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**Administratively Uncontrollable Overtime  
Case Summary**

**Stayer, Adam; OSC File No. DI-14-0631**

**Customs and Border Protection, El Paso Sector, Ysleta Station, El Paso, Texas**

Adam Stayer, a Border Patrol agent (BPA), disclosed that CBP employees at Ysleta Station, including BPAs and Supervisory BPAs, claimed Administratively Uncontrollable Overtime (AUO) but failed to perform duties that qualify for AUO under the governing laws and regulations. See 5 C.F.R. § 150.151-154. Mr. Stayer indicated that there were approximately 70 Supervisory BPAs at Ysleta Station who routinely claimed two hours of AUO per day while performing exclusively administrative duties that did not justify the receipt of AUO. In addition, Mr. Stayer disclosed that BPAs assigned to work in the field are improperly receiving AUO for routine shift-change activities. Finally, Mr. Stayer alleged that supervisors at Ysleta Station authorize the use of AUO to compensate injured BPAs who are assigned to administrative duties and therefore not working overtime.

Mr. Stayer's allegations were referred to then-Acting Secretary of Homeland Security Rand Beers on December 19, 2013. The Department of Homeland Security, Office of Inspector General (OIG) was tasked with conducting the investigation into the whistleblower's allegations, and CBP Commissioner R. Gil Kerlikowske was designated the authority to review and sign the report submitted to OSC. Commissioner Kerlikowske submitted the agency report on January 15, 2015.

In the agency report, OIG states that Ysleta Station did not have sufficient AUO documentation to allow OIG to identify a specific violation of law, rule, or regulation. However, OIG found that most activities performed by second-line supervisory BPAs during AUO hours appeared to be administrative, as alleged by Mr. Stayer, and thus, could be anticipated and managed administratively. OIG indicated that CBP's Office of Human Resources Management (HRM) made a similar determination in August 2014, finding that second-line supervisors, including field operations supervisors, watch commanders, and patrol agents in charge, are now ineligible for AUO. In addition, despite HRM's finding that first-line supervisory BPAs remain eligible for AUO, OIG found that some activities of first-line supervisory and nonsupervisory BPAs performed during AUO hours also appeared to be administrative and controllable, such as vehicle maintenance, shift change, and training. OIG found no evidence to substantiate the allegation that Ysleta Station BPAs who sustained work-related injuries were paid AUO improperly.

On February 4, 2015, a copy of the report was forwarded to Mr. Stayer. In his comments, Mr. Stayer discussed the steps he took to bring the issue of AUO misuse to

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U.S. Border Patrol leadership, and his feeling that leadership chose not to address the issue. He contends that AUO abuse continues and is confounded that not one person has been held accountable. Mr. Stayer states that he has become a target of whistleblower retaliation for coming forward with his disclosures of wrongdoing, but his personal and professional values would not allow him to ignore or condone the fraud that has been committed.