

January 4<sup>th</sup>, 2024

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

Re: Supplemental Report Response #2 OSC File. DI-22-000519

Dear Mr. President Et Al:

In May of 2021, Air and Marine Operations (AMO) lost N841BP, a rotary wing aircraft, due to a non-qualified pilot at the controls identified as the primary cause of the aircraft impacting the ground. N841BP was then fully consumed by a post-crash fire, which nearly took the lives of the two aircrewman on-board.

Customs and Border Protection (CBP) has been responding to requests from the Office of Special Counsel (OSC) to identify, hold accountable, and to correct the malfeasance that led to this mishap. Two and a half years later, CBP, while working in close coordination with AMO have been unable to provide valid corrective actions necessary to prevent another mishap from occurring. During this timeframe, AMO, has flown approximately 250,000 additional flight hours having prioritized executed flight time over the risk to the employees operating these aircraft.

As previously discussed, AMO executes approximately 100,000 flight hours per year. AMO receives funding from Congress for meeting and or exceeding these production goals and DOES NOT receive any incentive for actually meeting its stated objectives of border protection. If an aircraft is airborne, leadership is satisfied. If an aircraft is airborne and actually executes some type of law enforcement mission, "the metric is recorded" but not in a matter of measuring productivity.

The execution of flight hours is what drives AMO decision making processes. Removing an aircraft from the flight schedule to install risk reduction measures only hurts their "bottom line". The leadership failures of AMO are directly responsible for the mishap of N841BP in addition to many other aircraft not identified in this report. Unless a "grown up" from some parent organization gets involved, AMO will continue to put lives at risk. CBP, as a parent organization to AMO, must stop seeking AMO's input on how to correct themselves because AMO has continuously shown the inability to accomplish this task. Two and a half years later, NO progress has been made. If CBP does not ask educated and probative questions, and unless they refuse to accept AMO's stale and weak corrective measures, the result will continue to be these weak responses from CBP to OSC. The Commissioner of CBP receives input from the advisors he has working for him. It continues to be somewhat embarrassing to watch these inputs make their way to the Office of Special Counsel.

The following supplemental report is another example of these weak, feckless, and tired submissions. This supplemental report was submitted from CBP to OSC after having not answered to OSC's authority in previously requested documents. Following a 2-year

investigation of factual data gathered by the CBP Office of Professional Responsibility, and following repeated requests from OSC for closeout information, CBP has continued to show a willingness to stonewall and an unwillingness to be forthright.

#### SUPPLEMENTAL REPORT:

For one to understand the question being asked of CBP, the relationship between the National Transportation Safety Board (NTSB) and other federal entities must be understood.

Title 49, Part 831 (831.2) details the responsibility of the NTSB to investigate aviation accidents as described in subpart B of this part. The NTSB had the authority and responsibility of investigating N841BP.

AMO was allowed to assist the NTSB investigation of N841BP per Part 831.11 describing the "Party to investigation" process and the responsibilities of that party, or AMO, in this case. Part 831.11 (a), (4) reads:

*Participants in an investigation (e.g., party representatives, party coordinators, and/or the larger party organization) must follow all directions and instructions from NTSB representatives. Party status may be revoked or suspended if a party fails to comply with assigned duties and instructions, withholds information, or otherwise acts in a manner prejudicial or disruptive to an investigation.*

As described via the factual information of the OPR 2-year investigation into this matter, shows that AMO violated Title 49, having directed the pertinent safety information be withheld from the NTSB.

In summary, it is just that simple.

The investigation showed that Executive Director [REDACTED] immediately directed me to edit 9 pages of information from the safety report stating, "this is a litigation hazard". (See e-mail listed in report from [REDACTED])

The current Executive Assistant Commissioner of AMO [REDACTED] recently signed his signature to this highly edited document, stating that AMO follows a different reporting format, and therefore, the removal of this safety critical information was warranted. How can Executive Director [REDACTED] reason for removal and Executive Assistant Commissioner [REDACTED] reason for removal be so diametrically opposed from one another? Regardless of the clear conflict between these two gentlemen, neither had the authority under Title 49, as referenced above, to "withhold information, or otherwise act in a manner prejudicial or disruptive to an investigation"


Their actions were willful, pre-meditated, and with both individuals having been fully informed of AMO's relationship to the NTSB investigation. They both showed little to no regard of the consequences of violating Title 49.

With specifics to AMO's "corrective actions" as detailed in this supplemental report, let me point out how little AMO has taken responsibility or shown an interest in making "real" change to their processes.

1. Requesting a "review" by the United States Coast Guard" of AMO's safety investigation process. A "review" is just that. No one has the authority to implement change over AMO except CBP/DHS. For that to occur, CBP must first fully understand NTSB's authority over mishap investigations, an action CBP has yet to understand.
2. It states AMO/TSS, is incorporating monthly safety meetings among their junior safety officers and program managers. TSS already conducts weekly and monthly meetings so NO CHANGE is being incorporated. The safety officers and program managers are GS-12 to GS-14 employees. It is appalling to see that AMO/CBP has inferred a failure of these junior personnel to communicate among each other. AMO has a senior leadership failure. It is their actions of obstruction and interference with the Title 49 process which initiated the whistleblower report, not because of actions taken by junior personnel. AMO leadership has shown and continues to show an inability to hold themselves accountable.
3. It states that the safety team is required to brief the EAC 7 days following a mishap. NO CHANGE. This is already written into current policy.
4. It states that the safety team is required to present a finalized safety mishap report to the EAC within 45 days. NO CHANGE. For those educated in the safety mishap process, a 45 day completion requirement is an impossible metric to meet. Safety mishap investigations can take many months and longer to complete due to the complexities of the investigation, and the reliance upon Original Equipment Manufacturers to complete their own investigations of damaged components. The fact that this 45 day metric is still included shows how little effort AMO has spent in consideration for their corrective actions, and by CBP approving, just how little they understand of the investigative process.

In closing,

OSC has provided ample opportunity for CBP to explain their inactions of holding AMO accountable for its willful obstruction of Title 49. AMO has shown that any partnership with the NTSB should be considered null and void. The formal investigative process under the authority of the NTSB has long been held sacrosanct within the formalized aviation industry. AMO and CBP, by their inaction to take serious corrective actions, have shown a lack of maturity at a level to precluded them from being a valued member of this community.

  
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