



U.S. OFFICE OF SPECIAL COUNSEL

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June 9, 2011

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

Re: OSC File Nos. DI-10-2339 and DI-10-2396

Dear Mr. President:

Pursuant to 5 U.S.C. § 1213(e)(3), please find enclosed a report received from James F. Tomscheck, Assistant Commissioner, Office of Internal Affairs, U.S. Customs and Border Protection (CBP), Department of Homeland Security (DHS). The Office of Special Counsel received the report, on January 20, 2011, in response to allegations received from Peter Mueller and Jason Lowe (also referred to as the whistleblowers), former Marine Interdiction Agents with the CBP Office of Air and Marine. The whistleblowers alleged that Acting Liaison Branch Chief of the Federal Law Enforcement Training Center (FLETC) Manuel Reynoso engaged in conduct that violated laws, rules, or regulations, constituted gross mismanagement, and created a substantial and specific danger to public safety.

OSC referred the allegations to the Honorable Janet Napolitano, DHS Secretary, on November 22, 2010, with a request for an investigation pursuant to 5 U.S.C. § 1213(c) and (d). The Secretary subsequently referred the allegations to the CBP Office of Internal Affairs for investigation. Mr. Mueller and Mr. Lowe consented to the release of their names.

The whistleblowers alleged that while they attended Advanced Spanish language training at FLETC in Artesia, New Mexico, Mr. Reynoso impersonated a Federal Agent in violation of federal law. The whistleblowers maintained that Mr. Reynoso's routine use of a Federal Agent badge and his possession of a firearm violated False Impersonation, 18 U.S.C. § 912 because he was falsely representing himself as a sworn officer of the United States when he was neither qualified nor certified to do so.

On November 12, 2009, shortly after they arrived at FLETC, the whistleblowers met with Mr. Reynoso. They alleged that during the meeting, and at other times during their training, Mr. Reynoso wore a gold badge on his uniform with the words "Federal Agent" and that he wore an insignia on his uniform which identified him as a GS-14, when he was a GS-13. Mr. Mueller and Mr. Lowe confirmed with officials from CBP Office of Air and Marine that Mr. Reynoso was a flight instructor, not a sworn federal agent or law enforcement instructor.

The whistleblowers also alleged that Mr. Reynoso regularly violated federal law and the FLETC firearms policy by carrying firearms onsite. They observed Mr. Reynoso unholster a firearm from his uniform and place it in a lock box in his office. The whistleblowers explained that under the FLETC firearms policy in effect in November 2009, instructors were permitted to

bring their personal weapons to FLETC if they were certified and qualified to carry firearms. While at FLETC, instructors were required to store their firearms in an approved lock box in an office. As Mr. Reynoso was neither a FLETC instructor nor a law enforcement officer, the whistleblowers maintained that he was not authorized to carry a weapon under this policy.

Mr. Mueller and Mr. Lowe further alleged that after they reported Mr. Reynoso's use of the badge and possession of a firearm through their respective chains of command, Jason Nadolinski, Supervisory Air Interdiction Agent, Office of Air and Marine Headquarters, came to FLETC in late November to investigate. The whistleblowers maintain that after the inquiry, Mr. Reynoso ceased wearing the Federal Agent badge, and instead wore a badge that correctly identified him as a "Flight Instructor." He also stopped carrying a firearm and removed the GS-14 rank insignia from his uniform, and replaced it with one that properly identified him as a GS-13.

In January 2010, during the whistleblowers' training, the FLETC firearms policy became more restrictive after an incident involving the unintentional firing of a weapon. Under the new policy, instructors, staff members and students were prohibited from carrying firearms onto the property. The whistleblowers alleged that in early January 2010, Mr. Reynoso informed several students, including Mr. Mueller and Mr. Lowe, of the change in the firearms policy. They reported that he also stated that he had no intention of complying with the new FLETC firearms policy and that he planned to continue carrying his weapon while at the facility. The whistleblowers explained that even if Mr. Reynoso had a civilian permit to carry concealed weapons, he was required to comply with the firearms policy. Thus, he was required to register his weapon with the FLETC Security Office and surrender it at the front gate.

The agency investigation found that the allegations against Mr. Reynoso had merit. The investigation confirmed that Mr. Reynoso wore a badge with the words "Federal Agent" on it. According to the report, Mr. Reynoso stated that when he was transferred he received a new uniform which included gold "Federal Agent" Velcro badges. The uniform jacket had the Federal Agent badge sewn onto it. Mr. Reynoso stated that he remembered wearing the Federal Agent badge once and acknowledged that he wore the jacket with the badge when it was cold outside. The investigation determined that as an Acting Branch Chief, Mr. Reynoso was authorized to wear the GS-14 insignia.

The investigation also determined that Mr. Reynoso carried a personally-owned firearm onto FLETC grounds. Specifically, the investigation concluded that Mr. Reynoso's action did not appear to be in accordance with FLETC Firearms Policy, ICE Firearms Policy, and 18 U.S.C. § 930, Possession of Firearms and Dangerous Weapons in Federal Facilities. The investigation found that Mr. Reynoso did not violate 18 U.S.C. § 912 because there was no evidence of an overt act of soliciting or receiving a benefit in conjunction with the false pretense. In response to the investigative findings, the report states that CBP intends to issue Mr. Reynoso a proposed 5-day suspension.

The whistleblowers had the opportunity to review and comment on the agency's report pursuant to 5 U.S.C. § 1213(e). Mr. Lowe noted that he was pleased that the investigation found merit to the allegations. However, he identified several issues which he believes the investigation did not address. For instance, he noted that some agency officials were aware that Mr. Reynoso was carrying a firearm in violation of federal law and FLETC policy but did not take corrective measures. He questioned why Mr. Reynoso was allowed to engage in this conduct, and why he and Mr. Mueller were permitted to remain in such a training environment. He also questioned why Headquarters of the Office of Air and Marine continued to send agents for training given Mr. Reynoso's conduct. Finally, he believes that the substantiation of the firearms violations in this case is indicative of severe misconduct and, thus, warrants more severe disciplinary action. Mr. Mueller declined the opportunity to comment on the report.

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

As required by law, 5 U.S.C. § 1213(e)(3), OSC has sent copies of the report and Mr. Lowe's comments to the Chairmen and Ranking Members of the Senate Committee on Homeland Security and Government Affairs and the House Committee on Homeland Security. OSC has also sent a copy of the redacted report for public release and filed a copy of the redacted agency report and Mr. Lowe's comments in our public file.¹ OSC has closed its file on this matter.

Respectfully,



William E. Reukauf
Associate Special Counsel

Enclosures

¹CBP provided OSC with a revised report for public release that omitted the names of federal employees interviewed during the investigation. The agency cited the Freedom of Information Act (FOIA) (5 U.S.C. § 552) and Privacy Act of 1974 (Privacy Act) (5 U.S.C. §552a) as the bases for the revisions to the report produced in response to 5 U.S.C. § 1213. OSC objects to the use of FOIA to remove the names of federal employees because under FOIA, the withholding of such information is discretionary, not mandatory, and therefore does not fit within the exceptions to disclosure under 5 U.S.C. § 1219(b). OSC also objects to the use of the Privacy Act to redact the names of federal employee on the basis that the application of the Privacy Act in this manner is overly broad.