



**U.S. Customs and  
Border Protection**

Commissioner

Carolyn N. Lerner  
Special Counsel  
Office of Special Counsel  
1730 M Street, Suite 300  
Washington, D.C. 20036-4505

Re: OSC File No. DI-14-3479

Dear Ms. Lerner:

The enclosed report is in response to your referral of allegations that an employee assigned to the Department of Homeland Security (DHS), U.S. Customs and Border Protection (CBP), U.S. Border Patrol, McAllen Texas Station, McAllen, Texas, engaged in conduct that may constitute violations of law, rule, or regulation, gross mismanagement, and an abuse of authority. The Office of Special Counsel (OSC) received the allegations from Carlos Gonzalez, a Mission Support Analyst (MSA) at the McAllen Texas Station, who alleged that Field Technology Officer (FTO) Jefferson Sutton has consistently falsified his time sheets by claiming 80 hours of work per pay period when he worked considerably less than that; misused government supplies and equipment by printing large quantities of personal photos on a government printer; and, despite management's knowledge of FTO Sutton's behavior, they have failed to correct it. Additionally, MSA Gonzalez alleged that FTO Sutton assaulted him. I am the designated official responsible for providing your office with the Department's report pursuant to 5 U.S.C. § 1213.

On July 29, 2014, OSC referred the above allegations and a request for an investigation to DHS Secretary Jeh Johnson. CBP's Office of Internal Affairs (OIA) received these allegations on August 1, 2014. The investigation was completed on November 24, 2014, and revealed that FTO Sutton works an alternative work schedule, episodic telework, and at offsite locations, which account for his intermittent appearances at the office. Additionally, FTO Sutton had a limited number of non-work related pictures on his computer's hard drive, which he infrequently printed on his government printer. Use of the government computer and printer for non-work related Internet searches was limited and within the bounds of the CBP Rules of Behavior. Furthermore, MSA Gonzalez and FTO Sutton's supervisor, Area Manager (AM) Jeffrey Girven, relocated FTO Sutton to alleviate friction between the employees. Finally, there was insufficient evidence to determine whether FTO Sutton assaulted MSA Gonzalez.

The findings are included in the enclosed report. Copies of this report, along with all supporting documentation, were referred to the Office of Information and Technology (OIT) and the Office of Human Resources Management (HRM) for review of internal controls and any potential corrective action deemed appropriate. OIT, in collaboration with HRM, determined the above allegations to be unsubstantiated and internal controls are consistent with CBP policies.

If you require further information regarding this matter, please contact Philip Carpio in the Office of Chief Counsel at 202-344-2940.

Sincerely,



R. Gil Kerlikowske  
Commissioner  
U.S. Customs and Border Protection

Enclosures

cc: Secretary, Department of Homeland Security  
Deputy Secretary, Department of Homeland Security  
Chief Human Capital Officer, Department of Homeland Security  
General Counsel, Department of Homeland Security

## **I. SUMMARY OF THE INFORMATION WHICH FORMED THE BASIS FOR THE INVESTIGATION**

U.S. Customs and Border Protection (CBP) Mission Support Assistant (MSA) Carlos Gonzalez alleged to the U.S. Office of Special Counsel (OSC) that CBP Field Technology Officer (FTO) Jefferson Sutton consistently falsifies his timesheets and misuses government supplies and equipment by printing large quantities of personal photos on the government printer. MSA Gonzalez also alleged that he informed CBP management of FTO Sutton's misconduct and it failed to correct FTO Sutton's misconduct.

On July 29, 2014, OSC referred these allegations and a request for investigation to U.S. Department of Homeland Security Secretary Jeh Johnson. On August 1, 2014, the matter was assigned to CBP's Office of Internal Affairs (IA) for investigation.

## **II. DESCRIPTION OF THE CONDUCT OF THE INVESTIGATION**

### ***Interview of the Complainant***

In accordance with OSC policy, MSA Gonzalez was interviewed at the beginning of the investigation on August 4, 2014, and was asked to provide additional information and an explanation of his allegations.

