was very perfunctory; to them, a lot -- a lot more trouble."

The day after the incident in OHS, (b)(6), (b)(7) (C) was interviewed by agents from the Federal Protective Service and the OIG (Exhibit 46).

20. On February 26, 2015, (b) (6), (b) (7)(C) interviewed (b) (6), (b) (7)(C) (Exhibit 47). (b) (6), (b) (7)(C) was represented by her attorney, (b) (6), (b) (7)(C) from the law firm of (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) is currently employed as an (b) (6), (b) (7)(C) for the (b) (6), (b) (7)(C) . Prior to this, (b) (6), (b) (7)(C) was assigned to the EPA (b) (6), (b) (7)(C) for (b) (6), years. During that time, (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) difficult or sensitive cases (b) (6), (b) (7)(C) . From approximately (b) (6), (b) (7)(C) was assigned to (b) (6), (b) (7)(C) experience also includes assignments as a (b) (6), (b) (7)(C)

On October 24, 2013, (b)(6), (b)(7)(C) knew that (b)(6) (b)(7)(C) was scheduled for an afternoon interview with EPA OIG agents. She was involved in (b) (6), (b) (7)(C) of that interview. After a 5:00PM meeting, (b)(6), (b)(7)(C) went by (b)(6) (b)(7)(C) office and noticed that he had not yet returned from his interview. At approximately 6:30PM, she left her office for the day and went by OHS and sat in Williams' office to wait for (b)(6) (b)(7)(C) return. Soon thereafter, (b)(6) (b)(7) (C) entered the OHS space and walked toward Williams' office. She described (b)(6) (b)(7) (C) as "visibly shaken. His face was, I would say bright pink, which I had never seen him color. I mean some people blush normally. He was…he was very pink….And when he began to speak, he…his voice was very shaky. I believe that he was close to tears." (b)(6) (b)(7) (C) told Williams and (b)(6), (b)(7) (C) that he felt like he couldn't leave the interview. He also felt like the OIG agents asked him questions that delved in to (b) (7)(A) matters he could not discuss with them. Based on what she heard, (b)(6), (b)(7) (C) believed that the OIG agents attempted to compel (b)(6) (b)(7) (C) to disclose (b) (6), (b) (7)(C) Williams began discussing the need to make reports to the

[redacted] (b)(7)(A) [redacted] As he began that discussion, the three heard the front door to the OHS office open, and saw two individuals, a man and a woman, approaching Williams' office. (b)(6), (b)(7)(C) did not know who either of the individuals was. (b)(6) (b)(7)(C) walked toward the two, and (b)(6), (b)(7)(C) assumed that the woman was EPA OIG SA Heller. (b)(6) (b)(7)(C) (b)(6), (b)(7)(C) later learned that these two individuals were SA Heller and (b)(6), (b)(7)(C)

(b)(6) (b)(7)(C) Williams and (b)(6), (b)(7)(C) then approached the two in that order. The two did not identify themselves. SA Heller addressed (b)(6) (b)(7)(C) "in a little bit of a harsh tone", stating words to the effect of "I forgot to tell you that you are not permitted to talk with anyone about what went on during the interview." (b)(6), (b)(7)(C) responded "That is not true." to what she described as an "unconditional" statement. (b)(6), (b)(7)(C) stated that these were the only four words she uttered during the engagement with Heller and (b)(6), (b)(7)(C) At that point, she made the conscious decision to allow (b)(6) (b)(7)(C) and Williams to handle the situation and went back to Williams' office. (b)(6), (b)(7)(C) stated that she really wanted to "let her (Heller) have it, because I felt she was bullying someone." From her vantage point, which included time inside Williams' office and time standing in the doorway of Williams' office, (b)(6), (b)(7)(C) was able to hear everything that went on and was able to see much of what went on.

(b)(6) (b)(7)(C) responded that he did not wish to talk to the agents without his attorney present. Williams then told Heller and (b)(6) (b)(7)(C) that if they had something to say to (b)(6) (b)(7)(C) they should put it in writing. Heller then began to introduce herself as SA Heller, and may have been trying to produce her credentials, but (b)(6), (b)(7)(C) could not recall. She eventually extended her hand to shake Williams' hand, and Williams did not return the handshake. He said words to the effect of "I don't need to meet you" or "I don't want to meet you." Williams then directed Heller and (b)(6), (b)(7)(C) to leave. There was some discussion between Heller, (b)(6) (b)(7)(C) and Williams, but at some point (b)(6) (b)(7)(C) departed, followed a few minutes later by Heller and (b)(6), (b)(7)(C)

With regard to her observations of the proximity between Heller and Williams, (b)(6), (b)(7)(C) stated that at the beginning of the encounter, they were within what (b)(6), (b)(7)(C) described as a "comfortable conversational distance" of approximately three feet. (b)(6), (b)(7)(C) never saw Williams and Heller get any closer to each other than that. She recalled (b)(6), (b)(7)(C) as being a few inches behind Heller. (b)(6), (b)(7)(C) stated definitively that she never saw Heller and Williams get within a foot of each other.

Based on her experience having worked with Williams over several years, (b)(6), (b)(7)(C) described him during this encounter "as he typically is, I would say, in control of this situation. He is a naval reserve officer. When called for, he speaks in an authoritative tone. He definitely used an authoritative tone…He did not yell. He did not scream…I can say categorically that he did not yell. He did not scream. He spoke in a slightly enhanced conversational tone, very firmly to her. And he probably escalated or increased his volume slightly as he told her, I think a second and third time, to please leave the space." (b)(6), (b)(7)(C) estimated that on a scale of 1 to 10, Williams' normal speech volume is at a 6. On the encounter with Heller and (b)(6), (b)(7)(C) she stated his volume was probably between a 7 and 8. (b)(6), (b)(7)(C) could not recall

any hand motions by Williams during this encounter, and denied seeing Williams point at Heller.

(b)(6), (b)(7)(C) stated that one of the first things she noticed when Heller came in to the office was that she had on very high heeled black boots. She recalls thinking to herself "Oh, my god. I'd be like a giant in those." She described Heller without the boots as approximately (b)(6) (b)(7)(C) height, five feet seven inches, and with the boots, estimated her height as five feet nine inches to five feet ten inches. She estimated Williams' height at five feet one inch to five feet two inches. When asked how it would have looked if Williams stood just inches away from Heller, she stated "I know Steve so well and how he practices rules of etiquette and…and demeanor with…with women. He would never stand that close to a woman. He's told me, you know, a little bit about his military background. He has certainly commanded women. He's served with women. He would just never do anything that was inappropriate physical…in physical proximity to a woman."

