



November 5, 2024

The Honorable Hampton Dellinger  
Special Counsel  
U.S. Office of Special Counsel  
1730 M Street, NW, #300  
Washington, DC 20036  
Attn: Chelsey Whynot

Re: OSC Files No. DI-24-000960 and DI-24-000988

Dear Special Counsel Dellinger:

Through undersigned counsel, Whistleblower XXXX and Confidential Whistleblower #2, who remains anonymous due to fear of retaliation, submit this response to the U.S. Customs and Border Protection (CBP) Office of Professional Responsibility (OPR) report on the Office of Special Counsel's (OSC) referral of the above-captioned disclosures.

In May 2024, XXXX and Whistleblower #2 (together, "the Whistleblowers") disclosed to the OSC that the CBP Office of the Chief Medical Officer (OCMO) Acting Chief Medical Officer (ACMO), [REDACTED], had engaged in dangerous conduct prohibited by law and policy, namely, repeatedly consuming alcohol while carrying an agency-issued firearm.<sup>1</sup> On July 12, 2024, in accordance with 5 U.S.C. § 1213(b) and (c), the OSC found substantial likelihood of wrongdoing and referred this allegation and two others against [REDACTED] to the Department of Homeland Security (DHS) for investigation.<sup>2</sup> DHS ordered CBP OPR to investigate all three allegations and any additional or related allegations of wrongdoing arising from these investigations.<sup>3</sup> On October 1, 2024, the OSC delivered to the Whistleblowers a copy of OPR's Case Closing Report for the investigation into [REDACTED] consumption of alcohol while armed.

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<sup>1</sup> [REDACTED] regularly wears a visible pistol and habitually informs others that he is doing so. Though it is unclear that the position of Acting Chief Medical Officer is one that requires a firearm, [REDACTED] has stated on multiple occasions that Commissioner Troy Miller insisted on the issuance of a CBP firearm to [REDACTED]. Prior to their disclosure to the OSC, in February 2024, XXXX reported to OPR an instance in which they witnessed [REDACTED] consume alcohol while armed.

<sup>2</sup> In addition to the allegation that [REDACTED] repeatedly consumed alcohol while in possession of a CBP-issued firearm, the OSC referred to DHS for investigation allegations regarding [REDACTED] improper efforts to replace OCMO's Electronic Medical Records System and his improper effort to create an agency-wide narcotics policy to personally procure fentanyl.

<sup>3</sup> [REDACTED] wrongdoing occurred within the broader context of wrongdoing by the CBP Office of Acquisition (OA) and Loyal Source Government Services (LSGS), a government contractor, in the administration of the CBP Medical Services Contract to provide medical services to individuals in CBP custody. In addition to the allegations against [REDACTED] that the OSC has referred to DHS, whistleblowers have disclosed publicly to Congress, and privately to the OSC, information regarding OA and LSGS's gross waste, gross mismanagement, abuse of authority, and substantial and specific danger to public health and safety that took place before, during, and after the death of Anadith Reyes Alvarez, the eight-year-old child whose death in CBP custody could have been prevented had she received adequate medical attention. Many of the systems-failure root causes behind Anadith's death—lack of oversight and accountability on medical service contracts at the Southern border—continue, warranting investigation and remedial action. Given the need for accountability for past wrongs and the prevention of future harm, whistleblowers, who began disclosing this information to the OSC nearly a year ago, call on the OSC to refer these

For reasons described herein, the Whistleblowers find the agency's report unreasonable, as its conclusions lack credibility, consistency, and completeness.<sup>4</sup> OPR's report contains significant and unacceptable flaws, and it misrepresents relevant facts, evidences leaks in the investigation, and shows generally that the agency failed to afford this investigation the attention it merits.

Even still, OPR's investigation found that ████████ violated CBP's Use of Force policy (Table of Penalties – D02 (Consuming alcoholic beverages when carrying a weapon while off-duty)). However, the report states that OPR took no administrative action against him. OPR's failure to appropriately respond to a substantiated violation of policy by the acting head of OCMO reflects the culture of impunity for CBP supervisors that a damning Government Accountability Office (GAO) report recently revealed.<sup>5</sup> ████████ impunity is even more concerning as reports indicate that CBP is taking steps to hire him as the permanent Chief Medical Officer, although there is no indication that ████████ underwent the formal hiring process instituted for other candidates.<sup>6</sup>

In all, OPR's report is not only a reflection of CBP's failure to thoroughly investigate this allegation but also an affront to the OSC's role as a channel for whistleblower disclosures under the Whistleblower Protection Act. Accordingly, because the report is incomplete and because it fails to meet the requirements of 5 U.S.C. § 1213(d), the Whistleblowers urge the OSC to find OPR's report unreasonable pursuant to 5 U.S.C. § 1213(e)(2)(A). The agency must explain what corrective action will be taken against ████████ for violating policy, produce a new report based on the entirety of the evidence, and explain how the agency will address the serious investigative integrity issues apparent in OPR's report going forward.