At the time of the events under investigation, MSA Gonzalez was responsible for certifying time and attendance records for FTO Sutton. Additionally, he and FTO Sutton were co-located in the same room where, according to MSA Gonzalez, he was in a position to observe FTO Sutton throughout the day.

MSA Gonzalez initially made three allegations regarding FTO Sutton's alleged submission of fraudulent timesheets and misuse government equipment, and a fourth allegation of CBP management's alleged failure to correct FTO Sutton's behavior after it was notified of his misconduct. On August 12, 2014, MSA Gonzalez made a fifth allegation that FTO Sutton assaulted him in the hallway of their office by pushing him against the wall with his shoulder. MSA Gonzalez was interviewed for a second time on September 11, 2014, to provide additional information regarding the alleged assault.

***Allegation 1:*** FTO Sutton consistently falsifies his timesheets by reporting that he works 80 hours per pay period when he works an average of 52 hours per pay period.

**Allegation 2:** FTO Sutton misuses government supplies and equipment by printing large quantities of color personal photos on a government printer.

**Allegation 3:** FTO Sutton spends nearly his entire tour of duty surfing the internet, chatting with coworkers, and updating his personal blog about cigars and college football.

**Allegation 4:** When MSA Gonzalez informed Area Manager (AM) Jeffrey Girven of FTO Sutton's misconduct, AM Girven failed to stop it.

**Allegation 5:** FTO Sutton assaulted MSA Gonzalez in the hallway of their office by pushing him against the wall with his shoulder.

MSA Gonzalez stated that at one time he kept a log of FTO Sutton's arrival to and departure from the office. He estimated that FTO Sutton spent an average of 52 out of 80 hours at work per pay period. MSA Gonzalez arrived at this estimate based upon his observations that FTO Sutton arrived to work two hours late every morning, took extended lunches of two to three hours, and left work one to three hours early every day. After observing FTO Sutton's behavior at work for many months, he reported the alleged misconduct to his own supervisor, AM Girven. According to MSA Gonzalez, AM Girven directed him not to track FTO Sutton's arrival and departure from the office and told him to "grow up" and "be an adult." MSA Gonzalez was appalled and outraged by AM Girven's response. He advised that FTO Sutton's attendance did not improve following his report to AM Girven.

MSA Gonzalez was asked to provide specific examples and dates of when he observed FTO Sutton arriving to work late or leaving work early. MSA Gonzalez provided one example for July 25, 2014, on which FTO Sutton did not report for work nor submit a leave request for that day. MSA Gonzalez initially refused to certify FTO Sutton's timecard for that pay period because he believed it to be fraudulent without an approved leave request for July 25, 2014. Eventually, he certified the timecard without an approved leave request at AM Girven's direction.

After having an opportunity to review the log he kept on FTO Sutton, MSA Gonzalez provided the following additional dates and specific examples of FTO Sutton's alleged time and attendance abuse:

April 23, 2014, reported to work at 10:00 a.m. (three hours late)  
April 24, 2014, reported to work at 8:30 a.m. (one and one-half hours late)  
April 28, 2014, reported to work at 8:30 a.m. (one and one-half hours late)  
April 29, 2014, reported to work at 8:20 a.m. (approximately one and one-half hours late)

MSA Gonzalez said he would have kept a daily log of FTO Sutton's time and attendance, but he was directed not to do so by AM Girven. MSA Gonzalez said it was not unusual for FTO Sutton to "pick up and leave" the compound any time of the day and fail to report it. He opined that FTO Sutton did as he pleased and FTO Sutton told him to mind his own business when he questioned FTO Sutton about his time and attendance. MSA Gonzalez advised that he has been told in the past that he could not leave the compound without requesting permission from a supervisor. He told FTO Sutton that in his 17 years of government service, he (MSA Gonzalez) has never disobeyed an order. MSA Gonzalez said there are three supervisors in the building where he and FTO Sutton are located, and none of them have ever questioned FTO Sutton about his time and attendance.

