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Washington, DC 20229



**U.S. Customs and
Border Protection**

September 3, 2021

The Honorable Henry J. Kerner
Special Counsel
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

Re: Office of Special Counsel File No. DI-20-001009

Dear Mr. Kerner:

The enclosed report is in response to your referral of allegations that officials at the Department of Homeland Security (DHS), U.S. Customs and Border Protection (CBP), Air and Marine Operations (AMO), El Paso Air Branch engaged in conduct constituting a violation of law, rule, or regulation; gross mismanagement; an abuse of authority; and a substantial and specific danger to public safety. I am the designated official responsible for providing your office with the enclosed DHS report of investigation pursuant to 5 U.S.C. § 1213. As discussed in more detail below, and apart from an inadvertent and brief incursion into restricted airspace, the investigative report shows that there has been no violation of law, rule, or regulation; gross mismanagement; abuse of authority; or a substantial and specific danger to public safety. Corrective action has already been taken regarding the inadvertent incursion into restricted airspace. The investigation also found a local inquiry into the flight incursion was conducted by a subordinate of the subject of the inquiry. While this did not violate a law, rule, or regulation, I will direct that AMO review procedures for conducting local inquiries to prevent subordinates from being tasked to investigate their supervisors. Beyond the corrective action already taken on the incursion into restricted air space and directing AMO to review procedures for local inquiries, I have concluded that no additional corrective action is required in this case.

The Office of Special Counsel (OSC) received the allegations from Supervisory Air Interdiction Agent (SAIA) [REDACTED] SAIA [REDACTED] alleged misconduct by former Acting Director of Air Operations SAIA [REDACTED], Director of Air Operations (DAO) [REDACTED] SAIA [REDACTED] SAIA [REDACTED] and Deputy Director [REDACTED] SAIA [REDACTED] alleged they failed to fulfill their duty to ensure the safety and security of the public as follows:

1. DAO [REDACTED] SAIA [REDACTED] and SAIA [REDACTED] repeatedly prevented the Deming Air Unit from responding to emergency calls, resulting in several

- deaths;
2. SAIA [REDACTED] piloted a helicopter flight into restricted airspace during an unapproved change in mission;
 3. SAIA [REDACTED]'s subordinates conducted a cursory review of his unauthorized flight actions culminating in a report containing false statements, in violation of agency policy;
 4. Agency officials frequently approve the use of aircraft for questionable purposes; and
 5. Agency officials have made a series of management decisions that hinder the Deming Air Unit's ability to achieve its mission.

While allegations 2 and 3 were substantiated at least in part, corrective action has been taken for allegation 2 and will be taken for allegation 3. Regarding allegation 2, the investigation found SAIA [REDACTED] did inadvertently fly a helicopter briefly into restricted airspace during an unapproved change of mission from administrative to operational. Corrective action has already been taken with remedial training. I find no further corrective action is warranted on this finding.

Regarding allegation 3, the investigation found a subordinate of the subject of the inquiry had been tasked with conducting an inquiry into his immediate supervisor's intrusion into restricted airspace. The investigation did not find merit to the other allegations contained within allegation 3. The investigation did not find the investigation to be cursory, did not find the report to contain false statements, and did not find a violation of Agency policy. Even so, the investigation recommended a review of AMO procedures to avoid a recurrence of a subordinate being tasked with investigation his or her supervisor. I will direct AMO to conduct such a review.

The investigation did not find evidence to substantiate allegations 1, 4 or 5. Concerning allegation 1, the investigation found there is no evidence to support the allegation DAO [REDACTED] SAIA [REDACTED] and SAIA [REDACTED] repeatedly prevented the Deming Air Unit from responding to emergency calls, resulting in several deaths. The investigation found that each request for air support is evaluated on its own merits with the totality of the circumstances being taken into consideration. For instance, the investigation did not find evidence to support the allegation that the death of Border Patrol Agent [REDACTED] could have been prevented had the Deming Air Unit been called instead of being purposely excluded. The investigation specifically found the response from the El Paso Air Branch in support of BPA [REDACTED] to have been appropriate based on the real-time information available to the Command Duty Authority.

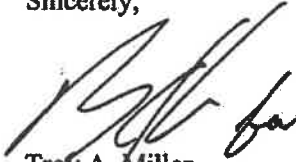
As to allegation 4, that aircraft are used for questionable purposes, the investigation found that all instances of non-enforcement flights cited by SAIA [REDACTED] were conceivably related to required training, proficiency and currency flights, or initial operator experience. The investigation found that, in the involved instances, the on-duty Command Duty Authority classified the flights as training and/or familiarization, which is within policy.

Finally, regarding allegation 5, the investigation noted that SAIA [REDACTED] was vocal in his disagreement with the El Paso Air Branch moving to a single unified Command Duty Authority for the three locations and units within its area of responsibility (the El Paso Air Unit, Deming Air Unit, and Alpine Air Unit). While the El Paso Air Branch consolidated the Command Duty

Authority, the investigation concluded the evidence did not support the allegation that the Deming Air Unit effectively idled the Deming Air Unit or was treated differently than any other unit in the El Paso Air Branch.

The investigative findings are included in the enclosed report, which we provide both unredacted for OSC internal use and redacted for public use. If you require further information regarding this matter, please contact [REDACTED] in the Office of Chief Counsel at [REDACTED]

Sincerely,



Troy A. Miller
Acting Commissioner
U.S. Customs and Border Protection

Enclosures

cc: Secretary, Department of Homeland Security
General Counsel, Department of Homeland Security

REDACTED Final Report for OSC File No. DI-20-001009

SYNOPSIS

In whistleblower disclosures made to the Office of Special Counsel (OSC), and referred by OSC to U.S. Customs and Border Protection (CBP) for investigation, Supervisory Air Interdiction Agent (SAIA) [REDACTED], alleged misconduct by former Acting Director of Air Operations SAIA [REDACTED], Director of Air Operations (DAO) [REDACTED], SAIA [REDACTED], SAIA [REDACTED], and Deputy Director (DD) [REDACTED]. SAIA [REDACTED] alleged they failed to fulfill their duty to ensure the safety and security of the public as follows:

1. DAO [REDACTED], SAIA [REDACTED], and SAIA [REDACTED] repeatedly prevented the Deming Air Unit from responding to emergency calls, resulting in several deaths;
2. SAIA [REDACTED] piloted a helicopter flight into restricted airspace during an unapproved change in mission;
3. SAIA [REDACTED]'s subordinates conducted a cursory review of his unauthorized flight actions culminating in a report containing false statements, in violation of agency policy;
4. Agency officials frequently approve the use of aircraft for questionable purposes; and,
5. Agency officials have made a series of management decisions that hinder the Deming Air Unit's ability to achieve its mission.

As discussed below, no evidence was found to support allegations 1, 4 or 5. Regarding allegation 2, the investigation found SAIA [REDACTED] did inadvertently fly a helicopter briefly into restricted airspace during an unapproved change of mission before exiting the restricted airspace. Air and Marine Operations (AMO) management conducted an inquiry into the matter and took remedial action against SAIA [REDACTED]. While it does not appear to have affected the inquiry's findings, the AMO inquiry was conducted by a subordinate of SAIA [REDACTED] as alleged in part in allegation 3. Therefore, CBP Office of Professional Responsibility (OPR) recommends that AMO review procedures for local management inquiries to ensure a subordinate is not assigned to investigate a superior in the future. However, OPR did not find the inquiry to have been a cursory review, to contain false statements, or to have been conducted in violation of Agency policy as alleged in allegation 3.

DETAILS OF INVESTIGATION

On September 29, 2020, CBP Office of Professional Responsibility (OPR), Resident Agent in Charge Buffalo (RAC/Buffalo) received an investigative referral (File No. DI-20-001009, **Exhibit 1**) from the OSC, Washington, D.C., detailing whistleblower disclosures of alleged misconduct concerning officials at the CBP, AMO, El Paso Air Branch (EPAB). The whistleblower, Supervisory Air Interdiction Agent (SAIA) [REDACTED], disclosed to the OSC that AMO managers in El Paso, who oversee the Deming Air Unit (DAU), have repeatedly failed to fulfill their duty to ensure the safety and security of the public. SAIA [REDACTED]

specifically detailed alleged misconduct by former Acting Director of Air Operations (ADAO) SAIA [REDACTED], Director of Air Operations (DAO) [REDACTED], SAIA [REDACTED], SAIA [REDACTED], and Deputy Director (DD) SAIA [REDACTED].

The OSC Referral for Investigation, dated September 10, 2020, concluded there was a substantial likelihood that the information provided to the OSC by SAIA [REDACTED] disclosed a violation of law, rule, or regulation; gross mismanagement; an abuse of authority; and a substantial and specific danger to public safety. Additionally, the OSC Referral outlined five general allegations developed through specific incidents detailed by SAIA [REDACTED], as follows:

Each of the five allegations are followed by a brief synopsis of OPR RAC/Buffalo's investigative findings and pertinent points believed to be helpful in gaining a better initial understanding of the overall matter. Additional information, including statements made by the involved parties during their interviews with OPR RAC/Buffalo, is presented in detail in the remainder of this final report and further delineated in its exhibits.

1. Director of Air Operations [REDACTED], Command Duty Officer [REDACTED], and Supervisory Air Interdiction Agent [REDACTED] repeatedly prevented the Deming Air Unit from responding to emergency calls, resulting in several deaths.

Investigative finding: The EPAB reviews every request for air support independently based on the totality of the circumstances known at the moment it is received, to include a review of other assets already deployed (i.e., Border Patrol vehicles, horse units, ATV's and/or other state and local assets). As such, a single employee or unit may not be fully aware of the facts and/or overall responsibilities of the EPAB at any given time.

If AMO had unlimited resources (staffing, aircraft, etc.) and limitless funding (for things such as fuel and aircraft maintenance) it could conceivably operate 24/7 and respond to every request for air support that came in, except in those instances where uncontrollable environmental factors (bad weather) would not allow for a safe response. As this is not the case, AMO is forced to operate within its budgetary constraints and while prioritizing limited resources to achieve its mission. There is no evidence to support the allegation DAO [REDACTED], SAIA [REDACTED], and SAIA [REDACTED] repeatedly prevented the Deming Air Unit from responding to emergency calls, resulting in several deaths.

In approximately April 2019, the EPAB began operating under a single unified Command Duty Officer (CDO) approach initiated by SAIA [REDACTED] during his time as ADAO. Prior to this change, each of the three units within the EPAB operated under a different CDO at each location. According to the Aviation Operation Handbook (AOH) Section 2.3.6.1 (v3.2 dated June 20, 2018 – **Exhibit 2**); the CDO is delegated the responsibility for coordinating branch operations. The CDO must ensure that all launches are necessary, properly planned, and executed in accordance with the guidance in the AOH and authorized standard operating procedures (SOPs). The CDO is also tasked with ensuring all launches of AMO assets in the assigned Area of Responsibility (AOR) are properly tracked and followed, and that all missions are accounted for in accordance with the flight plan. For the purposes of flight-following, the on-duty CDO will, prior to going off duty, provide a turn-over briefing to the oncoming CDO or appropriate 24-hour

communications center (i.e., CDO, U.S. Border Patrol Sector, C-100, Air and Marine Operations Center (AMOC), U.S. Coast Guard Station/Sector) relating the status of all ongoing missions in the branch or sector AOR.

As such, the EPAB CDO physically operated out of the El Paso Air Unit (EPAU) and was responsible for being aware of the status and availability of all EPAB assets (personnel and aircraft) at any given moment, as well as monitoring and managing aviation operations and missions within the branch's AOR, including its three locations and units: El Paso TX (EPAU), Deming NM (DAU), and Alpine TX (AAU).

AMO is required to operate in accordance with the regulations, guidance, and SOPs outlined in the AOH. The AOH does change to adapt, and grow as necessary, commensurate with AMO's changes in mission capabilities and taskings. AOH v3.2 (dated June 20, 2018 – **Exhibit 2**) was in effect during the involved period of time. The most recent revision of the AOH (v4.0) was completed on October 28, 2020.

Whereas the CDO is responsible for monitoring and managing aviation operations, the Clearance Authority's (CA) function is the assessment of risk of a given mission which is accomplished in collaboration with the pilot-in-command (PIC). According to policy (AOH Section 2.3.6), the CDO and CA functions may be fulfilled by a single person holding both designations. As such, this was at times the case within the EPAB. The assigned CDO/CA is required to make decisions about evolving situations which are often ambiguous. Oversight of the operational decision to launch or not is entrusted to the CDO/CA, in accordance with policy.

