



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

June 3, 2002

The Special Counsel

The President
The White House
Washington, D.C. 20500

Re: OSC File No. DI-01-0219

Dear Mr. President:

In accordance with 5 U.S.C. § 1213(e)(3), I am transmitting a report provided to me pursuant to 5 U.S.C. §§ 1213(c) and (d) by the Honorable John Ashcroft, Attorney General of the Department of Justice. The report sets forth the findings and conclusions of the Attorney General upon investigation of disclosures of information allegedly evidencing a substantial likelihood of violations of law, rule or regulation, an abuse of authority and a substantial and specific danger to public health and safety by officials at the Department of Justice (DOJ), Immigration and Naturalization Service, U.S. Border Patrol (Border Patrol), McAllen, Texas.

The whistleblower, Gregory Golla, a former Border Patrol agent, consented to the release of his name. He provided comments on the agency report to this office pursuant to 5 U.S.C. § 1213(e)(1), which I am also transmitting.

These allegations were referred to the Attorney General on March 5, 2001. DOJ's Office of the Inspector General conducted an investigation and sent a report to this office on May 15, 2001. Upon further inquiry by DOJ officials, the matter was then referred to the Criminal Section of DOJ's Civil Rights Division for a determination of whether that office would pursue criminal prosecution. The Civil Rights Division completed its review and advised this office on March 28, 2002, of its conclusion that there is insufficient evidence for criminal prosecution.

We have carefully examined the original disclosures and reviewed the agency's response and Mr. Golla's comments. Pursuant to 5 U.S.C. § 1213(e)(2), I have determined that the findings in the agency's report appear to be reasonable and contain all of the information required by statute.

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The Whistleblower's Disclosures

Mr. Gregory Golla alleged violations of law, rule or regulation, an abuse of authority and a substantial and specific danger to public safety by Senior Patrol Agent Robert Guerra through the unauthorized use of firearms, excessive use of force against unarmed aliens, and violation of agency regulations regarding training of Border Patrol agents. The allegations are detailed below.

Mr. Golla was employed with the Border Patrol for approximately seven months from April to October of 1998. After completing five months of training in South Carolina, he served as a probationary Border Patrol Agent in McAllen, Texas for two months. During the time he was stationed at McAllen, Mr. Golla spent two weeks doing a ride-along with Agent Guerra as part of his on-site training.

According to Mr. Golla, Agent Guerra proudly stated that he had opened fire on a flatbed boat carrying aliens as it crossed the Rio Grande. The gunfire caused the operator of the boat and the passengers to jump into the water to avoid being shot. They then swam back to the Mexican border. The operator of the boat had serious difficulty swimming, but apparently neither he nor any of the passengers were shot or drowned in the incident. Mr. Golla stated that another Border Patrol Agent corroborated Agent Guerra's statements; however, Mr. Golla did not know the agent's name.

Mr. Golla also reported that during the ride-along period he witnessed Agent Guerra use excessive force when apprehending individuals that were suspected to be undocumented aliens. For example, on one occasion when Mr. Golla and Agent Guerra were apprehending individuals they encountered walking along the road, Agent Guerra reportedly kicked the individual he was arresting in the legs, slammed him into the hood of the car, and shoved his body into the side of the Border Patrol vehicle even though no resistance was offered by either individual. Mr. Golla stated that he was able to promptly handcuff the other alien without the use of force and that Agent Guerra's use of force was unnecessary. Mr. Golla saw Agent Guerra use excessive force on other occasions and believes that Agent Guerra routinely uses such force. Finally, Mr. Golla stated that Agent Guerra himself implied that he has, on occasion, beaten aliens.

Mr. Golla stated that, in general, Agent Guerra violated agency rules and procedures, his conduct was inappropriate, and he engaged in intimidation and harassment. He alleged that during his ride-along period Agent Guerra violated agency procedures regarding the training of new agents. According to Mr. Golla, trainees are not supposed to be more than one-arm's length away from an agent, nor are they to pursue aliens unaccompanied. Mr. Golla stated that Agent Guerra instructed him to

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follow an alien into a sugar cane field unaccompanied thereby subjecting him to injury and potential danger. In addition, in response to Mr. Golla's questions about the boat incident, Agent Guerra reacted in an intimidating and threatening manner, unholstering his firearm and keeping it unholstered on his lap for the duration of the conversation.