According to MSA Gonzalez, FTO Sutton is an amateur photographer and uses a government printer to print many color personal photos. MSA Gonzalez does not know how many personal pictures FTO Sutton has printed on the government printer, but he has seen FTO Sutton's portfolio of personal pictures that he keeps in a three ring binder at work. MSA Gonzalez does not know how many pictures are in the binder, and he is uncertain whether those pictures were printed on the government printer, but he assumes that they were. MSA Gonzalez has not actually seen FTO Sutton print any pictures on the government printer, but he has heard the printer running for hours at a time and witnessed FTO Sutton run out of paper. MSA Gonzalez knows that FTO Sutton has used at least two printer ink cartridges and at least one ream of paper from printing what he believes were personal pictures. MSA Gonzalez said the government color printer was directly behind FTO Sutton's desk, and MSA Gonzalez could not see what was being printed on it. MSA Gonzalez stated that he never walked over to the printer and looked at what was being printed because he believed he had no reason to do so. MSA Gonzalez reported the misuse of government equipment to his supervisor, AM Girven, who allegedly did nothing about it.

MSA Gonzalez alleged that FTO Sutton spends nearly his entire day surfing the internet, chatting with coworkers, and updating his personal blog about cigars and college football. MSA Gonzalez said he knew that FTO Sutton was spending so much time on his blog at work because FTO Sutton has asked FTO Fred Suhr to bring in college football paraphernalia, such as a football helmet and jersey so that FTO Sutton

could use the items when photographing the models for his blog. MSA Gonzalez advised that FTO Sutton never showed him his blog and he never saw the blog on FTO Sutton's computer screen. MSA Gonzalez further advised that he could not see FTO Sutton's computer screen from his desk, nor was he aware of what FTO Sutton was doing on the computer.

MSA Gonzalez alleged that on August 12, 2014, he was assaulted by FTO Sutton. MSA Gonzalez said he opened the hallway door leading to the men's bathroom to wash his hands, and encountered FTO Sutton walking toward him. Rather than allow MSA Gonzalez to enter the bathroom, FTO Sutton veered into his path and wedged his left shoulder into the left side of MSA Gonzalez' chest, thereby pushing him backwards into the bathroom door jam. MSA Gonzalez said that FTO Sutton proceeded to enter his office and turned to face him as MSA Gonzalez asked the reason that he would do such a thing, and then reminded him they were at work and that type of behavior would not be tolerated. MSA Gonzalez said that FTO Sutton smiled and sarcastically responded, "So what? We just had a little bumping incident." MSA Gonzalez said he quickly corrected FTO Sutton and advised him that he (FTO Sutton) was the instigator of the physical encounter. MSA Gonzalez recalled that FTO Fred Suhr was on the telephone and asked them to "take it outside" if they were going to continue the argument. MSA Gonzalez said he quickly reminded FTO Sutton of the case against him and that he was going to contact IA and OSC. MSA Gonzalez said that FTO Sutton thought about it for a moment, then left the office and went to AM Girven's office.

MSA Gonzalez felt injured, but not from the assault. The injury was from the verbal altercation that followed the assault. MSA Gonzalez explained that while he was not yelling, he was upset and his voice was raised. He alleged that the excessive use of his jaw from arguing with FTO Sutton aggravated his existing sutures from maxillofacial surgery he had on August 1, 2014. MSA Gonzalez did not seek medical attention, but instead took sick leave for the rest of that day to recover from the incident. The next day, August 13, 2014, MSA Gonzalez filed a police report with the McAllen Police Department, alleging that FTO Sutton assaulted him at work.

### ***Method of Investigation***

IA Special Agents seized the hard drive from FTO Sutton's government computer on August 5, 2014, and conducted a forensic examination. Specifically, IA documented all non-work-related pictures and all access related to FTO Sutton's blog: [www.cigarsmokinfootball.com](http://www.cigarsmokinfootball.com). IA Special Agents examined [www.cigarsmokinfootball.com](http://www.cigarsmokinfootball.com) for all entries made between January and August 2014.

