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The Special Counsel

October 9, 2002

The President
The White House
Washington, DC 20500

Re: OSC File No. DI-00-2079

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 Paul H. O'Neill, Secretary of the Treasury. The report sets forth the findings and conclusions of the Secretary upon investigation of disclosures of information allegedly evidencing gross mismanagement and abuses of authority arising out of actions by U.S. Customs Service officials at Miami International Airport, Miami, Florida.

The whistleblower, Eileen M. DeSanto, a Senior Customs Inspector, consented to the release of her name. Ms. DeSanto declined to provide comments on the agency report to this office pursuant to 5 U.S.C. § 1213(e)(1).

Ms. DeSanto's allegations were referred to the Secretary of the Treasury for investigation on August 30, 2001. The Department of the Treasury, Office of Inspector General, Miami Field Office conducted an investigation and sent a report, signed by the Under Secretary of Enforcement, to this office on May 10, 2002.

We have carefully examined the original disclosures and reviewed the agency's response. 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.

The Whistleblower's Disclosures

Ms. DeSanto is a Senior Customs Inspector at Miami International Airport (MIA). She has been a member of the MIA Outbound Inspection Team since 1991, and has worked for the Customs Service since 1986.

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Ms. DeSanto alleged that, from 1997 until 1999, the MIA Outbound Inspection Team (Team) was ordered to provide American Airlines with a three-hour advance notice before searching any flights. When several other airlines learned about the three-hour notice provided to American Airlines, they requested, and were granted, one-hour notices. She stated that airline representatives routinely called the Team each morning and, on many occasions, spoke to Ms. DeSanto in particular, in order to obtain a list of flights that the Customs Service intended to search that day. Ms. DeSanto alleged that, although the Customs Service no longer provides three-hour notices to American Airlines, it continues to provide one-hour notices to American Airlines and other airlines, including Avianca, Air France, Aces Colombia, and Air ALM.

In addition, Ms. DeSanto alleged that the Outbound Inspection Team no longer pursues "Be On the Look Out" (BOLO) reports from other divisions of the Customs Service. Ms. DeSanto explained that BOLO reports relay information about illegal cargo generated during other investigations or obtained from informants. Previously, the Outbound Inspection Team assigned a high priority to BOLO reports when planning searches. However, according to Ms. DeSanto, Customs officials recently stopped forwarding the reports to the Outbound Inspection Team for investigation.

Ms. DeSanto maintained that the Customs Service's practice of providing advance notice to airlines and its failure to pursue BOLO reports constitute gross mismanagement and abuses of authority as they compromise the Customs Service's enforcement posture and have contributed to a significant decline in the amount of outbound smuggling money seized by the Team.

The Department of the Treasury Investigation and Report

Ms. DeSanto's allegations were investigated by the Department of the Treasury, Office of Inspector General (OIG), Miami Field Office. The OIG reviewed Outbound Inspection Team documents and interviewed thirteen witnesses, including Ms. DeSanto, seven MIA Customs officials, and five MIA airline representatives. The investigation substantiated Ms. DeSanto's allegation that, from 1997 until 1999, Customs Service inspectors were instructed to notify airlines officials in advance of routine inspections. However, the investigation failed to substantiate Ms. DeSanto's allegation that the Customs Service presently provides one-hour notices to American Airlines. It also failed to substantiate her allegation that Customs Service managers frequently ignore BOLO reports.

According to the agency report, in 1997, several facilitation meetings were held between MIA Customs Service managers and American Airlines officials after American Airlines officials repeatedly complained that Customs inspections caused numerous flight

delays. Nathaniel Michael Norwood, Chief Inspector, Passenger Processing Unit, explained that the meetings came about because D. Lynn Gordon, then-Customs Management Center Director, had instructed Customs management to accommodate the airlines with passenger and cargo processing as much as possible. At one of these facilitation meetings, Mr. Norwood and Jayson Ahern, then-Area Port Director,¹ agreed to provide American Airlines and other airlines with a one-hour advance notification of Customs inspections. American Airlines, in turn, agreed to provide additional personnel to assist Customs inspectors with unloading and reloading baggage. Mr. Norwood admitted that, on several occasions, Customs inspectors provided American Airlines with notice more than one hour in advance of an inspection.