Although DAO ██████████ operates at a management level above the CDO/CA in the normal chain-of-command, he is not routinely consulted with or involved in the immediate decision-making determinations by the CDO/CA regarding requests for air support (emergency or otherwise).

SAIA ██████████ was the CDO for all four of the specific incidents cited by SAIA ██████████ involving the death of an undocumented noncitizen. Three of the four undocumented noncitizen fatalities occurred in mid July 2020, and reportedly resulted from requests to the DAU for emergency air support, which were allegedly unjustly denied by SAIA ██████████ at the direction of DAO ██████████.¹ The fourth undocumented noncitizen fatality cited by SAIA ██████████ occurred in August 2020, and purportedly occurred because DAO ██████████ had unnecessarily transferred the DAU's sole aircraft to El Paso for repairs; therefore, the DAU could not respond to the related request for air support and the individual died.²

With respect to the above noted undocumented noncitizen deaths, as well as four additional specific occurrences of alleged misconduct involving SAIA ██████████ reported by SAIA ██████████ to OSC, SAIA ██████████ stated to OPR RAC/Buffalo investigators that all his decisions were based upon the totality of the circumstances, facts known in the moment, and his training and experience.

¹ July 10, 2020 (Oscar Alonso-Lopez); July 14, 2020 (Noe Ruiz-Martinez); and July 17, 2020 (Valeria Arrieta-Galindo)

² August 17, 2020 (Silvia Villalta-Leon)

SAIA [REDACTED] generally defined an emergency callout as involving the preservation of life when an individual is "broken, bleeding, or missing." SAIA [REDACTED] noted a response is not always permissible due to myriad variables. SAIA [REDACTED] identified competing interests, to include scheduled flights and flight hours to the areas that Border Patrol has set as a priority and AMO is required to fulfill, as a major contributing variable.

According to SAIA [REDACTED], if DAO [REDACTED] had ever denied a decision by him to launch during a legitimate potentially lifesaving emergency, he would have absolutely reported it; but that never occurred. SAIA [REDACTED] further indicated he was never directed by any AMO manager to minimize the DAU or SAIA [REDACTED], as alleged by SAIA [REDACTED].

After his interview with OPR RAC/Buffalo, SAIA [REDACTED] provided a typed narrative response (Exhibit 47) detailing the rationale behind his decisions regarding the eight previously mentioned incidents along with supporting documentation. SAIA [REDACTED]'s typed narrative refutes the allegations made by SAIA [REDACTED] regarding these eight incidents.

SAIA [REDACTED]'s typed narrative also refutes the allegation that EPAB command staff intentionally prevented the DAU from responding to any incident. According to SAIA [REDACTED], the response rationale of the EPAB for every request for air support is dictated by the availability of manpower and air assets at the time of the request, and in conjunction with AMO's overall operationally mandated objectives.

The remaining death specifically cited by SAIA [REDACTED] involved the EPAB's response in support of the BPA [REDACTED] incident on June 11, 2020. SAIA [REDACTED] claims this death may have been prevented had the DAU been called upon to respond, but that the DAU was purposely excluded from doing so by the CDO (SAIA [REDACTED]) at the direction of DAO [REDACTED].

OPR RAC/Buffalo found the response from the EPAB in support of BPA [REDACTED] to have been appropriate based on the real-time information available to the CDO (SAIA [REDACTED]) at the time of the request. SAIA [REDACTED] alone made the decision not to contact the DAU, which he indicated was primarily based on his contemporaneous belief that they did not meet crew rest requirements (AOH Section 3.6.1).

OPR RAC/Buffalo subsequently determined that the DAU may have completed the required crew rest period by the time the call for assistance came in. As such, there may have been sufficient manpower available to respond from Deming, which was located closer to the incident scene than El Paso. With that said, the time required for DAU employees to respond to the airport from their residences would have likely negated any possible time savings because the EPAU was already on duty and at the airport ready to immediately respond. OPR RAC/Buffalo conducted an assessment between the actual response time of the El Paso crew to the possible response time for the Deming crew had they launched. Taking into consideration the many variables involved, including the amount of time it would take to launch and the amount of time to fly to the incident scene, the projected estimated time of arrival for the helicopter out of Deming would have been within approximately five (5) to twenty (20) minutes of the actual arrival time of the helicopter that launched out of El Paso.

According to SAIA [REDACTED]'s allegation, on June 11, 2020, the EPAU pilot, later identified as AIA [REDACTED], was unfamiliar with the surrounding area of BPA [REDACTED]'s death and, as a result of this unfamiliarity with the area, AIA [REDACTED] allegedly landed approximately forty minutes from BPA [REDACTED]'s location. SAIA [REDACTED] asserted that by the time first responders drove to BPA [REDACTED]'s location, valuable time had been wasted and the agent had died. The EPAU helicopter piloted by AIA [REDACTED] that launched in support of BPA [REDACTED] landed at the Camp Garza Forward Operating Base (FOB) at the direction of the Joint Intelligence Operation Center (JIOC), which was in command of coordinating the response, and had nothing to do with AIA [REDACTED]'s familiarity level with the involved area. When OPR RAC/Buffalo flew the route via helicopter from Camp Garza FOB to the incident scene the flight was approximately 18 nautical miles and took approximately five to seven minutes to complete.

The AMO EPAB utilizes an Airbus AS350 (A-Star) Light Enforcement Helicopter (LEH) for approximately 81% of its aviation missions. The AS350 is a multipurpose aircraft, and depending upon its primary configuration, can facilitate several different missions. All AMO's AS350s are configured for a law enforcement mission. To expand, both seats are installed upfront with flight controls at each station. Therefore, the aircraft can be flown from either station, which allows for another level of safety. Furthermore, as a requirement, AMO conducts Annual Proficiency Evaluations (APE) on all its Air Interdiction Agents (AIA - pilots) and Tactical Flight Officers (TFO). Usually, an AS350 departing on a law enforcement mission will utilize two personnel upfront: an AIA (right seat) and a TFO (left seat). The TFO operates the electro-optical/infrared sensor, downlink system, and communicates with ground agents/officers. Additionally, the TFO is another set of eyes to scan the skies for other aircraft or aviation obstacles.

AMO can utilize its AS350 as a means of casualty evacuation (CASEVAC). CASEVAC uses a non-standard and non-dedicated aircraft that may or may not provide en route care. It is intended to be deployed for short flights in an effort to get a patient/subject to a much-needed higher level of care. AMO's AS350 passenger compartment configuration has four seats against the transition section, with very little leg room to the back of the pilot's seats. A standard backboard that a patient would be placed on for medical transport will not fit across the rear seats without the backboard protruding past the passenger door track. In other words, the rear passenger door will not close with a backboard placed across the four seats. Therefore, providing inflight care to a patient would be challenging.

Compared to an AMO AS350 configuration, a medical evacuation (MEDEVAC) AS350 configuration uses a standard and dedicated aircraft for the sole purpose of providing en route lifesaving care. To overcome the backboard situation identified above, the left front pilot seat, flight controls, and instrumentation are removed. This allows for ample space for the patient, and the onboard nurse/paramedic to perform life saving techniques. The same life saving techniques performed in the MEDEVAC-AS350 would not be able to be performed on the LEH -AS350 due to space limitations. Additionally, the DAU did not have any aircraft on June 11, 2020, that would have allowed en route lifesaving care to be performed inside the aircraft.

As a result of OPR RAC/Buffalo's assessment, no evidence was found suggesting that the DAU

was excluded from the response in support of BPA [REDACTED] for any reason other than those noted above. OPR RAC/Buffalo's assessment of the EPAB's response to the BPA [REDACTED] incident on June 11, 2020, is attached (**Exhibit 3**).

2. Former Acting Director of Air Operations [REDACTED] piloted a helicopter flight into restricted airspace during an unapproved change in mission.

Investigative finding: On April 25, 2019, SAIA [REDACTED] was the pilot-in-command of a CBP helicopter (Tail #N186AE) along with crewmember AIA [REDACTED], which was cleared on an administrative flight from the EPAU (El Paso, TX) to the DAU (Deming, NM). The documented mission's intent for the round-trip flight included area familiarization (as both individuals were relatively new to the area) and initial operator experience (IOE) training for AIA [REDACTED]. Upon arriving at the DAU, and while refueling for their return flight to El Paso, SAIA [REDACTED] took the opportunity to meet with the employees there and make it clear to them that the DAU was not closing, as rumored.

During the return flight to El Paso, SAIA [REDACTED] attempted to directly respond to suspected drug smuggling activity reported to him by SAIA [REDACTED]. This action by SAIA [REDACTED] constituted a change in mission from administrative to operational, which he never properly vetted through the appropriate channels or process. Because SAIA [REDACTED] never properly vetted this change in mission from administrative to operational, policy dictates that this was an unapproved change in mission.

During this attempted enforcement action, SAIA [REDACTED]'s helicopter briefly entered restricted airspace. Upon doing so, SAIA [REDACTED] stated he was advised by SAIA [REDACTED] that they had entered restricted airspace. SAIA [REDACTED] stated he did not see the restricted airspace delineated on the GPS and requested clarification, to which SAIA [REDACTED] indicated they had flown into R-5115. SAIA [REDACTED] stated he instructed AIA [REDACTED] to fly right 90 degrees and immediately exited the restricted area.

Immediately upon landing back at the EPAU, SAIA [REDACTED] completely reported and documented the intrusion as required, and accepted full responsibility for the incursion during his notification to Executive Director (XD) [REDACTED]. The matter was subsequently investigated by AMO management and remedial action was taken against SAIA [REDACTED] as detailed later in this report.

According to XD [REDACTED], there is no audible alarm on the GPS systems installed in AMO's helicopters to warn pilots of incursion into restricted airspace; however, there is a visual cue depicted on the GPS screen (moving map) that would indicate the aircraft had entered, or is about to enter, restricted airspace provided the pilot has adequately set up the aircraft's GPS with the appropriate layers to do so, and not in de-cluttered mode. In this instance, SAIA [REDACTED] failed to ensure the helicopter's GPS was properly programmed.

Corrective action taken: A much newer and capable ADS-B system was installed in October 2019, allowing the helicopter's transponder to now communicate and log its status with the GPS unit.

3. Former Acting Director ██████'s subordinates conducted a cursory review of his unauthorized flight actions culminating in a report containing false statements, in violation of agency policy.

Investigative finding: As SAIA ██████ was not involved in the events of April 25, 2019, he conducted an administrative inquiry into the matter, which was supervised and reviewed by the Southwest Region Deputy Director (DD) ██████. AMO routinely uses branch employees to conduct internal inquiries of this nature. SAIA ██████ confirmed that SAIA ██████ did, in fact, deviate from proper procedure by not re-briefing the change in mission with the Clearance Authority in accordance with the AOH (Section 3.3.2.A.2). The administrative inquiry also identified some training and procedural shortfalls. The errors and failures related to the April 25, 2019, incident were identified and reported to XD ██████, who subsequently verbally counseled SAIA ██████. According to XD ██████, SAIA ██████ wrote a memorandum identifying the mistakes he made and was required to complete remedial training. This remedial training included a review of the pertinent AOH sections and pertinent aeronautical knowledge subject matter. In addition, AMO required SAIA ██████ to review the applicable Federal Aviation Regulations (FARs). The specific regulations SAIA ██████ was required to review are outlined in **Exhibit 14**. In his response memorandum, SAIA ██████ acknowledged his errors concerning the incursion and agreed to the remedial training.

A review of the administrative inquiry (**Exhibit 22**) by OPR RAC/Buffalo received through XD ██████, to include all statements, memoranda, and related documentation revealed that it was sufficiently completed and did not contain any false statements. The Federal Aviation Administration (FAA) was notified of the incursion and ultimately deferred to CBP to take whatever action it deemed appropriate, as the involved restricted airspace is owned by CBP. Thus, the evidence does not support the allegation that the FAA neither received nor reviewed the incident. The additional allegation that SAIA ██████ turned off the helicopter's transponder was ultimately followed up on by DD ██████ and refuted through technical data (**Exhibit 34**) received from Air and Marine Operations Center (AMOC) Supervisory Domain Awareness Officer (SDAO) ██████, who cited terrain and elevation as the likely reasons why the transponder signal was temporarily lost.

Based upon SDAO ██████'s review of radar information, in particular the loss of data for 20 miles, he did not believe this could have been caused intentionally. The provided picture (**Exhibit 34**) had both blue and green dots which indicate primary and secondary radar hits. SDAO ██████ opined that even if the pilot shut off their transponder (the secondary radar), radar should have still picked up the primary data. SDAO ██████ believes that, based on his experience, the radar just lost contact with the aircraft during this time.

