



**U.S. OFFICE OF SPECIAL COUNSEL**

1730 M Street, N.W., Suite 218

Washington, D.C. 20036-4505

202-254-3600

**Administratively Uncontrollable Overtime  
Case Summary**

**Anonymous; OSC File No. DI-14-1093**

**Customs and Border Protection, Office of Border Patrol, Washington, D.C.**

The whistleblower, who requested anonymity, alleged that employees in the Office of Border Patrol headquarters claimed AUO on a daily basis but failed to perform duties that qualified for AUO. The whistleblower alleged that employees claimed, and managers approved, AUO to enhance employee paychecks and future retirement benefits and that the duties and responsibilities of Border Patrol headquarters employees are regular, predictable, and controllable and the work is not sufficiently urgent to warrant the use of AUO. The whistleblower asserted that Border Patrol leadership, particularly Border Patrol Chief Michael J. Fisher and Deputy Chief Ronald Vitiello, are responsible for the pervasive abuse of AUO. The whistleblower disclosed that in large part due to leadership's failure to enforce work shift time limits and allow the imposition of unnecessary deadlines to fabricate a need for overtime, a culture of entitlement to AUO has been ingrained in Border Patrol agents.

The whistleblower's allegations regarding AUO misuse were referred to DHS Secretary Jeh Charles Johnson on January 24, 2014, for an investigation and report. The DHS Office of Inspector General (OIG) was charged with investigating the allegations. By letter dated November 7, 2014, U.S. Customs and Border Protection Commissioner R. Gil Kerlikowske reported to Special Counsel Carolyn Lerner that the OIG investigation found that Border Patrol documentation was inadequate to determine if AUO qualifying duties were being performed when AUO was claimed. The OIG investigation found that while a few agents described work that likely qualified for AUO, some of the work appeared to be regular, predictable, and administrative in nature. Employees interviewed by the OIG pursuant to the investigation stated that they did not receive consistent training or guidance on the use of AUO, did not understand how to document and record AUO-qualifying work, admitted they claimed AUO for administrative tasks, and/or had a misconception that AUO was for all unscheduled and irregular work or that AUO was supposed to be used for any time beyond their regular eight-hour shift. The report included an "Actions Taken and Planned Section," as well as a more detailed description of CBP's plan to address the AUO abuse issue. As noted by Commissioner Kerlikowske, this plan included de-authorizing AUO for all Border Patrol Headquarters positions.