



U.S. Customs and
Border Protection

Commissioner

JUL 15 2015

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

Re: OSC File Nos. DI-1579 and DI-15-1780

Dear Ms. Lerner:

The enclosed report is in response to disclosures to the U.S. Office of Special Counsel (OSC) that U.S. Customs and Border Protection, U.S. Border Patrol, may have engaged in conduct which constitutes a violation of law, rule, or regulation; gross mismanagement; and a substantial and specific danger to public health. Specifically, Border Patrol Agents (BPA) Brandon Budlong and an anonymous BPA alleged that CBP failed to notify or test employees of the Laredo West Border Patrol Station who were potentially exposed to Tuberculosis (TB), and failed to protect detainees who were potentially exposed to TB.

On January 16, 2015, OSC referred to these allegations and a request for an investigation to Department of Homeland Security (DHS) Secretary Jeh Johnson. On February 5, 2015, this matter was assigned to CBP's Office of Internal Affairs for investigation. I am the designated official responsible for providing your office with the Department's report pursuant to 5 U.S.C. § 1213.

Having completed an extensive and comprehensive investigation, the evidence does not support the allegation that CBP failed to notify or test CBP employees who were potentially exposed to TB. CBP followed the recommendations of the Laredo Health Department, acting on behalf of the Texas Department of State Health Services, and followed CDC guidelines. Additionally, all BPAs in the Laredo Sector are encouraged to participate in the CBP Medical Surveillance Program, which includes offering quarterly testing to every BPA for TB infection and otherwise makes TB testing available at any time by appointment.

The evidence also does not support the allegation that CBP failed to protect detainees who were potentially exposed to TB. The aliens detained at the Laredo West Border Patrol Station were not determined to be in the high priority category according to the contact investigation conducted by the Laredo City Health Department, acting on behalf of the Texas Department of State Health Services, and following CDC guidelines. When those individuals designated in the high priority category at the Station tested negative for TB exposure, CBP actions were prudent based on the circumstances and recommendations provided by the TB healthcare experts.

CBP has a number of measures in place to provide a safe environment for its employees. These measures have proven to be effective in protecting CBP field officers and agents from prolific exposure to active TB. Therefore, no further action will be taken.

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

Sincerely,

A handwritten signature in black ink, appearing to read "R. Gil Kerlikowske". The signature is written in a cursive style with a prominent initial "R" and a dot above the "i" in "Kerlikowske".

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

cc: Secretary, Department of Homeland Security
General Counsel, Department of Homeland Security

Investigative Report into Allegations of Misconduct at the Office of Border Patrol Laredo West Station

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

U.S. Customs and Border Protection (CBP) Border Patrol Agent (BPA) Brandon Budlong, and a second whistleblower who chose to remain anonymous, alleged to the U.S. Office of Special Counsel (OSC) that CBP failed to notify or test employees of the Laredo West Border Patrol Station who were potentially exposed to Tuberculosis (TB), and failed to protect detainees who were potentially exposed to TB. The whistleblowers reported that Supervisory BPA Francisco Yerena displayed symptoms of TB approximately one month prior to an official diagnosis of TB on September 19, 2014, and during that month, he interacted with coworkers and detainees at the Laredo West Border Patrol Station, potentially exposing them to TB. The whistleblowers alleged that after SBPA Yerena's diagnosis of TB, no Laredo West Border Patrol Station staff or detainees were notified or tested for TB, beyond three employees who shared immediate physical space with SBPA Yerena.

On January 16, 2015, OSC referred these allegations and a request for an investigation to Department of Homeland Security (DHS) Secretary Jeh Johnson. On February 4, 2015, this 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, IA interviewed BPA Budlong at the beginning of the investigation and was asked to provide additional information and an explanation of his allegations. BPA Budlong is the Collateral Duty Safety Officer (CDSO) for the Laredo West Border Patrol Station and he is also on the Station's Health and Safety Committee.

BPA Budlong said the allegation started as a rumor that SBPA Yerena had TB. Budlong received confirmation that it was TB from the BPAs at the Station who were notified that they had been exposed to and were tested for TB. After learning of SBPA Yerena's diagnosis, BPA Budlong called SBPA Yerena, and SBPA Yerena confirmed that he had TB.

BPA Budlong said that only three BPAs were notified that SBPA Yerena had TB and were notified that they had been potentially exposed to TB and in need of testing: Special Operations Supervisor (SOS) Vicente Jimenez and BPA Jimmy Ramos, who both car-pooled with SBPA Yerena, and SBPA Miguel Valencia, who shared an office with BPA Budlong. BPA Budlong learned from the agents that their tests results were negative for TB and that the BPAs would return for a second test. BPA Budlong thought it was strange that he was not notified about the potential exposure because he worked with SBPA Yerena six days per week on the floor processing aliens and he spent more time with SBPA Yerena than the BPA who shared an office with him. BPA Budlong understands that BPA Yerena's medical condition is subject to privacy rights, but he opined that CBP could have told the employees at the Laredo West Station that they had been potentially exposed to TB and encouraged them to get tested.

BPA Budlong admitted that Federal Occupation and Health (FOH) medical personnel come to the Station and administer Hepatitis A/B vaccinations and offer free TB testing on a quarterly basis. BPAs may make an appointment with the FOH nurse to receive testing, but BPA Budlong noted that if management does not tell BPAs that TB is present in their environment, BPAs will not take the risk seriously. During the influx of aliens and subsequent overcrowding at the Station, BPA Budlong spread the word to get TB testing but CBP cannot order BPAs to be tested. BPA Budlong is not aware that an alien with a confirmed case of TB came through Laredo West Station during that timeframe.