IA Special Agents also interviewed FTO Sutton, AM Girven, coordinated with the McAllen Police Department, and interviewed potential witnesses to the alleged assault.

### **III. SUMMARY OF EVIDENCE OBTAINED FROM THE INVESTIGATION**

#### ***Forensic Examination of FTO Sutton's Government Computer Hard Drive***

The forensic examination of FTO Sutton's government computer hard drive revealed that the user's profile was created on January 14, 2014. The forensic examination did not reveal any violations of CBP Information Technology Security Awareness or Rules of Behavior. The forensic examination revealed nine instances when FTO Sutton accessed the webpage [www.cigarsmokinfootball.com](http://www.cigarsmokinfootball.com) between January 14 and August 5, 2014; however, the amount of evidence related to the internet site led the examiner to conclude that FTO Sutton did not violate the CBP Rules of Behavior. The dates FTO Sutton accessed the blog from his government computer were April 17 (multiple times), April 21, May 23, July 14, and July 22, 2014.

The computer forensic examination revealed eight pictures that appeared to be non-work-related; however, the examiner concluded that none of the pictures located on the hard drive violated the CBP Rules of Behavior.

#### ***Examination of the Blog [www.cigarsmokinfootball.com](http://www.cigarsmokinfootball.com)***

An examination of [www.cigarsmokinfootball.com](http://www.cigarsmokinfootball.com) revealed that from January 14 to August 5, 2014, there was only one blog entry regarding college football, uploaded on Sunday June 15, 2014, and three blog entries regarding cigars, uploaded on Saturday August 2, 2014.

#### ***Interview of Field Technology Officer Jefferson Sutton***

FTO Sutton denied that he ever claimed on his timesheet that he worked when he did not. FTO Sutton has been approved for an Alternate Work Schedule (AWS), meaning that he works nine hour days with every other Friday as a regular day off, and he has also been approved for telework. According to FTO Sutton, he has worked from home before, and he often arrives at the office later than his start time because he started his work day at an off-site location, such as one of the Aerostat Sites or one of the various Border Patrol Stations in Falfurrias, Weslaco, Rio Grande City, Harlingen, Brownsville, or Sector Headquarters. FTO Sutton said he sometimes leaves the office before the end of the work day to work at off-site locations, and sometimes he visits off-site

locations in the middle of the day before, during, or after lunch. FTO Sutton indicated that his supervisor, AM Girven, knows where he is at all times during the work week.

FTO Sutton was questioned on his whereabouts on the days furnished by MSA Gonzalez:

FTO Sutton explained that July 25, 2014, was his AWS regular day off.

FTO Sutton did not remember the reason he was late on April 23, 2014, but he provided an email he sent from his personal email account at 8:01 a.m. to AM Girven and Supervisory FTO Roger McQueen stating, "I will be coming into the office a bit late today, around 10:00 am." FTO Sutton said he has an understanding with AM Girven that if he arrives late, he can adjust his schedule to make up the time, rather than take leave. He indicated that it does not happen very often, but when it does, he notifies AM Girven to discuss when he will make up the time. FTO Sutton said that it happens so infrequently that he does not adjust his schedule in COSS, but instead handles it unofficially.

FTO Sutton said that on the morning of April 24, 2014, he was working at an Aerostat site in Falfurrias, TX, discussing training issues. FTO Sutton said it was normal for him to drive directly from his house to the Aerostat site instead of going to the office first and leaving from there. He said that was a common activity among all of the FTOs and he always made sure that AM Girven knew where he was and what he was doing.

FTO Sutton did not specifically remember the mornings of April 28 and 29, 2014; however, he advised that during that timeframe, he was working with CBP counsel in D.C. as they prepared to defend a complaint brought by his former employee. He said it was a sensitive case and because he did not have a private office, he worked out an arrangement with AM Girven to conduct the calls with CBP counsel from home before coming to work. He also kept all his files pertaining to the case at home, and with AM Girven's permission, he worked on answering written questions prepared by opposing counsel at home in the mornings. FTO Sutton said that he was approved for episodic telework for this reason and it was normal during that timeframe to arrive at work about 8:30 a.m. after speaking with CBP counsel at home or working on responses to their questions.

