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U.S. OFFICE OF SPECIAL COUNSEL  
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Dear Ms. Gorman,

Thank you for giving us the opportunity to respond to the Department of Homeland Security's (DHS) reports regarding our disclosures of serious misconduct being committed by U.S. Customs and Border Protection (CBP) Office of Border Patrol (OBP) management personnel. It is very disturbing DHS has chosen to laboriously defend actions by OBP that have jeopardized national security, rather than to simply provide us with the fundamental tools and support we need to prevent terrorists, smugglers and other violent criminals from furthering their illicit entry into the United States. Many of the statements in the agency's reports are not truthful, and we believe others are intended to add confusion to these issues, which we will address in this letter.

The detrimental changes made at our station, and the retaliatory personnel actions taken against us by Blaine Sector management are fundamentally ones of integrity, and they go to the heart of our national security mission. DHS' cover-up of these issues is just as egregious.

The first DHS report begins by stating we forwarded disclosures to the U.S. Office of Special Counsel (OSC) that alleged gross mismanagement and other serious misconduct by OBP, and that on November 16, 2005 OSC forwarded our allegations to Michael Chertoff, Secretary of DHS for investigation. DHS officials proceeded to purport they took swift action to thoroughly investigate our allegations. However, what DHS authorities did not state in their report is that they ignored the numerous disclosures we had sent to DHS internal affairs authorities over the prior ten months. After we had exhausted our internal reporting options, we forwarded our reports to the OSC Disclosure Unit. OSC subsequently directed DHS to investigate and, as a result, our allegations against PAIC Baker were substantiated.

Throughout DHS' reports, Blaine Sector management falsely contends we had been focusing our efforts on ICE Office of Investigation (OI) and Olympic Peninsula Narcotics Enforcement Team (OPNET) investigations, rather than on patrolling and securing the border in our area of responsibility (AOR). In the last paragraph on page eight of the agency's first report it states, "BPAs assigned to the Port Angeles Station have engaged in joint operations with other federal and state agencies throughout the Olympic Peninsula. These operations, while in many instances were highly successful, did not directly support the BP's core mission of patrolling and securing the border and often meant that BPAs were employed in areas away from the border."

DHS' false contention that our operations and narcotics seizures were not cross-border interdictions is easily refuted in our numerous arrest and seizure reports, as well as our daily operational activity reports (Form I-50). These arrest, seizure and I-50 reports illustrate ICE, OPNET and other agencies were assisting us with our cross-border interdiction duties, rather than us assisting them with their investigative duties. Prior to the establishment of DHS in 2003, our station performed both cross-border interdiction and interior enforcement operations. However, after OBP was merged into CBP in 2003, we began focusing our efforts on securing the border in our AOR. Occasionally we assisted ICE, as mandated in the Memorandum of Understanding (MOU) between ICE OI and CBP OBP, with arresting, prosecuting and removing aggravated felon aliens who were residing and committing serious crimes in our AOR. However, we did not do so at the expense of our cross-border interdiction responsibilities.

By way of a MOU, dated November 16, 2004, the CBP Commissioner and the ICE Assistant Secretary implemented guidelines between CBP OBP and ICE OI. The MOU established OI as the lead agency for all investigations and OBP as the lead agency for all cross-border interdictions. The MOU also clearly mandates ICE OI and CBP OBP to assist each other with their respective missions. In section E on page eight of the MOU it states, "Calls for routine assistance from either the Border Patrol or OI to the Border Patrol or OI will be handled in the spirit of cooperation and facilitation and will be honored as resources and operational commitments allow. Calls for assistance may involve processing aliens, transporting aliens, providing agents for service of warrants, augmenting investigative efforts, augmenting interdiction efforts, etc."

In the fourth paragraph on page two of the preamble to the National Border Patrol Strategy, former CBP Commissioner Robert Bonner stated, "The priority mission of CBP, specifically including all Border Patrol agents, is homeland security—nothing less than preventing terrorists and terrorist weapons—including potential weapons of mass destruction—from entering the United States. The Border Patrol's traditional missions of interdicting illegal aliens and drugs and those who attempt to smuggle them across our borders remain important."

