



U.S. Customs and
Border Protection

OSC FILE Number DI-10-2339 and DI-10-2396 [Redacted Version]

1. SUMMARY OF INFORMATION WHICH FORMED THE BASIS FOR THE INVESTIGATION

Peter Mueller and Jason Lowe, former U.S. Customs and Border Protection (CBP) Marine Interdiction Agents, filed whistleblower disclosures with the Office of Special Counsel (OSC) alleging Branch Chief (BC) [redacted], CBP Office of Air and Marine (OAM), Federal Law Enforcement Training Center (FLETC), Artesia, New Mexico, impersonated a sworn Federal agent in violation of federal law. Mr. Mueller and Mr. Lowe further alleged BC [redacted] violated Federal law and the FLETC firearms policy by carrying a firearm at FLETC when he was neither qualified nor authorized by statute to carry a weapon.

On September 20, 2010, the OSC forwarded the allegations to the Department of Homeland Security (DHS). The matter was subsequently referred to the CBP Office of Internal Affairs (OIA) for investigation. Field investigative work began on October 7, 2010.

The allegations contained in the OSC letter of September 20, 2010, are summarized as follows:

- On November 12, 2009, Mr. Mueller and Mr. Lowe met with BC [redacted] who is assigned to FLETC as a liaison between OAM and the Office of Border Patrol (OBP). During the meeting, Mr. Mueller and Mr. Lowe observed BC [redacted] wearing a gold badge on his uniform with the words "Federal Agent" on it. Mr. Mueller and Mr. Lowe reported during a second meeting with BC [redacted] on November 13, 2009, BC [redacted] was again wearing the "Federal Agent" badge. During that same meeting, they witnessed BC [redacted] unholster a firearm, which had been concealed underneath his jacket, which is in violation of the FLETC firearms policy. BC [redacted] placed the firearm in a lock box in his office. Mr. Mueller and Mr. Lowe also observed BC [redacted] wearing insignia identifying him as a GS-14, when in fact he was a GS-13.
- After Mr. Mueller and Mr. Lowe reported BC [redacted] use of badge and possession of a firearm through their respective chains of command, BC [redacted] ceased wearing the "Federal Agent" badge and started wearing a badge that identified him as a flight instructor. BC [redacted] also stopped carrying a firearm and removed the GS-14 insignia from his uniform and replaced it with insignia that properly identified him as a GS-13.
- Mr. Mueller and Mr. Lowe disclosed that despite the inquiry into his conduct, by January 10, 2010, BC [redacted] resumed wearing the "Federal Agent" badge while entering the FLETC facility. Mr. Mueller and Mr. Lowe allege [redacted] falsely represented himself as a sworn federal agent to the security officials at the front gate of FLETC, as well as to the law enforcement personnel and students at FLETC in violation of Title 18 United States Code Section 912, Officer or employee of the United States.

2. DESCRIPTION OF THE CONDUCT OF THE INVESTIGATION

A special agent from OIA, Dallas Field Office, Dallas, Texas, conducted investigative interviews and obtained relevant evidence in El Paso, Texas; Orlando, Florida; Greensboro, North Carolina; Charleston, South Carolina; and the FLETC, Artesia, New Mexico, between October 13, 2010, and November 4, 2010. The following current and former CBP/OAM employees were interviewed, and provided sworn statements:

- Supervisory Air Interdiction Agent (SAIA) _____, El Paso, Texas
- Supervisory Air Interdiction Agent (SAIA) _____, Washington, D.C.
- Supervisory Marine Interdiction Agent (SMIA) _____, St. Augustine, Florida
- Jason Lowe, Panama City, Florida
- Peter Mueller, Greensboro, North Carolina
- Aviation Operations Analyst (AOA) _____, Charleston, South Carolina
- Branch Chief _____, Artesia, New Mexico

The FLETC manual 70-09.J, Firearms and Ammunition, Immigration and Customs Enforcement (ICE) firearms policy, and the CBP/OAM Interim Uniform Guidance Manual were reviewed. In addition, Title 18 United States Code Section 930, Possession of firearms and dangerous weapons in Federal Facilities, and United States Code Section 912, False Personation, were reviewed for guidance.