During the exchange between Heller and (b)(6), (b)(7)(C) did not observe any movement by (b)(6), (b)(7)(C) to indicate that he perceived a threat. (b)(6), (b)(7)(C) did not know who he was at the time, and finding him to be physically imposing, she was "cautious" about him and paid attention to him and his movements. (b)(6), (b)(7)(C) also did not observe any actions by Heller suggesting that Heller felt threatened.

When asked if she saw any misconduct on the part of any OIG agent, Williams, or (b)(6) (b)(7)(C) during this first encounter, (b)(6), (b)(7)(C) stated that she did. "…because SA Drake (Heller) and (b)(6), (b)(7)(C) came back in to OHS space, and attempted to speak to (b)(6) (b)(7)(C) without his attorney, after the interview, about an interview where he had been represented, and…and was clearly trying to, you know, direct him to do something outside the presence of his attorney, I thought that was inappropriate, and that if I had seen that, in a different circumstance, I would probably have reported that as…as, you know, possibly being a, you know a breach of investigative protocol." (b)(6), (b)(7)(C) clarified that once (b)(6) (b)(7)(C) indicated that he did not wish to speak with the agents without his attorney present, the agents should have communicated with the attorney. (b)(6), (b)(7)(C) also suggested that at the point when (b)(6) (b)(7)(C) stated he did not wish to speak with the agents, the agent's authority to be in the space "evaporated." She denied observing Williams engage in anything that constituted "conducting unbecoming" or "creating a disturbance".

(b)(6), (b)(7)(C) never saw Heller produce any document for (b)(6) (b)(7)(C) to sign, despite Williams' admonishment to "put it in writing."

Once Heller and (b)(6), (b)(7)(C) departed, Williams came back to his office and the discussion returned to concerns that (b)(6) (b)(7)(C) had been compelled to disclose classified information. (b)(6), (b)(7)(C) described Williams' demeanor at this time as a "heightened state of alertness." She stated that when they were in the office together, they were sitting within a couple of feet of each other. (b)(6), (b)(7)(C) saw "absolutely no trace of facial redness or…or perspiration, or wetness on his face at all." She also denied ever seeing spittle coming out of Williams' mouth. (b)(6), (b)(7)(C) and Williams drafted an email together to report what had happened to Juan

Reyes, Associate Administrator of OHS. While drafting this email, Williams took a phone call from [redacted]. [redacted] could tell from Williams' side of the conversation that [redacted] was upset over what had happened [redacted]. She described Williams as trying to reassure [redacted] that he would take care of the situation. At the conclusion of that call, the email was sent and [redacted] continued talking with Williams about external notifications they thought they should make.

As they were having this discussion, they heard the front door being "flung" open and four men entered the space very quickly. Williams and [redacted] got up and walked toward the front door and saw [redacted] coming out of his cubicle. She described the men addressing [redacted], Williams and [redacted] in "that slightly elevated yell that law enforcement people do, when there…it reminded of what I have seen again, in movies and TV, in some kind of raid. And I had…I mean I was clearly shocked. I had no idea why they were there." She later learned that the first agent in line was [redacted] Behind him was an agent she already knew, [redacted] Behind him was another agent she knew, [redacted] Behind [redacted] was the agent who was doing most of the "shouting", and agent she later learned named [redacted] She described [redacted] and [redacted] focusing on [redacted] with [redacted] "shouting" directives at [redacted] trying to get [redacted] into the OHS conference room. [redacted] and [redacted] were focused more on Williams and [redacted] trying to get [redacted] in to one of the empty offices to question her. [redacted] thought to herself "This situation is out of control, for where we are, and what we are doing, and I need to be very careful not to escalate it…My desire was to tell [redacted] and anyone else who was in the range of my voice, "What on earth did they think they were doing?" and that I felt extremely uncomfortable being in the space, with four armed agents, who were shouting at me, as if I was in the middle of a drug deal. But I did not." Instead, [redacted] engaged [redacted] directly but quietly, suggesting that everyone was upset from what had happened, and perhaps the interviews could be conducted at another time. Quoting the Inspector General Act, [redacted] finally told [redacted] "I do not want to be questioned, unless you believe that I am committing a felony in your presence." At this point, [redacted] noted a change in [redacted] and he began to disengage, suggesting instead that they exchange contact information. It was at this point that [redacted] introduced himself as an EPA OIG special agent.

As [redacted] was trying to de-escalate the situation with [redacted], she could still hear [redacted] "going after" [redacted] "screaming things like "If you don't cooperate, you know, you can be…we can…you can be terminated. We can terminate you from your federal employment." She noticed Williams moving toward [redacted] [redacted] saw him at the door of the conference room, and could hear him "trying to calm things down." While not recalling his exact words, [redacted] was left with the impression that Williams was trying to "intervene and defend" [redacted] and that he wanted the "forced interrogation" to stop. Soon thereafter, all four agents left the space.

[redacted] described this encounter as "one of the trials of my [redacted] career…I definitely felt that I was being confined…I believed that I possibly, if the situation escalated, I believe there could have been violence. I knew all four of these men were armed…for a little bit of time, (I) feared for my safety." [redacted] elaborated that "It was a combination of the way they

entered the room; the resemblance to what I would consider to be a drug raid, or some really, you know, patently obvious illegal activity; the fact there were four of them; the fact that they were armed…I believe they were armed…the fact that they were shouting and trying to separate us; and also, the physical proximity of…of their bodies to ours." [redacted] was asked whether, in her opinion, the agent's desire to interview [redacted] on October 24, 2013, was within their authority to compel? [redacted] stated her belief that the agents did not have management authority to compel the interview. She stated that the authority to compel an interview "stems from management, through the IG agent, to the employee."