In the two page preamble Commissioner Bonner also stated, in part, "Our new Border Patrol National Strategy is based on the premise that we must establish and maintain operational control of the borders of the United States. All of our efforts must be—and are—focused on this goal. The National Border Patrol Strategy has an ambitious goal: operational control of our nation's border, and particularly our borders with Mexico and Canada. This is a goal vital to our national security. The new National Strategy embraces and builds upon many elements of Operations Gatekeeper and Hold the Line; however, *it goes beyond the deterrence strategy* embodied in those operations and it is more than a strategy just for the southwest border."

Commissioner Bonner further stated, "Achieving the new Border Patrol Strategy requires having the right combination of highly trained and well-equipped Border Patrol agents, integrated detection and sensor technology and air and marine assets, and strategically placed tactical infrastructure. As this Strategy recognizes, we will leverage the best technology available to detect and cue us to illegal entries, but I recognize, and we must never forget, that it is the men and women in green—CBP's well trained and highly motivated Border Patrol agents—who, in the final analysis get the job done.

We must ensure that this workforce is mobile, well trained and able to rapidly deploy and respond quickly to shifts in smuggling patterns. Another vital component to achieving our goal of controlling the borders is partnering with other law enforcement agencies. That means improving and expanding our coordination and partnerships with state, local, and tribal law enforcement in task force settings. It means strengthening our partnerships with fellow federal agencies like the U.S. Coast Guard, the National Park Service, ICE, the FBI, and the DEA.”

Prior to the detrimental changes Blaine Sector management made at our office, we had an outstanding working relationship with ICE OI and USCG, as well as OPNET and other Federal, State and local law enforcement agencies. By working cooperatively with these agencies, we established a powerful force multiplier to gain operational control of the border in our AOR.

The situation at our office is very transparent: On January 4, 2005, we notified the CBP/ICE Joint Intake Center (JIC) that former Port Angeles Patrol Agent in Charge (PAIC) Mike Baker was committing serious misconduct, which included undermining the successful border interdiction operations we were conducting with other law enforcement agencies. Approximately two weeks later, JIC forwarded our disclosures to Blaine Sector Chief Patrol Agent (CPA) Ron Henley and Deputy Chief Patrol Agent (DCPA) Joe Giuliano.

Upon being made aware of our disclosures, CPA Henley, DCPA Giuliano and PAIC Baker retaliated by taking several punitive personnel actions against us. These personnel actions included directing us to perform high profile patrol duties, rather than low profile patrol duties, which our station had performed since 1988. They also directed us to only work dayshift hours and prohibited us from working with other agencies. Additionally, they punished us monetarily by not allowing us to work premium paid work shifts and they withheld 45 ACT Overtime funding from us. For the past several years we had used overtime funding to provide enhanced border security shift coverage.

The only notation made in the agency’s reports that Blaine Sector management had conducted any type of inquiry into Baker’s misconduct is in section H on page nine of the first report. Herein it states, “DCPA Giuliano said that during a management inquiry he conducted into this allegation, PAIC Baker denied having allowed family members to use the Government owned Kayaks.” What the report does not state is that DCPA Giuliano did not interview Port Angeles Border Patrol personnel or anyone else who may have had first hand information to prove or disprove the allegations we had made. We do not believe it is credible DCPA Giuliano conducted any type of management inquiry when, by his own admission, the most he did was ask the subject of the allegations if he had done anything wrong.

In section 2 on page four of the agency’s second report it states, in part, “Blaine Sector managers indicate PAIC Baker was insubordinate in not ensuring compliance with their high-visibility enforcement strategy directed in 2001.” Although CPA Henley and DCPA Giuliano state PAIC Baker was insubordinate for not carrying out their operational tactics at our station, they did not take any apparent corrective or disciplinary action against him, nor did they investigate the disclosure we had made. In other sections of DHS’ reports, Blaine Sector managers remove themselves from having direct oversight of our station

and consequently any accountability for the mismanagement of our office. In the last paragraph on page eight of the agency's first report it states, "The CPA, DCPA and ACPA of the Blaine Sector indicated that each station PAIC has the ability to prescribe the daily tactics employed at his or her station."

In response to our allegation that Blaine Sector management and PAIC Baker had required us to work only day shift hours from 8:00 a.m. to 4:00 p.m., Monday through Friday, in the second paragraph of section D on page seven of the agency's first report it states, "During interviews conducted with CPA Henley and DCPA Giuliano, each indicated that the PAIC of each station has the authority to vary the duty hours of the BPAs assigned." It is important to note that on several occasions we notified Blaine Sector management that we had been directed to only work day shift hours and that the majority of smuggling activity in our AOR was taking place during the hours of darkness.

