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**Analysis of Disclosures, Agency Investigation and Report,  
and Comments of the Special Counsel**

**OSC File Nos. DI-06-1236; DI-06-1237; DI-06-1253;  
DI-06-1272; DI-06-1273; and DI-06-1286**

**Summary**

The disclosures in this matter were made by six Agricultural Specialists with the Department of Homeland Security (DHS), U.S. Customs and Border Protection (CBP), Sanford International Airport, Sanford, Florida. The whistleblowers, Selma Ocasio, Jose Vazquez-Quinones, William Errico, and three anonymous federal employees (Agricultural Specialists) alleged that they were instructed to enter into a CBP database false information concerning passenger screening. They believed that this practice constituted a violation of law, gross mismanagement, and a substantial and specific danger to public health and safety.

The agency report partially substantiated the whistleblowers' allegations. The investigation did not substantiate the allegations that the Agricultural Specialists were instructed to use an incorrect code, or that agency officials directed the improper entry or fraudulent creation of secondary examination results. The investigation also did not substantiate the allegation that Agricultural Specialists lacking proper clearance accessed the CBP database. The agency investigation did substantiate that personnel assigned to enter data were improperly directed to use default or generic data, and that authorized users were directed to enter data under another employee's user identification number and password. The agency has taken disciplinary and corrective action in response to the findings of violations of law.

OSC finds that the agency's report contains all of the information required by statute and that its findings appear to be reasonable.

**The Whistleblowers' Disclosures**

The Agricultural Specialists, three of whom have consented to the release of their names, work in the secondary inspections area of the airport. When passengers arrive on international flights, they present a customs declaration, which contains some identifying information. If the passenger is referred for a secondary inspection after the presentation of the declaration, the CBP agent will interview the passenger and enter data obtained from this interview into a computer database known as the Treasury Enforcement Communication System (TECS). This report of contact is known as an IO25.

During the summer and fall, 2005, these Agricultural Specialists were detailed to work at the Sanford International Airport, Sanford, Florida. During their shifts in the secondary

agricultural inspections area, they were instructed by Sanford CBP Supervisors to take stacks of passenger and crewmember customs declarations, and enter the names into TECS as IO25s. They were told to guess at the information that would otherwise be obtained during direct interview and inspection of the passenger or crewmember, such as race, length of stay, and number of bags. The standard information they were told to enter was "white, two weeks, two bags." They also alleged that they were instructed to enter an "ENF" code, rather than the code for an agricultural secondary inspection, "PPQ." This would falsely reflect that the passenger or crewmember had been stopped, interviewed, and bags inspected in connection with a suspicion of possessing contraband or engaging in unlawful activity. Several of the whistleblowers questioned this, and were told that things were done differently in Sanford, and that they should go ahead and enter the information as directed.

One agent, Mr. Vazquez-Quinones, was instructed to enter this information despite the fact that he had not received his security clearance or training in the TECS system, and had no password. He and other agents were told that they could sign in under another employee's password to complete the work. Mr. Vazquez-Quinones refused to complete the entries, and they were completed in his presence by a supervisor and other agents. All of the agents were told that the IO25s needed to be entered so that Sanford could reach the required percentage of enforcement screens. Each whistleblower estimates the number of IO25s that were entered in this manner to be in the hundreds.

## **Report of the Department of Homeland Security**

### ***A. Background***

The agency's report reflects that the CBP, Office of Internal Affairs (OIA), Investigative Operations Division (IOD), conducted investigative interviews and obtained relevant evidence at the Orlando, Florida and Sanford, Florida Ports of Entry (POE). They interviewed and obtained written statements from 19 CBP employees. They also obtained a statistical analysis on TECS data from the IA, Management Inspections Division.

The report contains a thorough discussion of the development of CBP, and the establishment of the two POEs known as Orlando and Sanford. It explains that the Sanford POE was originally designed to accommodate 800-900 passengers per hour, and that, during the summer of 2005, upwards of 3,000 passengers per hour needed to be processed. This resulted in international passengers waiting two to three hours to be processed. Several staffing changes were mandated, including adding eight CBP Officers to staff Primary Passport Control Booths, thus reducing the number of agents available to conduct secondary examinations.