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serious allegations to the agency for investigation and appropriate action. *See e.g.* Government Accountability Project, "Protected Whistleblowers' Disclosures Regarding Failure of CBP Leadership and CBP Office of Acquisition to Oversee its Medical Services Contract with Loyal Source Government Services and Ongoing Wrongdoing by Acting CBP Chief Medical Officer," (Feb. 16, 2024), <https://whistleblower.org/wp-content/uploads/2024/02/02-16-2024-CBP-Medical-Services-Whistleblower-Disclosure.pdf>; Government Accountability Project, "Protected Whistleblower Disclosures Regarding the Performance and Oversight Failures of the Medical Services Contract of U.S. Customs and Border Protection with Loyal Source Government Services," (Nov. 30, 2023), <https://whistleblower.org/wp-content/uploads/2023/11/11-30-2023-Hendrickson-Congressional-Disclosure.pdf>.

<sup>4</sup> 5 U.S.C. § 1213 (d); The OSC will find an agency's report in response to an OSC referral reasonable "if the report's findings and conclusions are credible, consistent, and complete, based upon all the information presented by all parties." U.S. Office of Special Counsel, "What Happens When an Employee Files a Disclosure Claim?" (last visited Oct. 17, 2024), <https://osc.gov/Services/Pages/DU-Process.aspx#:~:text=When%20OSC%20refers%20allegations%20for,summmary%20of%20the%20evidence%20gathered>.

<sup>5</sup> Government Accountability Office, "DHS Employee Misconduct: Actions Needed to Better Assess Differences in Supervisor and Non-Supervisor Discipline," (Feb. 2024), <https://www.gao.gov/assets/d24105820.pdf>.

<sup>6</sup> Earlier in 2024, CBP solicited candidates for a permanent Chief Medical Officer position. ████████ represented that he would not apply for the position because he would not relocate to Washington, D.C. as the position required. *See* May 20, 2024 Office of the Chief Medical Officer Job Posting for Supervisory Physician, USAJOBS.GOV, <https://www.usajobs.gov/job/791862000> (last visited Aug. 6, 2024); July 22, 2024 Office of the Chief Medical Officer Job Posting for Supervisory Physician, USAJOBS.GOV, <https://www.usajobs.gov/job/800795300> (last visited Aug. 6, 2024).

**The OPR Report Fails to Describe, Pursuant to 5 U.S.C. § 1213(d)(5), what Corrective Action Will be Implemented in Response to the Findings that ████████ Violated Policy.**

Despite the significant shortcomings evident in their Case Closing Report, which are highlighted below, CBP OPR found that ████████ did, in fact, violate CBP's Use of Force Policy, Table of Penalties – D02 (Consuming alcoholic beverages when carrying a weapon while off-duty). The agency found that ████████ violated policy when, as he admitted, he consumed alcohol while carrying his agency-issued firearm while in Tucson, Arizona in January 2024. Additionally, the agency found that while the evidence about a similar allegation in Washington, D.C. months earlier was less clear, “a violation appears likely.”<sup>7</sup> Inexplicably, however, ████████ has faced no accountability for the violation of policy OPR's investigation sustained. OPR's report notes that no administrative nor disciplinary action was taken. What's more, not only does ████████ reportedly remain in possession of an agency-issued firearm, but he also appears poised to become OCMO's permanent CMO, despite OPR's investigation and findings.

OPR's failure to hold ████████ accountable for a substantiated violation of policy is an extension of the impunity gap for superiors at CBP. A recent GAO investigation showed that supervisors at DHS as a whole, and at CBP in particular, are less likely to face discipline than non-supervisors, a highly concerning pattern for CBP, one of the world's largest law enforcement agencies.<sup>8</sup> As XXXX expressed to OPR, while ████████ got away with consuming alcohol while carrying his agency-issued gun, “anyone else would be fired for such behavior.” Whistleblowers report that if a rank-and-file CBP employee were accused of consuming alcohol while in possession of an agency-issued firearm, the agency would take action against them within 24 hours. Union representatives confirm that such an allegation would result in the removal of an employee's firearm and law enforcement authority, and, at minimum, placement on administrative duties.<sup>9</sup>

Superiors at CBP must play by the same rulebook as their subordinates, and, as leaders, they should exemplify the highest standards. It is unacceptable for higher-ranking employees to enjoy impunity. OPR and CBP leadership must take appropriate action against ████████ the acting head of OCMO, to ensure that CBP management who engage in wrongdoing are held accountable. Failing to do so is out of line with