During this second encounter with the four OIG agents, [redacted] denied observing anything on the part of Williams that rose to inappropriate behavior or misconduct. When asked whether she observed anything on the part of [redacted] that amounted to inappropriate behavior or misconduct, [redacted] stated "Yes. I think that…I think I was unlawfully detained. I think I was unlawfully questioned. I think I…they created a…a workplace environment, where I had fear for my well being, my physical well being. It was very…it was fleeting and I think I talked them out of it. But there was a very distinct time period when I was frightened, and I don't frighten easily." With regard to [redacted] interaction with [redacted] stated "…I can only imagine what it would have felt like to be having somone…an agent screaming at you that unless you go into a conference room with the agent, and let him start questioning you, that you'll be fired…I felt that what he was saying to [redacted] was false, and that he…and that he was impinging on his rights as well." [redacted] described [redacted] as "clearly the most out of control of the four of them…the thought crossed my mind that he might pull his weapon on…on [redacted]."

After the agents left, [redacted] and Williams all discussed what had just occurred and who they should notify. [redacted] wrote an email that night summarizing what occurred and sent it to the General Counsel, Deputy General Counsel, and other managers in the Office of General Counsel. She believes that she got responses from Avi Garbo and Brenda Mallory expressing concern over what had occurred. She recalls meeting with Garbo the next day to report further on what had occurred.

[redacted] stated that she subsequently became aware that agents in the EPA OIG attempted to bring a criminal charge of assault against Williams. She stated "I would like to say, under oath, that there is no possible way that SA Drake (Heller), or a reasonable agent in her position, could have interpreted what went on, in my presence that night, as an assault, criminal, civil, or otherwise, absent professional incompetence or psychosis."

When asked whether she observed, at any time on October 24, 2013, a refusal to testify or cooperate in an official proceeding on the part of Williams, [redacted] stated "No". She also denied observing anything that day leading her to believe that Williams refused to comply with a proper order. [redacted] denied observing anything at any time that led her to believe that [redacted] refused to comply with a proper order.

21. On April 14, 2015 and April 20, 2015, [redacted] provided via email copies of the undated notification letters that the EPA OIG sent to the FBI (Exhibits 48 and 49). The first

letter identified OHS as the subject of the OIG's investigation; the second letter identified Williams, (b)(6), (b)(7)(C) and (b) (6), (b) (7)(C) as subjects.

22. On May 15, 2015, Assistant United States Attorney (b)(6) (b)(7)(C), District of Columbia, declined prosecution of this matter, including Heller's allegation that Williams assaulted her (18 U.S.C. §111) or the allegation raised by OIG personnel that he committed "Obstruction of Justice" by interfering with (b)(6), (b)(7) (C) interview (Exhibit 50).

ANALYSIS AND CONCLUSION

This investigation found that in the spring of 2013, the EPA OIG began investigating an EPA employee [redacted] (b) (7)(A) for allegations of employee misconduct – possibly pertaining to (b) (6), (b) (7)(C), (b) (7)(A). In June 2013, it came to the OIG's attention that (b) (6), (b) (7)(C), (b) (7)(A) [redacted] (b) (7)(A), (b) (6), (b) (7)(C) [redacted]. The FBI had a memorandum of understanding with OHS, and they were already working (b) (7)(A), (b) (6), (b) (7)(C) so the FBI declined the OIG's offer to work together. The FBI further informed the OIG that they should (b) (7)(A), (b) (6), (b) (7)(C) to de-conflict the matter, to which the OIG responded that they still intended to travel to (b) (7)(A), (b) (6), (b) to meet with the FBI about their case. Consequently, the OIG initiated a separate investigation of OHS, the scope of which was "obstruction of justice," to investigate OHS for withholding allegations of employee misconduct (b) (7)(A), (b) (6), (b) (7)(C) [redacted] (b) (7) [redacted]. According to witness testimony, the scope of the OIG's investigation into OHS evolved to include a review of OHS' authority to conduct investigations and whether it was appropriate (b) (7)(A), (b) (6), (b) (7)(C) to work in OHS (b) (7)(A), (b) (6), (b) (7)(C) [redacted]. It is common for most OIGs to notify the FBI when investigations are initiated, and thus the OIG sent two letters to the FBI notifying them of the investigation of OHS. The first letter listed OHS as the subject of the OIG's case, but it did not identify any individual (Exhibit 48). The second letter identified (b)(6) (b)(7)(C), Williams, and (b)(6) (b) (7)(C) as subjects (Exhibit 49). While OIG witnesses generally described the nature of the investigation of OHS as administrative, both letters identified a potential criminal violation, obstruction of justice (18 U.S.C. §1510 and 18 U.S.C. §1519), as being within the scope of the investigation.

During the course of the OIG's investigation of OHS, the OIG obtained (b) (7)(A) [redacted] and conducted witness interviews. Heller emailed (b)(6) (b) (7)(C) to arrange an interview, which led to several weeks of discussions between the OIG, OHS, and the EPA Administrator's office about the scope of the questioning and the purpose of the interview. On October 24, 2013, Heller and (b)(6), (b) (7)(C) conducted an interview of (b)(6) (b)(7) (C) in an OIG conference room. (b)(6) (b)(7) (C) was represented by a private attorney. After what all participants described as a contentious four-hour interview, (b)(6) (b) (7)(C) departed OIG spaces, and (b)(6), (b) (7)(C) escorted (b)(6) (b)(7)(C) attorney out of the EPA building.

When (b)(6) (b)(7) (C) returned to the OHS office, (b)(6), (b)(7) (C) noted that he appeared visibly shaken by the interview. (b)(6) (b)(7) (C) reported to Williams and (b)(6) (b)(7) (C) that the OIG agents had asked him about topics that were previously agreed upon to be off-limits for the investigation, (b) (6), (b) (7) (C), (b) (7)(A) [redacted].

