



# Homeland Security

January 3, 2006

Mr. Scott J. Bloch  
Office of Special Counsel  
1730 M Street, Suite 300  
Washington, D.C. 20036-4505

RE: OSC File No. DI-05-2056

Dear Mr. Bloch:

On September 9, 2005, you referred to me the subject whistleblower disclosures for investigation and report. As required by 5 U.S.C. Section 1213, following is my report regarding the subject allegations.

### Summary of Disclosures

The complainant, Charles Cape, is responsible for telecommunications security in an eight-state area in the southwestern United States, including four Border States: Arizona, New Mexico, California, and Texas. Mr. Cape has disclosed that in 2004 and 2005, the Department of Homeland Security (DHS) failed to allocate sufficient funds to support the acquisition of wireless telecommunications equipment and technologies, as intended by Congress, and instead used the monies for non-wireless procurements such as the Homeland Secure Data Network (HSDN). Mr. Cape believes that this violated the intent and spirit of the appropriations legislation and represents gross mismanagement and a gross waste of funds. Mr. Cape further alleged that the failure to support wireless communications at the southwestern U.S. border has rendered the border unsafe for agents and vulnerable to terrorist infiltration.

### Conduct and Results of Investigation

On September 26, I referred the matter to the Office of the Inspector General (OIG) for review. The OIG reviewed the relevant Appropriations Act language for fiscal years (FY) 2004 and 2005. In addition, the OIG reviewed materials prepared by the Office of the Chief Information Officer (OCIO), National Wireless Management Office (WMO), on its funding and expenditures for those fiscal years, and which were used to brief the House and Senate Appropriations staffs in August 2005. Finally, the OIG discussed the issues with OCIO and WMO officials. The OIG found no violations or apparent

violations of law, rule, or regulation, and no evidence of mismanagement or waste of funds. Thus, no actions have been taken or planned as a result of the investigation.

### **Discussion**

The FY 2004 DHS Appropriations Act (P.L. 108-92) allocated \$185 million "For development and acquisition of information technology equipment, software, services, and related activities for the Department of Homeland Security, and for the costs of conversion to narrowband communications, including the cost of operation of the land mobile radio legacy systems," the amount to remain available until expended. The related conference report allocated \$100 million of this amount for "wireless programs." The FY 2005 Appropriations Act (P.L. 108-334) allocated \$208 million for the same purposes, and, similarly, the related conference report allocated \$86 million of this amount for the "wireless program."

As noted above, the FY 2004 and 2005 Appropriations Acts do not specify the amounts to be spent on wireless programs. The related conference reports do not define what is included under "wireless programs," and, in any event, do not have the force and effect of law. Nevertheless, Mr. Cape alleges that \$74 million of the \$186 million earmarked in the two conference reports for wireless programs was spent on non-wireless initiatives, such as the Homeland Secure Data Network (HSDN).

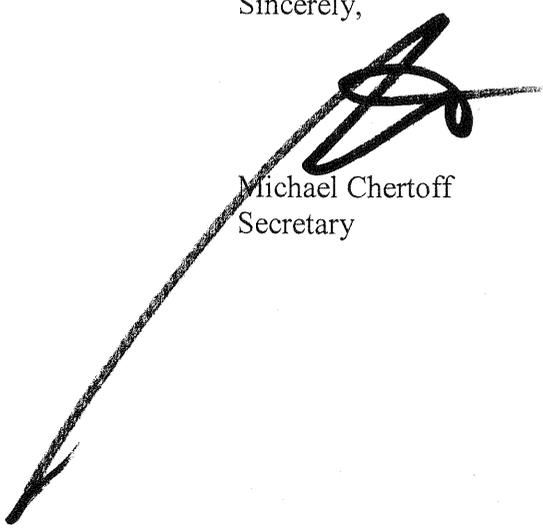
The WMO, within DHS' Office of the Chief Information Officer (CIO), is responsible for the development of policy and strategy for the use of wireless technologies across the Department. A WMO-prepared funding and expenditure summary shows that in FY 2004 and 2005, a total of \$203.24 million was expended on wireless programs, including \$31.6 million brought forward from FY 2003. Most of the expenditures appear to be directly related to wireless initiatives, including \$8.54 million spent on southwest border investments, and are not challenged by Mr. Cape. The summary also lists some items, such as "infrastructure initiatives," including \$13.37 million for HSDN program support, and \$15.68 million for General Services Administration support to the Federal Protective Service (FPS), whose connection to the wireless program is less clear. A WMO official said that even a "wireless" program is not all wireless, and while the HSDN is not a wireless program, per se, it can be used to support the movement of encrypted material to the field that is needed in an emergency. The official acknowledged that the FPS support amount was not connected to any wireless program, but represented the CIO's portion of the total amount allocated to DHS.

