



**U.S. Immigration
and Customs
Enforcement**

December 15, 2014

Ms. Carolyn N. Lerner
Special Counsel
U.S. Office of Special Counsel
1730 M Street, NW, Suite 300
Washington, D.C. 20036

Re: Supplemental Report for OSC File No. DI-14-1100

Dear Ms. Lerner:

The enclosed report is submitted in response to your request for supplemental information relating to the Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement's (ICE) report regarding Office of Special Counsel (OSC) File No. DI-14-1100. On October 10, 2014, ICE submitted the initial report containing its investigative findings. On November 6, 2014, the OSC requested a supplemental report from ICE. I have been delegated the authority to review and sign this supplemental report.

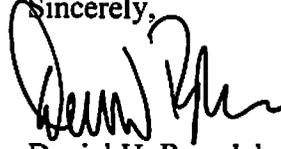
ICE has enclosed two versions of its supplemental report. The first version of the report contains the names and positions of ICE law enforcement officers and is For Official Use Only (FOUO), as specified by Title 5, United States Code (U.S.C.) Section 1213(e). Each page of the report has been marked accordingly. We understand that, as required by law, you will provide a copy of the unredacted version of the report to the President of the United States and the appropriate oversight committees in the Senate and House of Representatives for their review. In these legally required re-disclosures of the unredacted report, ICE respectfully requests that OSC retain ICE's FOUO markings and convey the sensitivities of the identifiable information contained in the report.

The second version of the report has been redacted to eliminate references to privacy-protected information and is suitable for release in accordance with the Freedom of Information Act (FOIA), 5 U.S.C. Section 552. ICE has redacted the names and positions of law enforcement officers pursuant to FOIA exemptions (b)(6) and (b)(7)(C) because the release of this information would constitute a clearly unwarranted invasion of the law enforcement officers' personal privacy. Accordingly, these exemptions are specifically asserted to protect ICE's law enforcement officers from possible acts of threat, coercion, and bribery. ICE requests that only the redacted version of the report be made available on your website, in your public library, or in any other forum in which it will be accessible to persons not expressly entitled by law to a copy of the unredacted report.

OSC File No. DI-14-1100 (Supplemental Report)

Please do not hesitate to contact my office at (202) 732-3000 should you require any further information regarding these matters.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel H. Ragsdale". The signature is fluid and cursive, with a large initial "D" and "R".

Daniel H. Ragsdale
Deputy Director

Enclosure

Cc: Chief Human Capital Officer
Principal Deputy General Counsel

I. Summary of Supplemental Information Requested by the Office of Special Counsel

On November 6, 2014, the Office of Special Counsel (OSC) submitted a request for a supplemental report regarding OSC File No. DI-14-1100. The OSC requested a revised cover letter stating that Deputy Director Daniel Ragsdale had been delegated authority to review and sign the report. The OSC also requested clarification regarding the scope of AUO work that is permissible to be performed at home, to include whether the investigation revealed specific incidents of employees improperly claiming AUO for work performed at home. Additionally, the OSC requested that ICE identify any investigations of individual misconduct that were initiated as a result of the investigative findings in this matter.

II. Information Regarding AUO Claimed for Work Performed at Home

The DHS Office of Inspector General (OIG) and ICE Office of Professional Responsibility (OPR) investigations in response to the allegation referred by the OSC focused on the AUO practices at the Chattanooga sub-office of the ERO New Orleans Field Office. Therefore, this supplemental report addresses the scope of work performed at home and claimed as AUO by employees of that sub-office.

The investigation revealed that employees of the Chattanooga sub-office are generally authorized to claim AUO for fielding duty calls from home. An interview of the Assistant Field Office Director (“AFOD”) that has supervisory oversight of the ERO Chattanooga office, [REDACTED] revealed that all officers who are issued an iPhone or are designated as the duty officer are required to answer and respond to calls that they receive after hours. These duty calls can relate to the impending release of illegal aliens, arrests of illegal aliens, issues involving juveniles, or other issues requiring the immediate attention of the officer. Failure to properly address these calls could potentially result in liability to ICE. Therefore, the investigation

determined that it is a permissible and appropriate use of AUO to respond to after-hours duty calls, where immediate response is necessary under the circumstances.