FTO Sutton is an amateur photographer and he occasionally conducts photo shoots with female models wearing college football gear and paraphernalia for [www.cigarsmokinfootball.com](http://www.cigarsmokinfootball.com). FTO Sutton admitted that has a three ring binder/portfolio with his personal pictures in it, denied that he keeps the portfolio at

work, but admits that he has brought it to work to show coworkers. FTO Sutton stated that all of the pictures in his portfolio were printed at the studio where he performs his photo shoots, or at home on his personal printer. He denied that any of the pictures in his portfolio were printed on the government printer at work.

FTO Sutton admitted that he had printed a few personal pictures at work, but stated that he was under the impression that his use fell within the guidelines of the CBP Rules of Behavior. FTO Sutton estimated that he has printed several hundred work-related pictures for various agency reports and projects that he is responsible for. IA Special Agents reviewed with FTO Sutton all eight of the non-work related pictures found on his government computer hard drive and FTO Sutton admitted to printing some of them, but he was uncertain about the others.

The eight non-work-related pictures included one close-up photo of a female model laying on the ground wearing a football jersey. FTO Sutton said he did not take the picture, but he liked it and he wanted to do something similar during an upcoming photo shoot for his blog. He admitted printing the picture at work and using it to show the model his idea for the photo shoot. FTO Sutton said he thinks he also showed the picture to MSA Gonzalez. The other seven non-work-related pictures were either related to movies or an artist's rendering of the Greek Goddess of Wind, which he uses as the screen saver on his government computer.

FTO Sutton noted that when he worked in the same room with MSA Gonzalez, the color printer was located directly behind his (FTO Sutton's) desk in the corner of the room. He said that MSA Gonzalez could not have seen what was printing unless he showed him, though he often showed MSA Gonzalez pictures he printed, both work-related and personal.

FTO Sutton admitted that he has accessed his blog from his government computer to show his coworkers, but denied that he uploaded any content or worked on his blog from his government computer. He admitted to chatting with his coworkers for professional and personal reasons, and maintained that he does not spend any more time surfing the internet than anyone else. He considered his personal use of the government computer to be within the guidelines of the CBP Rules of Behavior.

FTO Sutton explained that when he was located in the same office as MSA Gonzalez, his (FTO Sutton's) desk was in the corner of the room and his computer monitor was angled toward the corner of the room. He noted that it would have been impossible for MSA Gonzalez to see what was on his computer screen unless MSA Gonzalez was standing directly behind his chair in the corner of the room. FTO Sutton indicated that

after he moved to a different office in the same building in April 2014, MSA Gonzalez rarely, if ever, came into that room.

FTO Sutton said that on the morning of August 12, 2014, he was working on wiping hard drives when he encountered a problem with the laptop that FTO Suhr had provided him. He walked to FTO Suhr's office, which is in the same room as MSA Gonzalez. As he was walking in the hallway, and just before he reached the door, MSA Gonzalez came through the doorway. FTO Sutton said they were very close to each other, walking in opposite directions, when their shoulders brushed/bumped as they passed one another. FTO Sutton turned to MSA Gonzalez and said, "excuse me" and MSA Gonzalez immediately made a "big production" and accused FTO Sutton of purposely bumping him on the shoulder, yelling, "You better watch it!"

FTO Sutton said he replied, "I said 'excuse me'" but MSA Gonzalez yelled as he took two steps forward, pointed his finger at FTO Sutton and said, "You hit me. You better not ever do that to me again!" FTO Sutton said he replied, "Carlos, we brushed shoulders, it's no big deal." and then spread his arms to the side with his palms open to indicate no confrontation. FTO Sutton said MSA Gonzalez was still leaning forward and began ranting, "You fucking hit me! You asshole! Don't you ever do that again!" FTO Sutton said he replied, "Or what?" and then FTO Suhr yelled "Stop it! I'm on the phone." He said MSA Gonzalez turned and walked into the bathroom but left the door open and continued to yell, "That's just another thing for me to add to IA. I'm going to let Internal Affairs know that you are bullying me." FTO Sutton said he left the office, walked to AM Girven's office, and with other supervisors present as witnesses, he informed AM Girven of what had occurred.

