



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

The Special Counsel

September 4, 2024

The President
The White House
Washington, D.C. 20500

Re: OSC File No. DI-22-000519

Dear Mr. President:

I am forwarding to you reports transmitted to the Office of Special Counsel (OSC) in response to the Special Counsel's referral of disclosures of wrongdoing at the Department of Homeland Security (DHS), Customs and Border Protection (CBP), Air and Marine Operations (AMO), Training, Safety and Standards Directorate (TSS), Washington D.C. [REDACTED], former Director of TSS, consented to release of his name and commented on the reports. The CBP Office of Professional Responsibility conducted the investigation. I have reviewed the disclosures, agency reports, and whistleblower comments and, in accordance with 5 U.S.C. § 1213(e), have determined that the reports contain the information required by statute, and the findings appear reasonable.

The Allegations

[REDACTED] alleged that the majority of the AMO Light Helicopter fleet lacked the required crash resistant fuel tanks (CRFTs), in violation of a 2006 operational requirements document (ORD) for CBP Light Enforcement Helicopters. [REDACTED] explained that crashworthy fuel cells were designed to reduce the likelihood of a fire developing after a helicopter crash. Despite the requirement, at the time [REDACTED] submitted his allegations, only 16 of 97 AMO helicopters contained a CRFT. [REDACTED] stated that in November 2016, an AMO Aircraft Configuration Change Request was submitted to retrofit all AMO AS350 aircraft with a CRFT, but the request had yet to be funded. As a result, 81 AMO helicopters lacked this important safety feature and were not in compliance with the 2006 ORD.

[REDACTED] also alleged that AMO Executive Director of National Air Security Operations [REDACTED] improperly ordered the removal of critical information from an Aircraft Mishap Report concerning the crash of AMO Helicopter N841BP on May 12, 2021 to reduce the potential for negative press coverage and the agency's exposure to legal liability. [REDACTED]

explained that under a memorandum of understanding (MOU) with the National Transportation Safety Board (NTSB), CBP independently investigates crashes of CBP aircraft and sends the report to NTSB. CBP investigated the crash of AMO Helicopter N841BP and produced a draft mishap report in September 2021.

According to ██████████, the original draft report discussed several factors that led to the crash, including errors in AMO's hiring practices that allowed the pilot who was found to be primarily responsible for the crash to receive several unearned flight-hour waivers, concerns about flight helmets, and the lack of a CFRT in the helicopter.¹ Following the submission of the draft,² ██████████ ordered the removal of the aforementioned information from the report saying that its inclusion would open AMO up to excessive scrutiny and legal liability. ██████████ contended that the NTSB requires that agency mishap reports contain "all relevant information pertaining to the mishap," and that the exclusion of such material by an agency could result in the revocation of CBP's delegated authority to investigate safety mishaps.³

The Agency Reports

The investigation substantiated that there are approximately 81 AS350 helicopters in the CBP AMO helicopter fleet that do not have CRFTs, but did not find a violation of the 2006 ORD or other helicopter standards. The investigation noted that, on October 3, 1994, the FAA revised the airworthiness standards for helicopters to add "comprehensive crash resistant fuel system design and test criteria." These standards were incorporated into two new regulations, 14 CFR secs. 27.952 and 29.952, "Fuel System Crash Resistance." The agency's report explains that only the fuel systems on *newly* certified helicopters were required to contain CRFTs. Helicopters certified prior to October 1994, including the AS350 helicopters, are not subject to the requirements because the FAA did not make the rule retroactive. The investigation found that in 2016, TSS Deputy Director ██████████ submitted a proposal to procure CRFT for all CBP AMO Light Enforcement Helicopters. AMO determined that the acquisition would cost approximately \$3.1 million and take eight years to implement. Given this estimate, the agency did not procure the CRFT.

The agency also substantiated ██████████ allegation that ██████████ directed that critical information be removed from the Aircraft Mishap Report for AMO Helicopter N841BP. It cited a December 17, 2021 email in which ██████████ wrote the "Safety Report need (sic) to be pulled from routing and re-worked...the current version is a litigation hazard." The agency did not conclude whether ██████████ actions constituted a violation of law, rule, or regulation; gross mismanagement; or an abuse of authority.

¹The unedited draft report can be found within OSC File No. DI-22-000519 Agency Report as *Enclosure 1*.

²Upon completing a draft mishap report, an investigator submits the draft to an online "Document Routing" portal. AMO officials use this portal to access and review reports and submit their edits. Once all reviewing officials approve of the draft, it can be submitted to NTSB.

³"Information And Guidance for Parties to NTSB Accident and Incident Investigations," NTSB, 2010.

OSC thrice sought supplemental reports to clarify, among other things, the investigative findings, since CBP failed to identify whether [REDACTED] actions constituted a violation of a law, rule, or regulation; gross mismanagement; an abuse of authority; or any other form of wrongdoing, even as it substantiated that he removed required information from the Mishap Report.⁴

The agency provided supplemental information that indicated that [REDACTED] retired without review of his actions by the Disciplinary Review Board. They also advised that they determined not to retrofit helicopters due to cost. Instead, CBP elected to retire and replace the helicopters that did not have the required fuel tanks.