As part of the overall effort to shorten the processing time of arriving passengers, it was decided that passengers would be questioned more thoroughly on agriculture issues at the Secondary Baggage Control point. It was felt that this would improve passenger processing times. In order to adjust for the loss of CBP Officers to Primary Passport Control, personnel from the Orlando and Port Canaveral POEs were detailed to Sanford on a two-week rotational

basis during the summer and fall of 2005. Despite this, the staffing configuration typically left only one CBP Officer available to work secondary referrals from Secondary Baggage Control.

Typically, at Sanford, passengers deplane and are directed to the Primary Passport Control point where their immigration status and admissibility into the country are ascertained. Passenger baggage declaration forms are completed and coded, and may include a referral to the secondary inspection area after the traveler has collected luggage. Passengers then move to the baggage belt area, where selected passengers may be interviewed by CBP Officers designated as "rovers." Based on a CBP Agent's interview of a passenger, the rover may mark the declaration form as cleared or to be referred for secondary examination. Passengers then proceed to the Secondary Baggage Control Point.

At the Secondary Baggage Control Point, the baggage declaration is scanned for completion and notations, and the passengers may then be either released or asked additional questions. Those not released may be referred for further examination based on the result of the interview at the Secondary Baggage Control point, or sent for further examination based on a referral from Primary Passport Control or a rover.

TECS is a computerized information system used by CBP Officers and Agricultural Specialists to aid in the identification of individuals and businesses involved in, or suspected of involvement in, violations of Federal law. TECS workstations are located at all CBP ports of entry and are used by CBP personnel to check incoming travelers. At international facilities, such as Sanford, the names of arriving travelers are queried through TECS during processing at Primary Passport Control.

The IO25 function in TECS was designed to capture the results of secondary inspections conducted on travelers arriving via air. After all CBP processing is completed, and the passenger has been released, IO25 data is entered at Secondary Baggage Control. It is used by management to help develop risk assessments and to help identify possible changes needed in passenger processing operations. The IO25 function was originally designed to capture statistical information as related to the secondary inspection activity of the U.S. Customs Service, and was not intended to agricultural inspectional information.

## ***B. Findings***

### ***a. Unsubstantiated Findings***

The agency report found that the entry of a record under the ENF code, rather than the PPQ code, even though the traveler and/or luggage was processed by an Agricultural Specialist, did not constitute a violation of any known policy or procedure. An agency Directive on Secondary Examinations Systems, dated April 27, 2002, does not specifically address whether the code should read ENF or PPQ. The Port Director is authorized by this Directive to implement it, and it was the Port Director at Sanford who instructed port personnel to use the ENF code rather than PPQ. The Program Manager for Agriculture of the Tampa Field Operations Office also advised the Supervisory Agricultural Specialist at Sanford that the ENF code was acceptable.

The report also found that the entry of an IO25 record by an officer other than the one who actually conducted the secondary interview did not violate any policy or procedure; provided, however, that the interviewing officer's name is included in the Remarks section of the record and that the information is entered prior to the end of the examining officer's shift. It was found that the interviewing officer's name was not always present on baggage declaration forms for the period June through October 2005, but that the data input was completed prior to the end of the shift as required.

The report found that the stacks of baggage declaration forms, from which the Agricultural Specialists were directed to create IO25 records, were from passengers who had undergone additional questioning at Secondary Baggage Control, and that the supervisor who instructed the creation of the IO25s had been physically present when passengers were questioned. According to the report, the whistleblowers were unaware of the secondary questioning.

Finally, the report did not substantiate that any employees who lacked proper system authorization had used the TECS system. One such employee refused to access TECS without authorization and did not, and another denied that he had attempted access.

#### ***b. Substantiated Findings***

The report substantiated that baggage declaration forms were often incorrectly annotated with regard to certain traveler information, including length of stay, purpose of visit, number of accompanying bags, race, or the interviewing officer's name. Instead, Agricultural Specialists were given verbal instructions as to the missing information. Supervisors and management officials admitted to the practice, and claimed that it helped facilitate the movement of arriving passengers. The report stated that such a methodology of annotating IO25s does not provide the degree of accuracy that is required of data to be input into TECS. A review of a sampling of baggage declaration forms from the Sanford POE for the period June through October 2005, found that more than 50% of the forms had not been properly annotated.

