



U.S. Immigration  
and Customs  
Enforcement

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-14-1637

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 the Office of Special Counsel (OSC) File No. DI-14-1637. On October 3, 2014, ICE submitted the initial report containing its investigative findings. On November 21, 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 5 U.S.C. § 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 the OSC retain ICE's FOUO markings and convey the sensitivities of the identifiable information contained in the report.

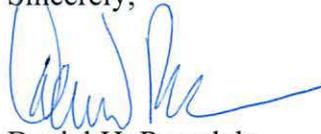
The second version of the report has been redacted to eliminate references to privacy-protected information and is suitable for release in accordance with the Freedom of Information Act (FOIA), 5 U.S.C. § 552. ICE has redacted the names and positions of law enforcement officers pursuant to FOIA exemptions (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.

*For Official Use Only (FOUO)*

Supplemental Report for OSC File No. DI-14-1637

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

Sincerely,



Daniel H. Ragsdale  
Deputy Director

Enclosures

Cc: Chief Human Capital Officer  
Principal Deputy General Counsel

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

On November 21, 2014, the Office of Special Counsel (OSC) submitted a request to the U.S. Immigration and Customs Enforcement (ICE) for a supplemental report regarding the OSC File No. DI-14-1637. The OSC requested: (1) a revised cover letter stating that Deputy Director Daniel Ragsdale had been delegated authority to review and sign the report; (2) whether ICE's Office of Enforcement and Removal Operations (ERO) office in Bakersfield, California (ERO Bakersfield), uses the G-1012 form to record Administratively Uncontrollable Overtime (AUO) hours and, if not, the basis for the use of the alternate form; (3) identifying information of employees as opposed to referring to them only by titles; (4) identifying information of employees whose hours claimed in WebTA exceeded the number of hours claimed on their AUO form and the factual bases for determining that these discrepancies were not instances of misconduct; (5) whether ERO Bakersfield management's understanding of "mission critical tasks" or tasks that qualified for AUO changed after receipt of February 2014 guidance from ERO Headquarters; and (6) whether ERO Bakersfield management received information indicating a possible audit of AUO forms and, if so, who and when did that individual become aware of that information.

**II. ERO Bakersfield Uses the G-1012 Form to Record AUO**

In its request for a supplemental report, the OSC requested that the report indicate whether ERO Bakersfield uses the G-1012 form to record AUO hours and, if not, to identify and provide the form and the basis for the use of this form instead of form G-1012 to officially record, track, and approve AUO hours. Based on its investigation, the ICE Office of

Professional Responsibility (OPR) determined that ERO Bakersfield does use the G-1012 form to record, track, and approve AUO hours and not another form.

**III. Identifying Information of Employees as Opposed to Referring to Them Only By Titles**

In its request for a supplemental report, the OSC requested that the report include identifying information about the employees as opposed to referencing titles or the number of employees who engaged in the activity mentioned (e.g., “IEA,” “one employee,” or “three employees”). The OSC listed specific references to employees in the report for whom the information was requested. The relevant portions of the original report are set forth below, with the requested identifying information:

[Page 8]: OPR also found AUO justifications were repetitive in nature; 31 of the 37 subjects reviewed used a repetitive justification 30 or more times. For example, five employees (Immigration Enforcement Agent (IEA) [REDACTED] IEA [REDACTED] IEA [REDACTED] and IEA [REDACTED] used the phrase “IEA duties” which together combined 266 times out of a 538 total instances (49 percent) of AUO claimed by these employees. IEA [REDACTED] used “transportation” as a sole justification 56 times out of 58 instances of total AUO claims. IEA [REDACTED] used the phrase “processed detainee paperwork” as a sole justification 53 times out of 104 instances (51 percent) of total AUO claims.

[Page 8-9]: The average AUO hours worked for each of the ERO Bakersfield employees was over 210 hours for the 6 months examined (over 7,784 hours total among the 37 subjects whose records were reviewed). The least amount of AUO worked by any individual subject during this period was 69 hours (IEA [REDACTED] while the greatest was 281 hours (Deportation Officer (DO) [REDACTED]

**IV. Employees Whose Hours Claimed in WebTA Exceeded the Number of Hours Claimed on their AUO Form**

As explained in ICE’s original report, dated October 3, 2014, in response to the OSC’s referral of allegations, OPR reviewed AUO forms and WebTA certified Time and Attendance records for 37 employees in ERO Bakersfield for a period of 14 pay periods. In its request for a

supplemental report, the OSC requested that the report identify the three employees whose hours claimed in WebTA exceeded the number of hours claimed on their AUO form. Furthermore, the OSC requested the factual bases for determining that these accounting discrepancies were not instances of misconduct possibly warranting further investigation and/or disciplinary action. The relevant portion of the original report is set forth below with the requested identifying information:

