

**Statement of
Daniel Schuman, Policy Director
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Before the Committee on House Administration
“Oversight of the January 6th Capitol Attack: Ongoing Review of the
United States Capitol Police Inspector General Flash Reports”
February 17, 2022**

Chairperson Lofgren, Ranking Member Davis, and Members of the Committee on House Administration, thank you for the opportunity to submit this statement concerning the ongoing review of the performance of the U.S. Capitol Police regarding the January 6, 2021 attack being conducted by the Capitol Police Inspector General.

My name is Daniel Schuman and I serve as policy director at the Demand Progress Education Fund, a non-profit organization that, among other things, focuses on strengthening our democracy by rebuilding the capacity of Congress to govern.¹ We have delved deeply into the activities of the Capitol Police since 2018, including reviewing its jurisdiction, arrests, and complaints made against officers,² as well as making recommendations to create a FOIA-like process for its records, proactively

¹ Demand Progress Education is a project of the New Venture Fund, which serves as our fiscal sponsor. Some of our advocacy work is performed under Demand Progress, which is a project of the SixteenThirty Fund (and the fiscal sponsor for that work).

² See, e.g., A Primer on the Capitol Police: What We Know From Two Years of Research (January 6, 2021), available at <https://firstbranchforecast.com/2021/01/06/a-primer-on-the-capitol-police-what-we-know-from-two-years-of-research/>; The Complete Guide to What We Know (And Don't Know) About the U.S. Capitol Police (June 19, 2020), available at <https://firstbranchforecast.com/2020/06/19/the-complete-guide-to-what-we-know-and-dont-know-about-the-u-s-capitol-police/>; The U.S. Capitol Police: What A Year Of Data Tells Us About The Congressional Police Force (February 10, 2020), available at <https://firstbranchforecast.com/2020/02/10/the-u-s-capitol-police-what-a-year-of-data-tells-us-about-the-congressional-police-force/>; Capitol Police Fire Arm Regulations (January 13, 2021), available at <https://firstbranchforecast.com/2021/01/13/capitol-police-fire-arm-regulations/>; The Long Arm of the U.S. Capitol Police (August 7, 2019), available at <https://firstbranchforecast.com/2019/08/07/the-long-arm-of-the-u-s-capitol-police/>; Capitol Police Arrests: What Department Data Does and Doesn't Tell Us (July 15, 2019), available at <https://firstbranchforecast.com/2019/07/15/capitol-police-arrests-what-department-data-does-and-doesnt-tell-us/>; Capitol Police Release 2019 Complaints Data With Significant Omissions That Reduce Clarity (August 20, 2020), available at <https://firstbranchforecast.com/2020/08/20/capitol-police-release-2019-complaints-data-with-significant-omissions-that-reduce-clarity/>; New Capitol Police Misconduct Complaint Report Obscures More Than it Reveals (March 17, 2021), available at <https://firstbranchforecast.com/2021/03/17/new-capitol-police-misconduct-complaint-report-obscures-more-than-it-reveals/>.

disclose its IG reports, and create a civilian oversight board.³ We have closely followed the January 6th proceedings in both chambers over the last fourteen months.

While we honor the individual heroism of the Capitol Police officers and others who defended the U.S. Capitol on January 6th, we cannot ignore that the proximate cause of the successful sacking of the Capitol and imperiling of the constitutional line of succession was the failure of Capitol Police leadership to anticipate and detect the attack, to train and prepare Capitol Police officers for the various threats that face the Congress, to make sure adequate equipment was available, and to exercise command and control during the attack. We fear that even in the aftermath of the January 6 insurrection, the congressional security apparatus present in the Capitol Police Board have gone back to business as usual.

For many months Capitol Police Inspector General Michael Bolton has been investigating aspects of the failures in the Capitol Police leadership. The Committee on House Administration has released executive summaries and recommendations contained in his “flash reports” while withholding the body of those reports. We believe that structural problems within the Office of Inspector General gravely limit the scope and utility of IG Bolton’s reports and recommendations despite his best efforts.

The problems with the congressional security apparatus do not start or end with January 6th. The leadership structure of the Capitol Police, as embodied in the Capitol Police Chief and the Capitol Police Board, make virtually certain that we will be unready to address grave threats to the continuity of Congress in the days, months, and years ahead. Moreover, these structural problems within the Capitol Police also increase the likelihood they will overreact in a way that will imperil the very functioning of the Legislative branch.