FTO Sutton said that not until after the event did he think that MSA Gonzalez orchestrated the encounter and planned to bump shoulders with him so that he could have something to report about him to IA. FTO Sutton said he saw MSA Gonzalez standing in the doorway when he (FTO Sutton) was halfway down the hallway, and the bathroom door is only about 2.5 steps from the doorway where MSA Gonzalez was standing. FTO Sutton said he was moving slowly because he was in pain from his recent back injury and there was no reason MSA Gonzalez would have remained standing in the doorway or hallway by the time he (FTO Sutton) reached him unless MSA Gonzalez was waiting for him. FTO Sutton said he thought nothing of it at the time, but after MSA Gonzalez' accusation that he assaulted him, he thinks MSA Gonzalez planned the encounter.

FTO Sutton said he had hurt his lower back and had taken sick leave the previous Tuesday through Friday because of his pain. He came to work that Monday, but he was

only able to walk short distances without pain. FTO Sutton said if he had done anything more than just brush shoulders with MSA Gonzalez, he would have been on the ground in extreme pain. He said he could not have hit MSA Gonzalez with his shoulder the way MSA Gonzalez described it because of his pain.

FTO Sutton does not know the reason MSA Gonzalez would make up the alleged assault other than that MSA Gonzalez may have a vendetta against him. FTO Sutton said he never put his shoulder into MSA Gonzalez's chest and never pushed him at all because doing so would have caused him (FTO Sutton) significant back pain. FTO Sutton said their shoulders only brushed each other and it was not hard enough to knock MSA Gonzalez into the door jamb as he alleged.

After MSA Gonzalez's complaint against him, FTO Sutton was moved to Sector Headquarters. There, he was visited by a McAllen police officer and he gave the officer a statement in the presence of AM Girven. FTO Sutton said he also provided a statement to a Municipal Court investigator on September 5, 2014, and he provided the same testimony that he provided to the McAllen police officer. FTO Sutton said the investigator apologized to him for having to provide a statement and said that he (the investigator) had to send the statement to a local prosecutor for a decision on whether to prosecute. The investigator told FTO Sutton that he thought the case was ridiculous and he would tell the prosecutor the same. FTO Sutton said the investigator called him back on September 9, 2014, and told him that the prosecutor had declined the charges. The investigator also told FTO Sutton that the prosecutor asked him what he thought of the allegation and the investigator told the prosecutor that it was ridiculous.

### ***Interview of Area Manager Jeffrey Girven***

AM Girven said he has no reason to believe that FTO Sutton is not working during his duty day and that numerous instances require FTO Sutton to report for duty at locations other than the "Annex" where MSA Gonzalez is stationed. AM Girven explained that all FTOs and Technicians at one point or another have reported to offsite locations such as the Weslaco Border Patrol Station, the McAllen Processing Center, or the Aerostat Sites. AM Girven further explained that FTO Sutton is responsible for two ongoing projects at the Weslaco Border Patrol Station which require him to be on-site for prerequisite work and to be on-site whenever the vendor is present at the Station. AM Girven said that FTO Sutton is also on the detail roster for work at the McAllen Placement Center which necessitates that Field Support Staff be available at shift changes around the clock.

AM Girven confirmed that FTO Sutton works an alternate work schedule with every other Friday as a regular day off. AM Girven advised that FTO Sutton has also been approved for episodic telework because he participates in conference calls with CBP attorneys in a case involving his former office. Because sensitive matters are discussed during the conference calls, he approved FTO Sutton to work at an alternate work location for these conference calls since he does not have a private office at the Annex.

AM Girven confirmed that July 25, 2014, was FTO Sutton's regular day off.