According to XD ██████, there is no maintenance history regarding failures or intermittent operation of the transponder in the involved helicopter (Tail #N186AE). Additionally, XD ██████ indicated that the transponder system installed in the involved helicopter at the time of the incursion did not have the capability to log transponder activity. That capability did not exist in the involved helicopter until installation of the much newer and more capable ADS-B system in

October 2019, wherein the transponder now communicates status with the helicopter's GPS unit. The involved helicopter was the last aircraft in the EPAB's fleet in need of the ADS-B system installation, which includes upgraded software and is Wide Area Augmentation System capable, giving the GPS system more accuracy.

Recommendation for corrective actions: AMO's Southwest Region management, down through SAIA [REDACTED], conducted the administrative inquiry of SAIA [REDACTED]'s incursion according to past practices followed regarding previous incidents. OPR RAC/Buffalo's investigation determined that a subordinate (SAIA [REDACTED]) conducted an administrative inquiry on his immediate supervisor (SAIA [REDACTED]), and although that administrative inquiry appeared to be thorough and accurate, the mere appearance of a subordinate conducting an administrative inquiry on their supervisor is inherently flawed. For local inquiries not meeting the thresholds of Policy No. 400.10 v. A (Management Inquiries, dated January 30, 2017 - **Exhibit 51**), it is recommended that AMO review existing procedures to ensure that a subordinate is not directed to conduct a local administrative inquiry involving anyone above themselves in their chain of command. OPR recommends that any future local administrative inquiries are conducted by an individual from an outside region and of equal or higher rank.

4. Agency officials frequently approve the use of aircraft for questionable purposes.

Investigative finding: This allegation relates directly to issues that are subject to interpretation by the approving authority. All instances of non-enforcement flights cited by SAIA [REDACTED] were conceivably relatable to required training, proficiency and currency flights, or initial operator experience (IOE). In the involved instances, the on-duty CDO classified the flights as training and/or familiarization, which is within policy (AOH Section 3.1.2).

In addition, EPAB Deputy Director (DD) [REDACTED] stated it is common practice to have an aircraft at the shooting range. DD [REDACTED] indicated that the pilots "patrol" while flying to and from the range. DD [REDACTED] indicated they routinely have an aircraft on site in the event someone was to be injured, as the range is in a remote location. As such, it is reasonably appropriate in the event someone was to be seriously injured to have an aircraft available for timely transportation to a hospital. DD [REDACTED] indicated that flight routes to and from the range routinely included patrol activities. This sentiment was reiterated by SAIA [REDACTED] during his interview with OPR RAC/Buffalo.

OPR RAC/Buffalo did not clearly identify any instances of a flight being classified as "transportation only" or taken solely to avoid driving, as alleged by SAIA [REDACTED].

5. Agency officials have made a series of management decisions that hinder the Deming Air Unit's ability to achieve its mission.

Investigative finding: DAO [REDACTED] was the full-time replacement for the former DAO [REDACTED], who held the position for approximately six years until his promotion to DD of the entire Southwest Region in October 2018. Prior to DAO [REDACTED]'s selection for the position and arrival at the EPAB, the DAO position was temporarily filled by multiple individuals in an acting capacity for brief periods of time. SAIA [REDACTED] served as the most

recent ADAO beginning in April 2019, until DAO [REDACTED] took over at the end of July 2019.

DAO [REDACTED] opined that when new personnel come into managerial roles, changes will occur. DAO [REDACTED] explained that different supervisors have different management styles and make changes as they see fit to adjust to shifting priorities and operational realities.

SAIA [REDACTED] described former DAO [REDACTED]'s approach to managing as being "hands-off," and because of this approach, the EPAB's three units were essentially being operated autonomously, not communicating with each other, and not following the Air and Marine Asset Prioritization List (AMAP). DAO [REDACTED] described the AMAP as an air space deconfliction process utilized to make sure only one aircraft is conducting a border enforcement mission in a designated area at a time. He added that this is done for safety concerns, and to efficiently optimize resources in a coordinated manner.

One of the major changes that occurred at the EPAB was the move to a unified CDO approach, which was initially developed and implemented by SAIA [REDACTED] in his acting capacity with the concurrence of DAO [REDACTED]. Around that time, DAO [REDACTED] had been selected for the position but had not yet reported for duty in El Paso. SAIA [REDACTED] explained that, although his plan was implemented consistently across the entire EPAB, it was his understanding that not everyone within the EPAB was supportive of this change. According to SAIA [REDACTED], SAIA [REDACTED] was vocal in his belief that SAIA [REDACTED]'s plan to move to a unified CDO approach would never work.

It appears SAIA [REDACTED] disagreed with the overall direction SAIA [REDACTED] and DAO [REDACTED] envisioned for the Branch.

OPR RAC/Buffalo found no evidence indicating the DAU was treated differently than any other unit in the EPAB. The evidence does not support the allegation that AMO officials, including DAO [REDACTED], effectively idled the DAU. The involved command staff did not appear to implement any of the changes for punitive reasons, nor were these changes specifically directed towards any employee.

Investigative Process

CBP OPR investigated the allegations to include, but not limited to, existing policy research, review of official emails between the five named subjects, a multi-faceted assessment of the EPAB response to the line of duty death of Border Patrol Agent [REDACTED] on June 11, 2020, a comprehensive review of the specific allegations outlined by the whistleblower, multiple witness interviews, and interviews of the five named subjects. The investigative activities conducted into the above noted allegations are detailed below in chronological order.

During the investigation, OPR RAC/Buffalo interviewed the following individuals: SAIA [REDACTED], Federal Aviation Administration Special Agent [REDACTED], SAIA [REDACTED] (no relation to [REDACTED]), SAIA [REDACTED], AMO Executive Director [REDACTED], SAIA [REDACTED], Air Interdiction Agent (AIA) [REDACTED], AIA [REDACTED].

Supervisory Domain Awareness Officer [REDACTED], DAO [REDACTED], DD [REDACTED], Border Patrol (BP) Chief Patrol Agent [REDACTED], and SAIA [REDACTED]. All formal interviews conducted during this investigation were video/audio recorded and transcribed.

On October 13, 2020, SAIA [REDACTED] emailed a 112 slide PowerPoint presentation (**Exhibit 4**) to CBP OPR RAC/Buffalo. The Power Point presentation provided by SAIA [REDACTED] includes his narrative of the allegations and supporting documents.

On October 14, 2020, Senior Special Agent (SSA) [REDACTED] and SSA [REDACTED], both assigned to CBP OPR RAC/Buffalo, interviewed SAIA [REDACTED] regarding his allegations. The interview was conducted via a combination of Microsoft Teams and phone and was captured in a single video and audio recording. Prior to the interview, SAIA [REDACTED] was provided the Administrative Warnings Acknowledgement for Non-Bargaining Unit Employees form, which he acknowledged by signature. The single video/audio recording of SAIA [REDACTED] is **Exhibit 5** and is 2 hours 16 minutes and 46 seconds in length. SAIA [REDACTED]'s signed Warnings and Notices are **Exhibit 6**.

During the interview, SAIA [REDACTED] went through the noted presentation (see **Exhibit 4**) page by page, providing a commentary and additional details regarding his allegations and related specific incidents. A transcript of the complete interview with SAIA [REDACTED] is **Exhibit 7**.

On October 15, 2020, SSA [REDACTED] submitted an extensive Archive email recovery request (**Exhibit 8**) to the eDiscovery Team. Based on the scope of the request and their backlog at the time, the eDiscovery Team estimated that the requested search results could be available by January 9, 2021. The recovered archive emails are **Exhibit 30**.

On October 19, 2020, this investigation was officially assigned to CBP OPR RAC/Buffalo SSA [REDACTED] and SSA [REDACTED] for investigation.

On October 20, 2020, SSA [REDACTED] and SSA [REDACTED] made telephonic contact with Federal Aviation Administration (FAA) Special Agent (SA) [REDACTED] regarding ADAO [REDACTED]'s incursion into restricted airspace on April 25, 2019. Later the same day, SSA [REDACTED] sent an email (**Exhibit 9**) to SA [REDACTED] requesting information or documentation regarding the alleged incursion.

On October 30, 2020, SSA Overhoff received an email response from FAA SA [REDACTED] including five PDF attachments (**Exhibit 10**), which reportedly cover the entire interaction between DHS and FAA on this matter. According to SA [REDACTED], there was no mention of the pilot (SAIA [REDACTED]) turning off the helicopter's transponder in the information he received via email (dated July 13, 2019) from SAIA [REDACTED]. Additionally, in the attached email string, the FAA indicated they were not going to pursue this matter any further. SA [REDACTED] noted in his email that he had previously spoken to OSC about the involved incident and given them the same information.

On November 3, 2020, SSA [REDACTED] and SSA [REDACTED] interviewed former Southwest Region Deputy Director (DD) [REDACTED]. [REDACTED] is currently a SAIA assigned to North American Aerospace Defense Command (NORAD) and will subsequently be referred

to as SAIA [REDACTED]. The interview was conducted in Colorado Springs, CO, and was video and audio recorded. Prior to the interview, SAIA [REDACTED] was provided the Administrative Warnings Acknowledgement for Non-Bargaining Unit Employees form, which he acknowledged by signature. The video/audio recording of SAIA [REDACTED] is Exhibit 11 and is 1 hour 42 minutes and 39 seconds in length. SAIA [REDACTED]'s signed Warnings and Notices are Exhibit 12. A transcript of the complete interview with SAIA [REDACTED] is Exhibit 13.

During the interview, SAIA [REDACTED] stated that he could see how SAIA [REDACTED] could justify the flight from El Paso to the DAU and back as proficiency or familiarization. SAIA [REDACTED] explained that, in general, for all flights, the pilot has to articulate his or her justification to the CDO for approval prior to the mission. (Exhibit 13, pages 12-16)

Regarding SAIA [REDACTED]'s incursion into restricted airspace, SAIA [REDACTED] stated SAIA [REDACTED] should have contacted the CDO and requested a change of mission, as per policy. Part of that request would include a risk assessment matrix to determine whether the proper personnel and/or equipment was available on the requested mission. (Exhibit 13, page 21)

SAIA [REDACTED] stated the supervisor (known to be SAIA [REDACTED]) who was assigned to conduct the administrative inquiry failed to follow-up on the rumor that SAIA [REDACTED] turned off the helicopter's transponder upon entering the restricted airspace, and after exiting turned it back on. After reviewing the administrative inquiry and noticing it was incomplete, SAIA [REDACTED] indicated he contacted the Air and Marine Operations Center (AMOC), and obtained information refuting the allegation as it related to the helicopter's transponder. AMOC SDAO [REDACTED] attributed the loss of the transponder signal to terrain and elevation, not any actions taken by SAIA [REDACTED] (Exhibit 34). SAIA [REDACTED] stated he was disappointed in the local Supervisor (SAIA [REDACTED]) who conducted the administrative inquiry. According to SAIA [REDACTED], SAIA [REDACTED] told him he was somewhat fearful of potential retaliation had he addressed the transponder matter directly with SAIA [REDACTED], who was his boss. (Exhibit 13, pages 25-35)

SAIA [REDACTED] stated the restricted airspace where the incursion occurred was owned by CBP. SAIA [REDACTED] was not sure who specifically assigned the administrative inquiry but was certain it was not assigned by SAIA [REDACTED]. SAIA [REDACTED] was assigned this administrative inquiry because he did not have any prior involvement in the incident. According to SAIA [REDACTED], SAIA [REDACTED] was ultimately given a verbal counseling by XD [REDACTED], who was the Southwest Regional Director over the EPAB during the involved time period. SAIA [REDACTED] explained that XD [REDACTED] advised SAIA [REDACTED] of all the points of concern relative to the incursion from an aviation standpoint, human standpoint, aviator's standpoint, and all the involved FAA regulations that should have been addressed in relation to the change in mission. According to SAIA [REDACTED], after XD [REDACTED]' verbal counseling with SAIA [REDACTED], SAIA [REDACTED] and XD [REDACTED] were both satisfied that the matter had been addressed sufficiently. (Exhibit 13, pages 30, 42, and 43)

On November 3, 2020, SSA [REDACTED] received an email with attachments (Exhibit 14) from SAIA [REDACTED] regarding the findings and recommendations of the

administrative inquiry on SAIA [REDACTED]'s incursion, as well as a response memorandum (dated July 26, 2019) from SAIA [REDACTED]. SAIA [REDACTED] reviewed the administrative inquiry and determined no evidence of misconduct by SAIA [REDACTED] was revealed. SAIA [REDACTED] recommended closing out the administrative inquiry with no disciplinary action but recommended remedial training for SAIA [REDACTED]. This remedial training included a review of the pertinent AOH sections and complete remedial training over pertinent aeronautical knowledge subject matter. In addition, AMO required SAIA [REDACTED] to review the applicable Federal Aviation Regulations (FARs). The specific regulations SAIA [REDACTED] was required to complete are outlined in **Exhibit 14**. In his response memorandum, SAIA [REDACTED] acknowledged his errors concerning the incursion and agreed to the remedial training.