In the first paragraph of section four on page six of the agency's supplemental report, Blaine Sector management arbitrarily accused us of not being trustworthy. The report states, "As a result of PAIC Baker losing confidence in the willingness of BPAs under his command to perform their duties as directed in the absence of direct supervision, PAIC Baker directed that BPAs assigned to the Port Angeles Station work the same day shift hours as the PAIC." Neither PAIC Baker nor any other agency manager had ever questioned our willingness to perform our duties. This assertion was not made until after we had filed management misconduct disclosures, and even then it was only done so in the agency's report and not conveyed to us.

We often did not have a supervisor at our office. Moreover, after we were directed to work day shift hours, Blaine Sector management routinely detailed PAIC Baker to Blaine Sector and the Bellingham station. Additionally, in January 2006, Baker retired from OBP and we did not have a supervisor at our station for several months, yet Blaine Sector management still required us to work only day shift hours.

The agency correctly stated in the first paragraph of section four on page three of their first report, and in the second paragraph on page one of their supplemental report, that OBP utilizes a wide range of methods, including *low-visibility tactics to apprehend individuals after they have entered the U.S.*, and high-visibility tactics designed to provide a visible deterrence to individuals attempting to enter the U.S. illegally.

In the second paragraph on page one of the agency's supplemental report it states, "High visibility tactics using highly visible uniformed BPAs have been adopted nationally to deter illegal cross-border activity. To the extent possible, these uniformed BPAs are supported by *highly mobile plainclothes BPAs who use low visibility tactics to create a successful "defense-in-depth."*

The DHS Office of Inspector General (OIG) report on Border Patrol's compliance with public law 108-334 explains the National Border Patrol "Defense in Depth" Strategy as follows: "...Patrol agents assigned to linewatch operations (the first line of border defense) maintain a high profile and are responsible for turning back or arresting anyone they encounter attempting to illegally enter the United States. The second tier is called "patrol operations." Patrol operations require a smaller contingent of agents who are deployed behind, e.g., further inland, those responsible for linewatch operations.

The primary responsibility of agents participating in patrol operations is to detect and arrest any illegal border crosser that makes it past agents conducting linewatch operations...”

Chapter 11.4 of the Border Patrol Handbook states, in part, “Low-profile operations are designed to facilitate the apprehension of aliens or contraband believed to be entering or expected to enter unlawfully in a specific area, where high visibility does not necessarily prevent entry but the agent’s ability to detect and apprehend suspects does. Maintaining low visibility enables an agent to see and predict important factors about the subjects entering before actually contacting them or their being made aware of the agent’s presence.”

In the third paragraph on page five of the agency’s first report, OBP misleadingly contends that by us using low visibility tier two tactics we were overlapping ICE responsibilities. The MOU, the National Border Patrol Strategy and section 11.4 of the Border Patrol Handbook evidence OBP is responsible for all low visibility cross-border operations and interdictions.

In the last paragraph on page three and continuing on page four of the first report, OBP disingenuously contends that language pertaining to the “defense-in-depth” border enforcement strategy is found in the MOU between ICE OI and CBP OBP. The text the agency quotes is not from the MOU, but rather it is from the National Border Patrol Strategy, which can be found in the first paragraph on the second page of the “Message from the Commissioner” preamble. We presume the agency did this to deceptively claim the MOU had tasked ICE with conducting the plainclothes second tier interdiction operations that we had been performing.

As you know, our station is located on the Olympic Peninsula in Washington State. Our situation is unique to OBP, because there is not a land border in our AOR, and there are only three agents assigned to our office. The international border in our area is a coastal water border, which is 8-12 miles north of the Olympic Peninsula shoreline.

Per DHS policy, OBP does not have coastal border marine vessels or jurisdiction to conduct coastal border marine enforcement. DHS has assigned this duty and responsibility to the U.S. Coast Guard (USCG) and CBP Office of Air and Marine (see announcement by Acting CBP Commissioner Deborah Spero on January 17, 2006 and USCG VADM Thad Allen’s statement to the Senate Homeland Security Sub Committee on April 6, 2006). Therefore, the large contingent of USCG officers stationed in Port Angeles is the high profile first line of border defense on the Peninsula. As the lead federal agency responsible for securing the maritime border in our area, the USCG maintains a high profile on the Strait of Juan de Fuca and is responsible for turning back or arresting anyone they encounter attempting to illegally enter or smuggle contraband across the international water boundary.