The agency also stated that CBP requested that U.S. Coast Guard (USCG) conduct an independent review of AMO's safety and crash investigation policies and procedures. In addition to the USCG review, AMO TSS revised the policy and the standard operating procedures regarding accident investigations to ensure better communication between the Safety Officers and executive leadership.

[REDACTED] informed OSC that on October 30, 2023, AMO Executive Assistant Commissioner [REDACTED] approved transmitting the Mishap Report for AMO Helicopter N841BP, which omitted the critical information to NTSB, and approved posting it on CBP AMO internal Safety Management System website. In a request for a third supplemental report, OSC sought confirmation that the redacted report had been transmitted and posted, and if so, an explanation for omitting the critical information. OSC also sought information on any changes related to the procedures for posting mishap reports.

CBP also noted that NTSB worked closely with CBP investigators throughout the N841BP mishap investigation and NTSB used information from the investigator's findings and completed the final NTSB report for public release on January 4, 2023. CBP further noted that, as information regarding the investigation was shared with NTSB throughout the development of the report (including draft copies of the report), CBP was compliant with the information sharing requirements from the MOU.

Further, CBP explained that while AMO did remove information from its final report, the issues of flight hour waivers, crashworthy fuel tanks, or aircrew flight helmets were not listed as direct, causal, or contributing factors to the crash in the initial draft and therefore, removing the report language addressing those issues did not violate the MOU between CBP and the NTSB or any regulations governing mishap investigations. Finally, CBP noted that, "NTSB, as the federal agency charged by Congress with investigating aviation accidents, would best be situated to determine if CBP's investigative procedures were in compliance with any additional laws, regulations, or policies and following several subsequent direct interactions with the

⁴Under 5 U.S.C. § 1213(d)(4), "Any report required under subsection (c)...shall include...a listing of any violation or apparent violation of any law, rule, or regulation."

NTSB, including completion of multiple successful investigative reports, AMO has confirmed with the NTSB that the organization remains in compliance with accident investigations as per NTSB standard procedures.”

The Whistleblower Comments

██████████ expressed dismay at the agency’s findings, writing that in both the report and supplemental reports, even after substantiating the allegations, the agency consistently attempted to avoid accountability by refusing to acknowledge that the responsible officials engaged in wrongdoing. ██████████ found it deeply concerning that the agency undertook no meaningful corrective or disciplinary action to address ██████████ misconduct and that allowing him to retire permits such wrongdoing to persist within the agency.

Additionally, ██████████ stated that AMO’s assertion that they had been working closely with NTSB in the development of this report is misleading. He maintained that he and his direct report were the only officials who met with NTSB about the case during the development of the report and that AMO management disapproved of these interactions. ██████████ notes that the agency now taking credit for communicating with NTSB on this matter is absurd and insulting when AMO attempted to discipline his direct report for those communications.

The Special Counsel’s Findings

AMO substantiated allegations that a significant portion of the CBP AMO helicopter fleet do not have CRFTs. AMO also acknowledges that critical information was ordered removed from the draft mishap report. In addition, the mishap report published by NTSB acknowledges that AMO’s selection process for the Air Interdiction Agent Program failed to properly identify that the pilot was not qualified for the program. As such, the findings of agency’s report appear reasonable.

Given the benefits from the presence of CRFTs, I would urge CBP to retrofit their helicopters with CRFTs as soon as possible. Additionally, in the interest of transparency, I encourage AMO to publish the unedited draft report on the CBP AMO internal Safety Management System website.

I note separately that I am troubled by the agency’s responses in this matter. I concur with many of ██████████ comments that the inconsistency between the agency’s substantiated finding that ██████████ ordered the deletion of critical information from the N841BP Mishap Report to avoid potential liability and its repeated refusal to acknowledge the misconduct as wrongdoing is perplexing. Further, I find CBP’s insistence that such an acknowledgement could only occur after a review of ██████████ actions by the CPB DRB to be unconvincing. I also find troubling CBP’s decision to post the admittedly incomplete N841BP Mishap Report on AMO’s internal Safety Management System website.

The President
September 4, 2024
Page 5 of 5

The agency's report ultimately reaches a conclusion with regard to the allegations. Nevertheless, the agency's delay in responding to OSC's specific requests about its actions with regard to the substantiated omissions, and the refusal to acknowledge the misconduct as wrongdoing, are not acceptable. I urge CBP to put in place measures to ensure that referrals of allegations of wrongdoing under section 1213(c) are prioritized and that prompt and complete reporting becomes the norm.

As required by 5 U.S.C. § 1213(e)(3), I have sent a copy of this letter, the agency reports, and whistleblower comments to the Chairs and Ranking Members of the Senate Committee on Homeland Security and Governmental Affairs and the House Committee on Homeland Security. I have also filed redacted copies of these documents and the redacted referral letter in our public file, which is available online at osc.gov. This matter is now closed.

Respectfully,



Hampton Dellinger
Special Counsel

Enclosures