3. SUMMARY OF EVIDENCE OBTAINED FROM THE INVESTIGATION

The investigation determined that the following allegations made by Mr. Mueller and Mr. Lowe had merit.

- BC _____ wore a gold Velcro badge patch with the words "Federal Agent" sewn on it.
- BC _____ carried a personally owned firearm onto FLETC grounds.

In addition, the investigation uncovered additional witnesses that saw BC _____ wearing a firearm at FLETC.

4. INVESTIGATIVE FINDINGS

Background

The OAM sends agents to FLETC, Border Patrol Academy, Advanced Spanish Training Program, Artesia, New Mexico, to attend advanced Spanish language training. The OAM does not have permanent staff at FLETC, Artesia, New Mexico. Therefore, BC _____ was temporarily assigned to FLETC as an acting branch chief and a liaison between OAM and Border Patrol. BC _____, as a GS-2181-13 Flight Instructor.

A. BC [redacted] is employed by CBP/OAM in a non-law enforcement position and carried a personally owned weapon onto FLETC grounds.

FLETC Manual 70-09.J, Firearms and Ammunition, page 8, section 6 (a) provides, "Signs advising of the policy on introduction to firearms or weapons onto FLETC facilities will be prominently posted at all installation entrances. Upon entering any FLETC facility, ALL personnel must declare possession of any firearm or weapon and/or ammunition to the appropriate security personnel at the site." Page 8, section 6 (d) (1) (a) provides, "[p]ersonnel assigned to FLETC facilities who are authorized to carry firearms by their agency, upon entering FLETC facility shall declare possession of the firearm at the appropriate security checkpoint." Page 8 section 6 (d) (b) provides, "[t]he aforementioned individuals must adhere to the following: Deposit firearms/weapons in the weapons locker at the Visitor Center and retrieve it at the time of qualification." Page 11, section (5) (a) provides, "[v]isitors authorized by state permit to carry a firearm/weapon on their person or in their vehicle must check the firearm/weapon prior to entry to a FLETC site."

U.S. Immigration and Customs Enforcement (ICE) Interim Firearms policy, dated July 4, 2004, which CBP/OAM continues to follow, provides the following:

Part 1, Section B: Authorized Officers

To carry firearms in the performance of their office duties, ICE officers must:

1. Be involved in daily, routine or recurring law enforcement activities and operations;
2. Be issued a badge and credentials to bear firearms;
3. Have successfully completed the mandatory basic law enforcement training, including basic firearms training approved by the Assistant Secretary through the Director of the National Firearms and Tactical Training Unit;
4. Maintain proficiency in the use of firearms they are permitted to carry and adhere to the provisions of the policy governing the use of force; and
5. Meet all other requirements and standards set forth in this policy.

Part 1, Section E: Private Citizens

"Nothing in this policy shall be construed as interfering with the right of ICE officers as private citizens to carry privately owned firearms for personal use. ICE officers are expected to comply with all applicable state and local laws when exercising this right."

Title 18 United States Code Section 930 (a), provides, "Except as provided in subsection (d), whoever knowingly possess or causes to be present a firearm or other dangerous weapon in a Federal facility, or attempts to do so, shall be fined under this title or imprisoned not more than 1 year, or both."

Title 18 United States Code Section 930 (d) provides, "Subsection (a) shall not apply to:

- (1) the lawful performance of official duties by an officer, agent, or employee of the United States, a State, or a political subdivision thereof, who is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of law;

- (2) the possession of a firearm or other dangerous weapon by a Federal official or a member of the Armed Forces if such possession is authorized by law; or
- (3) the lawful carrying of firearms or other dangerous weapons in a Federal facility incident to hunting or other lawful purposes.”

Title 18 United States Code Section 912 states, “Whoever falsely assumes or pretends to be an officer or employee acting under the authority of the United States or any department, agency or officer thereof, and acts as such, or in pretended character demands or obtains any money, paper, document, or thing of value, shall be fined under this title or imprisoned not more than three years, or both.”

The investigation revealed that BC [redacted] has never held a law enforcement position with CBP and has not been issued a law enforcement badge or weapon by CBP.