Congress must be secure and it must be open. Prior to the pandemic, hundreds of thousands of people visited the Capitol each year to engage in advocacy on behalf of causes in which they believe. The Capitol complex cannot become a green zone where only a select few are allowed to enter. Nor can the model of security employed for the White House be employed within the legislative branch. Congress is fundamentally different and its security must be managed differently.

I note with great alarm the suggestion by the House Sergeant at Arms, who serves on the Capitol Police Board, to impose a visitor tracking system akin to the WAVES system

³ See, e.g., The Capitol Police Should Issue FOIA-like Regs — Here’s our Model Regs That Show Them How (December 6, 2021), available at <https://firstbranchforecast.com/2021/12/06/the-capitol-police-should-issue-foia-like-regs-heres-our-model-regs-that-show-them-how/>; Testimony of Amelia Strauss, Policy Advisor, Demand Progress, Before the House Legislative Branch Appropriations Subcommittee, May 8, 2021 (concerning (1) Create An Independent Stakeholders Committee; (2) Establish An Information Request Process; (3) Publish Capitol Police Inspector General Reports; (4) Improve Quality of Arrest Summary Data; and (5) Expand Reporting On Employee Misconduct,) available at https://s3.amazonaws.com/demandprogress/testimony/Demand_Progress_FY_2022_Legislative_Branch_Testimony_Capitol_Police.pdf; Recommendations for the FY 2022 Appropriations Security Supplemental (February 11, 2021) (concerning a wide range of recommendations to improve congressional security), available at https://s3.amazonaws.com/demandprogress/reports/Demand_Progress_Recs_for_FY_2022_Security_Supplemental.pdf.

employed at the White House.⁴ Such a system would be a logistical nightmare, a waste of resources, and fundamentally alter our federal legislature. Such a proposal appears to ignore even the most basic facts about how a representative democracy functions, how Congress operates, and how journalism works. It also misses practical realities like the fact that millions of Americans do not possess photo identification and would be precluded from visiting their elected representatives and it would disincentivize whistleblowers from contacting Congress.

I am similarly concerned with some proposals related to “insider threats.”⁵ Certainly, we need to be able to rely upon the fact that persons providing security for Congress are not sympathizers to white nationalists who wish to overthrow the government or would cover up for those who do. But the various proposals, such as they have been spelled out publicly, have significant downsides. We have seen all too often where such security efforts go wrong, such as the Department of Commerce’s “Investigations and Threat Management Service” that investigated agency employees without cause, on the basis of their ethnicity, and using unlawful means.⁶ Even well run federal agencies have been found to violate our constitutional rights.

We need a Capitol security apparatus that we can trust AND we need to have a Congress that is open to every American to express their views. The only way that is possible is if it is built upon a rock solid leadership structure that fully understands its mission and the context in which it is performed.

Such a system must have checks. It must be built upon transparency and accountability — to internal stakeholders, to Members of Congress, to journalists, to civil society, and to the public. Only then can we identify when it goes wrong and set it right.

In the remainder of my testimony, I address two separate but related issues:

1. The Capitol Police Inspector General Lacks Structural Independence from the Police Chief and Board
2. Oversight of the Capitol Police is Inherently Flawed

⁴ See testimony of The Honorable William J. Walker, Sergeant at Arms, U.S. House of Representatives, Before The Subcommittee on Legislative Branch, Committee on Appropriations (January 11, 2022), available at <https://docs.house.gov/meetings/AP/AP24/20220111/114318/HHRG-117-AP24-Wstate-WalkerW-20220111.pdf>.

⁵ See House watchdog weighs ‘behavioral monitoring’ to deter internal security threats, Politico (February 8, 2022), available at <https://www.politico.com/news/2022/02/08/house-watchdog-behavioral-monitoring-internal-security-threats-00006447>.

⁶ “Report finds little-known security unit in Commerce abused power and investigated employees of Chinese or Southeast Asian ancestry for years,” CNN (July 17, 2021), available at <https://www.cnn.com/2021/07/17/politics/commerce-department-senate-report/index.html>.