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<sup>7</sup> While the Case Closing Report states that the investigation found the “potential violation(s) of policy, rule, or regulation” to be “sustained,” the report itself does not specify whether the agency found ████████ to have violated policy in only one or in both instances the Whistleblowers alleged in their disclosures to the OSC. Only in the cover letter from CBP Commissioner Troy Miller to Special Counsel Dellinger is it clarified that OPR found XXXX's allegation to be sustained, and the allegation Whistleblower #2 lodged to be “likely.” In fact, absent the cover letter, a reader might infer that OPR did *not* find the allegation that ████████ violated policy at The Hamilton in or around September 2023 to be “likely.” This is concerning for OPR's investigative record should the agency's cover letter to the OSC be severed from the Case Closing Report.

<sup>8</sup> Alarming, the GAO's report on discrepancies in DHS supervisor and non-supervisor discipline noted that of the four components of DHS evaluated, CBP was an outlier in that it had, “not developed a policy that documents the disciplinary adjudication policy for all employees.” *Id.* at 16.

<sup>9</sup> Indeed, the CBP Use of Force Handbook calls for temporary “revocation of the authority to carry CBP firearms and/or credentials” for evidence of “serious breaches of CBP integrity of security policies” and a determination that revocation is in the best interests of CBP, among other reasons. U.S. Customs and Border Protection, *CBP Use of Force – Administrative Guidelines and Procedures Handbook*, (January 2021), [https://www.cbp.gov/sites/default/files/assets/documents/2021-Jul/cbp-use-of-force-admin-guideprocedure-handbook\\_4500-002B.pdf](https://www.cbp.gov/sites/default/files/assets/documents/2021-Jul/cbp-use-of-force-admin-guideprocedure-handbook_4500-002B.pdf) at 9.

OPR's mandate and their purported specific objective to "model and promote integrity and accountability standards," for "[a] workforce that is aware and complies with integrity and accountability standards."<sup>10</sup>

**OPR's Report is Unacceptably Flawed and Must be Found Unreasonable.**

***OPR's report is wrong on the facts and omits vital information. It therefore fails to comply with 5 U.S.C. § 1213(d)(3).***

In their letter of referral to DHS, the OSC identified two specific instances in which the Whistleblowers disclosed that ██████ consumed alcohol while armed with a CBP-issued gun: at The Hamilton<sup>11</sup> in Washington, D.C. in or around September 2023, and at the bar of the SpringHill Suites Hotel in Tucson, Arizona on January 30, 2024.<sup>12</sup> Despite ██████ admission that he consumed alcohol in violation of CBP's Use of Force Policy on January 30, 2024, and an eyewitness account that he also violated this same policy in or around September 2023, OPR's presentation of the facts illustrates a biased – and demonstrably false – theory that there was only one clear transgression where ██████ consumed alcohol while armed, the incident was brief, and not only did ██████ quickly self-correct this violation but also promptly self-reported it. The facts show otherwise.

*Despite credible evidence that ██████ consumed alcohol while in possession of his CBP-issued firearm at The Hamilton or around September 2023, the OPR report is inconclusive as to this allegation.*

OPR investigators found it "likely" that ██████ consumed alcohol while carrying his agency-issued firearm at The Hamilton in Washington, D.C. in or around September 2023 but failed to make a final determination. Whistleblowers are concerned that OPR's report regurgitates ██████ poor defense that he may have been carrying an empty holster while at the bar.

Confidential Whistleblower #2 personally witnessed ██████ consume alcohol while armed at an OCMO happy hour held at The Hamilton or around September 2023. The whistleblower saw the firearm under ██████ jacket and felt it when the two hugged. During this time, Confidential Whistleblower #2 witnessed ██████ consume at least two liquor-based drinks within an hour, and based on ██████ appearance, Confidential Whistleblower #2 believed ██████ to be tipsy, information that they disclosed to the OSC. In their report, OPR included Whistleblower #2's testimony as to witnessing ██████ firearm but omitted any observation about ██████ consumption of alcohol. Even if OPR

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<sup>10</sup> CBP, Office of Professional Responsibility Strategy, 2024-2028 (Oct. 16, 2023), <https://www.cbp.gov/sites/default/files/assets/documents/2023-Oct/CBP%20OPR%202024-2028%20Strategy.pdf> at 31.

<sup>11</sup> Confidential Whistleblower #2 witnessed ██████ drinking alcohol at The Hamilton, located at 600 14<sup>th</sup> Street NW, Washington, D.C. However, throughout their report, OPR mistakenly refers to the bar at the Hamilton Hotel, located at 1001 14<sup>th</sup> Street NW, Washington, D.C. Government Accountability Project submits this amended response to correct and address this discrepancy.