On November 4, 2020, SSA [REDACTED] and SSA [REDACTED] interviewed former EPAB Acting Director of Air Operations (ADAO) SAIA [REDACTED]. The interview was conducted in Oklahoma City, OK, and was video and audio recorded. Prior to the interview, SAIA [REDACTED] was provided the Administrative Warnings Acknowledgement for Non-Bargaining Unit Employees form, which he acknowledged by signature. The video/audio recording of SAIA [REDACTED] is **Exhibit 15** and is 2 hours 34 minutes and 47 seconds in length. SAIA [REDACTED]'s signed Warnings and Notices are **Exhibit 16**. A transcript of the complete interview with SAIA [REDACTED] is **Exhibit 17**.

During the interview, SAIA [REDACTED] stated that he was brought in as the Acting Director of the EPAB beginning in approximately March 2019 and continued through July 2019. (**Exhibit 17**, pages 8-9)

Regarding the matters of April 25, 2019, SAIA [REDACTED] stated a rumor had gotten out that the DAU was going to be shut down. SAIA [REDACTED] reached out to his chain-of-command and was told there were no plans to close the DAU. The employees of the DAU were very concerned they may lose their jobs or be forced to relocate. (**Exhibit 17**, pages 14-15)

SAIA [REDACTED] stated he is an AS-350 helicopter instructor pilot, and there was another pilot (Air Interdiction Agent [REDACTED]) assigned to the Alpine Air Unit (AAU), who was in his initial operator experience training period and on duty on April 25, 2019. SAIA [REDACTED] decided he would take AIA [REDACTED] out flying from El Paso to Deming for initial operator experience and familiarization. While in Deming, SAIA [REDACTED] indicated their aircraft was refueled and he took the opportunity to make it clear to the DAU staff that the office was not closing. The mission that day was administrative training, not operational enforcement. (**Exhibit 17**, pages 15-17)

After departing the DAU, SAIA [REDACTED] stated he received a radio call from SAIA [REDACTED], who advised there was suspected drug smuggling activity in the "bootheel" area of New Mexico. According to SAIA [REDACTED], SAIA [REDACTED] asked him if they could head that way and check things out. SAIA [REDACTED] stated he asked AIA [REDACTED] if he was good with that, and as a crew they agreed to do it. According to SAIA [REDACTED], SAIA [REDACTED] gave him a specific vector and GPS coordinates of the suspected smuggling activity. SAIA [REDACTED] explained there was some confusion as to how to input the coordinates, so they continued flying on the provided vector while attempting to input the coordinates into the aircraft's GPS. SAIA [REDACTED] stated that SAIA [REDACTED] came over the radio and advised them they

had flown into restricted airspace. SAIA [REDACTED] stated he did not see the restricted airspace delineated on the GPS and requested clarification, to which SAIA [REDACTED] indicated they had flown into R-5115. SAIA [REDACTED] stated he instructed AIA [REDACTED] to fly right 90 degrees immediately exiting the restricted area. (Exhibit 17, pages 18-21)

SAIA [REDACTED] stated he then instructed AIA [REDACTED] to return to El Paso, and that AIA [REDACTED] was upset about the incursion into restricted airspace. SAIA [REDACTED] stated he told AIA [REDACTED] not to worry about it, as SAIA [REDACTED] was the pilot in command and responsible for the aircraft. Upon arrival in El Paso, SAIA [REDACTED] stated he advised Branch Safety Officer [REDACTED] of the incident. According to SAIA [REDACTED], when he got to his desk there was a message from the AMOC inquiring about an El Paso aircraft that had flown into restricted airspace. SAIA [REDACTED] stated he subsequently contacted AMOC and provided the details of the incursion and accepted full responsibility. (Exhibit 17, pages 21-23)

SAIA [REDACTED] stated he contacted XD [REDACTED] and provided him with the facts and circumstances surrounding the incursion and took full responsibility. XD [REDACTED] was already aware of the matter, as AMOC had contacted him as well. According to SAIA [REDACTED], XD [REDACTED] directed him to have the EPAB initiate an internal inquiry of the incident. (Exhibit 17, pages 23-24)

SAIA [REDACTED] stated SAIA [REDACTED] advised him of the required reports necessary to properly document the incident, which he completed. (Exhibit 17, pages 25-27)

SAIA [REDACTED] stated he directed someone, but could not remember if it was his deputy or his operations supervisor, to start an internal inquiry of the incursion. SAIA [REDACTED] advised he did not want to bias the inquiry, so he directed that person not to have any conversation with him relative to the incursion, except when that person needed his statement for the inquiry. SAIA [REDACTED] stated, "I need to be completely out of this because I was involved with this." (Exhibit 17, page 27)

SAIA [REDACTED] went on to detail the circumstances surrounding the involved incursion, as well as identifying the mistakes he made. (Exhibit 17, pages 27-45)

SAIA [REDACTED] stated he was aware of an allegation that he had turned off the helicopter's transponder on April 25, 2019 and denied doing so. SAIA [REDACTED] stated that, after the administrative inquiry was completed, XD [REDACTED] advised him that AMOC was able to disprove this, citing terrain and elevation as the reasons why the transponder signal (radar track) was temporarily lost. (Exhibit 17, pages 45-47)

SAIA [REDACTED] stated that during his time as the ADAO of the EPAB, he took multiple flights to different locations, and while at those locations conducted administrative duties, but the purpose of the flight was never to avoid driving. SAIA [REDACTED] stated that as an instructor pilot, and pilot in general, he needs to take proficiency and required currency flights. Additionally, on some flights he conducted evaluations of other pilots. SAIA [REDACTED] stated he was only acting DAO during that time, and ultimately going to return to the training center as an instructor pilot. (Exhibit 17, pages 47-52)

According to SAIA [REDACTED], during his time as the ADAO of the EPAB, he had a challenging time implementing his plan for the branch with SAIA [REDACTED], which he discussed in extensive

detail. According to SAIA [REDACTED], SAIA [REDACTED] was vocal in his belief that SAIA [REDACTED]'s plan to move to a unified CDO approach would "never work."

For example, according to SAIA [REDACTED], SAIA [REDACTED] called SAIA [REDACTED] on one occasion and informed SAIA [REDACTED] that SAIA [REDACTED]'s plan to move to a unified CDO approach "would never work" and was a "horrible idea." SAIA [REDACTED] explained that his office is adjacent to SAIA [REDACTED]'s office, and that he overheard SAIA [REDACTED] state this because SAIA [REDACTED] had SAIA [REDACTED] on speaker phone. SAIA [REDACTED] stated that he then went into SAIA [REDACTED]'s office and asked SAIA [REDACTED] why he thought the unified CDO approach would not work. According to SAIA [REDACTED], SAIA [REDACTED] stated that he tried to call the CDO that morning and could not get ahold of them. SAIA [REDACTED] then asked SAIA [REDACTED] who he specifically tried to call and when. SAIA [REDACTED] then changed his story and stated that he tried to call the EPAB communications room, also known as the "blue hole," but that the "blue hole" never answered the phone.

SAIA [REDACTED] explained that he then walked down the hall to the "blue hole," retrieved the call log for that morning, and asked the personnel in the "blue hole" if they got any calls from the DAU to launch an aircraft, to which they stated they did not receive any calls.

SAIA [REDACTED] stated his plan for the EPAB, which included a unified CDO approach, was in no way punitive toward the DAU or a specific employee. According to SAIA [REDACTED], his implementation of a unified CDO approach was about what was best for the EPAB and trying to bring organization and structure to what appeared to him to be chaotic and disjointed. SAIA [REDACTED] stated that he discussed his idea of a unified CDO with DAO [REDACTED] prior to implementing it, as DAO [REDACTED] had recently been selected as the permanent DAO around that time but had not started yet. (**Exhibit 17**, pages 83-89)

On November 4, 2020, SSA [REDACTED] received an email with attachments (**Exhibit 18**) from SAIA [REDACTED]. The email attachments included supporting documentation relevant to some of the matters discussed during his interview with OPR RAC/Buffalo. In the email and attachments, SAIA [REDACTED] addressed the allegations against him concerning his incursion into restricted airspace and provided his responses to refute those allegations. The remaining documentation provided by SAIA [REDACTED] deals with personnel matters (primarily time and attendance issues) not pertinent to this investigation but are still included as provided by SAIA [REDACTED].

On December 1, 2020, SSA [REDACTED] and SSA [REDACTED] interviewed XD [REDACTED]. The interview was conducted via Microsoft Teams and was video and audio recorded. Prior to the interview, XD [REDACTED] was provided the Administrative Warnings Acknowledgement for Non-Bargaining Unit Employees form, which he acknowledged by signature. The video/audio recording of XD [REDACTED] is **Exhibit 19**, part 1 is 49 minutes and 28 seconds in length and part 2 is 22 minutes and 34 seconds in length. XD [REDACTED]' signed Warnings and Notices are **Exhibit 20**. A transcript of the complete interview with XD [REDACTED] is **Exhibit 21**.

During the interview, XD [REDACTED] stated that it was not uncommon for a new director or managers to take proficiency flights or initial operator experience flights within their AOR. Additionally,

if they had an administrative reason to travel to a unit, missions were often combined with initial operator experience flights. XD [REDACTED] stated administrative flights solely for transportation purposes were prohibited. As such, if and when those types of requests came in, they would be denied. (Exhibit 21, pages 9-12 and 18-20)

XD [REDACTED] was aware of SAIA [REDACTED] having violated restricted airspace. XD [REDACTED] stated he directed the EPAB to conduct an administrative inquiry into the incursion incident, and the additional allegation that SAIA [REDACTED] turned off the helicopter's transponder. XD [REDACTED] did not specify who in the EPAB he had directed to conduct the administrative inquiry. XD [REDACTED] stated the transponder allegation was ultimately refuted by AMOC out of Riverside, CA. AMOC determined the involved aircraft's transponder was not turned off. (Exhibit 21, pages 13-15)

According to XD [REDACTED], SAIA [REDACTED] called him personally to explain that he violated the airspace and took full responsibility for the incident. XD [REDACTED] stated he expected better from SAIA [REDACTED], but that SAIA [REDACTED] owned up to it and took responsibility for his mistake. XD [REDACTED] stated he was fully aware that SAIA [REDACTED] committed multiple policy violations leading up to the incursion. According to XD [REDACTED], SAIA [REDACTED] wrote a memorandum identifying the mistakes he made. (Exhibit 21, pages 15-17)

According to XD [REDACTED], the EPAB encompassed aviation operations in three locations: (1) Alpine, TX; (2) Deming, NM; and (3) El Paso, TX. EPAB's Area of Responsibility (AOR) covered law enforcement aviation missions in three states (New Mexico, Oklahoma, and the western portion of the Texas). Each of EPAB's operating locations generally operated within a specific assigned AOR but had the ability to flex into the other AOR based on scheduling constraints, or aircraft maintenance requirements. The branch's border enforcement mission was aligned to approximately 82% of EPAB's aviation missions, and the border mission covers almost 800 linear miles of international boundary between the United States and Mexico, the largest land border responsibility within the Southwest Region. EPAB had a requirement to execute a specified amount of flight hours to each of the Border Patrol Sectors (El Paso and Big Bend) located within EPAB's AOR. The flight hours were determined at the national level, and the hours were budgeted accordingly. Ultimately, the flight hours were scheduled for execution as prioritized by the Chief Patrol Agent from their respective sector. It was the responsibility of the branch to resource air requests outside of scheduled USBP Sector flights based on availability of aircrew, readiness of aircraft, and the ability to successfully respond to critical situations utilizing available assets. This often involved the tasking of adjacent branches to provide support when resources were not available or when the event was located near an organizational boundary. While branch directors must be fiscally responsible when scheduling daily flight operations, flight hour constraints did not drive "go/no go" decisions in matters of officer safety or preservation of life.