The Port Angeles Border Patrol Station’s operational AOR begins 8-12 miles south of the maritime border at the Peninsula shoreline and extends south to the Oregon and California border. The Peninsula’s northern shoreline is approximately 120 miles long, and is made up of rugged terrain and isolated beaches.

Prior to the sweeping changes made at our station, we were conducting "defense-in-depth" enforcement by operating as a small contingent of highly mobile plainclothes agents to locate and arrest cross border violators who had successfully circumvented the USCG patrols and reached the Peninsula shoreline. Smugglers and other cross border violators who reach the Peninsula shoreline have already entered our country illegally, as they are 8-12 miles within the boundaries of the U.S.

It simply is not credible that the three of us conducting high visibility patrols on the expansive Olympic Peninsula are deterring any illegal cross-border activity. Certainly this is true if the 250 USCG officers who are conducting high visibility patrols on the Strait of Juan de Fuca are unable to do so. Since high profile tactics were mandated at our office in January 2005, we have not made any criminal arrests or contraband seizures.

In paragraph one on page five of the agency's supplemental report, DCPA Giuliano responded to our allegation that high visibility tactics had shattered our ability to arrest smugglers and interdict contraband. Herein he commented, "By definition, if deterrence is 100% successful then seizures and apprehensions would be zero as they currently are in the Port Angeles Station AOR." DCPA Giuliano continued to opine, "It could be argued the apparent absence of any (uniformed) OBP presence on the Olympic Peninsula enticed narcotic smugglers to cross the border in the Port Angeles AOR believing the border in that area to be unprotected."

However, in paragraph five on page five and in section D on page seven of the agency's first report, DCPA Giuliano argued that not having Port Angeles Border Patrol agents on duty does not increase a risk to public safety. In contrast to his previous statement, DCPA Giuliano contended the numerous USCG officers, ICE criminal investigators, CBP officers (inspectors at the port of entry), as well as numerous state, county and local law enforcement officers assigned throughout the Peninsula, "create an overall security posture that makes it extremely difficult for undetected illegal entry into the United States."

DHS is advising congress and the American public they must fund the hiring and training of an additional 8000 BPAs to secure the border, yet the aforesaid statement by DCPA Giuliano, as a representative of DHS management, appears to question why OBP even exists.

The USCG is the only agency DCPA Giuliano listed that is responsible for conducting cross-border deterrence and interdiction operations in our AOR. The three ICE criminal investigators are responsible for conducting complex, protracted investigations and routinely work from 9:00 a.m. to 5:00 p.m. Monday through Friday. The 10 CBP officers also work during the day and are restricted from operating or enforcing laws outside the boundaries of the port of entry. The county, state and local law enforcement departments on the Peninsula are not involved with any type of border enforcement unless we ask them to back us up on a specific call. Many of the law enforcement departments on the Peninsula are so understaffed they do not have enough officers to work 24/7 to handle their own law enforcement responsibilities, much less ours.

In 1996 the Border Patrol, while still part of the now defunct INS, established "Operation Gatekeeper." The premise of this operation solely consisted of moving most agents to the immediate land border areas to conduct high visibility patrols.

Border Patrol management has asserted since this operation first began that zero apprehensions and seizures were statistical confirmation high visibility patrols were deterring and preventing people and contraband from entering the U.S. illegally. Unbiased border security experts refer to this one-dimensional strategy as an optical solution rather than a practical solution to border control, and estimate there are several hundred thousand illegal aliens entering the U.S. every year. We also know there are between 12 and 15 million illegal aliens, some of whom are serious criminal offenders, residing and committing crimes in the U.S.

Beginning in the second paragraph on page five of the agency's supplemental report, DCPA Giuliano provided a misleading assessment of the smuggling activity taking place in our AOR and statistics generated from such activity. Herein he stated, "BPAs assigned to the Port Angeles Station state in 2004 they were responsible for 33-35 percent of the Blaine Sector's narcotics seizures. Though commendable, the activity represented in the reported statistics seem an anomaly given that although BPAs assigned to Port Angeles have for years operated using low-profile tactics, the 2004 statistics stand out far and above statistics recorded prior to and after 2004. Factors that further distort conclusions drawn from enforcement (seizure/apprehension) statistics is the fact that historically, ICE and OBP reported enforcement statistics in separate systems (TECS and Enforce respectively)."