<sup>12</sup> Confusingly, in the executive summary of the report, in which OPR lays out where and when the Whistleblowers filed their allegations, OPR only describes Whistleblower #2's claims as having arisen from the OSC's letter of referral to DHS on June 12, 2024. OPR states that XXXX reported his allegations to OPR on February 23, 2024, which is true. However, XXXX also disclosed information related to ██████ violation of policy to the OSC. It is important that OPR's investigative record accurately reflect that XXXX's disclosures also formed the basis of the OSC's finding, pursuant to 5 U.S.C. § 1213(b), that whistleblower disclosures reflected a "substantial likelihood" that ██████ engaged in wrongdoing.

found a violation in this instance to be “likely,” Whistleblower #2’s eyewitness testimony as to [REDACTED] level of intoxication should have been included in the investigative record.

The credibility of Confidential Whistleblower #2’s testimony as to [REDACTED] possession of a weapon at the time in question is supported by the whistleblower’s more than twenty years of military experience. In the military, Confidential Whistleblower #2 received extensive and specific training to carefully observe and detect threats, including the presence of weaponry that may not be readily apparent to a civilian. It was based on decades of experience analyzing potential threats in new environments across the globe that Confidential Whistleblower #2 identified [REDACTED] concealed firearm when his jacket flapped open and physically detected a firearm as they greeted each other at The Hamilton in Washington, D.C.

Against this reliable account, [REDACTED] feeble attempt to explain away witness testimony regarding his consumption of alcohol while armed at The Hamilton falls flat: [REDACTED] claims that whistleblowers were simply confused and incorrectly identified his empty holster as a firearm. [REDACTED] claims that he generally secures his firearm alone and that when his firearm is secured, he continues to wear his holster without a gun. According to the OPR report, [REDACTED] “would put the firearm in his safe but leave his holster on his belt. Dr. E stated he could understand how someone might confuse his empty holster printing under his clothing with carrying a firearm.” However, this is improbable, as it is common for observers familiar with firearms—even those without Whistleblower #2’s level of training—to be able to distinguish between an empty holster, which prints vertically, or a holster carrying a gun, which creates a horizontal silhouette.

In any event, it would be quite unusual for [REDACTED] to wear a holster without a gun, especially given his purported decades of experience with the Dallas Police Department. It is highly unadvisable for individuals who carry firearms, and armed public officials in particular, to remove a firearm while leaving its holster secured to the body. There are logical safety reasons for this. First, if an individual is perceived to be armed, this elevates the risk of being targeted by another armed individual. Therefore, wearing a holster alone would simultaneously elevate one’s risk of involvement in an armed confrontation while eliminating the possibility of an armed defensive response. Second, keeping a gun together with its holster at all times serves as a firearm awareness tool. It ensures that the gun owner has clear physical indications whether they are armed or not and avoids the ambiguity caused by wearing an empty holster. Third, it is customary for those who carry a government-issued firearm to keep their weapon properly secured in its holster unless the gun is in use for shooting or cleaning. When the secure storage location, such as a safe, is too small to accommodate both weapon and holster, the holster is generally stored nearby.

Additionally, [REDACTED] did not actually refute Whistleblower #2’s allegation directly. OPR’s report states that while [REDACTED] failed to recall the happy hour in Washington, D.C. in which he was accused of drinking alcohol while armed, “he *always* secured his firearm prior to imbibing alcohol, at his hotel if traveling, or in his office if after work” (emphasis added). This general statement 1) serves as one illustrative example of [REDACTED] lack of credibility: [REDACTED] contradicts himself by both admitting that he drank with his gun in Tucson, and also stating that he “always” secures his firearm before drinking; both cannot be true, and 2) does not address the question of whether [REDACTED] consumed alcohol while armed in this instance.

Faced with the juxtaposition of credible eyewitness testimony and [REDACTED] contradictory statements about his firearm storage, OPR’s failure to further investigate also calls their investigative credibility into question. For example, OPR apparently failed to ask [REDACTED] important follow-up questions such as where [REDACTED] stored his firearm prior to after-work events at The Hamilton in Washington, D.C. since his primary residence is in Texas. Furthermore, OPR appears to not have asked about the type of holster

██████████ was wearing even though identifying the holster type would have been useful for OPR to assess witness testimony, including ██████████ claim that he wore an empty holster. OPR also failed to elicit facts reflected here to support the expertise upon which Confidential Whistleblower #2's observation was based.

