

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

December 3, 2024

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

Re: OSC File No. DI-20-001009

Dear Mr. President:

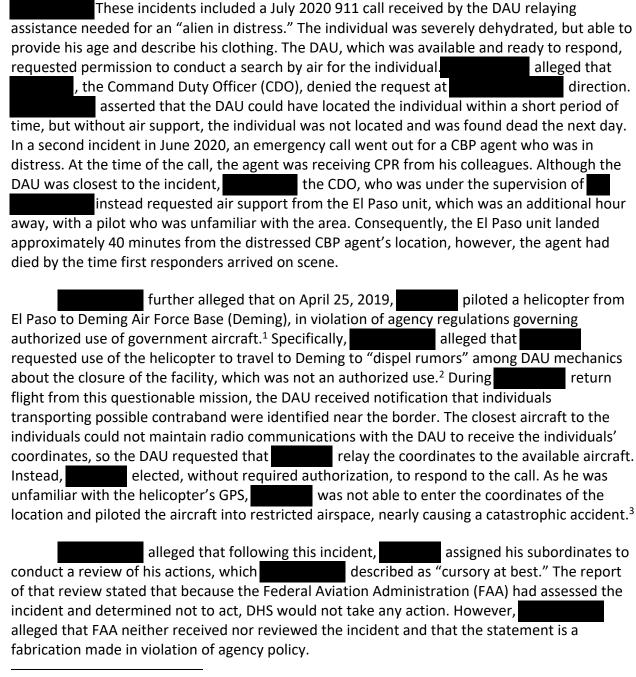
I am forwarding to you reports transmitted to the Office of Special Counsel (OSC) by the Department of Homeland Security in response to the Special Counsel's referral of disclosures of wrongdoing at the U.S. Customs and Border Protection (CBP), Air and Marine Operations (AMO), Deming Air Unit (DAU), El Paso, Texas.

Interdiction Agent, consented to release of his name and commented on the reports. The CBP Office of Professional Responsibility investigated the matter. I have reviewed the disclosures, agency reports and whistleblower comments and, in accordance with 5 U.S.C. § 1213(e), have determined that the reports contain the information required by statute, but the findings do not appear reasonable.

The Allegations

	alleged that Director of A	ir Operations	, Superv	isory
Interdiction Agent	, and Superviso	ory Air Interdiction Ag	ent , e	ach of
whom oversees the I	DAU in El Paso, repeatedly	prevented the DAU	from responding t	.0
emergency calls in ca	ases where quicker respor	nses might have saved	l lives.	further
alleged that former A	Acting Director of Air Oper	rations	piloted a helicopto	er flight
into restricted airspa	ce during an unapproved	change in mission, in	tentionally turning	g off his
helicopter's transpor	nder to avoid detection. For	ollowing the incident,	subor	rdinates
conducted a cursory	review of his unauthorize	d flight actions culmir	nating in a report	containing
false statements. Fin	ally, alleged	that AMO officials fre	equently approve	the use of
aircraft for questiona	able purposes and made a	series of managemen	nt decisions that h	inder the
DAU's ability to fulfil	l its mission.			
			a	
	alleged that on at least five	ve occasions in June a	ind July 2020,	
and , preve	ented the DAU from respo	nding to emergency o	calls at the direction	on of

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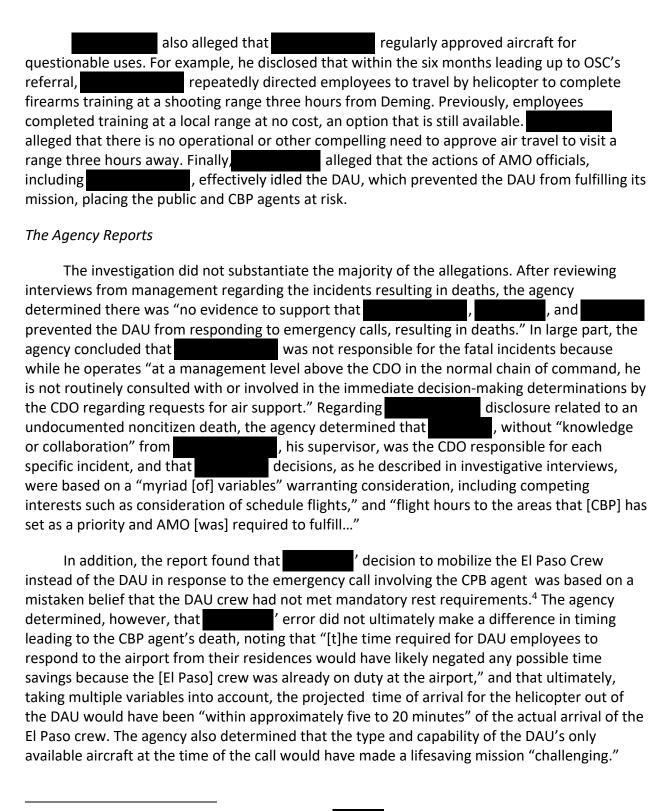