DCPA Giuliano is aware that criminal organizations operating in Western Washington had, prior to 2004, smuggled contraband across land border areas near Lynden and Blaine, Washington, because it was much easier and safer than smuggling across the treacherous Strait of Juan de Fuca in our AOR. This is outlined in the National Drug Intelligence Report entitled the Puget Sound Region, Washington, Drug Market Analysis.

In 2003, OBP significantly increased the number of agents assigned to the Blaine, Lynden and Bellingham Stations, which pushed smugglers to operate in our AOR. Our 2004 narcotics statistics were not an "anomaly" as DCPA Giuliano claimed, but rather they were a result of us working cooperatively with various law enforcement agencies to locate and interdict smugglers and contraband that had circumvented the USCG and reached the Peninsula. Further, DCPA Giuliano affirmed our contentions when he stated we have not made the same number of seizures since 2004. This is not attributed to an "anomaly," as he stated, but rather it is because since January 2005 we have been directed to work day shift hours in a high visibility fashion and not work with other agencies.

DCPA Giuliano also is aware that our station and the Port Angeles ICE office had reported joint enforcement statistics through TECS and Enforce in the same manner as every other ICE OI and OBP station across the nation; therefore, our statistics were not distorted as he claimed, but rather they were commensurate with other station's reporting procedures.

In the fourth paragraph on page five of the supplemental report, DCPA Giuliano offered further deceptive statements when he stated that 2004 enforcement activity in the Port Angeles AOR pushed those attempting illegal entry to the border areas east of Blaine. This misleading contention by DCPA Giuliano is refuted in the many intelligence reports we have provide Blaine Sector as well as other agency's reports and investigations.

ICE, USCG and the Royal Canadian Mounted Police have documented several incidents in which criminal organizations have successfully smuggled contraband through our AOR over the past two years. The smuggling activity in our AOR has not diminished since 2004; we simply have been prevented from combating it.

It is important to keep in mind the established cross border threat in our AOR. We are not dealing with passive illegal immigrants who are entering or attempting to enter the U.S. to work as farm or other industry laborers. Our previous arrests, contraband seizures and intelligence documents the threat and illegal cross-border activity taking place in our AOR stems from organized criminal smuggling groups (e.g., Outlaw Motorcycle Gangs and Vietnamese Gangs).

These smuggling groups are using small, fast boats and extensive counter surveillance tactics to circumvent USCG patrols and reach the Peninsula shoreline during the hours of darkness. The counter surveillance technologies they use (e.g., night vision, Blackberry's, encrypted radios, phones and GPS) far surpass the technology Blaine Sector management has provided us. Blaine Sector management's response to this threat, after we filed our disclosures, was to mandate we conduct high visibility patrols, only during daylight hours, and to ride-along with the USCG officers whom the smugglers are circumventing.

We believe that the three of us conducting high visibility patrols has had zero effect on deterring criminal organizations that are smuggling through our AOR. We also believe high visibility tactics enacted at our office has simply made us identifiable obstacles for the smugglers to elude.

In May 2005, the Department of Justice National Drug Intelligence Center released a report entitled the Puget Sound Region, Washington, Drug Market Analysis. This report outlines the extensive contraband and weapons smuggling that is taking place on the maritime frontier in Western Washington. As stated in this report, criminal organizations are routinely using our AOR as an avenue to smuggle between the U.S. and Canada.

The Port Angeles ICE OI office presently has three open investigations into the extensive smuggling that is taking place through our AOR. Two months ago, as a result of their investigations, ICE agents arrested several people who had attempted to smuggle a record amount of ecstasy tablets, worth 4.5 million dollars, to the U.S. from Canada through our AOR. This investigation is ongoing, and ICE recently arrested coconspirators in Los Angeles, California and Houston, Texas.

In DHS' first report, the agency responded to our allegation that Blaine Sector management had prevented us from working with other agencies. In the second paragraph on page nine it states, "Blaine Sector managers require the submission and approval of operational plans when assisting other agencies to ensure BP personnel are used in a manner consistent with BP's core mission. Operational plans outlining the nature of the activity to be undertaken and what is expected of each participant ensures enforcement activities are conducted within the understanding of existing MOUs and the participating entities are properly used. Blaine Sector management does not discourage assisting other law enforcement agencies; however, it is their position that assistance cannot be done at the sacrifice of their primary mission of maintaining a high-profile deterrent enforcement presence on the border."