A records request to FLETC revealed that it does not have any record showing BC [redacted] received a copy of the FLETC Firearms Policy. The records request also revealed that FLETC does not have any record of BC [redacted] checking a weapon into the FLETC Security Office.

Supervisory Air Interdiction Agent (SAIA) [redacted], Office of Air and Marine Headquarters, Washington, D.C., was interviewed and stated he was never tasked with investigating BC [redacted] for carrying a firearm or wearing a law enforcement badge. SAIA [redacted] stated he traveled to FLETC, Artesia, New Mexico, in November 2009, to evaluate the Spanish Tasked Base Training Program that OAM agents were attending.

Aviation Operations Analyst (AOA) [redacted], who was stationed at CBP/OAM, El Paso, Texas, was interviewed and stated in February 2010, four Air and Marine Agents, who were recent graduates of Spanish training at FLETC, Artesia, asked him if BC [redacted] was authorized to carry a firearm. The agents told AOA [redacted] while in BC [redacted] office at FLETC, they observed BC [redacted] remove a firearm from underneath his Tactical Enforcement Uniform (TEU), place it on the table, and tell them they were not the only ones allowed to carry a gun. AOA [redacted] stated he advised the four agents to officially report BC [redacted], but the agents told him they were afraid to report it because of the recent terminations of four Air and Marine Agents at FLETC, Artesia, New Mexico. AOA [redacted] also stated, in July 2010, another recent graduate of the Spanish training at FLETC, Artesia, New Mexico, told him that he observed BC [redacted] take out a handgun from underneath his TEU and place it in a lock box in his office. AOA [redacted] stated he asked the agent why he did not report it and the agent stated he did not want to risk getting fired from his position, because he was a new employee and on probationary status.

AOA [redacted] stated, after receiving the first two complaints of BC [redacted] carrying a gun on FLETC grounds, he reported it to his chain of command. Two weeks after AOA [redacted] reported BC [redacted] Director of National Aviation Training Center, sent an e-mail citing CBP policy which stated that non-law enforcement personnel cannot carry a weapon while on duty. The email from [redacted] shows that BC [redacted] was not a recipient. The investigation was unable to determine if BC [redacted] ever received [redacted] email. AOA [redacted] stated, in October 2010, he heard about a third agent who observed BC [redacted] carrying a gun. AOA [redacted] also stated he called the agent, [redacted] Mc Allen Air Operations, Mc Allen, Texas, who told him, while at FLETC, Artesia, New Mexico, he observed

BC [redacted] lift up his TEU shirt, remove a gun, and place it in a lock box. Agent [redacted] told AOA [redacted] that he did not report BC [redacted] because he was a probationary employee, but stated he would be happy to report it now. AOA [redacted] stated he knows BC [redacted] is not in a law enforcement position because AOA [redacted] was the primary firearms instructor at the El Paso Training Office where BC [redacted] was assigned. AOA [redacted] stated there were only three gun carrying agents in that office and BC [redacted] was not one of them. AOA [redacted] also stated there are signs posted at FLETC, Artesia, New Mexico, advising persons entering FLETC grounds that no weapons are allowed on premises without authorization.

Approximately eight witnesses, who are CBP/OAM employees, were e-mailed and asked if they ever observed BC [redacted] wearing a gun at FLETC. Seven out of the eight CBP/OAM employees e-mailed stated that they observed BC [redacted] wear a firearm at the FLETC facility.

Approximately twenty-one additional witnesses, who are CBP/Office of Border employees, were e-mailed and asked if they ever observed BC [redacted] wearing a gun at FLETC. Only eleven of the CBP/Border Patrol employees e-mailed responded and all eleven stated they never observed BC [redacted] wearing a firearm at the FLETC facility.

