



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

The Special Counsel

June 23, 2022

The Honorable Alejandro Mayorkas
Secretary
U.S. Department of Homeland Security
2707 Martin Luther King, Jr., Ave., SW
Washington, D.C. 20593

Re: OSC File No. DI-22-000519
Referral for Investigation—5 U.S.C. §1213(c)

Dear Secretary Mayorkas:

I am referring to you for investigation a whistleblower disclosure that employees at the Department of Homeland Security (DHS), Customs and Border Protection (CBP), Air and Marine Operations (AMO), engaged in conduct that may constitute an abuse of authority and a substantial and specific danger to public safety. A report of your investigation in response to the allegations and any related matters is due to the Office of Special Counsel (OSC) on August 22, 2022.

The whistleblower, Director of Training Safety Standards [REDACTED], who consented to the release of [REDACTED] name, alleged that the majority of the AMO Light Helicopter fleet lack required crashworthy fuel tanks in violation of a 2006 operational requirements document (ORD) for the CBP Light Enforcement Helicopter. [REDACTED] also alleged that AMO Executive Director of Training Safety Standards [REDACTED] improperly attempted to remove critical information from an Aircraft Mishap Report concerning the crash and destruction of AMO Helicopter N841BP on May 12, 2021. The specific allegations to be investigated include:

- 81 out of the 97 AS350 helicopters in the AMO helicopter fleet do not have crashworthy fuel cells installed, as required by a 2006 ORD for the CBP Light Enforcement Helicopter;
- [REDACTED] repeatedly attempted to remove critical information from the Aircraft Mishap Report for AMO Helicopter N841BP because of the potential for a negative public response and increased legal liability; and
- Any additional, related allegations of wrongdoing discovered during the investigation of the foregoing allegations.

██████████ explained that crashworthy fuel cells were designed to reduce the likelihood of a fire developing following a helicopter crash. Despite this requirement, currently only 16 of 97 AMO helicopters contain a crashworthy fuel cell. ██████████ stated that in November 2016, an AMO Aircraft Configuration Change Request was submitted to retrofit all AMO AS350 aircraft with a crashworthy fuel cell, but the request has yet to be funded. Therefore, 81 AMO helicopters lack this critical safety feature and are not in compliance with the 2006 ORD. ██████████ also reported that of AMO's most recent light helicopter mishaps, the only aircraft to sustain damage from a post-crash fire was a helicopter that did not have a crashworthy fuel cell.

██████████ also alleged that ██████████ attempted to remove significant portions of the Aircraft Mishap Report for AMO Helicopter 841BP to reduce the potential for negative press coverage and the agency's exposure to legal liability. Under a memorandum of understanding with the National Transportation Safety Board (NTSB), CBP conducts an independent investigation into crashes of CBP aircraft and sends the report to NTSB. ██████████ explained that following the crash of AMO Helicopter N841BP, Air Interdiction Agent ██████████ was assigned to investigate the accident and produced a draft mishap report in September 2021.

According to ██████████, the draft report included discussion of several factors that ██████████ identified as contributing to the mishap, including errors in AMO's hiring practices allowing the pilot deemed to be most responsible for the crash to receive several unearned flight-hour waivers, and the use of non-crashworthy fuel cells. Since the submission of the initial draft, ██████████ has ordered the removal of this discussion from the mishap report. In annotations on the draft, ██████████ wrote, "This does not need to be part of the safety report. Reports shall be factual concerning the crash without external analysis."¹ However, in private conversations, ██████████ stated that including such discussions in the report would open AMO up to excessive scrutiny and legal liability.

Pursuant to my authority under 5 U.S.C. § 1213(c), I have concluded that there is a substantial likelihood that the information provided to OSC discloses an abuse of authority and a substantial and specific danger to public safety. Please note that specific allegations and references to specific violations of law, rule or regulation are not intended to be exclusive. If, in the course of your investigation, you discover additional violations, please include your findings on these additional matters in the report to OSC. As previously noted, your agency must conduct an investigation of these matters and produce a report, which must be reviewed and signed by you. Per statutory requirements, I will review the report for sufficiency and reasonableness before sending copies of the agency report along with the whistleblower's comments and any comments or recommendations I may have, to the President and congressional oversight committees and making these documents publicly available.

¹See Enclosure 1

The Honorable Alejandro Mayorkas

June 23, 2022

Page 3 of 3

Additional important requirements and guidance on the agency report are included in the attached Appendix, which can also be accessed at <https://osc.gov/Pages/DOW.aspx>. If your investigators have questions regarding the statutory process or the report required under section 1213, please contact Catherine A. McMullen, Chief, Disclosure Unit, at (202) 804-7088 or cmcmullen@osc.gov for assistance. I am also available for any questions you may have.

Respectfully,

A handwritten signature in black ink, appearing to read "Henry J. Kerner", with a stylized flourish at the end.

Henry J. Kerner
Special Counsel

cc: The Honorable Joseph V. Cuffari, Inspector General

Enclosures