Structural Problem 1: The Capitol Police Inspector General Lacks Structural Independence from the Police Chief and the Board

The Capitol Police Inspector General, Michael Bolton, has a mandate to supervise and conduct “audits, inspections, and investigations involving USCP programs, functions, systems, and operations.”⁷ The IG is appointed by the Capitol Police Board for a five-year term that may be renewed, may be removed by a unanimous vote of the Board, and is under the general supervision of the Board.⁸ The Capitol Police Chief serves as an *ex officio* member of the Capitol Police Board.⁹ Testimony by the Architect of the Capitol suggests that the Capitol Police Board operates by unanimous consent, where any member may informally veto a proposal. It is unclear whether this courtesy is extended to the Police Chief. We know the Board operates almost entirely in secret, with little accountability even to its congressional overseers.

This hiring and reporting structure of the Capitol Police Board creates an inherent conflict of interest with respect to the independent operations of the Inspector General. The IG is intended to supervise and inspect all functions and operations of the Capitol Police, including the Capitol Police Chief, and yet reports (via the Board) to the Capitol Police Chief. The Board also provides “general supervision” of the IG. That general supervision apparently extends to the Board directing the IG via a non-public letter to not make his reports publicly available. Further, the Capitol Police Inspector General has testified his jurisdiction does not extend to oversight of the Capitol Police Board.

In other words, the Capitol Police Inspector General is either unwilling or unable to make all appropriate recommendations that concern the Capitol Police Board, whose oversight failed to correct the decades-long failures of a series of Capitol Police chiefs and the agency’s senior leadership. Furthermore, the Capitol Police Chief, through the Board on which he sits, is able to exert some control over the Inspector General. Finally, the Board acts with one full-time staff person and under the cloak of secrecy.

A fully independent and empowered inspector general is an essential accountability mechanism for the Capitol Police and its Board. So too is the publication of the IG’s findings. Rebecca Jones, then with the Project on Government Oversight, testified before the House Legislative Branch Appropriations Committee in April 2019 on the undue limitations placed upon the Capitol Police Inspector General.¹⁰

Under the Inspector General Empowerment Act of 2016, most IGs are required to publish on their website any audit, inspection, or evaluation report they create within three days of sending it to the head of the agency involved. By publishing these reports, IGs keep the public, including groups like POGO,

⁷ <https://www.uscp.gov/the-department/office-inspector-general>

⁸ 2 USC 1909.

⁹ 2 USC 1901a.

¹⁰ House and Capitol Police Inspectors General Should Make their Reports Public, Rebecca Jones, Project on Government Oversight (April 2019), available at <https://www.pogo.org/testimony/2019/04/house-and-capitol-police-inspectors-general-should-make-their-reports-public/>

informed of waste, fraud, and abuse within an agency. This allows the public to call out wasteful or illegal practices and to increase pressure for swift change. **In effect, publication greatly increases the influence of IGs' work.**

But not all IGs are subject to these reporting requirements. Two such IGs are those of the House of Representatives and the Capitol Police. While these watchdogs provide independent, nonpartisan oversight of the operations of both entities, they do not make their reports, findings, and recommendations readily available for public consumption. In fact, hardly any of their reports are available on their websites, and therefore are not easily available even to Congressional staff who could find themselves looking for information ultimately contained in these reports years after publication with no idea that the reports even exist.

Jones' testimony notes this is an acute issue with respect to the Capitol Police IG, whose reports are neither proactively disclosed nor are obtainable under the Freedom of Information Act (or a facsimile thereof), because, unlike the vast majority of federal IGs, and despite the urging of Congress, the Capitol Police do not follow FOIA-like processes.

While the Capitol Police could argue that IG reports should be withheld because they might be classified, the Project on Government Oversight rebuts this as well: "The Government Accountability Office and the Department of Defense Inspector General currently provide basic information, such as a report title or report number, in cases when some or all of a report's content must remain nonpublic. By providing this information, the public can request the report through FOIA." Not all information must be withheld. And processes exist for declassifying information deemed in the public interest.¹¹

Moreover, the Architect of the Capitol has testified that the matters before the Capitol Police Board are routinely declared to be classified and thus unreleasable both to the general public and to congressional staff. In his testimony, the AOC decried what he called rampant overclassification. (The Architect also testified how the two prior Sergeants at Arms cut him out of the oversight process almost entirely.)