Significantly, OPR's report suggests that ██████████ admitted to drinking alcohol while armed on more than one occasion to Dr. Herbert Wolfe, Chief Medical Officer, Office of Health Security, DHS. The summary of OPR's interview with Dr. Wolfe states: "Dr. W stated Dr. E described the *incidents* as minor and assured Dr. W the matter was not a repeated problem" (emphasis added). While OPR fails to expand on which "incidents," *plural*, ██████████ referred to in his admission to Dr. Wolfe, this testimony shows that ██████████ may have admitted to Dr. Wolfe that he did consume alcohol on more than one occasion, including while armed at The Hamilton in or around September 2023. In any event, this admission indicates that ██████████ drinking while armed is habitual, rather than a one-off, as he generally claims to OPR.

*The OPR report omits evidence in favor of ██████████ narrative to minimize his admitted consumption of alcohol while in possession of his CBP-issued firearm at the bar of the SpringHill Suites in January 2024.*

██████████ admits that he consumed alcohol while carrying an agency-issued firearm in January 2024 at the bar of the SpringHill Suites hotel in Tucson, Arizona. However, his recounting of events to downplay the severity of the incident—and OPR's regurgitation of his narrative—is unfounded. The OPR report leads the reader to believe that ██████████ stumbled upon OCMO colleagues at the hotel bar, had a few sips of a beer, quickly realized his mistake in drinking while armed with his CBP-issued firearm, swiftly disposed of his drink, and might have returned to his room, although OPR's report is unclear as to whether ██████████ left or remained at the happy hour.<sup>13</sup> Additionally, OPR's report entertains ██████████ narrative that even though he consumed alcohol while armed, staff only reported this violation of policy due to personal resentment of ██████████

In fact, in January 2024, two OCMO teams were on official travel in Tucson, Arizona. Rather than stumbling upon an impromptu happy hour as he claims, ██████████ group invited both OCMO teams to meet at the SpringHill Suites bar for drinks on the last day of the trip. Whistleblower XXXX was one of the OCMO staff members on the trip and, like ██████████ carried an agency-issued firearm. On the last day of the trip, after work, XXXX returned to the hotel room, secured XXXX's firearm and holster in the room's safe, changed into plainclothes, went to dinner with colleagues, returned to the hotel, and took an Uber to the SpringHill Suites to meet OCMO colleagues, including ██████████ for drinks at the bar. ██████████ however, did not take proper precautions and came to the happy hour armed, which he admits. At the SpringHill Suites happy hour, rather than taking a few sips of a beer before rectifying the violation of policy as he claims by dumping out his beer and leaving the bar, ██████████ remained at the event for several hours, as he was present when XXXX arrived around 9PM and left the happy hour—still armed—around 11PM.

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<sup>13</sup> Curiously, OPR's report is not clear on whether ██████████ narrative is that he left the bar after partially consuming a beer or just disposed of the beer and remained at the bar. The agency cover letter states that ██████████ "asserts that he quickly left the bar without finishing his first drink when he realized that he still had his firearm with him." However, nowhere in interview summaries of the Case Closing Report does this claim appear.

After witnessing ██████ blatantly violate the Use of Force Policy, XXXX reported the incident, which XXXX was required to do.<sup>14</sup> First, XXXX immediately disclosed the wrongdoing to XXXX's supervisor via text message. Next, XXXX verbally reported the incident to OPR investigators and followed up with a written report sent via email to OPR on February 23, 2024. To XXXX knowledge, nothing consequential came of XXXX's complaint to OPR other than ██████ himself finding out about the complaint and retaliating against XXXX. In fact, on information and belief, the agency issued ██████ another firearm—an automatic rifle—two months later. XXXX filed XXXX's disclosure with the OSC in May 2024.

Despite ██████ admission of drinking alcohol while carrying an agency-issued firearm, an offense that warrants official reporting, ██████ claims that XXXX reported him because ██████ had "counseled" XXXX for a uniform violation on January 30, 2024, the same day that ██████ violated the CBP Use of Force Policy. OPR's report parrots ██████ claims that XXXX's report was part of a larger "campaign to tarnish his character." ██████ claim that he is a victim of a personal vendetta is false, but even if the whistleblower were in part motivated to report wrongdoing because of personal animus, that would not negate the truthfulness of the complaint, which through ██████ own admission is not in question in the first place.

While ██████ did raise concerns about XXXX's uniform to XXXX's direct supervisor via email on January 30, 2024, those concerns were unfounded. XXXX was never reprimanded, and certainly not by ██████ who never raised his concerns with XXXX directly. In fact, XXXX explained this discrepancy in detail to OPR investigators in a follow-up interview held on June 28, 2024. Inexplicably, OPR excluded this interview from their report.

