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**Administratively Uncontrollable Overtime
Case Summary**

**Rodriguez, Miska; OSC File No. DI-12-1105
Customs and Border Protection, Office of Border Patrol, Laredo North Station,
Laredo, Texas**

Miska Rodriguez disclosed to OSC that Border Patrol agents (BPAs) at the Laredo North Station engaged in conduct that violated a law, rule, or regulation and created a substantial and specific danger to public safety. Specifically, Mr. Rodriguez alleged that BPAs regularly left their assigned zones along the Mexico–U.S. border prior to being relieved by the oncoming shift. He alleged this practice left portions of the border unsecured and violated the law and regulations governing Administratively Uncontrollable Overtime (AUO), as BPAs claimed two-hours of AUO even when they did not remain on duty for two full hours during shift changes. On July 20, 2012, OSC referred these allegations to then-Secretary Napolitano to conduct an investigation pursuant to 5 U.S.C. § 1213(c) and (d). On October 23, 2013, OSC requested a supplemental investigation into the misuse of AUO at the Laredo North Station, specifically, whether BPAs were engaged in duties that justified the receipt of AUO during the hours the overtime was claimed.

After receiving OSC's referral, then-Secretary Napolitano tasked the CBP Office of Internal Affairs (OIA) with conducting an investigation of Mr. Rodriguez's allegations and designated OIA Assistant Commissioner James T. Tomsheck as the official responsible for submitting the agency reports to OSC. Assistant Commissioner Tomsheck submitted the initial agency report on December 10, 2012, and the supplemental agency report on January 23, 2014. Pursuant to 5 U.S.C. § 1213(e)(1), Mr. Rodriguez submitted his comments to the report on December 28, 2012, and February 10, 2014.

CBP substantiated the allegation that AUO is being inadequately documented and utilized improperly for work that is not compensable under the AUO laws and regulations. See 5 C.F.R. § 150.151-154. The agency concluded that BPAs are frequently engaged in routine post-shift activities during the hours they are claiming AUO, such as awaiting shift relief, checking-in equipment, and completing administrative paperwork. However, the agency indicated that CBP would not be able to complete its core mission using a schedule that utilizes three shifts per day without the use of additional hours to facilitate routine shift changes. The agency further stated that the Laredo North Station lacked the manpower to appropriately patrol and secure the border utilizing four shifts, so management had deliberately chosen to continue with three shifts, using AUO to facilitate the shift change. CBP did not substantiate Mr. Rodriguez's allegations that

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BPAs were leaving their assigned zones prior to being relieved by the oncoming shift, or that they were not working the hours claimed for AUO compensation.¹

Based upon the findings of AUO misuse, the agency committed to taking corrective actions. The agency indicated that BPAs stationed at the Laredo North Station engage in operational functions and have job duties that are legitimately eligible for AUO, thus, a blanket de-authorization from AUO would be potentially overbroad and infeasible. However, in the supplemental report, CBP indicated the agency was implementing an AUO compliance validation plan wherein both Laredo North management and CBP OIA Management Inspections Division independently verify that the hours claimed are valid and in compliance with current requirements for compensation under AUO. The Office of Border Patrol also committed to implementing a new framework for documenting AUO claims and new management controls for its certification. CBP also committed to completing an internal AUO eligibility review of 158 CBP positions, issuing a revised AUO directive, cooperating with the Government Accountability Office DHS AUO audit, and exploring comprehensive pay reform through legislation. These corrective actions are all ongoing.

In his comments, Mr. Rodriguez reiterated that the majority of BPAs claim two hours of AUO daily despite working less than that, usually only working an hour and a half, and that BPAs were not remaining in the field until relieved by the oncoming shift. He also stated that when the Laredo North Station implemented four shifts, BPAs were still receiving significant AUO pay, which, he asserts, is evidence that CBP wastes money on overtime that is not necessary to accomplish the agency mission.

¹ In the initial agency report, CBP included a discussion of other allegations raised by Mr. Rodriguez during his interview with OIA investigators. However, as those allegations were not included in OSC's referral to the agency head for investigation under 1213(c), they will not be discussed in this letter.