XD [REDACTED] stated every request for air support is evaluated on its own merits, and that the totality of the circumstances of every request are taken into consideration when making decisions to approve, or deny, those requests. (Exhibit 21, pages 26-27)

XD [REDACTED] stated he had a very strong relationship with the El Paso Sector Border Patrol Chief, and fully believed that she would have called him had there been any complaints from the local

Border Patrol stations regarding a lack of support or response by the EPAB. (**Exhibit 21**, pages 27-31)

XD [REDACTED] stated he reviewed the BPA [REDACTED] incident and was 100% comfortable with the decisions that were made with respect to EPAB's response. XD [REDACTED] cited a few examples to explain his 100% comfort with the EPAB's response. XD [REDACTED] described the weather on June 11, 2020, as "crappy," adding there were thunderstorms in the area, and convective activity all the way to Deming, which would have made flying difficult. XD [REDACTED] also advised that on June 11, 2020, Deming only had one pilot on duty, but explained that the pilot was excluded from flying because he had exceeded his "duty day." XD [REDACTED] explained that the AOH stipulates a pilot cannot exceed a total of 16 hours for a shift, and that the available pilot was "well outside" that 16-hour day. (**Exhibit 21**, pages 32-33)

In addition, XD [REDACTED] explained that the aircraft that would have been used from Deming was located inside the hangar and would have had to go through a normal daily inspection, possibly fueled, and then would have had to deal with head winds that, according to XD [REDACTED], were gusting in excess of 50 knots. XD [REDACTED] stated that the start limitations for the helicopter are 40 knots, so the winds on that night would have exceeded the start limitations for the helicopter at Deming. (**Exhibit 21**, pages 32-34)

XD [REDACTED] further explained that calling in an off-duty pilot from their home would have put both personnel and aircraft in danger by elevating the risk assessment. Additionally, XD [REDACTED] explained that the time it would have taken for personnel to travel to the unit from their home, and prepare to launch, would have negated any savings in response time for Deming, as opposed to the actual response time from El Paso. XD [REDACTED] opined that these extenuating circumstances refute the claim that the DAU could have responded to the scene of BPA [REDACTED]'s death in 30 minutes, as alleged by SAIA [REDACTED]. (**Exhibit 21**, pages 34-48)

On December 1, 2020, XD [REDACTED] emailed a copy of the completed administrative inquiry (**Exhibit 22**) of the incursion into restricted airspace by SAIA [REDACTED] to OPR RAC/Buffalo.

On December 11, 2020, SSA [REDACTED] and SSA [REDACTED] interviewed SAIA [REDACTED]. The interview was conducted via Microsoft Teams and was video and audio recorded. Prior to the interview, SAIA [REDACTED] was provided the Administrative Warnings Acknowledgement for Non-Bargaining Unit Employees form, which he acknowledged by signature. The video/audio recording of SAIA [REDACTED] is **Exhibit 23** and is 54 minutes and 55 seconds in length. SAIA [REDACTED]' signed Warnings and Notices are **Exhibit 24**. A transcript of the complete interview with SAIA [REDACTED] is **Exhibit 25**.

During the interview, SAIA [REDACTED] stated that he was the Command Duty Officer (CDO) on June 11, 2020. SAIA [REDACTED] began his shift that day at 0600 hours and approved multiple flights throughout that day. According to SAIA [REDACTED], on June 11, 2020, he denied a request for air support regarding on-going protests in the downtown El Paso area due to poor weather conditions. SAIA [REDACTED] explained that the on-duty pilot (AIA [REDACTED]) located in El Paso was physically at the airport, but in a standby posture and not allowed to launch unless it was an absolute law enforcement emergency. (**Exhibit 25**, page 6)

At approximately 2330 hrs, SAIA [REDACTED] received a call from the EPAU stating there was a BPA down. SAIA [REDACTED] stated he spoke with AIA [REDACTED] and had a lengthy discussion regarding the weather and the need for a response, as conflicting information was coming in from the field. SAIA [REDACTED] stated the weather was not good, and at the limits of the operation of the helicopter in El Paso. SAIA [REDACTED] stated AIA [REDACTED] asked him if Deming was an option. SAIA [REDACTED] stated it was not because DAU did not have a crew available. Earlier in the day, SAIA [REDACTED] had cleared AIA [REDACTED], who was the only pilot in the DAU that day. Because SAIA [REDACTED] had cleared AIA [REDACTED] earlier that day, he believed that AIA [REDACTED] had exceeded the hours he was allowed to be on shift for the day, and as a result did not meet crew rest requirements. (Exhibit 25, pages 7-8)

SAIA [REDACTED] stated he had a crew available (on duty) at the El Paso Airport and believed it would take longer to call in an off-duty Deming crew, brief them, and have their aircraft prepped than it would to assign the El Paso crew, which had already been briefed and had an aircraft readily available. Additionally, SAIA [REDACTED] knew that the Deming crew had flown earlier that day during their scheduled day shift, and believed they were not available. (Exhibit 25, pages 18-22)

SAIA [REDACTED] stated he ultimately cleared AIA [REDACTED] for a high-risk mission on June 11, 2020, with the concurrence of DAO [REDACTED]. SAIA [REDACTED] explained that he notified DAO [REDACTED] via telephone of the "high risk mission" prior to launching AIA [REDACTED]. AIA [REDACTED] subsequently launched out of El Paso. SAIA [REDACTED] stated that he was eventually notified that the Tucson Air Branch was also launching an aircraft out of Tucson, AZ, to aid in the mission. (Exhibit 25, pages 8-9)

SAIA [REDACTED] explained that coordination of the air response was communicated through the Joint Intelligence Operations Center (JIOC). SAIA [REDACTED] and the JIOC discussed where BPA [REDACTED] would be transported, and settled on the hospital in Douglas, TX. SAIA [REDACTED] explained that he was already coordinating with the hospital's emergency room doctor in Douglas, who agreed to allow the helicopter carrying BPA [REDACTED] to land in the hospital parking lot to get BPA [REDACTED] to the emergency room as soon as they could. SAIA [REDACTED] added that, while he was coordinating with the pilots and the hospital, he was also updating DAO [REDACTED] throughout the night. (Exhibit 25, page 8-11)

According to SAIA [REDACTED], the JIOC instructed AIA [REDACTED] to land at the Camp Garza Forward Operating Base (FOB) instead of the incident scene, citing airspace de-confliction reasons, and instructed the pilot from Tucson to land at the scene. SAIA [REDACTED] stated he questioned that order, believing AIA [REDACTED] was closer, but the JIOC stated the pilots from Tucson would arrive at the scene sooner. Ultimately, AIA [REDACTED] was instructed by the JIOC to land at Camp Garza FOB. SAIA [REDACTED] explained that the Hidalgo County Emergency Medical Services arrived on scene and "made the call." SAIA [REDACTED] did not specify who subsequently canceled the rescue mission and directed all responding aircraft to return to their respective bases, but SAIA [REDACTED] added that he "kept" his aircraft at Camp Garza FOB a little longer just in case they were needed again. (Exhibit 25, pages 7-18)

Given all the information, SAIA [REDACTED] stated he would not have done anything differently concerning the decisions he made surrounding the EPAB's response during the BPA [REDACTED] incident. (Exhibit 25, pages 28-30)

SAIA [REDACTED] stated he has never received any information or been given any orders to minimize or disregard the DAU to limit its ability to respond to calls. SAIA [REDACTED] added that if he had received any of those orders, he would have reported it to the CBP Joint Intake Center. (Exhibit 25, pages 30-31)

SAIA [REDACTED] stated he has integrity, accepted accountability for all his actions, and would never have let any personal objectives or ambitions dictate or change his professional handling of a response. (Exhibit 25, pages 36-37)

SAIA [REDACTED] stated DAO [REDACTED] was in tune with policy and gave "black or white" orders. (Exhibit 25, page 38)

On January 5, 2021, SSA [REDACTED] and SSA [REDACTED] interviewed AIA [REDACTED]. The interview was conducted via Microsoft Teams and was video and audio recorded. Prior to the interview, AIA [REDACTED] was provided the Administrative Warnings Acknowledgement for Non-Bargaining Unit Employees form, which he acknowledged by signature. The video/audio recording of AIA [REDACTED] is Exhibit 26, part 1 is 1 minute and 41 seconds in length and part 2 is 28 minutes and 7 seconds in length. AIA [REDACTED]'s signed Warnings and Notices are Exhibit 27. A transcript of the complete interview with AIA [REDACTED] is Exhibit 28.

During the interview, AIA [REDACTED] stated that he was on duty on June 11, 2020, with Supplemental Aircrew Member (SAM) BPA [REDACTED] and SAM BPA [REDACTED] working a midnight shift. He remembered the weather was bad that day and that the CDO, SAIA [REDACTED], had already made the decision that they would not be launching an aircraft on that date because of the poor weather conditions. (Exhibit 28, pages 6-7)

AIA [REDACTED] advised that a call came in requesting air support for a BPA in distress, so he contacted SAIA [REDACTED] and they began to plan a response. AIA [REDACTED] stated he launched at approximately 1158 PM, noting the flight normally took about 90 minutes, but they arrived at Camp Garza FOB in 57 minutes due to a strong tailwind. (Exhibit 28, pages 7-9)

AIA [REDACTED] stated he was instructed to land at Camp Garza FOB and await ground transportation of the unresponsive BPA to that location, but he could not remember who instructed him to land at Camp Garza FOB. At some point, AIA [REDACTED] heard over the radio that the BPA was pronounced dead. AIA [REDACTED] stated there was a discussion over the radio about having the body transported via air, but a Supervisory Border Patrol Agent that was at Camp Garza FOB indicated they were not going to move the body, as they were waiting for a chaplain and/or EMT. AIA [REDACTED] stated he called SAIA [REDACTED] and explained the situation, and SAIA [REDACTED] subsequently instructed him to return to El Paso. (Exhibit 28, pages 9-10)

Although AIA [REDACTED] did not specify how he "called" SAIA [REDACTED], XD [REDACTED] explained in

a subsequent email (**Exhibit 46**) that, based on his research and requests, he is not aware of any audio or video recordings of AMO communications (pilot to pilot, "blue hole" to pilot, Wolfsburg radio, cell phone, hand-held radio, flight deck recorder, cockpit camera, or any other platform potentially installed on the involved aircraft) of the BPA [REDACTED] incident. XD [REDACTED] further explained that neither the involved El Paso nor Tucson Aircraft had a cockpit camera, maintenance recorder or cockpit voice recorder installed, nor were they equipped for this capability. There is no voice or video recording from the clearance authority or radio room for either El Paso or Tucson for this event. There is a written record of the incident based on previously provided BigPipe chat (**Exhibit 3**), but neither aircraft recorded this event utilizing Electro-Optical Infrared (EOIR) systems. EOIR Systems are imaging systems used for military or law enforcement applications which include both visible and infrared sensors.

AIA [REDACTED] stated he did not believe there were any other aircraft available, as El Paso runs the only nightshift for the EPAB. AIA [REDACTED] added, "So one of the things that's kind of been pushed when I got here, my walking words, how do you say it, is that anytime there's an agent in distress, or whatever, like, if they ask it's available, you're, you're going to launch." (**Exhibit 28**, pages 12-13)

AIA [REDACTED] stated he discussed with his crew member (SAM [REDACTED]) as they were flying past Deming that it would have been better to launch an aircraft out of DAU had one been available. SAIA [REDACTED] stated he did not recall any discussion that evening with CDO [REDACTED] relative to the DAU. (**Exhibit 28**, pages 15-17)

AIA [REDACTED] stated the 25 minutes between the time the initial call came in requesting air support until the time he launched was due to updating the risk assessment and preparing the helicopter for takeoff. (**Exhibit 28**, pages 17-20)

As an AMO pilot, AIA [REDACTED] stated he was comfortable and equipped to respond to the incident, even though he had not previously responded to that specific location. He had the coordinates and the ability to follow the GPS track to the scene. AIA [REDACTED] stated his landing at Camp Garza FOB had nothing to do with his lack of knowledge or experience in the AOR. (**Exhibit 28**, pages 26-30)

On January 5, 2021, SSA [REDACTED] received three emails from AIA [REDACTED] (**Exhibit 29**). The emails and supporting materials referenced matters discussed during his interview with OPR RAC/Buffalo. In the supporting documents, AIA [REDACTED] sent SAIA [REDACTED] an email on June 11, 2020, at 1814 hours informing SAIA [REDACTED] that the risk score for flying on June 11, 2020, was a 63, putting flights in the "high" risk area. AIA [REDACTED] cited weather conditions, including gusts of wind reaching 46, as part of the reason for such a high-risk score. AIA [REDACTED] provided the risk assessment score sheet for that evening in these emails. A detailed explanation of how a risk assessment score is calculated was subsequently provided by XD [REDACTED] and is included in **Exhibit 48**.