Significantly, WMO briefed House and Senate appropriations staff on the above wireless program expenditure summary in August 2005. A WMO official said the appropriations staff raised no objections to the summary, and the FY 2006 Appropriation Act and related conference report raised no concerns regarding this issue.

Finally, regarding the need for adequate technologies for border patrol agents in the southwest, the southwest border initiatives cited above include some that were specifically recommended by Mr. Cape. The Department is striving to address these

vulnerabilities with whatever resources are available. On November 2, 2005, I announced a comprehensive multi-year plan to secure America's borders and reduce illegal migration, entitled the Secure Border Initiative (SBI). Under this plan we have placed special emphasis on the need to provide Border Patrol agents with the means to protect themselves against violence from criminal traffickers.

Sincerely,

A handwritten signature in black ink, appearing to be 'Michael Chertoff', written over a long, thin, slightly curved line that extends from the signature down towards the bottom left of the page.

Michael Chertoff  
Secretary



# Homeland Security

June 5, 2006

Mr. Scott J. Bloch  
Office of Special Counsel  
1730 M Street, Suite 300  
Washington, D.C. 20036-4505

Re: OSC File No. DI-05-2056

Dear Mr. Bloch:

On September 9, 2005, you referred to me the subject whistleblower disclosures for investigation and report. As required by 5 U.S.C. 1213, I provided you my report on subject allegations on January 3, 2006. In response to subsequent discussions between your staff and my Inspector General's office, the following is a supplement to that report.

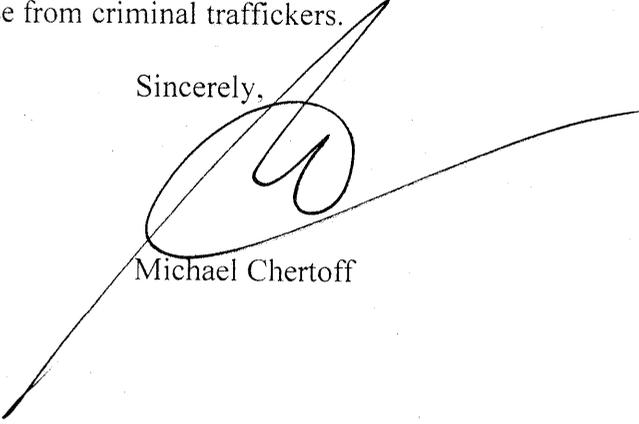
As noted previously, the complainant, Charles Cape, disclosed that in 2004 and 2005, the department failed to allocate sufficient funds to support acquisition of wireless technology, as intended by Congress, and instead used the monies for non-wireless procurements such as the Homeland Secure Data Network. Further, Mr. Cape alleged that the failure to support wireless communications at the southwest border has rendered the border area unsafe for patrol agents and vulnerable to terrorist infiltration.

The Office of Inspector General discussed Mr. Cape's disclosures and concerns with him and reviewed documents he provided. The discussions with Mr. Cape and review of documents yielded no information that altered conclusions regarding the use of funds. Again, the OIG found no violations or apparent violations of law, rule, or regulation, and no evidence of mismanagement or waste of funds.

Additionally, the Office of Inspector General has monitored developments in the Secure Border Initiative, providing advice to the department and testimony to the Congress. The Office of Inspector General also discussed with Mr. Cape his concerns regarding the new-start Secure Border Initiative program. In addition to immigration reforms, the Secure Border Initiative features a significant multi-year acquisition called *SBI<sub>net</sub>*, which will deliver new technology and tactical infrastructure to secure our borders. We have identified publicly problems with border security, including the issues Mr. Cape raises, and asked private industry to propose solutions drawing on the best government and commercial technologies to meet the challenge of securing the border. A formal request for proposals in support of this initiative was released on April 11, 2006, and a contract is scheduled for award in September 2006. Again, we acknowledge and share Mr. Cape's concerns about the

safety of Border Patrol agents and the vulnerabilities of America's borders to smuggler and terrorist infiltration. In pursuing the Secure Border Initiative and *SBI<sub>net</sub>*, we have placed special emphasis on the need to provide Border Patrol agents with the means to protect themselves against violence from criminal traffickers.

Sincerely,



Michael Chertoff