Our experience shows that classification is often used as a mechanism to avoid accountability, not to protect secrets. No less an authority than the Director of National Intelligence recently declared overclassification "both undermines national security by blocking the intelligence community's ability to share critical information and 'erodes the basic trust that our citizens have in their government.'"¹²

We note the Capitol Police Board is located inside the Legislative branch and is unable to classify material, so the only properly classified material it holds would be that

¹¹ See Mandatory Declassification Review, available at <https://www.archives.gov/isoo/training/mdr>

¹² Top US spy warns too many government secrets harms national security, CNN (January 27, 2022), available at <https://www.cnn.com/2022/01/27/politics/avril-haines-government-secrets/index.html>.

classified elsewhere. Similarly, the Capitol Police routinely assert that information is “law enforcement sensitive,” which as far as we can tell means that it pertains in some fashion to the Capitol Police without having any additional sensitivity. This often is another dodge to avoid accountability.

We were pleased to see the House Legislative Branch Appropriations Committee directed transparency as a remedy to ensure that IG reports have a maximum effect.

As part of the FY 2021 Legislative Branch Appropriations Committee report, appropriators stated with respect to USCP Inspector General Reports: “The Committee believes that **the Inspector General should make an effort to make appropriate reports public** if they do not compromise law enforcement activities, national security, or Congressional security and processes without redaction. Therefore, no later than 90 days after the enactment of this Act, the Inspector General is directed to conduct a review of all issued reports within the previous 3 years and provide to the Committees a report listing which reports could have been made public.”¹³

It followed up in the FY 2022 Legislative Branch Appropriations Committee report, where the House Appropriations committee stated, with respect to USCP Inspector General Reports: “The Committee believes that the Inspector General should try to make appropriate reports public if they do not compromise law enforcement activities, national security, or Congressional security and processes without redaction. **The Committee instructs the Inspector General to institute procedures to make reports publicly available whenever practicable and to begin publishing reports on its website.**”¹⁴

To date, the Capitol Police Inspector General has not made any reports available to the public. The Committee on House Administration has published a handful of “flash reports,” which are the focus of these hearings, but they contain only the executive summaries and recommendations and not the majority of the contents. They were not released by the IG. It is our understanding that the Capitol Police Board is standing in the way of the release of these documents.

To ensure enforcement of IG recommendations, the recommendations must be disclosed to members of the committees of jurisdiction, to members of Congress, to the press, to watchdogs, and to the public. For all we know, IG Bolton has made the same recommendations time and again concerning the Capitol Police. If so, we have no way to know whether the Capitol Police implemented his recommendations. IG Bolton testified the Capitol Police asserted they have complied with his recent recommendations without, in many instances, providing supporting documentation.

There is much Congress could do to address these problems.

¹³ H. Rept. 116-447, p. 22, available at <https://www.govinfo.gov/content/pkg/CRPT-116hrpt447/pdf/CRPT-116hrpt447.pdf>

¹⁴ H. Rept. 117-80, p. 26, available at <https://www.govinfo.gov/content/pkg/CRPT-117hrpt80/pdf/CRPT-117hrpt80.pdf>

The most direct approach would be to make the Capitol Police Inspector General fully independent of the Capitol Police Chief and Board. This would include an appointment and removal mechanism fully independent of the Chief and Board, an expanded scope that encompasses oversight of the Board, independence from rules and regulations promulgated by the Board, proactive disclosure requirements for IG reports, fully separate funding mechanisms, and full participation in the Council of the Inspectors General on Integrity and Efficiency (CIGIE).

A narrower approach would be to remove the Capitol Police Chief from the Capitol Police Board, which could strengthen the IG's independence from the Chief.

A third approach would be to abolish the Board, reconfigure the role of the Sergeants at Arms, and fundamentally rethink how security works in the Congressional context.

Structural Problem 2: Oversight of the Capitol Police is Inherently Flawed

Fundamentally, oversight of the Capitol Police, both by and including the Capitol Police Board, is structurally flawed. As discussed above, the Capitol Police IG currently is structurally incapable of providing full oversight of the Chief and Board. In addition, Congress's oversight committees have been structurally incapable of providing the necessary oversight. This is illustrated by the former acting Capitol Police Chief testifying as to her belief that she reported to leadership and not the committees of jurisdiction. It is further illustrated by members of the Capitol Police Board who are appointed by one chamber and decline to testify in person before hearings conducted in the other chamber.