Meanwhile, Heller realized she forgot to have (b)(6) (b) (7)(C) execute a NDA prior to his and his attorney's departure from the interview room. Heller and (b)(6), (b)(7)(C) then went to OHS spaces to locate (b)(6) (b)(7) (C) and have him execute the NDA. Upon entering OHS spaces, Heller and

(b)(6), (b)(7)(C) met (b)(6) (b)(7)(C) (b)(6) (b)(7)(C) told the agents he did not wish to speak with them without his attorney present. Heller verbally directed (b)(6) (b)(7)(C) that he was not permitted to discuss their interview with anyone/anyone other than his attorney. When the agents continued attempting to communicate with (b)(6) (b)(7)(C) Williams stepped forward and directed the agents to leave the office. Also present at this time were (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C)

The OIG agents both assert that Williams was belligerent and aggressive in his interaction with Heller. Heller claims that he approached within 12 inches of her and pointed his finger within inches of her chest. Both agents described Williams as yelling loudly and sweating profusely with bulging veins. Heller stated that she was intimidated by Williams, and when she stepped back away from him, Williams advanced and closed the distance. Williams, (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) stated that Williams never got closer than two feet from Heller at any time, was calm but forceful, never closed the distance with Heller, and specifically pointed toward the door of the suite while directing the agents to leave, never pointing directly at Heller. All three denied that Williams yelled, denied that he was sweating profusely, and denied that he had bulging veins. Neither (b)(6) (b)(7)(C) (b)(6), (b)(7)(C) nor (b)(6), (b)(7)(C) described Williams' behavior as threatening or inappropriate. Eventually, Heller and (b)(6), (b)(7)(C) left OHS.

After Heller and (b)(6), (b)(7)(C) departed the OHS office, Williams received a telephone call from (b)(6), (b)(7)(C) told Williams that (b)(6) (b)(7)(C) was upset, and (b)(6), asked Williams to promise (b)(6), (b) (6), (b) (7)(C) team leader, he would do his best to "ensure that these things did not continue to happen."[3]

Upon their return to the OIG office, Heller informed her managers and (b)(6), (b)(7)(C) that Williams had "assaulted her,"[4] as she felt intimidated by him, and his intimidation constituted assault. (b)(6), (b)(7)(C) testified that he told Sullivan, "We've just had an assault on a federal agent…we've got to do something about this. We've got to handle this situation."[5] Sullivan then dispatched (b)(6), (b)(7)(C), and (b)(6), (b)(7)(C) to OHS to investigate. (b)(6), (b)(7)(C) and Williams characterized the OIG agents' entry into the OHS space as being authoritative, and (b)(6), (b)(7)(C) compared it to police officers on a drug raid.[6] (b)(6), (b)(7)(C) gave a similar account of the agents' entry; he testified that when they entered OHS, he instructed Williams to "Come here," and he and Williams walked towards each other "aggressively." As (b)(6), (b)(7)(C) walked past, he instructed (b)(6), (b)(7)(C) to "Stay put."[7] While (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) attempted to interview (b)(6), (b)(7)(C) and Williams, (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) attempted to interview (b)(6), (b)(7)(C) in a conference room. (b)(6), (b)(7)(C) and (b) indicated they attempted to calm the situation. The OIG agents portrayed Williams as being upset, and they indicated his behavior was inconsistent with a professional office setting.

[3] Williams, pg. 49
[4] Heller, pgs. 61-62
[5] (b)(6), (b)(7)(C) pg. 20
[6] (b)(6), (b)(7)(C) pg. 53
[7] (b)(6), (b)(7)(C) pg. 22

Meanwhile, [redacted] felt unlawfully detained by the OIG, and she testified that the agents created a workplace environment in which she feared for her safety. Initially, [redacted] did not want to be interviewed at that time given the time of day (approximately 6:30 – 7:00 p.m.), and asked to be interviewed the following day. However, after [redacted] informed [redacted] that he was being compelled to be interviewed, and he could be fired if he did not comply, [redacted] finally agreed to the interview. Williams asked [redacted] multiple times if he was okay during the interview. Eventually, [redacted] said he did not want to be interviewed that evening. [redacted], and [redacted] characterized Williams' conduct as disruptive and interfering with their interview of [redacted] However, [redacted] Williams, and [redacted] portrayed Williams as being concerned about [redacted] as [redacted] team leader. After approximately 10 minutes, the OIG agents decided to terminate the interviews because they believed they would not be fruitful, and they returned to the OIG office.

The following day, Sullivan reported Williams' alleged assault of Heller to FPS. Initially, the OIG initiated a joint investigation with FPS, but the OIG closed that investigation based on a request from the EPA Administrator. FPS finished their investigation independently, and they ultimately applied for an arrest warrant for Williams for violating DC Code 22-404, "Assault or Threatened Assault in a Menacing Manner; Stalking". An assistant United States attorney declined to pursue the charge and instructed FPS to handle the matter administratively.

1. **Did SA Heller improperly attempt to prevent [redacted] from disclosing details of his interview when she told him he was not permitted to discuss details of the interview with anyone other than his attorney?**

[redacted] testified that Heller told [redacted] that he was not permitted to discuss his interview with anyone, which caused her to interject, "That's not true."[8] [redacted] further testified that she thought Heller was "bullying" [redacted] Williams, and [redacted] each testified that Heller told [redacted] that he was not permitted to disclose information about the interview to anyone. Testimony further established that after [redacted] asked whether he could discuss the interview with specific individuals including his wife, Heller told him that he could not speak with anyone except his attorney. Heller admitted to giving this admonishment to [redacted] She testified, "And then I told him that I wanted, that I needed to advise him that he was not allowed to discuss what we had talked about in the interview with anybody except for his attorney."[9] Therefore, witnesses consistently testified that Heller advised [redacted] that he was not permitted to discuss the interview with anyone, or at least anyone except his attorney. Furthermore, witnesses were consistent in observing that Heller never actually presented/attempted to present the NDA to [redacted] for his review and possible signature, nor did Heller produce the NDA to justify the propriety of her admonishment to [redacted]

[8] [redacted] pg. 21
[9] Heller, pg. 50

We found no EPA OIG policy regarding such oral admonishments to witnesses. Upon review of the EPA NDA form (see Exhibit 12), which the record reflects was Heller's basis for giving (b)(6) (b)(7)(C) the oral admonishment – we noted that the form did not contain such unconditional instructions as those Heller gave to (b)(6) (b)(7)(C). In fact, the form lacks any specific language prohibiting the witness from discussing the contents of his interview with anyone, rather it calls for the witness to acknowledge he "understands" that "unauthorized disclosures" of certain information could have a negative impact on the OIG investigation and then explicitly states its execution is "voluntary" rather than "required". Likewise, we found no OIG policy governing the use of the NDA form itself. Apparently, use of the form was implemented based on a June 10, 2013, email from (b)(6), (b)(7)(C) to EPA OIG special agent personnel (contained in Exhibit 12).