[Page 9]: In three instances, AUO hours claimed in WebTA exceeded the number of hours claimed on the employee's AUO form. DO [REDACTED] claimed a total of five more AUO hours in WebTA than what was claimed on the AUO form. Supervisory Deportation and Deportation Officer (SDDO) [REDACTED] [REDACTED] claimed a total of one and a half more AUO hours in WebTA than what was claimed on the AUO form. Assistant Field Office Director (AFOD) [REDACTED] [REDACTED] claimed a total of 15 more minutes in WebTA than what was claimed on the AUO form.

Based only on a review of the documentation, OPR obtained no evidence to support that the three instances where the employees claimed more AUO hours in WebTA than what was claimed on the AUO forms were anything but administrative errors.

In the instance that involved DO [REDACTED] she claimed 5 hours of AUO for November 29, 2013, in WebTA but failed to total the number of hours that she had worked on that day (5 hours) in the correct cell on the corresponding AUO form. Nevertheless, DO [REDACTED] did document on the AUO form that she worked AUO hours from "1230" to "1730." Once again, only the total of hours worked on that day was missing from the correct cell on the AUO form but the actual period worked was present on the AUO form. Furthermore, the total number of AUO hours worked for the entire pay period matched in WebTA and on the AUO form (18 total hours). As such, OPR did not obtain information to support that these accounting discrepancies were instances of misconduct possibly warranting further investigation and/or referral for disciplinary action.

In the instance that involved SDDO [REDACTED] he claimed 2 hours of AUO for January 28, 2014, in WebTA but only claimed 1.5 hour of AUO for that same day on the corresponding AUO form. In that same pay period, he also claimed 2 hours of AUO for February 7, 2014, in WebTA but only claimed 1 hour of AUO for that same day on the corresponding AUO form. OPR reviewed the employee's G-1012s and WebTAs submitted during the period in review and found no other similar discrepancies. OPR did not obtain any information to support that these two discrepancies in one pay period were anything more than an administrative error where the employee simply entered the incorrect information inadvertently. Based on the small amount and number of discrepancies, OPR did not obtain information to support that these accounting discrepancies were instances of misconduct possibly warranting further investigation and/or referral for disciplinary action.

In the instance, that involved AFOD [REDACTED] he claimed 2.25 hours of AUO for February 6, 2014, in WebTA but only claimed 2 hours of AUO on the corresponding AUO form for that same day, which was his last workday of the pay period. The total number of AUO hours claimed on WebTA was 17:15 hours. The total number of hours typed into the AUO form was 17; however, there was a handwritten “.15” inserted next to the typewritten total. Based on OPR finding no other similar discrepancies in the employee's G-1012s and WebTAs submitted during the period in review, OPR did not obtain any information to support that this one 0.25-hour discrepancy in one pay period was anything more than an inadvertent administrative error. As such, OPR did not obtain information to support that this discrepancy was an instance of misconduct possibly warranting further investigation and/or disciplinary action.

**V. ERO Bakersfield Management’s Understanding of “Mission Critical Tasks” Did Not Change**

In its request for a supplemental report, the OSC requested that the report explain if ERO Bakersfield management’s understanding of “mission critical tasks” or tasks that qualified for AUO changed after receipt of February 2014 guidance from ERO Headquarters. Prior to the February 2014 guidance on AUO, there was minimal updated guidance from ERO Headquarters related to the use, approval, and documentation of valid justifications for AUO qualified work. The February 2014 guidance explained which positions would be decertified from eligibility for AUO (e.g., full-time training instructors) and the criteria necessary for a position to be eligible for AUO. ERO Bakersfield management indicated during follow-up interviews that the February 2014 guidance did not define what would be a “mission critical task” and, as such, their understanding of what constituted a mission critical task did not change because of that guidance.

**VI. ERO Bakersfield Management Received No Information Indicating a Possible Audit of AUO Forms**

In its request for a supplemental report, the OSC requested that the report explain if ERO Bakersfield management ever received any information indicating a possible audit of AUO forms and, if so, to identify who and when the individual became aware of this information. OPR specifically asked each manager if they had received any notification that AUO forms would be audited in the future and all managers denied receiving any such information or notification.