BC [redacted] was interviewed and stated that he was not issued a firearm by CBP and has not participated in any firearms training conducted by CBP. BC [redacted] also stated he is not authorized by CBP to carry a handgun while on duty, but stated he did not know there was a FLETC policy in place, which prohibits non law enforcement personnel from carrying firearms while on duty, because he didn't remember ever receiving a copy of a policy. BC [redacted] stated he has a personally owned handgun and has a concealed handgun permit to carry his handgun. BC [redacted] stated he did not know the FLETC firearms policy, but noted that most permanent FLETC staff members carried a weapon on FLETC grounds until the policy changed in January 2010. It should be noted that most FLETC staff members are law enforcement personnel. BC [redacted] also declared he carried his personal handgun on FLETC grounds approximately twenty times prior to January 2010 and admitted to carrying a firearm on FLETC grounds after the January 2010 policy change. It is unclear as to what January 2010 policy change BC [redacted] is referring to because the new "Policy on the Prohibition of Introduction of Unauthorized Firearms onto FLETC Facilities" is dated March 9, 2010. It is possible BC [redacted] is referring to the January 2010 email from [redacted] which cited CBP policy. BC [redacted] also acknowledged that he carried his handgun while on duty at FLETC because he was temporarily assigned to FLETC and did not want to leave the handgun in his hotel room. BC [redacted] stated he did not carry his handgun around campus while at FLETC. BC [redacted] claimed that he locked his handgun up in his office as soon as he got to work.

The investigation revealed BC [redacted] actions do not appear to be in accordance with the FLETC Firearms Policy, the ICE Firearms Policy, and Title 18 United States Code Section 930, Possession of firearms and dangerous weapons in Federal facilities. The investigation also revealed BC [redacted] did not violate 18 United States Code Section 912, False Personation, as there was no additional overt act in the false pretense.

B. BC [redacted] wore a "Federal Agent" badge patch when not a federal agent and wore GS-14 insignia on his uniform when a GS-13.

The investigation revealed that most OAM employees are issued the same type of uniforms and most uniforms come with a gold Velcro badge patch with the words "Federal Agent" sewn on them. Non-law enforcement OAM employees are instructed by management not to wear the badge patch with the words "Federal Agent" sewn on them, but to wear a different patch that is subdued and has "Aviation Specialist" sewn on it.

CBP/OAM Interim Uniform Guidance Manual, section D-2, provides the gold "Federal Agent" badge is to be worn by 6c/law enforcement personnel only. The subdued "Aviation Specialist" badge patch is to be used by non-6c/non law enforcement personnel.

BC [redacted] was interviewed and stated when he was transferred to El Paso, Texas, from Mexico City, Mexico, he received new uniforms. The uniform jacket had a gold "Federal Agent" badge patch sewn on it, and the uniforms contained gold "Federal Agent" Velcro badge patches. BC [redacted] also indicated that he did not get the subdued Velcro "Aviation Specialist" badge patches until a later date. BC [redacted] stated he can only remember wearing the Velcro gold "Federal Agent" badge patch once and wearing the jacket with the gold "Federal Agent" badge patch sewn on it when it was cold outside. BC [redacted] noted that he ultimately cut out the gold "Federal Agent" badge patch sewn on his jacket because he was not a Federal agent.

The investigation revealed BC [redacted] was authorized to wear GS-14 insignia because he is an acting branch chief.

5. DESCRIPTION OF ACTION TAKEN OR PLANNED

A. ACTION TAKEN

On December 7, 2010, the completed Report of Investigation (ROI) was delivered to the CBP Labor and Employee Relations (LER) Office, Washington, D.C. The case was assigned to a LER Specialist for review.

On December 29, 2010, the case was presented to a team of LER Specialists during a Discipline Review Board (DRB) "dry run." Note: The CBP DRB has delegated authority to propose adverse actions (i.e., suspensions of more than 14 days, demotions and removals) against CBP employees who engage in misconduct. "Dry runs" are conducted to determine whether an investigation has the potential for a proposed adverse action before actually presenting the case to the DRB. Cases that do not meet that threshold are remanded to management for appropriate action.

During the DRB "dry run" it was determined that misconduct cited in this case would not warrant proposed adverse action based on LER's assessment of the investigative findings in conjunction with the CBP Table of Offenses and Penalties. Therefore, it was determined that the case would be remanded to management for review and action.

B. ACTION PLANNED

CBP management plans to issue BC [redacted] based upon the investigative findings in this case.