Although the aforesaid by CPA Henley and DCPA Giuliano is necessary from a legitimate operational standpoint, it has no basis in fact for Blaine Sector management practices. All our requests, which Blaine Sector management ignored, were to conduct cross-border interdiction operations.

The following is an example of how Blaine Sector management uses operational plan requirements as a barrier to prevent us from working: In September 2005, Supervisory Border Patrol Agent (SBPA) Kerry Hunter submitted an operational plan for our station to Blaine Sector management. At that time I was the senior agent on duty at our station. In e-mail correspondence, SBPA Hunter informed me that Blaine Sector management was attempting to intimidate him into not pursuing an operational plan for our office. In this e-mail SBPA Hunter stated, "I just got my ops plan back with a note saying that I need to put some work into it. There are comments all over it asking for more specific info, mostly crap that has never been in an ops plan. I know that it's just posturing and some sort of intimidation, but it highly pisses me off. I am going to be replying to a cc:mail (e-mail) from (ACPA) Wes Vanderheyden, which I am sure will not be well received either and then I'll start working on revisions."

In paragraph three on page seven of the agency's first report, DCPA Giuliano defends management's directive for high visibility operations at our station by asserting they simply are implementing procedures at our office that are consistent with standard operations throughout OBP. However, on pages two and three of the agency's supplemental report, DCPA Giuliano stated the Port Angeles Station does not need the same technology, assets and personnel as other stations (e.g., intrusion-sensing technology, K-9 units, and additional agents), because our situation is different than at other stations. Herein he stated that illegal entry through our area is limited by the topographical differences between our station and the other stations within Blaine Sector. He further stated, "Attempted illegal crossings are further exacerbated by the substantial presence of USCG officers on the Strait of Juan de Fuca."

In order to defend various personnel actions taken against us, and the changes made to our station operations, DCPA Giuliano asserts opposing arguments. When defending management's directive that we only work during daylight hours and the decision to not assign additional personnel and technology to our office, he contends there are a substantial number of uniformed USCG officers and other Federal, State and local officers who are providing border security in our AOR. However, in order to justify the change to high visibility patrols at our station, he interjects statements such as he did in paragraph one on page five of the agency's supplemental report wherein he stated, "It could be argued the apparent absence of any OBP presence on the Olympic Peninsula enticed narcotic smugglers to cross the border in the Port Angeles AOR believing the border in that area to be unprotected."

Further, in order to justify not adding additional agents and technology to our office, DCPA Giuliano misleadingly stated there are only two avenues of egress from the Peninsula that cross border violators can utilize. However, any map of the Peninsula negates this statement and documents there are numerous roadways, back roads, ferry routes, inland waterways and air landing strips that criminals can use to reach the mainland from the Peninsula.

DCPA Giuliano and other OBP managers contend this high visibility "cookie cutter" type approach to border enforcement is the most effective and efficient way to gain operational control of the border, regardless of the individual station's topographic AOR, infrastructure, technology and number of agents. This line of reasoning is recalcitrant to what DHS Secretary Michael Chertoff is telling congress and the American public.

On March 2, 2005, DHS Secretary Michael Chertoff testified before the House Appropriations Homeland Security Subcommittee wherein he made the following statements: "I want to emphasize that our analysis of the threats and risks will drive the structure, operations, policies, and missions of the Department, and not the other way around. We will not look at the threats and our mission through the prisms of the Department's existing structures and functions. Instead, we will analyze the threats and define our mission holistically and exhaustively, then seek to adapt the Department to meet those threats and execute that mission... The terrorists who seek to attack us are not ready to concede defeat. Rather, they appear determined to adapt their methods to create new threats to our homeland." Secretary Chertoff further stated, "We want to have a comprehensive picture, recognizing that there are different tactics that work on different parts of the border because of topography. So we are committed to best practices. If there's anything there that works-well, that's legal-we're going to do it. ... We want to do the best to maximize the effect we have with the resources that we can bring together. "

In the fifth paragraph on page three of the agency's supplemental report, DCPA Giuliano continued to interject false information wherein he stated, "Low-visibility tactics (investigations) are primarily the jurisdiction of ICE, Port Angeles." He further stated in paragraph three on page four of the report that, "Allowing BPAs assigned to the Port Angeles Station to operate predominantly in low-visibility profile (i.e., plain clothes, unmarked vehicles) would equate to adding three Border Patrol agents to the ranks of ICE investigations."