AM Girven recalled the incident when FTO Sutton was late to work on April 23, 2014, and he confirmed that he does allow his employees to adjust their schedule to make up the time instead of requesting leave, on a case-by-case basis. He noted that this happens very infrequently and to his recollection FTO Sutton has not requested to adjust his schedule since April 23, 2014. AM Girven said because adjustments are so infrequent and are handled on a case-by-case basis, he allows employees to adjust their schedule without making the change in COSS.

AM Girven denied knowledge of FTO Sutton printing personal pictures on the government printer; however, he said he requests many documents from technicians, including FTO Sutton, that have photo documentation, including, but not limited to, executive summaries for the Aerostat program, the Vendor Circuit ingress to the CBP campus, and weather damage to sites. A large amount of printed photos are required for the reports.

After MSA Gonzalez made his allegations of time and attendance fraud against FTO Sutton, AM Girven spoke with both employees about the perception that they had of each other. After speaking with both employees, it seemed there was no possibility that they could reside in the same office together. MSA Gonzalez told AM Girven that FTO Sutton was too loud and he could not get his work done. AM Girven asked FTO Sutton whether he was willing to relocate to another part of the building and he agreed. AM Girven explained to MSA Gonzalez that work assignments, locations, and completion of those assignments involving other employees are not his concern. AM Girven admitted telling MSA Gonzalez to "grow up" and "be an adult."

AM Girven said he has assigned many tasks to FTO Sutton that have been completed on time, and a number of those tasks are outside the normal FTO duties. Many of the tasks have internet searches associated with them, including, but not limited to, researching amplifiers for MiFi devices, cable internet providers, and machinery work for communications tower additions. One of the projects FTO Sutton worked on related to communications shortfalls at the Aerostat sites resulted in a team award

recommendation to the Joint Award Committee for the 2<sup>nd</sup> Quarter of fiscal year 2014. AM Girven has never personally observed FTO Sutton on his blog at work.

AM Girven advised that MSA Gonzalez and FTO Sutton do not get along and have had several disputes over locked office doors and email exchanges. He said that separating them was the most efficient approach to resolve their disputes because their duties are not intertwined. Because MSA Gonzalez alleged that FTO Sutton assaulted him in the hallway, FTO Sutton agreed to voluntarily relocate his work location to Rio Grande Valley Sector Headquarters.

### ***McAllen Police Department Investigation of the Alleged Assault***

McAllen Police Department conducted an independent investigation into the alleged assault of MSA Gonzalez by FTO Sutton and referred it for a prosecutorial decision on September 9, 2014. The Municipal Court prosecutor declined to file any charges against FTO Sutton.

### ***IA Interviews of Potential Witnesses to the Alleged Assault***

IA Special Agents did not locate any witnesses to the alleged assault. FTO Suhr, whose desk was in the same room as MSA Gonzalez, was on the phone when the alleged assault occurred. He did not see any physical contact between MSA Gonzalez and FTO Sutton. Rather, he only heard their verbal argument following the incident. Maurine Ramirez, who provides contract cleaning services in the office, was tying trash bags at the end of the hallway when the alleged assault happened. She did not see any physical contact between MSA Gonzalez and FTO Sutton. She heard the verbal argument that followed and she quickly left the area because she was scared.

## **IV. INVESTIGATIVE FINDINGS**

### ***Allegation 1: FTO Sutton consistently falsifies his timesheets***

The evidence does not support the allegation that FTO Sutton consistently falsifies his timesheets. When IA Special Agents interviewed MSA Gonzalez, he stated that other FTOs who work in the office with him also arrive at work later than their official start time or leave early from work and never submit a leave request. However, he never questioned the other FTOs about where they are or if they were working, and he has never alleged that they submitted fraudulent timesheets to his supervisor. MSA Gonzalez stated that he did not know that FTO Sutton had been approved for episodic telework and he had never heard the term “episodic” before. He also acknowledged

that he did not know AM Girven had authorized FTO Sutton to work from home regarding a pending lawsuit against CBP where he was a witness. MSA Gonzalez said he had no idea that FTO Sutton was authorized to report directly to an offsite location versus coming into the office first, and he had no idea that he was authorized to leave the office early to visit offsite locations on his way home. When MSA Gonzalez was asked the reason he believed that FTO Sutton blatantly disregarded his official schedule and other FTOs did not, he responded, "Everyday Mr. Sutton would show up around 9 a.m., yawning, carrying a Mountain Dew and whatever he picked up from breakfast, and gave me the impression he came directly from home. He often mentioned that he couldn't sleep at night and I assumed that he slept in."