Given that Heller's verbal instructions to (b)(6) (b)(7)(C) were not grounded in EPA-OIG policy and were inconsistent with the language found in the OIG NDA form, we considered whether her statements to (b)(6) (b)(7)(C) constituted "dishonest" behavior as characterized by the EPA Table of Offenses, Number 7, "Conduct which is generally criminal, infamous, dishonest, immoral or notoriously disgraceful." Notwithstanding these factors, we found no evidence that Heller intentionally misrepresented to (b)(6) (b)(7)(C) that he was prohibited from discussing the interview. Accordingly, we find that Heller did not violate EPA Table of Offenses, Number 7, "Conduct which is generally criminal, infamous, dishonest, immoral or notoriously disgraceful."

Next we considered whether Heller's admonishment to (b)(6) (b)(7)(C) constituted "Negligent performance of duties" as described in the EPA Table of Offenses, Number 22a. As previously discussed, Heller's statement to (b)(6) (b)(7)(C) that he was not permitted to discuss the interview with anyone except his attorney, was not grounded in EPA OIG policy. Furthermore, Heller had no authority to issue (b)(6) (b)(7)(C) such an order, even if it had been grounded in EPA OIG policy since she was not (b) (6), (b) (7)(C) supervisor. Of significant note, Heller's oral admonishment to (b)(6) (b)(7)(C) was inconsistent with the language contained in the NDA, a document she admits was the basis for her visit to the OHA spaces but which she never produced. While EPA OIG's NDA requests the interviewee's voluntary agreement not to make "unauthorized disclosures," a term that the NDA does not define, Heller demanded (b)(6) (b)(7)(C) compliance with a much broader limitation. Finally, we note that witness testimony was consistent in that Heller clearly told (b)(6) (b)(7)(C) he could not talk to anyone about the interview except his attorney. When interviewed on September 30, 2014 however, Heller more accurately described her authority to issue an admonishment – "...it's my understanding that I have the authority to say, "I'm asking you as an employee not to discuss this information with anyone."[10] As a special agent, Heller is entrusted with a great deal of authority, and she is expected to exercise due care in the performance of her duties. By making such a cavalier and baseless statement cloaked in her authority as an OIG special agent,

[10] Heller, pg. 43

Heller escalated what was already a very tense situation. Witnesses testified that her admonishment to [redacted] elicited from Williams that she should "put it in writing"[11] and [redacted] interjecting, "That's not true."[12] Therefore, we find by a preponderance of evidence that Heller violated the EPA Table of Offenses, Number 22a, by performing her duties in a negligent manner by failing to recognize that she lacked the authority to issue an order to [redacted] not to discuss his interview with anyone except his attorney.

2. **Did SA Heller improperly communicate with someone she knew to be represented by counsel without counsel present?**

Testimony established that when Heller and [redacted] arrived at the OHS space, [redacted] attorney was not present. Heller testified that she told [redacted] she wanted to speak with him privately, to which [redacted] responded that he did not wish to speak with her without his attorney present. Heller persisted by telling [redacted] that he was not permitted to disclose the contents of his interview with "anyone". [redacted] testified that she believed it was inappropriate for Heller to persist in engaging with [redacted] after he stated he did not wish to speak without his attorney present. [redacted] informed Heller that she "should not be there" because he was represented by an attorney.[13]

While Heller was reluctant to characterize her investigation of OHS as purely administrative, she also testified that she did not believe [redacted] was entitled to an attorney in the first place because his interview was administrative in nature, and his attorney was permitted during the interview as a "courtesy." Additionally, Heller did not intend to ask [redacted] any questions, therefore, she did not believe [redacted] was entitled to an attorney when she approached him to sign the NDA.

In order to establish that Heller violated 5 U.S.C. §555, it must be proven that Heller denied [redacted] the right to counsel during an "agency proceeding." In *Cohen v. Department of Homeland Security*, 121 M.S.P.R. 152; 2014 MSPB LEXIS 3967 (June 19, 2014), the Board noted that the "APA [Administrative Procedures Act] establishes a right to counsel during "agency proceedings." The Board defined an "agency proceeding" as "rule-making, adjudication, and licensing." The Board further stated, "It [5 U.S.C. §555] does not create a right to counsel during an investigation." Therefore, based on a preponderance of evidence, we find Heller did not violate 5 U.S.C. §555 because Heller and [redacted] presence in OHS was not for the purpose of an "agency proceeding."

In order to establish that Heller violated the McDade Amendment (28 U.S.C. §530B), it must be proven that Heller, acting on behalf of an attorney for the Government, typically an

[11] Williams, pg. 28
[12] [redacted] pg. 21
[13] [redacted] pg. 34

Assistant United States Attorney, contacted (b)(6) (b)(7)(C) about a matter for which (b)(6), (b)(7)(C) had sought an attorney's representation. While (b)(6) (b)(7)(C) was represented by an attorney in the matter of the OIG's investigation of OHS, Heller was not acting on behalf of an attorney for the Government when she contacted (b)(6) (b)(7)(C) In fact, the OIG had not discussed the investigation with any Department of Justice attorney. Therefore, based on a preponderance of evidence, we find Heller did not violate 28 U.S.C. §530B.

However, Heller's assertion that (b)(6) (b)(7)(C) was not entitled to an attorney because the interview was administrative was inaccurate. Specifically, EPA OIG Policy 207, Section 4-1, "Legal Representation," states, "OIG policy permits an employee who is not in custody to have an attorney present at an interview if the employee so requests. . . The Special Agent will allow the individual a reasonable opportunity to arrange for an attorney to be present at the interview." While Heller did not intend to ask (b)(6) (b)(7)(C) any questions when she went to OHS to have him sign the NDA, her re-approaching (b)(6) (b)(7)(C) was an extension of the interview because she had neglected to complete what was consistently described by EPA OIG personnel as a routine component of their interviewing process – asking the interviewee to sign a NDA. While Heller believed that she was not obligated to allow (b)(6) (b)(7)(C) the opportunity to have counsel present when she re-approached him, we nonetheless find that she violated EPA OIG Policy 207, Section 4-1, in that Heller failed to provide (b)(6) (b)(7)(C) with a reasonable opportunity to have his attorney present during the discussion regarding signing the NDA, which discussion was an integral part of a routine EPA OIG interview. Additionally, we noted that by approaching (b)(6) (b)(7)(C) without his attorney present, Heller muddied the waters and could have created an avoidable problem. Specifically, the OIG had made written notification to the FBI that (b)(6) (b)(7)(C) was a subject of their investigation, the scope of which included a criminal violation of Obstruction of Justice. Although this was ultimately a moot point because the case was not presented for criminal prosecution, the issue of the propriety of Heller communicating with (b)(6) (b)(7)(C) outside the presence of his attorney in violation of the EPA OIG's own policy could have been raised by defense counsel if the matter had progressed to a trial.