<sup>&</sup>lt;sup>1</sup> 1 C.F.R. § 301-70.801.

<sup>&</sup>lt;sup>2</sup> Use of a government aircraft is generally authorized when commercial options are not available or for required-use situations, such as emergencies or when a specific communications or security needs arise.

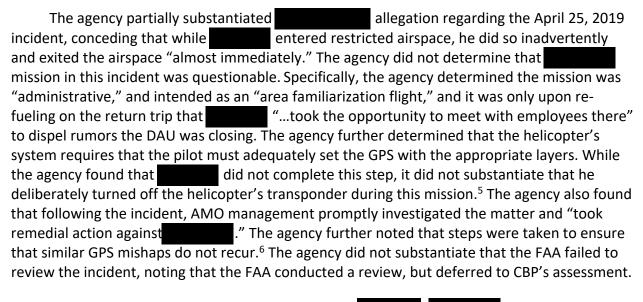
<sup>&</sup>lt;sup>3</sup> The restricted airspace protects the Deming Tethered Aerostat Radar System site, which houses a tethered aerostat radar system—an airborne ground surveillance system that uses moored balloons tethered to the ground by multiple steel cables. The cables are not visible to pilots and pose a fatal threat to helicopters if they clip the cables in the air.

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<sup>&</sup>lt;sup>4</sup> The agency report stated that contrary to Mr. belief, the DAU crew had met rest requirements.

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The agency substantiated that the AMO tasked with conducting the internal review of the April 25, 2019 incident. The agency noted that "although the administrative inquiry appeared to be thorough and accurate, the mere appearance of a subordinate conducting an administrative inquiry on their supervisor is inherently flawed," (emphasis added), and violates Policy No. 400.10 v. A.8 Accordingly, the agency recommended that AMO Southwest Region review existing procedures to ensure that going forward, any local administrative inquiries are conducted by individuals outside the region, and that the investigators are "of equal or higher rank" than the subject officials.

The agency did not substantiate that officials frequently approve the use of aircraft for questionable purposes. Rather, the agency found that all instances of non-enforcement flights specifically cited were "conceivably relatable to required training, proficiency and

review noted that the incident revealed some "training and administrative shortfalls," and determined that deviated from proper procedure by not re-briefing the change in mission with the Clearance Authority pursuant to the AOH Sections 3.3.2.A.2.

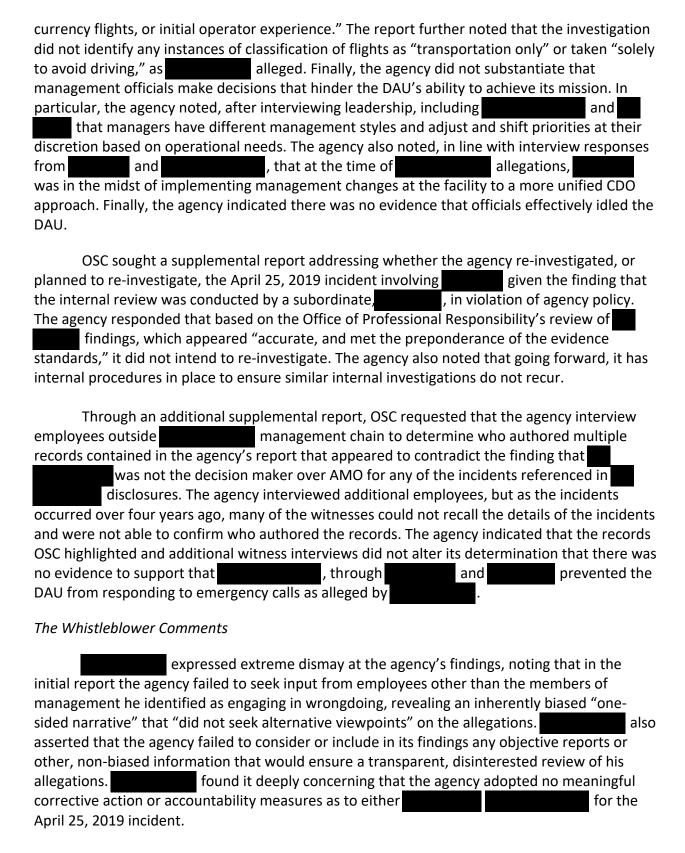
Based on these findings, recommended that review applicable Federal Aviation Regulations and issued him a letter of counseling.