On January 11, 2021, SSA [REDACTED] and SSA [REDACTED] interviewed AIA [REDACTED]. The interview was conducted via Microsoft Teams and was video and audio recorded. Prior to the interview, AIA [REDACTED] was provided the Administrative Warnings Acknowledgement for Non-

Bargaining Unit Employees form, which he acknowledged by signature. The video/audio recording of AIA [REDACTED] is **Exhibit 31** and is 19 minutes and 53 seconds in length. AIA [REDACTED]'s signed Warnings and Notices are **Exhibit 32**. A transcript of the complete interview with AIA [REDACTED] is **Exhibit 33**.

During the interview, AIA [REDACTED] stated that he flew with SAIA [REDACTED] to the DAU for a meeting on April 25, 2019, and for SAIA [REDACTED] to conduct IOE training with him. After the meeting, they departed DAU and received a call on the radio to check for drug smuggling activity near Monument 40. While they were attempting to input the provided coordinates, as neither of them were familiar with where Monument 40 was, SAIA [REDACTED] gave them a compass heading of 240. Sometime during the flight, they received a call from SAIA [REDACTED] indicating they had entered restricted airspace and to turn hard right, which they did. AIA [REDACTED] stated he did not see the restricted area and they subsequently returned to the EPAB. AIA [REDACTED] stated he did not recall any request from SAIA [REDACTED] simply to relay a message, but did hear a request for air support, which they subsequently accepted. Additionally, AIA [REDACTED] stated he did not turn off the aircraft's transponder. (**Exhibit 33**, pages 7-21)

On January 11, 2021, SSA [REDACTED] telephonically contacted the Air and Marine Operations Center (AMOC) in Riverside, CA, requesting information regarding SAIA [REDACTED]'s incursion into restricted airspace on April 25, 2019. SSA [REDACTED] spoke with Supervisory Domain Awareness Officer (SDAO) [REDACTED].

On January 21, 2021, SSA [REDACTED] had a telephone conversation with SDAO [REDACTED], which was memorialized in an Agent Affidavit, and additionally received the requested information from SDAO [REDACTED] (**Exhibit 34**). Based upon SDAO [REDACTED]'s review of radar information, in particular the loss of data for 20 miles, he did not believe this could have been caused intentionally. The provided picture had both blue and green dots which indicate primary and secondary radar hits. SDAO [REDACTED] opined that even if the pilot shut off their transponder (the secondary radar), radar should have picked up the primary data. SDAO [REDACTED] believes that, based on his experience, the radar just lost contact with the aircraft during this time due to terrain and elevation.

On February 3, 2021, SSA [REDACTED] and SSA [REDACTED] traveled to the EPAB and reviewed the process involved in preparing a flight for launch with AIA [REDACTED]. SSA [REDACTED] and SSA [REDACTED] observed that in a non-emergency situation, during the daytime, and under favorable weather, it would take approximately 13-17 minutes to conduct a risk assessment, 10 minutes to conduct a pre-flight inspection, and 10 minutes to remove the aircraft from the hangar and launch, for a total of approximately 33-37 minutes. According to AIA [REDACTED], times will vary from pilot to pilot, and the risk assessment portion is contingent upon weather conditions. Generally, the more severe the weather, the longer that portion of the risk assessment would take. AIA [REDACTED] explained that severe weather requires a more in-depth review of weather information systems than it would under less severe weather conditions and takes longer to complete. The same would generally be true regarding daytime versus nighttime flights. The CDO for the day also would need to review the complete risk assessment and approve the flight, which again could vary in length based on the risk level. Under the above noted conditions, it

took between 33-37 minutes from a pilot's arrival at the office to take-off.

On February 3, 2021, SSA [REDACTED] and SSA [REDACTED] traveled via a helicopter piloted by AIA [REDACTED] to both Camp Garza FOB and the BPA [REDACTED] incident scene. Under ideal wind conditions and daylight, various potential landing locations were identified from the air. AIA [REDACTED] was able to land the aircraft approximately 400 feet from the involved location. AIA [REDACTED] noted that the location was in a valley and the winds were unpredictable.

On February 4, 2021, SSA [REDACTED] and SSA [REDACTED] completed a mock response from the residences of AIA [REDACTED] and SAM [REDACTED] to the DAU. Due to their proximity to the DAU, AIA [REDACTED] and SAM [REDACTED] were identified as the two closest aircrew members that could have potentially responded in support of BPA [REDACTED]. Under ideal conditions and no traffic, the drive time from AIA [REDACTED] and SAM [REDACTED] residences to the DAU was 2 minutes and 9 seconds, and 5 minutes and 47 seconds, respectively. The noted times solely reflect drive time and do not account for any time relative to preparing themselves for duty. The time needed to prepare themselves for duty and to drive to the DAU would be added to the 33-37 minutes it would take for a pilot to ready the aircraft and launch when calculating a comparative response time.

On February 5, 2021, SSA [REDACTED] and SSA [REDACTED] interviewed EPAB DAO [REDACTED]. The interview was conducted in El Paso, TX, and was video and audio recorded. Prior to the interview, DAO [REDACTED] was provided the Administrative Warnings Acknowledgement for Non-Bargaining Unit Employees form, which he acknowledged by signature. The video/audio recording of DAO [REDACTED] is Exhibit 35 and is 3 hours 16 minutes and 4 seconds in length. DAO [REDACTED]'s signed Warnings and Notices are Exhibit 36. A transcript of the complete interview with DAO [REDACTED] is Exhibit 37.

During the interview, DAO [REDACTED] stated that he started as the DAO of the EPAB around the end of July 2019. (Exhibit 37, page 5)

DAO [REDACTED] stated he never made any statements to anyone attempting to minimize the DAU and treated the DAU the same as every other unit in the EPAB. (Exhibit 37, pages 43-44)

Regarding the death of BPA [REDACTED] on June 11, 2020, DAO [REDACTED] stated he did not have any direct involvement with the incident response. After initially becoming aware of the matter via an email from the CDO (SAIA [REDACTED]) shortly after midnight (the morning of June 12th), DAO [REDACTED] stated he called SAIA [REDACTED] and asked two questions: Are we good with the weather? and did we consider launching a Blackhawk? According to DAO [REDACTED], SAIA [REDACTED] indicated to him that the weather was marginal, and it would take over an hour to get a Blackhawk crew ready. Additionally, DAO [REDACTED] indicated that, after reviewing the decisions made by SAIA [REDACTED] on June 11, 2020, he was comfortable with them. (Exhibit 37, pages 45-56)

The June 11, 2020, response in support of BPA [REDACTED] by the EPAB was discussed in detail during the interview with DAO [REDACTED]. DAO [REDACTED] stated he was "very

confident” with the decisions that SAIA [REDACTED] made. He added it was an unfortunate series of events that had a catastrophic outcome, but DAO [REDACTED] believed they did the best they could with what they had.

According to DAO [REDACTED], the DAU crew was not available because they had already worked their shift for the day (16 hours maximum), which by policy must be followed by ten hours of uninterrupted crew rest before that same crew can fly again. DAO [REDACTED] indicated SAIA [REDACTED] believed the DAU crew had not completed their required crew rest, and therefore was not available.

OPR RAC/Buffalo referenced AMOs response to a related congressional request for information (RFI, **Exhibit 38**), which reads, “The Deming Air Unit (DAU) was the second closest CBP Air Unit; however, due to the lack of personnel immediately available, unfavorable weather conditions and aircraft maintenance, at the time of the incident, DAU was unable to respond. Notwithstanding the personnel and maintenance issues, DAU would not have been able to respond due to unfavorable weather. Under favorable launch and flight weather conditions, DAU’s response would have still been delayed approximately 1 hour and 45 minutes on June 11, 2020, due to personnel having to respond from their homes.”

DAO [REDACTED] stated that, although previously cited in the RFI, it was his understanding that weather conditions, and the rules associated with the number of individuals needed to move the helicopter out of the hangar were not factors in SAIA [REDACTED]’s decision not to involve the DAU. DAO [REDACTED] stated, “There was no reason to get down into the weather or get down into aircraft available because we had no crew” at the DAU. DAO [REDACTED] stated that if at any point during the BPA [REDACTED] incident he had told SAIA [REDACTED] not to get the DAU involved that SAIA [REDACTED] would have “put me in my place.” DAO [REDACTED] added that SAIA [REDACTED] is “very passionate about his work and if I would have crossed any line, he would have let me know.” (**Exhibit 37**, pages 57-113).

DAO [REDACTED] sent out an email dated June 18, 2020, which discussed, among other things, flight hours and the need to support the Tucson AOR (Zone FA3). DAO [REDACTED] discussed the rationale behind the email and the need at that time for EPAB units to have standby days (emergency callouts only) when routine flights were not taken. DAO [REDACTED] denied that those decisions to launch, or not launch, were to hinder or minimize the DAU, as alleged by SAIA [REDACTED]. DAO [REDACTED] discussed his expectations of his CDOs and supervisors, and why decisions to launch, or not launch, were made. DAO [REDACTED] reiterated there was never any intent to diminish the DAU or SAIA [REDACTED] in any way. (**Exhibit 37**, pages 114-196)

On February 8, 2021, SSA [REDACTED] received supporting materials (**Exhibit 39**) from DAO [REDACTED] regarding some of the matters discussed during his interview with OPR RAC/Buffalo. Included in these materials was a detailed explanation as to why the DAU crew was not available on June 11, 2020, because they had already worked their shift for the day (16 hours maximum). DAO [REDACTED] explained that according to the AOH, a 16-hour shift must be followed by ten (10) hours of uninterrupted crew rest before that same crew is allowed to fly again. The remaining materials provided by DAO [REDACTED] provide his rebuttal to time and attendance and other personnel matter type allegations made by SAIA [REDACTED].

which are not directly related to this specific investigation.

On February 10, 2021, SSA [REDACTED] and SSA [REDACTED] interviewed EPAB Deputy Director (DD) [REDACTED]. The interview was conducted via Microsoft Teams, and was video and audio recorded. Prior to the interview, DD [REDACTED] was provided the Administrative Warnings Acknowledgement for Non-Bargaining Unit Employees form, which he acknowledged by signature. The video/audio recording of DD [REDACTED] is **Exhibit 40** and is 55 minutes and 51 seconds in length. DD [REDACTED]'s signed Warnings and Notices are **Exhibit 41**. A transcript of the complete interview with DD [REDACTED] is **Exhibit 42**.

During the interview, DD [REDACTED] stated that he was the CDO on April 25, 2019, and cleared SAIA [REDACTED] and AIA [REDACTED] for an administrative flight to the DAU with the justification as air familiarization, as both SAIA [REDACTED] and AIA [REDACTED] were new to the area. (**Exhibit 42**, pages 6-7)

DD [REDACTED] indicated he was not involved with the change in mission later that same day by SAIA [REDACTED], which ultimately resulted in the incursion into restricted airspace. DD [REDACTED] stated he initially found out about the incursion from someone in the office, whom he could not specifically recall, but was immediately briefed about the incident by SAIA [REDACTED] and AIA [REDACTED] upon their landing back at the EPAB. (**Exhibit 42**, pages 8-9)

DD [REDACTED] stated an administrative inquiry regarding the incident was subsequently initiated by someone in the Southwest Region. DD [REDACTED] believes it was SAIA [REDACTED], but he could not recall who specifically ordered the administrative inquiry. DD [REDACTED] stated he did not have any direct involvement in conducting the administrative inquiry, as he was the CDO on April 25, 2019. (**Exhibit 42**, pages 10-14)

In reference to the allegation concerning the use of a helicopter traveling to the firearms range, DD [REDACTED] explained it is common practice to have an aircraft at the range, and that the pilots "patrol" while flying to and from the range. DD [REDACTED] indicated there is routinely an aircraft on site in the event someone was to be injured, as the range is in a remote location. (**Exhibit 42**, pages 14-18)

DD [REDACTED] stated he was off duty and not involved with the EPAB's response to the BPA [REDACTED] incident on June 11, 2020. However, DD [REDACTED] stated he subsequently became aware of the details surrounding the EPAB's response to that incident, and based on the totality of the circumstances, DD [REDACTED] indicated that he concurred with the overall response. DD [REDACTED] did not specify how he became aware of the details, but he explained that the more information he received, the more he believes that the response to this incident was "very appropriate." DD [REDACTED] described SAIA [REDACTED], the CDO on June 11, 2020, as one of the most thorough and efficient CDO's they have. (**Exhibit 42**, pages 19-23)

DD [REDACTED] stated he was not aware of any standing order from DAO [REDACTED] to minimize the DAU, and added that he would not have supported such an order because the DAU is responsible for such a large portion of the AOR. (**Exhibit 42**, pages 23-29)

DD [REDACTED] stated he was not aware of SAIA [REDACTED] ever denying a DAU flight for anything

other than an appropriate reason(s). (Exhibit 42, pages 35-37)

On February 10, 2021, SSA [REDACTED] spoke telephonically with El Paso Sector, Chief Patrol Agent (CPA) [REDACTED], which was memorialized in an Agent Affidavit (Exhibit 43). CPA [REDACTED] stated she was in close contact with her Sector's Patrol Agents in Charge (PAICs) and had not received any complaints or concerns from her stations related to lack of air support. CPA [REDACTED] stated she has a good working relationship with the EPAB. In a subsequent email (included in Exhibit 41) to SSA [REDACTED], CPA [REDACTED] indicated that she was satisfied with the response by AMO and the EPAB in support of the BPA [REDACTED] incident on June 11, 2020.