3. **Did Williams violate EPA Table of Offenses number 8 (Abusive or offensive language, gestures, or other conduct) during his interaction with Heller?**

In order to establish that Williams violated Offense Number 8 in the EPA Table of Offenses, "Abusive or offensive language, gestures, or other conduct", it must be proven that Williams used offensive language and/or gestures against Heller. Heller, (b)(6) (b)(7)(C) (b)(6) (b)(7)(C) Williams and (b)(6) (b)(7)(C) all testified that Williams did not use offensive language during the encounter. Heller testified that she felt threatened by Williams' proximity, and that his fingers came within inches of her breasts when he was pointing at her. (b)(6) (b)(7)(C) not only corroborated Heller's version of

events, but also reports he felt a physical attack was "imminent".[14] Yet by his own admission, (b)(6) (b)(7)(C) took no action and made no statements to assist Heller during her encounter with Williams. As a former (b)(6) (b)(7)(C) (b)(6) (b)(7)(C) testified that he has been involved in "hundreds" of use of force incidents. It is therefore inconceivable that (b)(6) (b)(7)(C) would stand silently next to Heller, even as he felt a physical attack was "imminent".

Williams denied pointing at Heller, stating that he was actually pointing toward the door and directing her to leave. Both (b)(6) (b)(7)(C) and (b)(6) (b)(7)(C) corroborate Williams' testimony. Based on the accounts of Heller, (b)(6) (b)(7)(C) Williams, (b)(6) (b)(7)(C) and (b)(6) (b)(7)(C) we find by a preponderance of evidence that Williams did not use abusive or offensive language nor did he use abusive or offensive gestures during his interaction with Heller.

4. **Did (b)(6), (b)(7)(C) violate EPA-OIG policy by causing (b)(6), (b)(7)(C) to reasonably believe he was in a custodial situation?**

EPA OIG Policy Number 207, part 3-1 states, "Unless taken into custody, persons interviewed by the OIG are free to leave an interview at any time. Occasionally, circumstances might evolve under which an interviewee might reasonably perceive that a custodial situation has arisen. Special Agents should take care to prevent such situations from arising." We find that (b)(6), (b)(7)(C) violated this standard.

(b)(6), (b)(7)(C) testimony and the memorandum he prepared after the events of October 24, 2013 reflect that (b)(6), (b)(7)(C) told him that he needed to be interviewed immediately. When (b)(6), (b)(7)(C) informed (b)(6), (b)(7)(C) that he would prefer to be interviewed at a later date because it was beyond business hours and he was already late leaving the office, (b)(6), (b)(7)(C) told (b)(6), (b)(7)(C) "We need to speak to you now." (b)(6), (b)(7)(C) described (b)(6), (b)(7)(C) as "very insistent and aggressive in his tone with me." (b)(6), (b)(7)(C) further testified, "(b)(6) (b)(7)(C) (b)(6), (b)(7)(C) became more insistent and started threatening that I would be obstructing an IG investigation if I did not provide them immediate testimony and that administrative penalties can include me losing my job." On two occasions, (b)(6), (b)(7)(C) stated "I'm compelling you to testify."[15] When (b)(6), (b)(7)(C) stated, "So you're obstructing the investigation," and began writing things down (b)(6), (b)(7)(C) agreed to the interview, at which time (b)(6), (b)(7)(C) led (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) into the conference room.[16]

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[14] (b)(6), (b)(7)(C), pg. 16

[15] These statements by (b)(6), (b)(7)(C) call into question whether he violated EPA Table of Offenses, Number 22a by performing his duties in a negligent manner by failing to recognize that he lacked the legal authority to compel (b)(6) (b)(7)(C) interview; however, we concluded that any such misconduct was subsumed within the larger question of whether (b)(6), (b)(7)(C) violated EPA-OIG policy by causing (b)(6), (b)(7)(C) to reasonable believe he was in a custodial situation.

[16] (b)(6), (b)(7)(C) pg. 46-47

(b)(6), (b)(7)(C) testimony supported that of (b)(6), (b)(7)(C). She noted that when the agents entered OHS, it was like a "drug raid."[17] She characterized (b)(6), (b)(7)(C) as "doing most of the shouting." She stated that (b)(6), (b)(7)(C) was "shouting directives" at (b)(6), (b)(7)(C), trying to move (b)(6), (b)(7)(C) into the OHS conference room. Even as (b)(6), (b)(7)(C) was engaged in conversation with the other agents, she could hear (b)(6), (b)(7)(C) "screaming" at (b)(6), (b)(7)(C) that he could be terminated from Federal employment if he did not consent to the interview. With regard to (b)(6), (b)(7)(C) interaction with (b)(6), (b)(7)(C), (b)(6), (b)(7)(C) stated "…I can only imagine what it would have felt like to be having someone…an agent screaming at you that unless you go into a conference room with the agent, and let him start questioning you, that you'll be fired…I felt that what he was saying to (b)(6), (b)(7)(C) was false, and the he…and that he was impinging on his rights as well." (b)(6), (b)(7)(C) described (b)(6), (b)(7)(C) as "clearly the most out of control" of the four OIG agents, and "the thought crossed my mind that he might pull his weapon[.]"[18]

Williams testified that he observed (b)(6), (b)(7)(C) pointing in (b)(6), (b)(7)(C) face and "forcing movement" by getting close to (b)(6), (b)(7)(C). Williams heard (b)(6), (b)(7)(C) yelling at (b)(6), (b)(7)(C) "You will talk to me. I'm investigating it." Williams heard (b)(6), (b)(7)(C) tell (b)(6), (b)(7)(C) "You will talk to me, or you will be fired." Williams testified that (b)(6), (b)(7)(C) looked at him "in trauma" during his interaction with (b)(6), (b)(7)(C).

