



U.S. OFFICE OF SPECIAL COUNSEL
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The Special Counsel

April 22, 2020

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

Re: OSC File No. DI-19-0071

Dear Mr. President:

Pursuant to my duties as Special Counsel, I am forwarding to you a report provided to me in response to disclosures received from former Special Agent ██████████ of the Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), Homeland Security Investigations (HSI). Agent ██████████, who consented to the release of his name, alleged that in February 2011, officials at the ICE Office of the Attaché in Mexico City engaged in gross mismanagement when they sent him and Special Agent ██████████, who was on temporary duty assignment (TDY) to Mexico City at the time, on a dangerous assignment through areas controlled or monitored by Los Zetas drug cartel. ICE-HSI Mexico City management tasked the two agents with traveling north to an area near the city of Matehuala, Mexico to meet with ICE agents from the ICE-HSI office in Monterrey, Mexico to obtain equipment. During the return trip to Mexico City after the meeting, cartel members attacked them, killing Agent ██████████ and wounding Agent ██████████.¹

Agent ██████████ alleged that ICE-HSI officials: (1) ignored advisories from the U.S. Department of State (DOS), Diplomatic Security Service, regarding travel dangers along the route to the meeting point; (2) ignored intelligence indicating travel dangers along the route to the meeting point; (3) failed to consider the possibility of, or improperly declined to provide or coordinate, additional support for the agents with U.S. personnel and/or Mexican law enforcement; (4) failed to coordinate with the relevant Regional Security Officer (RSO) for the trip;² (5) failed to consider the possibility of using, or improperly declined the use of, a

¹ We referred Agent ██████████'s allegations to then-Homeland Security Secretary Kirstjen Nielsen on December 11, 2018, pursuant to 5 U.S.C. § 1213(c) and (d). Secretary Nielsen delegated to ICE the authority to investigate the matter. The ICE Office of Professional Responsibility handled the investigation, relying in part on information gathered during 2011 after the attack, and produced the report. ICE Deputy Director Matthew Albence signed the agency's report. The respective offices of general counsel for DHS and ICE notified OSC of each delegation of authority that resulted in ICE handling the investigation and Deputy Director Albence serving as the signing authority.

² The Regional Security Officer falls under DOS, Diplomatic Security Service, and is responsible for, among other things, advising on safety and security abroad, protecting diplomatic facilities and personnel, and liaising with the host nation on law enforcement matters.

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diplomatic pouch to transport the cargo via ground or air; and (6) failed to properly brief and prepare the agents in advance of the assignment to discuss the cargo, security measures, and any other relevant information.

The investigation substantiated the allegations that ICE-HSI officials failed to consider the possibility of, or improperly declined to provide or coordinate, additional support for the agents with U.S. personnel and/or Mexican law enforcement; failed to coordinate with the relevant RSO for the trip; and failed to properly brief and prepare the agents in advance of the assignment to discuss the cargo, security measures, and any other relevant information. Additionally, the report confirmed that there was “a known lack of diligence with regard to the maintenance of the ICE armored vehicles.” For example, it was known in the ICE-HSI Mexico City office prior to the incident that the agents’ armored vehicle did not have properly functioning tracking equipment.

The investigation also found that, at the time of the attack, management lacked specific policies and procedures for the execution of the agency mission in Mexico. For example, the agency lacked formalized policies with respect to travel; did not provide counter threat training to those stationed in Mexico (except for those working along the border who received such training from DOS); and did not provide armored vehicle training to employees in Mexico. Additionally, the Mexico City office suffered from weak operational security, which was evident in the lack of planning and execution for the trip taken by Agent [REDACTED] and Agent [REDACTED].

The report did not substantiate the allegation that officials failed to consider the possibility of using, or improperly declined the use of, a diplomatic pouch to transport the cargo via ground or air. The report notes that use of a pouch was discussed but was determined to take too long. Furthermore, the report does not substantiate the two allegations that officials ignored DOS advisories and intelligence about the travel dangers but does acknowledge managerial complacency toward the dangers of traveling in Mexico.

The report confirms that, in the aftermath of the relevant events, ICE addressed this mismanagement by (1) establishing a Personnel Recovery Unit to “provid[e] ICE employees and their families with the knowledge and capabilities to prepare for, prevent, respond to, and survive an isolating event while deployed overseas”; (2) implementing restrictions on driving in Mexico, “to include no self-driving outside of city limits” and requiring “a minimum of two people and 24-hour notice to the RSO”; (3) increasing training for all personnel assigned to Mexico, including Foreign Affairs Counter Threat training; (4) mandating that all personnel complete High Threat Security Overseas prior to deployment to Mexico on TDY; (5) mandating armored vehicle training for all personnel in Mexico; and (6) disabling the automatic unlocking mechanism in HSI armored vehicles. Additionally, the report was forwarded to HSI Executive Leadership to consider disciplinary action.

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I am saddened not only by the significant harm to Agent [REDACTED], but the death of Agent [REDACTED] as well. I am grateful to Agent [REDACTED] for notifying my office of his concerns about the potential mismanagement immediately preceding this tragic event and for allowing us the opportunity to seek answers to his concerns. While what happened to Agent [REDACTED] is terrible, I am pleased to see that the agency has taken steps to help prevent such a tragedy from occurring in the future.

I have reviewed the original disclosure and the agency report. Agent [REDACTED] also reviewed the agency report and provided his own comments to OSC, but prefers to keep those comments confidential. Based on the substantiation of three of the referred allegations, inclusion of other instances of mismanagement not specifically identified in our referral, and in consideration of the actions taken by the agency to address these problems, I have determined that the report contains the information required by statute, and the findings appear reasonable.

As required by 5 U.S.C. § 1213(e)(3), I have sent copies of this letter and the agency report to the Chairmen 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 these documents and a redacted copy of the referral letter in our public file, which is available online at www.osc.gov, and closed the matter.

Respectfully,



Henry J. Kerner
Special Counsel

Enclosures