

1300 Pennsylvania Avenue, NW
Washington, DC 20229



U.S. Customs and Border Protection

Commissioner

September 18, 2023

Henry J. Kerner
Special Counsel
Office of Special Counsel
1730 M Street, Suite 300
Washington, D.C. 20036-4505

Re: Supplemental Report Regarding: OSC File No. DI-22-000519

Dear Mr. Kerner:

On June 21, 2023, the Department of Homeland Security (DHS), Customs and Border Protection (CBP) submitted to the Office of Special Counsel (OSC) a report regarding OSC's referral for investigation of a whistleblower disclosure that employees within Air and Marine Operations (AMO) engaged in conduct that may constitute an abuse of authority and a substantial and specific danger to public safety. The Office of Special Counsel (OSC) received the allegations from a whistleblower who alleged that the majority of CBP's Light Enforcement Helicopter fleet lack required crashworthy fuel tanks, and that an employee in AMO Headquarters improperly attempted to remove critical information from an Aircraft Mishap Report concerning the crash and destruction of AMO Helicopter N841BP on May 12, 2021. This supplemental report is in response to OSC's follow-up questions issued on August 1, 2023. OSC submitted the following questions:

- The report states on p. 2 that "OPR's review and analysis of documents and interviews revealed on December 17, 2021, XD [REDACTED] directed critical information to be removed from Aircraft Mishap Report for AMO Helicopter N841BP." Please explain whether the agency believes these actions constitute a violation of a law, rule, or regulation, an abuse of authority, or any other form of wrongdoing?
- The agency report concludes on p. 23, "This report is being sent to the U.S. Office of Special Counsel for review and any actions deemed appropriate." However, pursuant to 5 U.S.C. § 1213 the agency is charged with taking corrective and or disciplinary action in response to the agency investigation. Given the statutory directive, please clarify what action the agency intends to take in response to its findings?
- Additionally, on p. 13, the report noted that in December 2022 CBP AMO provided cost estimate of approximately \$3.1 million to retrofit the remaining AS350 fleet that lack a Crash Resistant Fuel Tank and that retrofitting would take approximately eight years. Given the safety concerns, does AMO intend to retrofit the AS350 fleet? If not, why not?

Answers to each of these questions are addressed herein:

Upon completion of this investigation CBP intends to forward the report to an internal Discipline Review Board (DRB) for review and proposal. The DRB will consider any corrective and disciplinary actions which it will subsequently recommend to a deciding official within CBP. The DRB will also review whether the removal of information from the N841BP Aircraft Mishap Report constituted misconduct and will make a recommendation regarding any prospective discipline.

[REDACTED]

[REDACTED]

Additionally, CBP has become aware that one of the subjects of this investigation, Executive Director [REDACTED] intends to retire by the end of September. If his retirement occurs as planned, that may additionally affect the DRB's upcoming review.

Regarding the AS350 helicopter fleet, CBP has determined not to retrofit the current fleet. While CBP had previously calculated the costs associated with retrofitting the AS350s, CBP has elected to retire and replace the fleet lacking crash worth fuel tanks. Additionally, as highlighted within the report, Federal Aviation Administration regulations 14 C.F.R §§ 27.952 and 29.952 explicitly state that fuel systems on rotorcraft designed prior to October 1994 are exempt from fuel system crash resistant tanks. As the AS350 was designed prior to 1994, the Agency's AS350 fleet is compliant with current regulations.

If you require further information regarding this matter, please contact [REDACTED] in the Office of Chief Counsel at [REDACTED].

Sincerely,



Troy A. Miller
Senior Official Performing the Duties of the Commissioner

cc: Secretary, Department of Homeland Security
Acting Deputy Secretary, Department of Homeland Security
Chief Human Capital Officer, Department of Homeland Security
General Counsel, Department of Homeland Security