In the sixth paragraph on page three of the agency's supplemental report, DCPA Giuliano states that Blaine Sector management does not discourage agents from working with ICE; however, that it should not detract from OBP's primary mission, and that BPAs assigned to Port Angeles appear to want to become one and the same with ICE investigations.

In paragraph three on pages five of the agency's first report, DCPA Giuliano again misleadingly contends ICE criminal investigators are responsible for second tier low visibility border interdiction duties, and that by having us perform these plainclothes interdictions, we are overlapping ICE investigative duties. It is, in fact, OBP management that has created overlapping agency responsibility in our AOR, by assigning us to ineffectively duplicate the high visibility deterrence patrols that the USCG is already performing.

On page five of the agency's supplemental report it states that in fiscal year (FY) 2003 we were responsible for 2.3 percent of Blaine Sector's narcotic seizures, in FY 2004 we were responsible for 12.12 percent of Blaine Sector's narcotics seizures, and in FY 2005 we were responsible for 6.6 percent of Blaine Sector's narcotics seizures.

The aforesaid statistics OBP listed are simply fraudulent. This is evidenced by our many arrest and seizure reports and the Blaine Sector Intelligence Office statistics.

Further, the seizure that OBP management documented for our FY 2005 narcotic statistic is one that we made while we were still working low visibility operations in calendar year October 2004. We have not made any narcotics seizures since high visibility tactics were implemented at our station in January 2005.

The Blaine Sector Intelligence Unit statistics on page 6 of the supplemental report accurately reflect our seizures:

2004 Port Angeles accounted for 35 percent of Blaine Sector narcotics seizures.

2005 Port Angeles accounted for 0 percent of the Blaine Sector narcotics seizures.

2006 Port Angeles accounted for 0 percent of the Blaine Sector narcotics seizures.

In the first paragraph on page five of the agency's first report it states that in addition to the Lynden, Blaine, Bellingham and Port Angeles Stations, the Blaine Sector has specialized teams that include an IBET unit and K-9 agents who are deployed throughout the sector to augment the defense-in-depth strategy. This statement also is misleading. Blaine Sector specialized teams, which include the IBET unit and K-9 units, do not include the Port Angeles station agents, but rather consists of agents from the Lynden, Blaine and Bellingham stations. These units are not deployed to assist us, as our office is located four hours away from the other stations in Blaine Sector.

In paragraph five on page four of the agency's supplemental report it states, "Investigation indicates OBP management did not order the discontinuation of low visibility tactics in favor of high visibility tactics in January 2005." The report states that *according to OBP management*, the directive to assume a high visibility posture was issued in or about 2001, but that PAIC Baker was insubordinate for not ensuring compliance with the high-visibility enforcement strategy. Blaine Sector management's response to Baker's alleged insubordination was not to discipline him for ignoring their directives, but rather it was to have him return to Port Angeles and immediately begin taking systematic actions to punish us and destroy our successful interagency border security operations.

It was a well-known fact throughout Blaine Sector that the Port Angeles Station had been operating as a plainclothes office since it was first established in 1988, and up until the time we filed our disclosures. Supervisors and field agents who were either personally aware of or had directly observed our plainclothes operations during this time included former Chief Patrol Agent Tom Wacker, Former Chief Patrol Agent Carey James, former DCPA Eugene Davis, former DCPA John Baits, Lynden Station PAIC John Strauch, who at one time served as acting PAIC of the Port Angeles Station during PAIC Baker's absence, former PAIC Danny Brinson, DCPA Joe Giuliano, Assistant Chief Patrol Agent (ACPA) Keith Miller, and Lynden Field Operations Supervisor Richard Holland, as well as numerous first line supervisors and field agents from other stations.

Although DCPA Giuliano stated Blaine Sector management had directed PAIC Baker to implement high visibility tactics at the Port Angeles Station in 2001, Blaine Sector management did not file the required 3-A Notice (i.e., request to bargain with the union over a proposed change in working conditions) with the National Border Patrol Council until February 2005, which was one month after we had filed our disclosures of misconduct.

Moreover, it was DCPA Giuliano who had, for the past few years and up until the time we filed disclosures, been authorizing us the use of unmarked home-to-work (HTW) government vehicles. The many HTW authorization forms he had signed evidence this.