The final element of ██████ self-serving narrative around the Tucson incident is his claim to OPR investigators that he self-reported to Deputy Executive Assistant Commissioner for Operations Support ██████ and Dr. Wolfe once he found out that a report had been filed about his drinking while armed. ██████ statement concerningly demonstrates 1) that he had knowledge of the *confidential* complaint XXXX filed, calling into question OPR's integrity in the investigative processes and receipt of complaints and 2) that rather than quickly self-reporting, according to ██████ he only deemed it necessary to disclose his violation after someone else did. ██████ statement is additionally troubling because it is ultimately false; the OPR report itself illustrates that neither ██████ nor Dr. Wolfe received any such report from ██████ and in fact they only learned of ██████ violation after public reporting of the protected whistleblower disclosures.

Simply put, ██████ account is not credible. Again, there is no indication that OPR asked critical follow-up questions of witnesses, including whether they saw ██████ leave the hotel and return, as he said.<sup>15</sup> ██████ appears to have lied about both the circumstances of his admitted policy violation and

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<sup>14</sup> See CBP, *Report on Internal Investigations and Employee Accountability, Fiscal Year 2022* (Dec. 8, 2023), explaining: "CBP expects its workforce to demonstrate high standards of professional conduct, as established in our Standards of Conduct. Any activity that violates these standards as well as state or federal criminal laws must be reported. This includes, but is not limited to, bribery, theft, misuse of funds, smuggling, drug possession, perjury, civil rights violations, and instances in which an employee is arrested. It also includes serious misconduct that could jeopardize CBP's mission such as misuse of government Information Technology (IT) systems, falsification, abuse of official position for personal gain, workplace violence or harassment, improper association, and willful misuse of government vehicle or property," at 8.

<sup>15</sup> As explained above in footnote 11, it is unclear whether OPR's position is that ██████ disposed of his unfinished beer when he realized he was still armed and remained at the bar *or* that he quickly left the happy hour, an allegation stated in the agency cover letter, but not reflected anywhere in the investigative report.



his voluntary reporting of his violation. These self-interested falsehoods render his similarly self-interested story of quickly storing his firearm after a few sips of beer, countered by witness reports, unbelievable. It follows that OPR's investigative report is unreasonable.

*OPR inexplicably omitted information they received regarding ██████████ violation of CBP policy on consuming alcohol while carrying an agency-issued firearm.*

In the course of their investigation into the allegation that ██████████ repeatedly consumed alcohol while carrying an agency-issued firearm, OPR received a witness statement with material information that they inexplicably omitted from the Case Closing Report. While on official travel, ██████████ asked the witness, who, like ██████████ carries an agency-issued firearm, if the witness planned to consume alcohol at a team dinner following the workday, and if so, what that individual planned to do with their gun. The witness responded that they would likely drink alcohol at dinner and would therefore first secure their firearm in their hotel room. ██████████ responded, "how do you go out in public without a gun?" ██████████ later told the witness he had been reported for drinking while carrying an agency-issued firearm and that he did not know that drinking while armed violated CBP policy, claiming that it had been permitted at the Dallas Police Department, and further stating that he always carried his firearm.

The information in this witness statement that OPR chose to exclude speaks for itself. It corroborates the allegations that ██████████ was armed at OCMO happy hour events in or around September 2023 and in January 2024. If ██████████ did not know that consumption of alcohol while in possession of his firearm was a policy violation in January 2024, it follows that he took no precautions to follow this policy unknown to him months earlier in September 2023, and was therefore armed while drinking at The Hamilton. It further suggests that ██████████ may have consumed alcohol while carrying an agency-issued firearm at other events, before and after this conversation with the witness, particularly because ██████████ stated he "always" carries his firearm.

OPR cannot explain away this serious omission, and that of the second interview with XXXX, by claiming that the information was left out because, somehow, it was irrelevant to the investigation or the Case Closing Report. Indeed, OPR *included* the summary of an interview with a witness who allegedly could not provide *any* relevant information, stating that the witness "could provide no information concerning the allegation of ██████████ drinking alcohol while armed." In other words, OPR clearly mishandled the information it collected from witnesses during their investigation, resulting in unacceptable evidentiary holes in the Case Closing Report.

***OPR's failure to maintain confidentiality tainted their investigation.***

Confidentiality breaches discredit the integrity and objectivity of OPR's investigation. Information from the Whistleblowers and OPR's report itself demonstrates that ██████████ gained improper knowledge of both the report that XXXX filed in February 2024 after witnessing ██████████ consume alcohol while carrying an agency-issued weapon in Tucson *and* about OPR's investigative processes, after which ██████████ attempted to influence witness testimony.