FTO Sutton provided reasonable explanations for all dates and times MSA Gonzalez provided as evidence that FTO Sutton was submitting fraudulent timesheets, and his statements were corroborated by AM Girven. The day that MSA Gonzalez alleged FTO Sutton did not show up for work and did not submit a leave request was FTO Sutton's regular day off.

***Allegation 2: FTO Sutton misused government supplies and equipment***

The evidence does not support the allegation that FTO Sutton misused government supplies and equipment by printing large quantities of color personal photos on a government printer. A forensic examination of FTO Sutton's government computer hard drive revealed only eight non-work-related pictures on his hard drive. Although FTO Sutton admitted to printing some of those pictures, it was within the CBP Rules of Behavior. MSA Gonzalez admitted that he has not seen FTO Sutton print any pictures on the government printer, but he has heard the printer running for hours at a time and witnessed him run out of paper. MSA Gonzalez asserts that FTO Sutton has used at least two printer ink cartridges and at least one ream of paper from printing what he believes were personal pictures. MSA Gonzalez acknowledged that he did not know that on many occasions AM Girven had asked FTO Sutton to print large amounts of work-related pictures for reports and the like.

***Allegation 3: FTO Sutton updates his personal blog at work***

The evidence does not support the allegation that FTO Sutton misuses his government computer by updating his personal blog at work. The forensic examination of FTO Sutton's government computer hard drive did not reveal any violations of CBP IT Security Awareness and Rules of Behavior. The forensic examination revealed only nine instances that FTO Sutton accessed his blog at work, which does not violate the CBP Rules of Behavior. An examination of FTO Sutton's blog revealed that blog entries

were only uploaded on Saturdays and Sundays. When IA Special Agents interviewed MSA Gonzalez, he admitted that: FTO Sutton never showed the blog to him; he never saw the blog on FTO Sutton's computer screen; he could not see FTO Sutton's computer screen from his desk; and he did not know what FTO Sutton was doing on his computer. When asked the reason that he believed that FTO Sutton was spending time on his blog, MSA Gonzalez responded, "I knew because while at work, Mr. Sutton asked Mr. Suhr to bring in college football paraphernalia, such as football helmet, and football jersey so Mr. Sutton could use it when photographing his models for his blog."

***Allegation 4: AM Girven failed to stop FTO Sutton's misconduct***

The evidence does not support the allegation that AM Girven failed to stop FTO Sutton's alleged misconduct after being informed of it by MSA Gonzalez. Although there was no evidence of misconduct, AM Girven spoke with both employees about the perception they had of each other, and he advised MSA Gonzalez that the work assignments, locations, and completion of assignments of other employees are not his concern. He said that after speaking with both employees, it appeared that they could reside within the same office together. AM Girven relocated FTO Sutton to another part of the building. Following the alleged assault, AM Girven relocated FTO Sutton to an offsite work location.

***Allegation 5: FTO Sutton assaulted MSA Gonzalez in the hallway at work.***

A determination cannot be made regarding the allegation that FTO Sutton assaulted MSA Gonzalez. The employees provided contradictory statements regarding the incident and there were no witnesses to the alleged assault. The McAllen Police Department also conducted their own investigation and determined that insufficient evidence exists to pursue any charges.

**V. DESCRIPTION OF ACTION TAKEN OR PLANNED**

Copies of this report along with all supporting documentation was referred to the Office of Information and Technology and the Office of Human Resources Management for review of internal controls and any potential corrective action deemed appropriate. Corrective action was not deemed appropriate.