In the fourth paragraph on page eight of the agency's original report it misleadingly states that the initial assignment of unmarked vehicles to BPAs assigned to the Port Angeles Station was due to a lack of secured parking in the immediate vicinity of the Port Angeles Station. It further states that Blaine Sector management made a determination the government owned vehicles would be more secure if agents assigned to Port Angeles were allowed to take the vehicles home at the end of their shift of duty. And, the report states, Blaine Sector Chief Ron Henley considered this a temporary measure until secure parking for the vehicles could be found. The parking garage where we now are parking our vehicles opened in 1924 and it has been renting parking spaces for many, many years. Blaine Sector management claimed they had been unsuccessfully attempting to find us parking for our vehicles since 2001; however, immediately after they learned we had filed disclosures, they were able to acquire rental parking spaces for us.

Although Chief Henley stated that taking our government vehicles home was a temporary measure, Port Angeles agents had been driving unmarked HTW vehicles from the time the station was first opened in 1988, up until the time we filed our disclosures in January 2005. Blaine Sector management contends that we had been driving our government vehicles home for security purposes rather than law enforcement call outs. It is our understanding this is not allowed in the CBP HTW vehicle policy. Additionally, the home-to-work authorization forms DCPA Giuliano had been signing stated we were taking our vehicles home for law enforcement call outs after hours and on our days off duty, rather than for security purposes. Either Blaine Sector management was being dishonest when they stated on these HTW forms that we were taking them home for law enforcement purposes, or they are being dishonest now by stating we were only taking them home for vehicle security reasons. The fact is, we routinely used our HTW vehicles for call outs to conduct enforcement actions.

In section I on page nine of the agency's original report, OBP management responded to our allegation that PAIC Baker had been violating the CBP HTW vehicle policy by commuting further than 50 miles one way from his residence to work each day. DHS responded that PAIC Baker was in compliance with agency policy because the latitudinal and longitudinal coordinates revealed he lived within a 50 mile radius of our office. We believe the agency's use of air nautical miles to justify his use of a government vehicle is contrary to the intent of the commuting distance provisions set forth in the HTW vehicle policy. Moreover, we do not recall PAIC Baker ever responding to a call out. He simply used his HTW government vehicle to commute between home and work.

On page ten of the agency's first report, DHS responded to our allegation that PAIC Baker and Blaine Sector management grossly wasted government funds. In paragraph one it states, "Investigation revealed that in September 2002, marine equipment valued at approximately \$6,000 was purchased by Port Angeles Station PAIC Mike Baker."

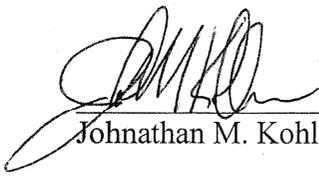
The report goes on to disingenuously state this was not a gross waste of funds because the Port Angeles Station was established in 1988 and originally intended to be a marine patrol station. The fact that OBP has never assigned a marine vessel to our station discredits the assertion that our station was opened to conduct marine patrols.

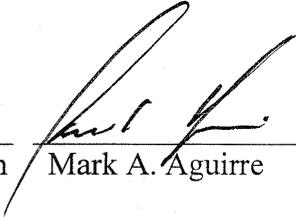
DHS further falsely asserts this equipment was necessary because we participated in joint marine patrols with the USCG and Washington State Police. We have never participated in joint patrols with either of these agencies. On one occasion we went for a ride-along with the USCG for liaison purposes. The marine equipment purchased by OBP did not even pass USCG certification requirements, and it has been in storage since the time it was purchased in 2002.

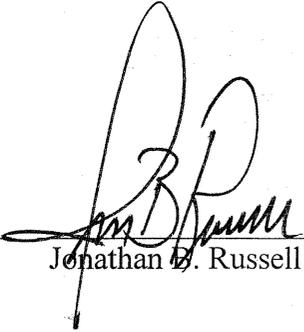
In January 2006, CBP announced OBP would not be conducting marine patrols in coastal and lake environments, as this duty was being assigned to the CBP Office of Air and Marine. The directive also stated the Office of Air and Marine would pay for all marine equipment, vessels and training. Four months later, in May 2006, Blaine Sector management purchased more marine equipment for our station valued at approximately \$10,000.

OBP's serious misconduct and gross mismanagement of our station, as well as DHS' whitewashing of these issues, has seriously jeopardized national security.

Sincerely,

  
Johnathan M. Kohlman

  
Mark A. Aguirre

  
Jonathon B. Russell