



U.S. OFFICE OF SPECIAL COUNSEL

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**Administratively Uncontrollable Overtime
Case Summary**

Anonymous; OSC File No. DI-14-1637

**Immigration and Customs Enforcement, Enforcement and Removal Operations
Bakersfield, California**

The whistleblower, who has requested anonymity, disclosed that employees at the Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO) in Bakersfield, California engaged in conduct that may constitute violations of law, rule, or regulation; gross mismanagement; a gross waste of funds; and an abuse of authority. Specifically, the whistleblower alleged that employees claimed, and management approved, Administratively Uncontrollable Overtime (AUO) on a daily basis but failed to perform duties that qualified for AUO under the governing laws and regulations. *See* 5 C.F.R. § 150.151-154. On March 21, 2014, OSC referred these allegations to Secretary of Homeland Security Jeh Charles Johnson to conduct an investigation pursuant to 5 U.S.C. § 1213(c) and (d). On November 21, 2014, OSC requested a supplemental report to address, among other things, whether any individual misconduct was identified or investigated.

Secretary Johnson tasked ICE's Office of Professional Responsibility (OPR) with investigating the whistleblower's allegations, and designated ICE Deputy Director Daniel H. Ragsdale the authority to review and sign the reports submitted to OSC. The initial agency report was submitted on October 3, 2014, and the supplemental agency report on February 11, 2015. Pursuant to 5 U.S.C. § 1213(e)(1), the whistleblower provided comments on the agency reports.

The agency investigation substantiated the allegation that ERO employees claim AUO but fail to perform qualifying duties, finding 84% of the reviewed AUO justifications insufficient. The report substantiated that employees claimed AUO while performing pre-planned or administratively controllable work inconsistent with AUO regulations. For example, the report indicated that employees claimed AUO during training or while processing paperwork. While the agency report did not substantiate management knowingly approving improper AUO, the report attributed this problem to management's insufficient scrutiny of AUO forms, lack of AUO use and approval training, and minimal updated agency guidance.

In the supplemental report, the agency stated that AUO practices inconsistent with regulatory criteria stemmed from misunderstandings and insufficient training rather than intentional misconduct. The agency initiated a variety of measures to ensure AUO is properly

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administered. This corrective action plan includes updated guidance for employees and managers, training, and updated forms to record AUO with detailed justifications.

According to the comments, upon reading media reports about Customs and Border Protection's AUO abuse, the whistleblower was concerned that ICE was not part of ongoing AUO investigations. Thus, the whistleblower was motivated to highlight AUO irregularities observed at ICE over many years of service. While expressing satisfaction with OPR's investigation and hope that the corrective actions will result in change, the whistleblower noted that it is unacceptable for management to claim ignorance and reliance on faulty past practices related to AUO at the expense of taxpayer dollars. Thus, the whistleblower believes that management should have been more vigilant in their AUO administration.