When Whistleblower XXXX filed XXXX's report in February 2024, OPR staff, including Investigating Special Agent ██████████, assured XXXX that the report would not be shared outside of OPR. However, in April, an OCMO colleague informed XXXX that ██████████ had announced that he had seen the email that XXXX sent OPR. Astounded, XXXX then contacted ██████████, who acknowledged that he was aware that ██████████ knew about the confidential complaint.



The fact that ██████ learned that XXXX filed a report that was purportedly confidential is concerning for multiple reasons, not the least of which is the retaliation XXXX experienced by ██████ after he learned XXXX filed the report. Instances like this have chilling effects on other employees who would otherwise speak up about potential wrongdoing if they knew that their reports would remain confidential and that they would therefore be protected from retaliation, especially when reports of misconduct involve superiors. Indeed, Government Accountability Project is aware of multiple additional whistleblowers who have not reported allegations to OPR or the OSC out of fear of retaliation, having seen how ██████ has already targeted multiple whistleblowers who have reported their concerns.

Additionally, according to OPR's report, on April 7, 2024, the day before Supervisory CBP Officer ██████ (described as OCMO Deputy) was scheduled to speak with OPR investigators about this allegation, ██████ approached ██████, his subordinate, about her OPR interview. In addition to discussing the substance of the allegations against him, exerting undue influence over the witness, ██████ told ██████ that he had a "source" who informed him about the report XXXX filed against him. ██████ relayed this information about ██████ "source" to OPR on April 8, 2024.

A few weeks later, when OPR investigators interviewed ██████ on May 8, 2024, his story changed. In that interview, ██████ told OPR he had heard about XXXX filing the report from an OCMO employee, whom ██████ did not name, and from ██████, Assistant Chief, USBP Special Programs, LEOD. (██████ later admitted to OPR he had informed ██████ that XXXX reported him but that when ██████ shared this information, ██████ had already been informed about the filing.) Two days after this interview, ██████ told ██████ he had been questioned about having a "source" within OPR, and in a flagrant attempt to influence her testimony in subsequent conversations with OPR investigators, ██████ told ██████ that he did not have such a "source," contrary to his statement to her a month prior.

OPR's failure to keep protected whistleblower disclosures confidential and to prevent influence over investigators and over potential witnesses is highly concerning for their implications in this case and others.

***OPR misleadingly identified XXXX as a whistleblower related to ██████ policy violation of drinking while in possession of a CBP-issued firearm.***

XXXX has engaged in protected activity pursuant to 5 U.S.C. § 1213 and 5 U.S.C. § 2302. However, XXXX has not reported allegations regarding the specific policy violation by ██████ of drinking alcohol with his CBP-issued firearm and has never claimed to have such firsthand information. Yet, OPR both named XXXX and identified XXXX as a whistleblower in their report. While this label helpfully establishes agency knowledge of XXXX's whistleblower status supporting any claims of whistleblower retaliation XXXX may have, in this context, it appears that OPR used the title of "whistleblower" as an attempt to discredit XXXX's whistleblower allegations generally and weaken witness testimony. For instance, XXXX is quoted in the cover letter from CBP Commissioner ██████ to Special Counsel Dellinger as evidence to refute witness testimony that establishes that ██████ was in possession of his CBP-issued firearm when he consumed alcohol. The inclusion of XXXX's testimony on this allegation is superfluous and misleading.

Furthermore, OPR selectively included information that XXXX has provided to OPR investigators regarding ██████ neglecting to include allegations that could have supported findings of ██████ policy violations in this investigation. For instance, XXXX has reported to OPR that Deloitte contractor ██████, described by ██████ as his "Senior Advisor," disclosed to XXXX that the biggest problem with ██████ is that he does not think the rules apply to him. This testimony by XXXX

would have been germane to OPR's investigation of [REDACTED] violation of law, policy, rule, or regulation.

***OPR failed to meet professional investigative standards.***

It appears that in addition to leaks, OPR investigators failed to meet other professional investigative standards. In their summary of the April 25, 2024 interview with [REDACTED] for example, OPR states that “after the recording device was dismantled, a casual conversation about CBP and firearms training ensued, wherein Dr. E stated he had, at one time, been at a hotel, arrived in the evening, entered the hotel lobby, and saw CBP employees he knew at the hotel bar. Dr. E indicated he approached said CBP employees, without first going to his room to secure his firearm.” When [REDACTED] admitted potential wrongdoing in this instance, OPR investigators failed to properly document it by reactivating the recording. It appears that OPR also failed to ask basic clarifying questions about the time and place [REDACTED] was referring to, and OPR does not indicate whether in these off-the-record remarks [REDACTED] admitted to consuming alcohol. This failure to clarify this admission, let alone, record it, leaves questions unanswered about where and when [REDACTED] was referring to, and whether this could be an additional incident beyond what whistleblowers reported.