We raise the structural problems with oversight of Congress's security apparatus not as an explicit or implicit critique of this committee. Indeed, the Committee on House Administration has held more than a half-dozen hearings into the January 6 insurrection over the last year and brought much information to light. Democrats and Republicans alike have distinguished themselves with probing questions and the intent to make things better. Moreover, we note the Committee's July 2019 hearing entitled *Oversight of the Capitol Police* where the Police Chief, the IG, the House Sergeant at Arms, and the Chairman of the Capitol Police Labor Committee all testified.¹⁵ The warnings of growing problems within the Capitol Police raised by Gus Papathanasiou are chilling when reread in light of what happened. And we note the excellent decision to hire Aaron LaSure, who has proven to be an asset for the House of Representatives. Many structural problems, however, remain unresolved.

We are deeply concerned as we learn about proposals by members of the Capitol Police Board that would gravely affect the openness of the Capitol and the privacy of those who work within its walls. To have any measure of comfort with an expanded security program, we *must* have good reason to believe that the structures in which they are embedded are robust and capable of protecting the openness of the Congress, the

¹⁵ Oversight of the United States Capitol Police, Committee on House Administration (July 2019), available at <https://cha.house.gov/committee-activity/hearings/oversight-united-states-capitol-police>

privacy of those who work there, and the civil liberties of those who wish to engage in our democracy. And yet, see no evident reform at the top of the Capitol Police leadership, in the structure of its board, or in the makeup of the USCP's senior staff.

Conclusion

Over a year after the greatest Congressional security failure in living memory, we are profoundly worried by the absence of a sufficient institutional response. Where is the transparency? Where is the accountability? Where is the stakeholder engagement? Where are the reforms?

We have set forth a number of recommendations to address some of these structural flaws, ranging from an independent USCP Oversight Board (akin to a civilian oversight board), the hiring of permanent staff who are deeply experienced with policing by the committees of jurisdiction and are funded through Capitol Police appropriations, a fully independent IG, true Capitol Police transparency and accountability — which includes implementing Congress's directives to create a FOIA-like process to Capitol Police records¹⁶ — and more.¹⁷

Each day increases the likelihood of another attack on the Capitol and the people who work here.¹⁸ The only way to prevent or mitigate that attack is to significantly overhaul the Congressional security structures and the mechanisms by which they are overseen and held accountable. Left largely unreformed, the security apparatus represented on the Capitol Police Board will overreach into our civil liberties to create the appearance without the reality of actual security that leaves the seat of our democracy unprotected.

As this hearing is focused on oversight conducted by the Capitol Police Inspector General and the flash reports generated as a byproduct of that oversight, we must remember to look where the Inspector General cannot.

Thank you for the opportunity to testify. I look forward to your questions.

¹⁶ As part of the FY 2021 Legislative Branch Appropriations Committee report, House appropriators stated, with respect to USCP information sharing: "While the USCP is not subject to the Freedom of Information Act (FOIA) (5 USC 552), the Committee encourages the USCP to develop a policy and procedure for the sharing of information that follows the spirit of the Freedom of Information Act. This policy should be consistent with, and not interfere with, USCP's primary function of protecting the Congress." H. Rept. 116-447, p. 22, available at <https://www.govinfo.gov/content/pkg/CRPT-116hrpt447/pdf/CRPT-116hrpt447.pdf>. And again, as part of the FY 2022 Legislative Branch Appropriations Committee report, the House Appropriations committee stated, with respect to USCP information sharing: "While the USCP is not subject to the Freedom of Information Act (FOIA) (5 USC 552), the Committee directs the USCP to develop a policy and procedure for the sharing of information that follows the spirit of the Freedom of Information Act. This policy should be consistent with, and not interfere with, USCP's primary function of protecting the Congress." H. Rept. 117-80, p. 26, available at <https://www.govinfo.gov/content/pkg/CRPT-117hrpt80/pdf/CRPT-117hrpt80.pdf>. The Capitol Police Should Issue FOIA-like Regs — Here's our Model Regs That Show Them How (December 6, 2021), available at <https://firstbranchforecast.com/2021/12/06/the-capitol-police-should-issue-foia-like-regs-heres-our-model-regs-that-show-them-how/>

¹⁷ Recommendations for the FY 2022 Appropriations Security Supplemental, Demand Progress (February 11, 2021), available at https://s3.amazonaws.com/demandprogress/reports/Demand_Progress_Recs_for_FY_2022_Security_Supplemental.pdf

¹⁸ See National Terrorism Advisory System Bulletin, DHS.gov (February 7, 2022), available at https://www.dhs.gov/sites/default/files/ntas/alerts/22_0207_ntas-bulletin.pdf