(b)(6), (b)(7)(C) testimony corroborated the others' testimony about his conduct. Specifically, (b)(6), (b)(7)(C) testified that he told (b)(6), (b)(7)(C) "You do need to talk to me. You're required by EPA policy to talk to me about this. You're not the subject of this investigation. You know, there's a …you're directed by your administrator to talk to me." (b)(6), (b)(7)(C) stated that (b)(6), (b)(7)(C) repeatedly told him that he did not want to talk, that he wanted to go home. (b)(6), (b)(7)(C) then told (b)(6), (b)(7)(C) "Okay. I'll report this to the administrator tomorrow and then we'll go from there." (b)(6), (b)(7)(C) stated at that point, (b)(6), (b)(7)(C) said that he wanted to talk to (b)(6), (b)(7)(C), and (b)(6), (b)(7)(C) led (b)(6), (b)(7)(C) in to the conference room along with (b)(6), (b)(7)(C).

Based on the accounts of [redacted], (b)(6), (b)(7)(C) Williams, and (b)(6), (b)(7)(C) might have reasonably perceived that a custodial situation had arisen as a result of (b)(6), (b)(7)(C) conduct. Therefore, we find by a preponderance of the evidence that (b)(6), (b)(7)(C) violated EPA OIG Policy Number 207, Part 3.1.

5. **Did Williams violate EPA Table of Offenses number 16 (…refusal to testify or cooperate in an official proceeding) or 20 (Insubordinate defiance of authority, disregard of directive, refusal to comply with proper order) during his second interaction with the OIG on October 24, 2013?**

In order to establish that Williams violated offense number 16 in the EPA Table of Offenses (…refusal to testify or cooperate in an official proceeding), it must be proven that Williams had a

[17] (b)(6), (b)(7)(C), pg. 62
[18] (b)(6), (b)(7)(C), pgs. 54, 70, 71

duty to cooperate in an official proceeding and failed to do so. The EPA Table of Offenses does not define the term "official proceeding" as it is used in the context of offense number 16. For the purposes of the following analysis, we have adopted the following definition of the term "official proceeding" found in The American Law Institute's Model Penal Code Annotated, Article 240, Bribery and Corrupt Influence, Section 240.O. It states, "a proceeding heard or which may be heard before any legislative, judicial, administrative or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary or other person taking testimony or deposition in connection with any such proceeding." Given that during the second encounter, the OIG agents were dispatched by the AIGI to the OHS spaces to investigate Heller's alleged assault, and that OIG agents are empowered to take statements under oath for official investigations, we conclude that the second encounter was in fact an official proceeding.

In the second encounter, Williams interceded on behalf of [redacted] to stop [redacted] compelled interview of [redacted] which was being achieved by [redacted] improper custodial restraint of [redacted] In that case, [redacted] stated that he was threatened with job termination by [redacted] if [redacted] did not immediately submit to an interview. Williams stated that he heard [redacted] making threats to terminate [redacted] employment if he did not cooperate. [redacted] himself acknowledged that he told [redacted] "You do need to talk to me. You're required by EPA policy to talk to me about this. You're not the subject of this investigation. You know, there's a …you're directed by your administrator to talk to me." [19] Williams interceded in that interview only after hearing the threats made against [redacted] and after hearing [redacted] state that he did not wish to submit to an interview at that time. Williams previously asked [redacted] to state his authority in questioning employees after hours, and questioned [redacted] authority to "do whatever it is you're doing" without management approval.[20] He also heard [redacted] tell [redacted] that if he did not see a felony committed in his presence, then he needed to leave.[21] Williams therefore could have reasonably believed that [redacted] had no authority to compel [redacted] to submit to an interview by improperly restraining [redacted] freedom of movement after [redacted] repeatedly told [redacted] that he did not wish to be interviewed at that particular time. We therefore do not find that Williams "refused to cooperate" but rather that Williams assisted [redacted] in exercising his right not to be placed in custody and interviewed at such a late hour in the work day as opposed to being interviewed in a non-custodial situation the next work day.

Similarly, we find that Williams did not violate EPA Table of Offenses, Number 20, "Insubordinate defiance of authority, disregard of directive, refusal to comply with proper order". To establish a violation of this standard, it must be proven that Williams defied legal

[19] [redacted] pg. 24
[20] Williams, pg. 61
[21] Williams, pg. 62

authority or refused to comply with a proper order. The fact that [redacted] improperly compelled [redacted] to submit to an interview by violating EPA Policy Number 207, Part 3-1, calls into serious question whether [redacted] direction to Williams to stop interfering with [redacted] misconduct could even be considered a "proper order" under EPA Table of Offenses, Number 20. Furthermore, EPA OIG Interim Guidance 207-01 states "If an interviewee has been advised of his or her duty to respond *but refuses to do so*, the details regarding this refusal will be reported to the AIGI, who will then report the matter to the appropriate agency officials…so that appropriate management orders and/or administrative action may be taken." In this case, there is no evidence that [redacted] reported [redacted] refusal to answer questions to the AIGI. Instead, the evidence suggests that [redacted] responded to [redacted] refusal to answer questions with physical separation from others in the office and threats to terminate [redacted] employment. EPA OIG policy clearly indicates that the authority to compel an employee's cooperation rests with management ("…so that appropriate management orders and/or administrative action may be taken.") and not with the EPA OIG special agent [redacted] order for [redacted] to cooperate was, therefore, made by [redacted] without proper legal authority. Further, even [redacted] while describing Williams' conduct as "interference", did not feel that Williams' conduct rose to the level of "obstruction".[22] In fact, it was [redacted] supervisor, who made the decision to not enforce [redacted] directive to Williams, strongly suggesting that he either (a) recognized [redacted] direction to Williams was not a "proper order" and/or (b) did not believe Williams' conduct constituted a violation of [redacted] direction. Instead, the four agents departed the office space. For these reasons, we find by a preponderance of the evidence that Williams did not violate EPA Table of Offenses, number 20.

Other Matters

The scope of this investigation was limited to the events of October 24, 2013. DCIS did not investigate the following allegations/issues that were outside that scope:

- Attorney Biran's allegation that the EPA OIG used coercive and inappropriate means to attempt to gain access to [redacted]
- Attorney Biran's allegation that IG Elkins and his staff made false statements to both houses of Congress regarding OHS' actions in the John Beale investigation.
- The propriety of the EPA OIG's inquiry as to whether [redacted] was authorized by policy or regulation to conduct [redacted] investigations in OHS;
- Whether [redacted] was authorized to withhold information from the OIG [redacted]
- Whether it was proper for Heller [redacted] Williams.