***OPR's report is sloppy, indicating a lack of thoroughness in OPR's response to the OSC's referral.***

In addition to the outright omissions and investigative shortcomings described above, OPR's report contains technical errors that render the investigative record imprecise and the report unreasonable.

- OPR fails to conform with 5 U.S.C. § 1213(d)(4) through its failure to identify Arizona law implicated by [REDACTED] policy violation. Although the allegations under investigation occurred in Washington, D.C. and Tucson, Arizona, in a glaring omission, OPR fails to reference Arizona law as applicable state law that was likely violated. OPR only cites agency policy and Washington, D.C. law as the normative frameworks applicable to the investigation, blatantly leaving out the law of the state in which [REDACTED] admitted to drinking with his agency-issued gun. Under Arizona state law, it is illegal to consume alcohol at an establishment selling alcohol while carrying a firearm.<sup>16</sup>
- OPR's report cites the wrong year. On the first page of OPR's report, the date of alleged activity is recorded as “June 20, 2030 – Present.” This typo shows carelessness in ensuring the report is accurate and complete for the investigative record, as the events in question occurred in 2023 and 2024.
- OPR's report cites the wrong location where Confidential Whistleblower #2 witnessed [REDACTED] consume alcohol while armed. Confidential Whistleblower #2 witnessed [REDACTED] drinking alcohol at The Hamilton, located at 600 14<sup>th</sup> Street NW, Washington, D.C. However, throughout their report, OPR mistakenly refers to the bar at the Hamilton Hotel, located at 1001 14<sup>th</sup> Street NW, Washington, D.C.
- The text of OPR's report is often confusing and imprecise. For example, in one of the interview summaries with [REDACTED], OPR states: “once, on a work trip, Dr. E had come back to the hotel

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<sup>16</sup> 2009 Ariz. ALS 175 § 3 (codified as Ariz. Rev. Stat. § 4-244(31). The statute has an exception for “the consumption of small amounts of spirituous liquor by an undercover peace officer on assignment to investigate the licensed establishment,” which was not the case here.

late. When he was going back to the hotel, located within the hotel lobby, he saw in the bar area. There were some individuals that he knew from CBP. He did not go up to his room to drop his firearm off. He went into the bar and ‘had a drink with them.’” This summary does not specify which work trip [REDACTED] was referring to—to Washington, D.C., Tucson, Arizona, or elsewhere—nor which hotel bar—this admitted incident occurred.

Taken together, these errors show imprecision and lack of due care in the preparation of OPR’s report, indicating that OPR did not give the OSC-referred allegations warranted consideration.

**OPR’s Report is an Affront to the OSC as a Channel for Whistleblower Disclosures Under the Whistleblower Protection Act.**

The unreasonableness of OPR’s report raises serious concerns for accountability and institutional integrity at CBP. This report flies in the face of CBP OPR’s published 2024-2028 Strategy, in which they committed to “[l]ead by example and promote the proper norms, beliefs, high-standards, and core values that reinforce CBP’s foundation; and [c]ommunicate the truth and ensure that transparency and accountability remain paramount.”<sup>17</sup>

Additionally, CBP OPR’s report is contextualized within a concerning landscape for accountability at DHS as a whole. This is true given the aforementioned GAO report on preferential treatment for supervisors at the agency. OPR’s report is even more concerning because the Integrity Committee of the Federal Council of Inspectors General recently found that the DHS Inspector General [REDACTED] has engaged in a range wrongful conduct and recommends that the White House take appropriate remedial action, “up to and including removal” of the Inspector General.<sup>18</sup>

This landscape makes the role of whistleblowers at the agency all the more important, and it heightens whistleblowers’ reliance on the OSC to ensure that their disclosures under the Whistleblower Protection Act are not raised in vain. OPR’s unacceptable treatment of this OSC-referral cannot stand, as OPR not only failed to adequately address the present allegations but also risks setting a precedent for trivializing whistleblower disclosures, contributing to a culture of impunity and silence.

Respectfully submitted,

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<sup>17</sup> CBP, Office of Professional Responsibility Strategy, 2024-2028 (Oct. 16, 2023), <https://www.cbp.gov/sites/default/files/assets/documents/2023-Oct/CBP%20OPR%202024-2028%20Strategy.pdf> at 12.

<sup>18</sup> Council of the Inspectors General on Integrity and Efficiency, Integrity Committee, Report of Findings for Integrity Committee Case 20-059 (Oct. 2, 2024), <https://oversightdemocrats.house.gov/sites/evo-subsites/democrats-oversight.house.gov/files/evo-media-document/2024-10-02-IC20-059-Letter-to-the-President-Redacted-w-Encls.pdf> at page 22.