On February 11, 2021, SSA [REDACTED] and SSA [REDACTED] interviewed SAIA [REDACTED]. The interview was conducted via the Microsoft Teams, and was video and audio recorded. Prior to the interview, SAIA [REDACTED] was provided the Administrative Warnings Acknowledgement for Non-Bargaining Unit Employees form, which he acknowledged by signature. The video/audio recording of SAIA [REDACTED] is Exhibit 44 and is 1 hour 53 minutes and 53 seconds in length. SAIA [REDACTED]'s signed Warnings and Notices are Exhibit 45. A transcript of the complete interview with SAIA [REDACTED] is Exhibit 46.

During the interview, SAIA [REDACTED] stated that because he did not have any direct involvement with the incursion into restricted airspace by SAIA [REDACTED] on April 25, 2019, he was asked to conduct an administrative inquiry of the incident. SAIA [REDACTED] stated he did not recall who specifically asked him to conduct the administrative inquiry but did recall that the results of his investigation were to be sent to AMO at the regional level. (Exhibit 46, pages 5-8)

SAIA [REDACTED] explained that he did not feel intimidated by SAIA [REDACTED], nor did SAIA [REDACTED] attempt to influence the outcome of the administrative inquiry. SAIA [REDACTED] indicated he contacted the FAA, and that he completed all the proper notifications with respect to reporting and documenting the involved incursion. SAIA [REDACTED] stated he completed the administrative inquiry fully and to the best of his abilities. SAIA [REDACTED] stated that no part of the administrative inquiry he conducted was false, or a fabrication. (Exhibit 46, pages 8-12)

SAIA [REDACTED] indicated he did not believe that SAIA [REDACTED] had turned off the aircraft's transponder, noting that there was redundancy in the tracking systems, so there would have been no point in doing so. (Exhibit 46, pages 13-15)

In relation to a helicopter being utilized at the range, SAIA [REDACTED] stated it was common to have an aircraft at the range during firearms qualifications because the range was located far outside of the city and away from medical services. SAIA [REDACTED] stated he never heard any complaints or concerns from SAIA [REDACTED] about having a helicopter at the range, and stated that, based on his belief, it was common knowledge amongst the EPAB employees as to why this was done. (Exhibit 46, pages 15-17)

SAIA [REDACTED] was provided with the eight specific incidents identified by SAIA [REDACTED] as examples of alleged misconduct by SAIA [REDACTED]. The eight involved matters reportedly occurred between June 3 and August 17, 2020, and involved SAIA [REDACTED] as the CDO. Four of the eight specified events involved a deceased undocumented noncitizen.

SAIA [REDACTED] was the CDO for all four of the specific incidents cited by SAIA [REDACTED] involving the death of an undocumented noncitizen. Three of the four undocumented noncitizen fatalities occurred in mid July 2020 and reportedly resulted from requests to the DAU for emergency air support, which were allegedly unjustly denied by SAIA [REDACTED] at the direction of DAO [REDACTED]. The fourth undocumented noncitizen fatality cited by SAIA [REDACTED] occurred on, or about, August 17, 2020, and purportedly occurred because DAO [REDACTED] had unnecessarily transferred the DAU's sole aircraft to El Paso for repairs; therefore, the DAU could not respond to the related request for air support and the individual died.

SAIA [REDACTED] indicated he was never directed by any AMO manager to minimize the DAU or SAIA [REDACTED]. SAIA [REDACTED] detailed his general rationale and decision-making process as a CDO. SAIA [REDACTED] generally defined an emergency callout as involving the preservation of life when an individual is "broken, bleeding, or missing." SAIA [REDACTED] noted a response is not always permissible due to myriad variables. SAIA [REDACTED] identified competing interests, to include scheduled flights and flight hours to the areas that Border Patrol has set as a priority and AMO is required to fulfill, as a major contributing variable. SAIA [REDACTED] stated all his decisions were based upon the totality of the circumstances, facts known in each moment, and his training and experience. (Exhibit 46, pages 29-96)

SAIA [REDACTED] indicated he could only vaguely recall the incidents OPR RAC/Buffalo presented to him, and because of that, he could not provide specific information relative to the eight incidents cited by SAIA [REDACTED]. SAIA [REDACTED] requested the opportunity to further research the involved matters to provide a more accurate response.

On February 19, 2021, SSA [REDACTED] received an email from SAIA [REDACTED], which included ten attachments (Exhibit 47). These noted materials included a narrative response by SAIA [REDACTED] detailing the rationale behind his decisions as the CDO for the above eight specified matters, along with supporting documentation.

In relation to the first incident concerning the allegation from SAIA [REDACTED], SAIA [REDACTED] stated that on June 3, 2020, the reason DD [REDACTED] was the CDO/CA for the flight to the range that day was because SAIA [REDACTED] was already flying a mission on that same day, and according to the AOH (Section 3.3.2), "The CA must not participate in a mission as a crew member when acting as the CDO." SAIA [REDACTED] explained that he cannot fly and be the CDO/CA at the same time. SAIA [REDACTED] stated that he turned those responsibilities over to DD [REDACTED], who was on schedule that morning until his (SAIA [REDACTED]'s) return.

SAIA [REDACTED] alleged that DD [REDACTED] took over the responsibility as the CDO/CA for the flight to the range from SAIA [REDACTED] because, according to SAIA [REDACTED], he knew the flight was not legal and he did not want SAIA [REDACTED] to have to clear it. According to SAIA [REDACTED], DD [REDACTED] was following the orders of DAO [REDACTED] during all of this. SAIA [REDACTED] stated his belief that it was DAO [REDACTED] who directed DD [REDACTED] to make this flight happen. (Exhibit 7, pages 31-33)

In relation to the second allegation from SAIA [REDACTED], SAIA [REDACTED] indicated that he did not

consider the reported use of a portable leaf blower by a group of undocumented noncitizens to conceal their footprints on June 8, 2020, as being “extraordinary” or indicative of a potential “terrorist group,” as alleged by SAIA [REDACTED]. According to SAIA [REDACTED], this was not the first time he had observed this type of behavior in his career. SAIA [REDACTED] stated, “To state that this wasn’t ordinary, potentially a terrorist group, could present a danger, a specific danger to the USA is purely speculative and could be said of many groups.”

In relation to the third allegation from SAIA [REDACTED], SAIA [REDACTED] indicated that he did not deny any requests for air support from the DAU concerning two Border Patrol vehicles being involved in an accident on June 18, 2020, as alleged by SAIA [REDACTED]. SAIA [REDACTED] reported that no requests for air support were made or logged in the El Paso duty log, nor did the Border Patrol request air support for this motor vehicle accident. SAIA [REDACTED] explained that the agents involved in the accident were not in a life-threatening situation, were surrounded by help, and were not needing to go to the hospital or in a medical emergency, as alleged by SAIA [REDACTED]. SAIA [REDACTED] noted that the agents involved in the accident were accessible, an ambulance with properly trained and equipped personnel was en route, and the accident scene was only minutes away from the hospital by ambulance.

In relation to the fourth allegation from SAIA [REDACTED], SAIA [REDACTED] indicated that he did not deny any DAU requests to launch on or about July 10, 2020, as alleged by SAIA [REDACTED], because no requests for air support were received for this specific incident. SAIA [REDACTED] explained that when the Deming Border Patrol Station initially reported the incident on July 9, 2020, there was no indication that the subject (Oscar Alonso-Lopez) was in need of any medical assistance, he wasn’t bleeding or “broken,” nor was the subject reported to be out of water, food, or medicine. According to SAIA [REDACTED], Las Cruces Border Patrol Central Dispatch was able to “ping” Alonso-Lopez’s cellphone, placed it a mile off Interstate 10, and Border Patrol units were already in the immediate area able to respond.

In relation to the fifth allegation from SAIA [REDACTED], SAIA [REDACTED] indicated that he did not deny any DAU requests to launch on July 14, 2020, as alleged by SAIA [REDACTED]. SAIA [REDACTED] explained that when the initial call for air support came in at approximately 2200 hours on July 13, 2020, regarding Noe Ruiz-Martinez, the EPAB, to include the DAU, did not have any pilots available to respond. SAIA [REDACTED] stated that on July 14, 2020, at approximately 1248 hours a follow up request for air support came in, there was a crew on duty in El Paso, but they had a competing call for an “alien in distress” in the opposite direction near Sierra Blanca, TX. According to SAIA [REDACTED], SAIA [REDACTED]’s assertion that an earlier DAU request for air support was denied at approximately 0725 hours on July 14, 2020, is false, noting that the only request for assistance on that day was at approximately 1248 hours.

In relation to the sixth allegation from SAIA [REDACTED], SAIA [REDACTED] stated that, on July 15, 2020, when the Border Patrol initially became aware that Valerio Arrieta-Galindo was in distress or deceased, they did not have information on the specific location of the subject. On July 15, 2020, the Border Patrol was alerted to Arrieta-Galindo’s situation by his family members, who reported that the last communication they had with him was on July 12, 2020. Arrieta-Galindo’s family members advised that he informed them, via cell phone, that he had crossed the border into the United States through the Sierra Rica Mountains, and that he was dizzy and could not

walk anymore. No other information regarding his possible location was provided.

SAIA [REDACTED] stated that, as with all requests for air support, he considers the totality of the circumstances surrounding that specific request. For the specific incident on July 15, 2020, SAIA [REDACTED] explained that he took the following information into account: the information regarding the subject's whereabouts was three days old, the Border Patrol had already spent time and effort unsuccessfully searching for the subject, and Arrieta-Galindo had a cell phone which would allow him to call for help. According to information provided by SAIA [REDACTED], Arrieta-Galindo's body was discovered on July 17, 2020, five days after his last known reported communication with family members. SAIA [REDACTED] added, "For [REDACTED] to imply that had his agents been there, this would have been averted, again, is speculation."

In relation to the seventh allegation from SAIA [REDACTED], SAIA [REDACTED] denied that the involved helicopter was not airworthy, as alleged by SAIA [REDACTED]. SAIA [REDACTED] stated that SAIA [REDACTED] was included in all emails concerning the movement of the involved helicopter on August 4, 2020, and was part of the decision-making process to fly the involved aircraft from the DAU to El Paso for maintenance. SAIA [REDACTED] advised that if anyone involved in the decision to fly this aircraft thought that it was unsafe, it would not have been moved. According to SAIA [REDACTED], the involved helicopter was deemed airworthy based on the findings of the mechanic, who is extremely meticulous in his book work and calculations concerning aircraft maintenance. According to SAIA [REDACTED], the involved helicopter should not have been relocated without a special flight permit issued by the FAA. SAIA [REDACTED] explained that CBP aircraft are considered public use aircraft and as such, are not restricted or required to obtain a "ferry permit" as alleged by SAIA [REDACTED].

