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December 11, 2009

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

Re: OSC File No. DI-08-0549

Dear Mr. President:

The Office of Special Counsel received disclosures from Mr. Manuel Rodriguez, former Supervisory Detention and Deportation Officer, Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), Detention and Removal Operations (DRO), in Miami, Florida. Mr. Rodriguez, who consented to the release of his name, alleged that Miami ICE DRO employees improperly entered an unoccupied home and transported detainees to other locations without returning their property.

Mr. Rodriguez's disclosures were referred to the Honorable Michael Chertoff, former DHS Secretary, to conduct an investigation pursuant to 5 U.S.C. § 1213(c) and (d). Secretary Chertoff referred the inquiry to the ICE Office of Professional Responsibility and designated Mr. James Dinkins, Acting Director, to investigate the whistleblower's allegations. We received a report of this investigation on April 16, 2009. Mr. Rodriguez provided comments on that report to this office pursuant to 5 U.S.C. § 1213(e)(1); his comments are enclosed. As required by law, 5 U.S.C. § 1213(e)(3), I am now transmitting the report and Mr. Rodriguez's comments to you.

Specifically, Mr. Rodriguez stated that on June 1, 2005, Deportation Officers (DO) [REDACTED], [REDACTED], [REDACTED], and Immigration Enforcement Agents (IEA) [REDACTED] and [REDACTED] were assigned to conduct fugitive operation duties to apprehend [REDACTED]. Mr. Rodriguez explained DO [REDACTED] was responsible for escorting a Miami Herald reporter and photographer on the operations as observers. On that day, when no one answered [REDACTED] door, DO [REDACTED] contacted the building property manager, who opened the door to permit DO [REDACTED] to enter the apartment. Mr. Rodriguez alleged that this operation violated DHS policy, which prohibits employees from entering a dwelling without the express consent of the occupant. The next day, on June 2, 2005, Mr. Rodriguez read about the alleged illegal entry in the Miami Herald. Mr. Rodriguez, in his supervisory capacity, requested written statements from all six of the officers and agents attesting to the events that took place on June 1, 2005. DOs [REDACTED] and [REDACTED] did not submit written statements.

Mr. Rodriguez also contended that on or about September 4, 2007, a group of detainees were transferred or deported out of the United States without their funds being returned to them. Mr. Rodriguez brought this information to the attention of his supervisory officials via email on

October 10, 2007. Mr. Rodriguez was instructed by [REDACTED] a supervisory official, to propose a plan to help ensure that detainee's funds and other property are appropriately returned and transported with them. However, Mr. Rodriguez' proposal was never adopted and no alternative plan was implemented during Mr. Rodriguez' tenure at ICE.

In order to determine whether DO [REDACTED] improperly entered [REDACTED] home, the Deputy Field Office Director, [REDACTED], began an investigation into the allegations by conducting interviews with four Deportation Officers, including the whistleblower. During his interview, DO [REDACTED] clearly stated that he did not obtain consent prior to entering the residence. Chapter 19, Section 5 of the Detention and Deportation Officer's Field Manual (DDFM) states that "in order to enter a residence, someone who has authority to do so must grant informed consent, unless a court-approved search warrant is obtained in advance."

Ms. Boulia found that DO [REDACTED] violated the established DDFM policies and procedures when he failed to obtain consent from [REDACTED] to enter the residence.

In response to the violation, [REDACTED] Field Office Director, took disciplinary action against DO [REDACTED]. [REDACTED] sent a letter to DO [REDACTED] dated November 16, 2005, informing him that he would receive a letter of reprimand for noncompliance with the DDFM. Additionally, [REDACTED] ordered DO [REDACTED] to review the National Fugitive Operations Policy and sign an acknowledgement that he had done so. The notice was not placed in DO [REDACTED]'s official Personnel File. However, DO [REDACTED]'s first-line supervisor was informed of the situation. Moreover, [REDACTED] personally admonished DO [REDACTED] for his actions. [REDACTED] and [REDACTED] both stated that they considered certain mitigating factors in determining the appropriate sanctions for DO [REDACTED], including his years of service and satisfactory past performance evaluations. However, DO [REDACTED] did receive a warning that any further misconduct would result in additional disciplinary action.

ICE also investigated the allegation that seven detainees were transferred from the Miami Field Office (FMI) to the Krome Processing Center and subsequently deported from the United States without their funds being transported with them. In its report, the agency determined that the detainees' funds were transferred by the Citrus County Jail to the Krome Processing Center over one month after the detainees had already been removed to other facilities. The agency further found that upon discovery of the detainees' checks several days later, agents followed policy and surrendered the funds to the Department of Treasury. The checks were deposited in December and April 2007 and July 2008. In June 2008, the agency directed that FMI Supervisory Immigration Enforcement Agents begin performing weekly audits of the safe to identify detainee property. The agency also created a form letter to schedule appointments for retrieval of funds and property using detainees' provided or last known addresses. The report noted that on November 30, 2008, the agency's independent Compliance Reviewer gave the agency a rating of "Acceptable" in meeting the *Funds and Personal Property Operation* standard.

Pursuant to 5 U.S.C. § 1213(e)(1), Mr. Rodriguez had an opportunity to review the agency report, and he provided comments expressing his opinion of the investigation.

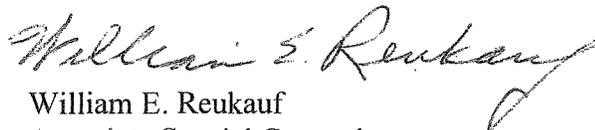
Mr. Rodriguez acknowledged that he was satisfied that the agency report substantiated his allegations. However, Mr. Rodriguez expressed concern that the agency's attached original investigation was dated May 2005 and that the allegations therein were not forwarded to the United States Attorney for prosecution following his 2008 disclosure. Mr. Rodriguez articulated his belief that criminal prosecution is warranted in this case because the agents who entered [REDACTED] home did so in violation of the Fourth Amendment. Mr. Rodriguez further explained that he was not satisfied with the designation of the agency's investigation as a "management inquiry," which he stated was the lowest priority level of investigation and constituted an attempt by the agency to avoid criminal prosecution.

Mr. Rodriguez also reiterated his allegations of mistreatment of detainees and the failure to transfer detainees with their personal property. Finally, Mr. Rodriguez reiterated his belief that he received multiple unwarranted personnel actions in retaliation for speaking out about the violations he observed.

We have reviewed the original disclosures, the agency's report, and Mr. Rodriguez's comments. Based on that review, OSC has determined that the agency's report contains all of the information required by statute and that the findings of the agency head appear to be reasonable.

As required by law, 5 U.S.C. § 1213(e)(3), we have sent a copy of the unredacted agency report and Mr. Rodriguez's comments to the Chairmen and Ranking Members of the Senate Committee on Homeland Security and Governmental Affairs and the House Committee on Homeland Security. We have also filed a redacted copy of the report and Mr. Rodriguez's comments in our public file and closed the matter. OSC's public file is now available online at www.osc.gov.

Respectfully,



William E. Reukauf
Associate Special Counsel

Enclosures