It was also substantiated that the Agricultural Specialists were instructed to enter IO25 data into TECS under someone else's system identification number and password. Port supervisors and management officials readily acknowledged that this was common practice, employed as an operational expediency, but limited only to IO25s. It was claimed that the practice was viewed to be reasonable because of the need to process passengers quickly, and the lack of available TECS terminals. In addition, anyone who entered information into TECS was an authorized user.

#### ***C. Action Taken in Response to Findings***

As a result of the investigative findings, the agency initiated both corrective and disciplinary action. Port supervisors have been instructed to discontinue the practice of using verbal, generic passenger information to enter data into IO25 records. Supervisory personnel were reminded of their responsibility to ensure that all baggage declarations sent for IO25 input

by someone other than the reviewing officer contain all of the information required. All Sanford POE personnel were instructed to cease entering IO25 records under someone else's identification and password. In addition, management reiterated to supervisors that they are responsible for ensuring that no such future breaches of TECS systems security occur at the port.

In addition, the agency report indicates that officers who failed to follow applicable policy and procedures and/or supervisory personnel who failed to ensure policy compliance would receive Letters of Counseling. The agency also plans to issue a new directive to better address some of the data collection issues associated with the IO25, and to establish national policy for the recording of secondary inspections performed by both CBP officers and Agricultural Specialists. Further, the Director, Field Operations, Tampa, advised that by November 30, 2006, two Area Port-wide employee notices would be delivered to all CBP Officers and Agricultural Specialists, in order to put on notice employees who might be detailed to other POEs in the region.

Finally, the Tampa Field Office Staff will perform quarterly oversight visits to Sanford, through FY 07. Staff will verify issuance of the employee notices, and will sample and witness data entries.

The agency also recommends that the Orlando POE, in conjunction with the Tampa Field Office, review and reevaluate the CBP unified secondary training provided to the Agriculture Specialists in Orlando. The agency further recommends that all former USCS policies and procedures related to inspectional processes, passenger processing, and the reporting of inspection results, be updated to reflect a CBP unified port inspectional environment that is inclusive of agricultural issues.

### **The Whistleblowers' Comments**

Three of the whistleblowers commented on the report.<sup>1</sup> The whistleblowers all expressed frustration and disappointment in the findings of the report.

First, all three of the whistleblowers commented that the use of the ENF code instead of PPQ would provide better classified and more accurate statistical information. One commented that CBP in Sanford used the ENF code to boost enforcement statistics, which incorrectly depicted an enhanced enforcement risk assessment versus agriculture. The use of ENF, according to another whistleblower, for passengers whose luggage was not physically inspected and who were not properly interviewed, is inappropriate considering the definition of an "enforcement examination." Another whistleblower commented that the report implies that there was some kind of interview with passengers. In fact, the whistleblower claimed, there was no interview. The only words heard by the passenger were those of the Agricultural Specialist, saying, "Please place all bags and cases flat on the belt."

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<sup>1</sup> One whistleblower has provided written consent for the release of his/her written comments, but has not consented to the release of his/her name.

One whistleblower commented that the declaration forms given to the Agricultural Specialist to enter were taken from the stack that piles up as these are being collected; no information is gathered on these. Another stated that the “stacks” of customs declarations “handed to me and to the other Agricultural Specialist were given without further notation in the back of each form as of the detailed information needed to input in the IO25 record. We received “stacks” of customs declarations. When we refer to a stack, we are referring to many declarations forms... [i]t is humanly impossible to remember each mandatory data of each declaration and verbally and correctly transmit this information to another employee to create the IO25 records.” This whistleblower observed that the main complaint that initiated this investigation was the fact that many of the IO25 records were ordered to be created without the proper mandatory information and using false information. As integrity is one of the agency’s core values, it should be practiced at all levels of the agency.

It was also observed by a whistleblower that although the passengers may have undergone questioning by a supervisor at the secondary baggage control point, crewmembers were handled differently. Numerous crewmembers passed through the secondary inspection area all at once, which left little to no time for each interview to take place. Very few crewmembers were subjected to questioning beyond the primary passport control interview.

The whistleblowers appreciate the “One Face at the Border” concept, but CBP Officers and Agricultural Specialists have distinct legal authorities. When Agricultural Specialists with limited authority perform CBP Officers’ functions, the lines become blurred.

### **Conclusion**

Based on my review of the original disclosures and the agency’s report, I have determined that the agency’s report contains all of the information required by statute, and that its findings appear to be reasonable.