In relation to the eighth allegation from SAIA [REDACTED], SAIA [REDACTED] disputed SAIA [REDACTED]'s claim that the DAU was prevented from responding to the emergency air support request on August 17, 2020, because all the DAU aircraft had been previously removed on August 4, 2020, due to alleged retaliation by DAO [REDACTED]. DAO [REDACTED] indicated to SAIA [REDACTED] that he did not have a replacement aircraft available for the DAU at that moment due to broader branch aircraft maintenance issues, which limited the availability of EPAB aircraft. DAO [REDACTED] further explained that he was required to manage his remaining available aircraft to support the "top priorities" at that time, as established by the Border Patrol Chief. (Exhibit 37, pages 177-182)

According to the materials provided by SAIA [REDACTED], the initial request for air support regarding Silvia Villalta-Leon came in on August 17, 2020, at 1953 hours. According to SAIA [REDACTED], the DAU was scheduled to work the day shift on August 17, 2020, and would have had to have been called back in to work, prepared the aircraft for launch, and then responded to this specific incident. SAIA [REDACTED] stated that even if the DAU had an available aircraft and responded, it is speculation that the death of Villalta-Leon could have been prevented.

SAIA [REDACTED] stated he cannot launch on every request for air support that comes into his office, because he does not have the resources to do so. SAIA [REDACTED] explained that he has to manage the resources that he has and determine, to the best of his ability, whether or not to launch using the information available at the time of that decision.

On April 30, 2021, SSA [REDACTED] requested XD [REDACTED] determine whether there are any recorded audio and/or video communications available from the June 11, 2020, incident involving the death of BPA [REDACTED]. In his subsequent email response (**Exhibit 48**), XD [REDACTED] stated that, based on his research and requests, he is not aware of any audio or video recordings of AMO communications (pilot to pilot, "blue hole" to pilot, Wolfsburg radio, cell phone, hand-held radio, flight deck recorder, cockpit camera, or any other platform potentially installed on the involved aircraft) for this incident. XD [REDACTED] further explained that neither the El Paso nor Tucson aircraft had a cockpit camera, maintenance recorder or cockpit voice recorder installed, nor were they equipped for this capability. There is no voice or video recording from the clearance authority or radio room for either El Paso or Tucson for this event. There is a written record of the incident based on previously provided BigPipe chat (**Exhibit 3**), but neither aircraft recorded this event utilizing Electro-Optical Infrared (EOIR) systems.

XD [REDACTED] indicated the JIOC does not record its communications with aircraft and that they utilize archived BigPipe chat to serve as records of communications.

XD [REDACTED] indicated FAA air traffic controllers for this incident were in El Paso, TX, and Tucson, AZ. Recorded communications would have been limited to departure and arrival clearances within 10 nautical miles of those respective airports. XD [REDACTED] explained that no other communications would have normally been made by AMO aircraft once clear of the controlled airspace surrounding the departure and arrival at airports, due to Visual Flight Rules and airspace requirements.

XD [REDACTED] explained that, due to the age of the majority of AMO aircraft, most are not equipped with cockpit or flight data recorders. As AMO continues to replace aging aircraft, cockpit and cabin recording devices are being installed for the purpose of safety. XD [REDACTED] indicated that audio and/or video recording of flight dispatch processes are not made or required by AMO policy. BigPipe chat and written daily logs serve as the record for flight operations at the branches. According to XD [REDACTED], BigPipe chat and written daily logs have proven themselves to be sufficient for previous inquiries regarding both operational and safety events. XD [REDACTED] indicated that communications with the AMOC are recorded, but most tactical communications are done over networks managed by the agencies that are being supported. For most flights within the Southwest Region, communications with the AMOC are limited to notifications when aircraft go operational and end their patrols for the purpose of flight following (safety tracking).

XD [REDACTED] stated that during light enforcement helicopter (LEH) operations, the normal radio communications flow is listed below:

1. Aircraft call operational (10-8) with the local AMO CDO/CA located in the radio room of the branch.
2. Aircraft receive a departure clearance from the FAA control tower if operating out of a towered airport. These communications are normally terminated once the aircraft clears the controlled airspace surrounding the towered airport (generally 10 nautical miles).

3. Aircraft call operational with the AMOC to verify that their satellite tracking systems are operational for the purpose of flight following (safety function) and to receive applicable traffic advisories for airspace deconfliction.
4. Aircraft then utilize the radio networks of supported partners (USBP, HSI, etc.) for tactical communications for the majority of their missions. These communications are often encrypted for the purpose of operational security.
5. Aircraft also utilize a “common” frequency for air-to-air communications. This is done primarily for deconfliction of aircraft for the purposes of safety when communicating with non-AMO aircraft. These communications are not recorded and are conducted over “open” VHF frequencies that are accessible by other aircraft.
6. Once the patrol or mission is complete, the process is reversed as the aircraft re-enters the controlled airspace of the towered airport. FAA tower contact is made, followed by notifications that the aircraft is no longer operational (10-7) to both the AMOC and the local AMO CDO/CA.

On May 10, 2021, SSA ██████ sent an email to XD ██████ requesting additional information. XD ██████ subsequently provided additional information and documentation (**Exhibit 48**) regarding the preflight risk assessment process and scoring, N186AE transponder logging maintenance history, and GPS capabilities.

According to XD ██████, the risk score scale goes from 0 to 100, and ranges between “low,” “medium,” and “high,” which is somewhat variable depending on the total number of crew on board the aircraft. For example, a score of 46 could be considered in the “high” category for a single piloted aircraft with no additional crew members, whereas that score would need to be a 56 to be considered “high” if there were two crewmembers in the aircraft under identical environmental condition and circumstances. XD ██████ indicated there is no absolute score that mandates a “no-fly decision,” noting that said decision is risk versus reward calculus based on the criticality and severity of the situation. For example, an agent in distress would justify flight with a higher risk score than would a more routine law enforcement call for air support. Generally, a risk assessment is based on three main areas: mission information, weather, and crew and recency factors. A blank AMO rotor-wing risk assessment template is included in **Exhibit 48**.

According to XD ██████, there is no maintenance history regarding failures or intermittent operation of the transponder in the helicopter (Tail #N186AE) that was piloted by SAIA ██████ into restricted airspace on April 25, 2019. Additionally, XD ██████ indicated that the transponder system installed in the involved helicopter at the time of the incursion did not have the capability to log transponder activity. That capability did not exist in the involved helicopter until installation of the much newer and more capable ADS-B system in October 2019, wherein the transponder now communicates status with the helicopter’s GPS unit. The involved helicopter was the last aircraft in the EPAB’s fleet in need of the ADS-B system installation, which includes upgraded software and is Wide Area Augmentation System capable, giving the GPS system more accuracy.

According to XD ██████, there is no audible alarm on the GPS systems installed in AMO’s

helicopters to warn pilots of incursion into restricted airspace; however, there is a visual cue depicted on the GPS screen (moving map) that would indicate the aircraft had entered, or is about to enter, restricted airspace provided the pilot has adequately set up the aircraft's GPS with the appropriate layers to do so, and not in de-cluttered mode.

On May 10, 2021, SSA [REDACTED] sent an email to BP El Paso Sector Intelligence Unit Acting Intelligence Operations Supervisor (AIOS) [REDACTED] requesting any available recorded audio and/or video communications from the BPA [REDACTED] incident on June 11, 2020.

On May 20, 2021, SSA [REDACTED] was informed by BP El Paso Supervisory Law Enforcement Information Systems Specialist (SLEISS) [REDACTED] that the BP does not have any video of the BPA [REDACTED] incident on June 11, 2020. According to SLEISS [REDACTED], there were no remote video surveillance system cameras operating in the involved area at the time of the incident.

On June 4, 2021, SSA [REDACTED] received a CD (**Exhibit 49**) containing three files from BP El Paso Critical Incident Team Special Operations Supervisor (SOS) [REDACTED]. Two of the three files represent body camera footage (audio/video) of the processing of the BPA [REDACTED] scene by the Hidalgo County Sheriff's Office (HCSO). The third file represents recorded BP radio communications during the timeframe of the BPA [REDACTED] incident on June 11, 2020.

According to SOS [REDACTED], the involved radio communications came through a repeater that covers the Deming/Lordsburg, NM, area, which is monitored/recorded by the El Paso Sector Tactical Communications Office (TacCom) in El Paso. The noted recorded communications are intermittent (broken and spotty), which is generally due to the proximity and power of the source of any given transmission (hand-held radio Vs. car radio Vs. base station radio, etc.) in relation to the cited repeater's location. As a result, the involved recorded radio communications include partial portions of a transmission and/or one side of a conversation.

On July 14, 2021, SSA [REDACTED] confirmed via email (**Exhibit 50**) through AMOC SDAO [REDACTED] that their audio and/or video communications system only retains recordings for a 6-month period. In addition, SDAO [REDACTED] indicated that AMOC was not notified about the BPA [REDACTED] incident as it was occurring, nor was AMOC involved in AMOC's response.

This case is closed with the filing of this report and no further investigative activity is anticipated.

Exhibit List

Exhibit 1 - OCS Referral Letter (dated September 10, 2020)

Exhibit 2 - Aviation Operations Handbook v3.2 (dated June 20, 2018)

Exhibit 3 - OPR RAC/Buffalo assessment of EPAB response on June 11, 2020

Exhibit 4 - PowerPoint presentation provided by SAIA [REDACTED]

Exhibit 5 - StarWitness Audio/Video Recording of SAIA [REDACTED] interview

Exhibit 6 - SAIA [REDACTED] signed Warnings and Notices

Exhibit 7 - Transcript of SAIA [REDACTED] interview

Exhibit 8 - Archive Email recovery request (dated October 15, 2020)

Exhibit 9 - Request to FAA SA [REDACTED] (dated October 20, 2020)

Exhibit 10 - Email and attachments from FAA SA [REDACTED] (dated October 30, 2020)

Exhibit 11 - StarWitness Audio/Video Recording of SAIA [REDACTED] interview

Exhibit 12 - SAIA [REDACTED] signed Warnings and Notices

Exhibit 13 - Transcript of SAIA [REDACTED] interview

Exhibit 14 - SAIA [REDACTED] email and attachments (dated November 3, 2021)

Exhibit 15 - StarWitness Audio/Video Recording of SAIA [REDACTED] interview

Exhibit 16 - SAIA [REDACTED] signed Warnings and Notices

Exhibit 17 - Transcript of SAIA [REDACTED] interview

Exhibit 18 - Email and attachments from SAIA [REDACTED] (dated November 4, 2020)

Exhibit 19 - StarWitness Audio/Video Recording of XD [REDACTED] interview

Exhibit 20 - XD [REDACTED] signed Warnings and Notices

Exhibit 21 - Transcript of XD [REDACTED] interview

Exhibit 22 - Administrative Inquiry of SAIA [REDACTED]'s incursion into restricted airspace

Exhibit 23 - StarWitness Audio/Video Recording of SAIA [REDACTED] interview

Exhibit 24 - SAIA [REDACTED] signed Warnings and Notices

Exhibit 25 - Transcript of SAIA [REDACTED] interview

Exhibit 26 - StarWitness Audio/Video Recording of AIA [REDACTED] interview

Exhibit 27 - AIA [REDACTED] signed Warnings and Notices

Exhibit 28 - Transcript of AIA [REDACTED] interview

Exhibit 29 - Emails from AIA [REDACTED] (dated January 5, 2021)

Exhibit 30 - Archive emails (DVD)

Exhibit 31 - StarWitness Audio/Video Recording of AIA [REDACTED] interview

Exhibit 32 - AIA [REDACTED] signed Warnings and Notices

Exhibit 33 - Transcript of AIA [REDACTED] interview

Exhibit 34 - Information received from AMOC regarding April 25, 2019, incursion

Exhibit 35 - StarWitness Audio/Video Recording of DAO [REDACTED] interview

Exhibit 36 - DAO [REDACTED] signed Warnings and Notices

Exhibit 37 - Transcript of DAO [REDACTED] interview

Exhibit 38 - AMOs response to congressional request for information

Exhibit 39 - Materials received from DAO [REDACTED]

Exhibit 40 - StarWitness Audio/Video Recording of DD [REDACTED] interview

Exhibit 41 - DD [REDACTED] signed Warnings and Notices

Exhibit 42 - Transcript of DD [REDACTED] interview

Exhibit 43 - Chief [REDACTED] Agent Affidavit and email

Exhibit 44 - StarWitness Audio/Video Recording of SAIA [REDACTED] interview

Exhibit 45 - SAIA [REDACTED] signed Warnings and Notices

Exhibit 46 - Transcript of SAIA [REDACTED] interview

Exhibit 47 - Materials received from SAIA [REDACTED]

Exhibit 48 - Information received from XD [REDACTED]

Exhibit 49 - HCSO body camera footage and recorded BP radio communications (CD)

Exhibit 50 - Email string with SDAO [REDACTED]

Exhibit 51 - AMO Policy No. 400.10 v. A (Management Inquiries, dated January 30, 2017)