Due to the nature of the allegation referred by the OSC, the investigators specifically asked Deportation Officer (DO) [REDACTED] about whether he claimed AUO for work performed from home. DO [REDACTED] stated that the work performed at home and claimed as AUO involved fielding duty calls, documenting and responding to emails or phone calls involving juvenile detainee issues, and reviewing and updating a case file associated with a Field Operation Worksheet (FOW). Additionally, DO [REDACTED] stated that on one occasion, after he represented Supervisory Detention and Deportation Officer (SDDO) [REDACTED] during a conference call, he prepared a document that evening at home, based on his notes, in order to brief SDDO [REDACTED] the following work day.

The investigation determined that it generally is a permissible and appropriate use of AUO to respond to after-hours juvenile detainee-related issues. DO [REDACTED] indicated that he is one of two Field Office Juvenile Coordinators (FOJC) in the ERO New Orleans field office. The investigation determined that FOJCs are required to be available to field office personnel to provide immediate operational guidance on juvenile and family apprehensions, which can require further case review to determine custody matters. A FOJC is required to be available to apprehending units or their agencies (e.g., ICE's Homeland Security Investigations or U.S. Customs and Border Protection) that operate outside of regular business hours and assist in the immediate processing of encountered juveniles. It is important to note that ERO is not authorized to maintain custody of juveniles indefinitely, and must secure housing with the Office of Refugee Resettlement within the Department of Health and Human Services within 72 hours of notification of a juvenile taken into custody. Therefore, the FOJC must act quickly in

providing guidance on these matters, in order to ensure that juvenile detainees are transferred to the proper facility in an expeditious manner. Thus, responding to juvenile detainee-related issues from home is generally a proper use of AUO.

DO ██████ indicated that he may not know whether an email received after hours related to an urgent matter requiring immediate response until he opened it, and that he may respond to emails after hours even if an immediate response was not required, given that he had already read the email. The investigation determined that responding to emails regarding non-urgent matters does not generally meet the criteria for AUO, as these matters can be handled the next business day.

The investigation determined that DO ██████ claimed AUO for reviewing and updating a case file associated with a FOW¹ from home. He indicated that at the time he claimed AUO for this particular activity, his belief was that any work conducted after his eight hour shift was AUO. DO ██████ stated that he now has a better understanding of AUO guidelines and has chosen not to work any AUO from home, with the exception of duty calls/juvenile issues.

AFOD ██████ indicated that in certain exigent circumstances, it could be appropriate to claim AUO for hours spent at home updating an FOW. For example, where an officer was conducting surveillance the night before a planned operation, such as the execution of a search or arrest warrant, and observed new vehicles at the location in question, it would be appropriate for the officer to query databases from home in order to determine who might be encountered during the operation the next day. This would be a matter of officer safety requiring immediate

¹ As explained in ICE's October 10, 2014 report, a FOW is required for an operation involving an alien that is not in ICE custody, such as field surveillance or an arrest, and must be signed prior to the operation's occurrence. A FOW allows the officer to document an individual's residence, vehicles, and work location, and allows the officer to maintain notes during surveillance or based on other information garnered during their investigation of an individual. Processing a FOW involves physically checking the address location to ensure validity.

updating of the FOW. However, the investigation did not reveal that DO ██████ reviewed the FOW case file based on exigent circumstances such as these.

The investigation revealed that DO ██████ claimed AUO at home for preparing a document based on notes that he had taken during a conference call in order to brief SDDO ██████ the following workday. This action appears to be administrative in nature, and inconsistent with the purpose of AUO.

III. Investigations of Individual Misconduct

During the course of the investigation, ICE OPR did not discover or develop any additional information that warranted an additional misconduct investigation(s) of individual ICE ERO Chattanooga employees for misuse of AUO. In this case, while the investigation did reveal that employees had claimed AUO for duties that do not meet the regulatory criteria, the investigation did not reveal evidence demonstrating that employees were claiming AUO for hours that they did not work or that they engaged in any other intentional misconduct related to their AUO use. While the investigation revealed AUO practices that were inconsistent with the regulatory criteria, these practices appeared to stem from a misunderstanding of the purpose of AUO, and a lack of updated Agency guidance until 2014. However, as indicated in the Agency's Description of Action Taken or Planned as a Result of the Investigation, the Agency has initiated a variety of measures to ensure that AUO is properly administered by all employees moving forward.