The agency's determination was based on an assessment by Supervisory Domain Awareness Officer, who opined that based on observations of "radar hits," that the 20-minute loss of transponder activity (radar hits) was most probably the result of "terrain and elevation," and not a purposeful deactivation of the transponder.

<sup>&</sup>lt;sup>6</sup> The agency installed a newer system in the aircraft which would allow the transponder to log and communicate the aircraft flight status.

<sup>&</sup>lt;sup>8</sup> Air And Marine Operations, Policy Number 400.10, Version A, January 30, 2017, "Management Inquiries." In relevant part, the policy states that "the field director and Fact Finder assigned to [Management Inquiry Team] will be drawn from outside the region and directorate where the event occurred..." (emphasis added).

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## The Special Counsel's Findings

After review, I remain concerned with the agency's findings regarding the degree to which the series of decisions to deny the DAU's ability to launch between June and August of 2020 were attributable to direction. In particular, in a request for a second supplemental report, OSC asked the agency to reconcile documents and statements directly contradicting the agency's finding that never ordered CDOs to deny DAU's requests to launch air support during the particular instances cited. Despite the compelling nature of these documents and statements, the agency failed to acknowledge this contradiction and maintained that each denial of DAU's requests to launch was a decision by the assigned CDO alone.

OSC's intent in requesting a second supplemental report was to confront the agency with these apparently contradictory documents and to request interviews of several additional witnesses who might have knowledge of these contemporaneous records surrounding the 2020 DAU requests to launch. Other than providing additional statements from witnesses who could not recall authoring the records, the agency's second supplemental response did little to clarify its findings. Instead, the agency maintained that "a thorough and comprehensive review" of the allegations "did not find any evidence that DAO made any decisions, or instructed anyone else, to purposefully minimize [the DAU]." Based on the foregoing, I have concluded that the agency's findings do not appear reasonable.

<sup>9</sup> The contradictory information OSC obtained was from two sources: the first source was a series of "DAU Operations Notes," dated July 14<sup>th</sup> and July 15<sup>th</sup>, respectively, provided by attached to the agency report as "Exhibit 4." These operations notes, which the majority of witnesses conceded were official documents and written contemporaneously with each shift, contained the following record: "Request to launch on search and rescue of alien in , per [Director of Air Operations ( ." The second distress denied by source was the September 9, 2021 interrogatory of an AMO employee, obtained during the investigation of a related retaliation case involving reviewed by OSC's Investigation and Prosecution Division. In this interrogatory, the witness stated that the , assigns crews and destination assignments, "Deming Supervisor," presumably and that per the "Deming Supervisor," the DAU was to be assigned to patrol in Arizona. However, throughout the agency's reports, this same employee consistently maintained that he, as CDO, was solely in charge of decisions concerning when and where the DAU would launch and that these decisions were not those of

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As required by 5 U.S.C. § 1213(e)(3), I have sent a copy of this letter, the agency reports, and whistleblower comments to the Chairs and Ranking Members of the Senate Committee on Homeland Security and Governmental Affairs and the House Committee on Homeland Security. I have also filed redacted copies of this letter, the agency reports, and the redacted referral letter in our public file, <sup>10</sup> which is available online at www.osc.gov. This matter is now closed.

Respectfully,

Hampton Dellinger Special Counsel

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**Enclosures** 

cc: Troy A. Miller, Senior Official Performing the Duties of the Commissioner, CBP

<sup>&</sup>lt;sup>10</sup> Mr. Chandler did not consent to the inclusion of his comments in the public file.