[22] [redacted] pg. 40-41

- Whether the EPA OIG NDA is a legally binding agreement (see Exhibit 12).
- Whether there was sufficient evidence for the EPA OIG to "title" (b)(6) (b)(7)(C) Williams, and (b)(6) (b)(7)(C) for violation of 18 U.S.C. §1519 as indicated in the EPA-OIG letter to the FBI (see Exhibit 49).
- (b)(6), (b)(7) allegation that the FPS agent misrepresented facts in his arrest warrant application for Williams. DCIS referred that allegation to the Department of Homeland Security, OIG (Exhibit 51).

EXHIBITS

1. Letter from the Honorable Arthur Elkins to the Honorable Phyllis Fong dated January 24, 2014, with attachments.
2. MOU between DoD OIG and EPA OIG dated March 10, 2014.
3. Letters from Avi Garbow, EPA, to Henry Shelley, DoD OIG, dated February 26, 2014 and September 18, 2014.
4. Heller's testimony before the HOGR Committee dated May 7, 2014.
5. Letter from Biran to McCarthy, Rymer, and Fong dated September 18, 2014.
6. Transcript of Heller's interview dated September 30, 2014.
7. EPA OIG Case Initiation, Case #: OI-AR-2013-ADM-0110, with attachment.
8. Memorandum from (b)(6), (b)(7)(C) [redacted], "RE: Facts Informally Gathered from OCFET Regarding Purported (b)(6), (b)(7)(C) Positions Currently Held by (Redacted) (b)(6) (b)(7)(C) [redacted]" dated May 1, 2012.
9. List of interview questions created for (b)(6) (b)(7)(C) [redacted] EPA OIG interview.
10. Memorandum of Activity prepared by SA Elisabeth Drake (Heller), with attachments.
11. "Administrative Warning: Duty to Cooperate" (Kalkines) form signed by (b)(6) (b)(7)(C) [redacted] dated October 24, 2013.
12. EPA OIG NDA and email from (b)(6), (b)(7)(C) [redacted] to (b)(6), (b)(7)(C) [redacted] dated September 25, 2014, forwarding (b)(6) (b)(7)(C) [redacted] email dated June 10, 2013, Subject: "Non-Disclosure Agreement 061013.dotx."
13. Memorandum of Activity prepared by Heller regarding the incident in OHS on October 24, 2013.
14. Memorandum of Interview of Heller prepared by (b) (6), (b) (7)(C) [redacted] EPA OIG, dated October 25, 2013.
15. Transcript of (b)(6), (b)(7)(C) [redacted] interview dated October 8, 2014.
16. (b)(6), (b)(7)(C) [redacted] written statement dated October 26, 2013.
17. Transcript of (b)(6), (b)(7)(C) [redacted] interview dated October 16, 2014.
18. Memorandum of Interview of (b)(6), (b)(7)(C) [redacted] prepared by (b)(6), (b)(7)(C) [redacted], EPA OIG, dated October 25, 2013, including attached Memorandum of Activity prepared by (b)(6), (b)(7)(C) [redacted] regarding the incident in OHS on October 24, 2013 (marked "Draft").
19. Transcript of (b)(6), (b)(7)(C) [redacted] interview dated October 23, 2014.
20. Email from (b)(6), (b)(7)(C) [redacted] to SA (b)(6), (b)(7)(C) [redacted], DCIS, containing (b)(6), (b)(7)(C) [redacted] statement regarding the incident in OHS on October 24, 2013.
21. Transcript of (b)(6), (b)(7)(C) [redacted] interview dated October 30, 2014.

22. Transcript of [redacted] second interview dated November 6, 2014.
23. Transcript of [redacted] interview dated November 6, 2014.
24. Memorandum for Record from [redacted] to Matthew Fritz, Deputy Chief of Staff, EPA, dated November 6, 2014.
25. Email from [redacted] to Juan Reyes, Subject: "Interview with the OIG," dated October 24, 2013
26. Sketch prepared by [redacted]
27. FPS investigative report and affidavit in support of an arrest warrant.
28. Transcript of [redacted] interview dated November 13, 2014.
29. Memorandum of Understanding between the FBI and EPA.
30. "Summary of EPA/FBI Meeting on August 1, 2013" prepared by Juan Reyes.
31. Sketch prepared by [redacted]
32. Emails drafted by [redacted] and Williams, Subject: "OIG Interview," dated October 26, 2013.
33. Email from [redacted] to Gwen Keyes Fleming, Fritz, Reeder, and Reyes, Subject: "Thursday evening," dated October 27, 2013.
34. Transcript of Williams' interview dated November 24, 2014.
35. Email from Williams to Avi Garbow, Brenda Mallory, Matthew Fritz, John Reeder, Juan Reyes, and Gwen KeyesFleming, Subject: "Update with OIG," dated October 24, 2013.
36. Two Emails from Williams to Garbow, Mallory, Fritz, Reeder, Reyes, and KeyesFleming, Subject: "RE: Update with OIG," dated October 24, 2013.
37. Photographs of OHS taken by the DCIS agents.
38. Transcript of Reeder's interview dated December 3, 2014.
39. Documentation pertaining to Heller's [redacted]
40. Documents provided to DCIS by Reeder dated March 13, 2015.
41. Transcript of Sullivan's interview dated December 24, 2014.
42. Email from AUSA [redacted] to SA [redacted] declining prosecution of [redacted] dated January 8, 2015.
43. Transcript of [redacted]'s interview dated February 10, 2015.
44. Kalkines warning signed by [redacted]
45. Memorandum of Activity prepared by [redacted] reflecting the events of October 24, 2013.
46. Memorandum of Interview of [redacted] prepared by SA [redacted] dated October 25, 2013.

47. Transcript of [redacted] interview dated February 26, 2015.

48. Email from [redacted] to [redacted] dated April 14, 2015, with attached notification letter from EPA-OIG to FBI.

49. Email from [redacted] to [redacted] dated April 20, 2015, with attached notification letter from EPA-OIG to FBI.

50. Email from AUSA [redacted] to [redacted] declining prosecution of this matter dated May 15, 2015.

51. Referral to DHS OIG.

Prepared by [redacted] and [redacted] DCIS APPR [redacted]