The Department of Justice Report

DOJ's Office of the Inspector General (OIG) conducted the investigation into Mr. Golla's allegations. The investigation did not substantiate them. The OIG interviewed fifteen Border Patrol agents regarding Mr. Golla's allegations. The report states that the investigation did not reveal evidence of civil rights violations or of a violation of DOJ's Deadly Force Policy. The report further noted that the actions that Mr. Golla characterized as abusive were not inconsistent with the normal operating procedures of both probationary and non-probationary employees. In addition, none of the agents interviewed witnessed or, in any other way, corroborated Mr. Golla's allegation that Agent Guerra had fired upon unarmed aliens or otherwise mistreated undocumented aliens. The OIG was not able to identify the other Border Patrol agent who Mr. Golla believed could corroborate the incident. As stated previously, Mr. Golla was unable to provide that agent's name.

The investigation included an interview with Senior Patrol Agency Jesse Rivera who was interviewed in his capacity as a Training Officer and because he assisted in the development of the Field Training Manual which was adopted and implemented in early 2000. According to Agent Rivera there was no official policy for instruction in the "field" environment during Mr. Golla's tenure. Agent Rivera further explained that Border Patrol trainees have never been required to remain in the immediate vicinity of the training officers. There are often times when trainees are required to separate from the training officers to verify the presence of aliens or to make arrests.

Supervisory Border Patrol Agent Paul Hornaday was also interviewed regarding these allegations. Agent Hornaday was assigned as the field training officer for Agent Trainee Golla during Mr. Golla's tenure at the McAllen Station from August 30, 1998 to September 12, 1998. He noted that mistreatment of aliens is a reportable offense but did not recall Mr. Golla making any such reports. Agent Hornaday also stated that both agents and trainees are required to enter sugarcane fields to search for undocumented aliens. Finally, he verified that it is normal procedure for trainees to become separated from their training officers for short periods of time.

Supervisory Border Patrol Agent John Clough, Jr., Mr. Golla's supervisor while at the Border Patrol, stated that he considered Agent Guerra's demeanor as "strict" with trainees. He did not recall any complaints or reports of mistreatment of aliens made by Mr. Golla. Finally, three Border Patrol Agents who were trainees at

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the same time as Mr. Golla were also interviewed. They stated that they were not aware of any policy requiring that trainees remain in the vicinity of the training officers. None of these agents were aware of any mistreatment of aliens by Agent Guerra.

The investigation also included an interview with Agent Guerra who confirmed that he often sends trainees into sugarcane fields or other remote areas in pursuit of aliens and that no policy prohibits the trainees from being temporarily out of the sight of the training officers. He also confirmed that stories have circulated about him at the McAllen Station that are apparently meant as "entertainment." Agent Guerra denied ever telling Mr. Golla that he fired his weapon at unarmed aliens crossing the Rio Grande River. In fact, he denied ever discharging his weapon during the course of his employment with the Border Patrol. Finally, he denied that he had ever used excessive force.

The Whistleblower's Comments

Mr. Golla provided comments on the agency's report. Mr. Golla stated that he was disappointed that the investigation did not substantiate the allegations and that no action was taken against Agent Guerra. He does not believe that Agent Guerra's comments were stories merely intended to impress trainees. On the contrary, he believes that Agent Guerra opened fire on the individuals on the raft. Further, he stated that the investigator should have provided him with photographs of Border Patrol agents who worked in that office during the relevant time period so that he could try to identify the other Border Patrol agent who may have witnessed the incident. Finally, Mr. Guerra stated that he believes that Agent Guerra has used excessive force with aliens and that his actions have shown a lack of integrity and respect for individual civil rights required by federal agents.

Conclusion

Based on the representations made in the report and as stated above, I have determined, pursuant to section 1213(e)(2), that the findings in the agency's report appear to be reasonable and contain all of the information required by statute.

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As required by section 1213(e)(3), I have sent a copy of the report and Mr. Golla's comments to the Chairmen of the Senate and House Committees on the Judiciary. We have also filed copies of the report and Mr. Golla's comments in our public file and closed the matter.

Respectfully,

A handwritten signature in black ink, appearing to read "Ei Kaplan", written in a cursive style.

Elaine Kaplan

Enclosures