

1300 Pennsylvania Avenue, NW
Washington, DC 20229



U.S. Customs and Border Protection

Commissioner

March 19, 2024

Hampton Dellinger
Special Counsel
Office of Special Counsel
1730 M Street, Suite 300
Washington, D.C. 20036-4505

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

Dear Mr. Dellinger,

On June 21, 2023, the Department of Homeland Security, U.S. 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. OSC received the allegations from a whistleblower who alleged that the majority of CBP's light enforcement helicopter fleet lack crashworthy fuel tanks, and an employee in AMO Headquarters improperly attempted to remove critical information from an aircraft mishap report concerning the May 12, 2021, crash and destruction of AMO Helicopter N841BP. In response to additional questions from OSC, supplemental reports were submitted to OSC on September 18, 2023, and January 2, 2024. Subsequently, on January 31, 2024, OSC replied with the following requests for additional information:

- The agency report found that former AMO Executive Director of Training, Safety, and Standards, [REDACTED] directed that critical information be removed from the aircraft mishap report for AMO Helicopter N841BP. OSC recently learned that on October 30, 2023, AMO Executive Assistant Commissioner [REDACTED] signed off on transmitting the mishap report for AMO Helicopter N841BP with this critical information missing to the National Transportation Safety Board (NTSB) and posting it on CBP AMO's internal Safety Management System website.
 - Please confirm whether the mishap report approved for transmittal to NTSB and publication on the CBP website omits critical information. If so, given the agency's finding that critical information was removed, please explain why Executive Assistant Commissioner [REDACTED] submitted the report to NTSB and posted it to the AMO internal Safety Management System.
- AMO recently modified its standard operating procedures (SOP) regarding Crash Investigations. Please provide the new SOPs.

- In the supplemental report dated January 2, 2024, CBP did not respond to OSC's request to clarify whether the agency concluded that [REDACTED] directing critical information to be removed from the aircraft mishap report for AMO Helicopter N841BP constitutes a violation of a law, rule, or regulation; an abuse of authority; or any other form of wrongdoing. Please clarify the agency's investigative finding regardless of whether [REDACTED] can be disciplined.

Answers to each of these questions are addressed herein:

While the June 21, 2023, investigation concluded that Executive Director [REDACTED] had recommended the removal of information from the mishap report, the investigation did not specifically conclude whether those actions were in violation of law, regulation, or agency policy. To assess Executive Director [REDACTED] actions, the investigation (along with OSC's Investigation and Prosecution Division's recommendations) was submitted to a CBP Disciplinary Review Board. However, Executive Director [REDACTED] retired prior to the board's review.

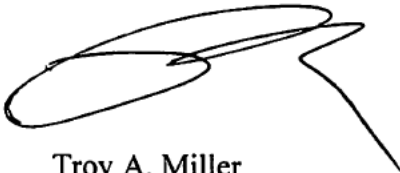
NTSB Central Region Chief, [REDACTED] worked closely with the assigned CBP, Air and Marine Operations accident investigators from the start of the AMO Helicopter N841BP mishap investigation. Every aspect of the investigation was shared with the NTSB while the AMO investigators developed AMO's draft mishap report. The NTSB used information from the investigator's findings and completed the final NTSB report for public release on January 4, 2023 (NTSB Acc#CEN21LA216). The AMO final report was approved for internal reference on October 30, 2023.

Pursuant to 49 CFR § 831.4, "Accident and incident investigations are conducted" "to determine the facts, conditions, and circumstances relating to an accident or incident and the probable cause(s) thereof." Additionally, as highlighted in the party certification between CBP and the NTSB, CBP "may not withhold any information pertaining to the accident, or any manner relevant to the investigation." (See Report DI-22-000519 Exhibit 4, NTSB-CBP Party Certification at 82.) 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 of the regulations. While AMO did remove information from its final report, these issues (issuance of flight hour waivers, crashworthy fuel tanks, and aircrew flight helmets) were not listed in the draft mishap report's conclusion as factors contributing to the accident. (See Report DI-22-000519 Exhibit 1, Mishap Report SR20210299 at 61.) Flight hour waivers were included as "present noncontributing factors," but the draft mishap report did not list flight hour wavers, crashworthy fuel tanks, or aircrew flight helmets as direct, causal, or contributing factors. Of note, the trainee pilot's lack of qualifications and experience were noted in the NTSB's final report, information obtained by NTSB through CBP's investigation. (See NTSB Acc#CEN21LA216). As such, it is not apparent that the exclusion of such information in AMO's final report is in violation of law, regulation, or policy.

The NTSB, as the federal agency charged by Congress with investigating aviation accidents, would best be situated to determine if CBP's investigative procedures are in compliance with 49 CFR § 831 or any additional laws, regulations, or policies. As such, CBP has engaged with the NTSB regarding any additional NTSB guidance or direction for the process and compilation of

future incident reports. Through several subsequent direct interactions with the 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 as well as Annex 13 International Civil Aviation Organization (ICAO) Standards. Per your request, CBP is submitting the revised safety policy and procedures (the Air and Marine Safety Program Handbook) highlighted in the January 2, 2024, response. If you require further information regarding this matter, please contact [REDACTED] in the Office of Chief Counsel at [REDACTED].

Sincerely,

A handwritten signature in black ink, appearing to read 'Troy A. Miller', with a stylized flourish extending to the right.

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