Mr. Norwood's testimony was corroborated by Mr. Ahern and Rick Arner, Manager, International Operations, American Airlines, who also attended the facilitation meetings. Both witnesses emphasized that the advance-notice policy had been adopted for the purpose of expediting the outbound inspection process in order to avoid unnecessary flight delays. Mr. Ahern denied that the advance notification policy had any negative impact upon Customs inspectors' ability to perform their duties or that it compromised the efficiency or integrity of the Customs Service's enforcement mission. In addition, the report notes that a review of Customs Service documents demonstrated that no official Customs Service directive is in place for notification procedures regarding outbound inspections.

Despite Mr. Ahern's contention that the advance notice policy had no impact upon enforcement, the investigation substantiated Ms. DeSanto's allegation that monetary seizures decreased significantly after the advance notification policy was instituted. The report states that Customs records reveal that the Outbound Inspection Team seized approximately \$9.7 million in FY 2000, but only \$4.1 million in FY 2001. Chester William Olejasz, Chief Inspector, Outbound Inspections, admitted that outbound seizures had dropped significantly in the past year. However, he opined that other factors also contributed to the decrease in seizures. He explained that the Customs Service had recently become more focused on risk management and less on enforcement. In addition, he speculated that inspectors may have cut back on the number of inspections they conducted in order to avoid the associated paperwork.

The agency report states that the advance notification policy was discontinued in March 1999, when Thomas S. Winkowski became the Miami Area Port Director. According to Mr. Winkowski, he decided to abolish the advance notification policy after learning that Raymond Kelly, Customs Service Commissioner, was opposed to it. Mr. Winkowski informed American Airlines of the change in policy by letter dated March 29, 1999. In the

¹ Mr. Ahern's current position is Director, Field Operations for Southern California, Customs Management Center, USCS, San Diego, California. He served as the Port Director of MIA from October 1995, until February 1999.

letter, Mr. Winkowski stated that, although he understood the reasons why the advance notice agreement had been implemented, he nevertheless found it to be "inconsistent with Customs' national policy" and believed that it increased "the possibility for compromise of Customs enforcement efforts."

With the exception of Ms. DeSanto, all of the Customs inspectors and airline officials interviewed maintained that Customs no longer notifies airlines in advance of routine inspections. Ms. DeSanto concurred that the Customs Service no longer provides advance notice to ACES, Air France, ALM and Avianca Airlines. However, she maintained that American Airlines continues to receive advance notice. Specifically, she stated that several Senior Inspectors, including John M. Russell and Wayne Russell, continue to notify American Airlines approximately one hour in advance of routine outbound inspections.

When interviewed, both John M. Russell and Wayne Russell denied notifying American Airlines in advance of routine inspections, but admitted that they do notify airlines in advance when there is a BOLO report or when the Customs Service plans to inspect checked baggage aboard a flight. They explained that advance notification is provided before baggage is inspected in order to facilitate the re-routing of baggage to the designated inspection area. Mitch Segermeister, International Security Coordinator, American Airlines, MIA, corroborated their testimony, adding that Customs provides the airlines with prior notification of a BOLO report in order to allow the airline sufficient time to secure the passenger in question and locate their baggage for inspection.

Lastly, the investigation failed to substantiate Ms. DeSanto's allegation that Customs officials ignore BOLO reports. The OIG reviewed the Outbound Inspection BOLO log for the period October 2001 through February 2002 and found that the vast majority of BOLO reports had been appropriately documented and acted upon by Customs inspectors. For the few BOLO reports that had not been completed, the log had been annotated to state that the report could not be acted upon due to a shortage of staff or a conflict with a higher-priority incident. Thus, the agency report concluded that the Outbound Inspection Team appropriately documents and responds to BOLO reports.

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 to the Chairmen of the Senate Committee on Finance and the House Committee on Ways and Means. We have also filed copies of the report in our public file and closed the matter.

Respectfully,



Elaine Kaplan

Enclosures