BPA Budlong opined that this incident of potential TB exposure was serious because SBPA Yerena was initially misdiagnosed twice with a respiratory infection. BPA Budlong observed many aliens come through the Station with what appeared to be respiratory infections, and thus, it is possible that those aliens may have had TB and had been misdiagnosed.

BPA Budlong alleged that CBP is covering up the potential TB exposure because if they notify the 180 BPAs at the Station, they may have to notify the 5,000 detainees who were held at the station. If CBP notified the 5,000 detainees, they would have to notify the entire United States that TB may have been brought across our borders and released throughout the country. BPA Budlong alleged that CBP does not want to admit that TB was ever in the Station. BPA Budlong noted that to date, the Station has not notified its employees that SBPA Yerena was diagnosed with TB. BPA Budlong does not want to notify the Station because he does not want to violate BPA Yerena's privacy.

BPA Budlong said that if he were in charge of the Station, he would ensure that his employees had the opportunity to get tested for TB. Instead of offering testing once a quarter during the day shift, he would offer testing once a quarter on all of the shifts. BPA Budlong also said that if he were in charge of the Station and he knew that an individual with TB had been in the Station, he would disinfect the building and take air samples to verify or rule out the presence of TB.

BPA Budlong was unaware that CBP has a policy that addresses TB exposure. He opines that employees and aliens who are exposed to potentially fatal diseases should be notified of the exposure. He alleged that CBP violated aliens' rights because it exposed them to TB without notification. BPA Budlong provided a hypothetical example to illustrate his point: suppose that CBP allowed a BPA infected with TB to hand the aliens' sandwiches. BPA Budlong said that if the aliens are deported, they may not get proper medical treatment in Mexico, and they could die never knowing that they had been exposed to TB.

BPA Budlong advised that SBPA Yerena's wife and live-in nephew had latent TB. He advised that he also became sick and was coughing up blood several weeks after SBPA Yerena was diagnosed with TB. His doctor performed a chest X-ray to rule out TB. He was diagnosed with a respiratory infection.

BPA Budlong is certain that SBPA Yerena contracted TB from one of the aliens detained at the Laredo West Station.

Allegations investigated

Based on the information and guidance provided by OSC, and the information provided by BPA Budlong, the following allegations were investigated:

Allegation 1: CBP failed to notify or test CBP employees who were potentially exposed to TB.

Allegation 2: CBP failed to protect detainees who were potentially exposed to TB.

Method of Investigation

In conducting the investigation, CBP-IA Special Agents interviewed CBP employees and TB healthcare experts who were familiar with SBPA Yerena's diagnosis and treatment, including experts from the Texas Department of State Health Services,

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Tuberculosis and Refugee Services Branch; Laredo City Health Department; U.S. Department of Health and Human Services' Federal Occupational Health Division; and the U.S. Public Health Service. CBP-IA Special Agents reviewed the relevant CBP policy that specifically addresses TB, including the CBP Occupational Safety and Health Handbook 5200-08B, and the CBP Medical Surveillance Program. CBP-IA Special Agents also reviewed guides published by the Centers for Disease Control and Prevention (CDC), including: Guidelines for the Investigation of Contacts of Persons with Infections Tuberculosis; Recommendations from the National Tuberculosis Controllers Association; Guidelines for Using the QuantiFERON®-TB Gold Test for Detecting Mycobacterium Tuberculosis Infection; CDC Guide to the Application of Genotyping to Tuberculosis Prevention and Control; and various CDC informational pamphlets such as Get the Facts about TB Disease and Questions and Answers About Tuberculosis.

The following CBP employees were interviewed as part of this investigation:

Assistant Chief Patrol Agent Albert Torres, Laredo Sector Headquarters
Assistant Chief Patrol Agent Enrique Martinez, Laredo Sector Headquarters
Area Safety Specialist Mark Hassell, Occupational Safety and Health, Laredo Sector
Director Gracie Medina, Security, Policy and Compliance, Laredo Sector
Patrol Agent in Charge Clara Torres, Laredo West Border Patrol Station
Deputy Patrol Agent in Charge Oscar Escarcega, Laredo West Border Patrol Station
Border Patrol Agent Brandon Budlong, Laredo West Border Patrol Station
Supervisory Border Patrol Agent Francisco Yerena, Laredo West Border Patrol Station
Industrial Hygienist Brent Bolton, CBP HRM Occupational Safety and Health Division

The following TB healthcare experts were interviewed as part of this investigation:

Veronica Dominguez, RN, TB Elimination Program Supervisor, City of Laredo Health Department
Peggy Wittie, PhD. MAG, TB Health Services Branch, Texas Department of State Health Services
Laura Lane, MPH, CPH, TB Health Services Branch, Texas Department of State Health Services
Captain Terry Porter, RN, BSN, Federal Occupation and Health, U.S. Health and Human Services
Fred Sommerfeld, RN, BSN, contractor for Federal Occupation and Health

III. SUMMARY OF THE EVIDENCE OBTAINED FROM THE INVESTIGATION

What is TB and how is it spread?

TB is a disease caused by bacteria which usually attack the lungs. If not treated properly, TB can be fatal. TB is spread through the air from person to person when a person with active TB disease coughs, sneezes, or speaks. Nearby individuals may become infected after breathing in the bacteria. Individuals who are infected, but not sick, have "latent" TB infection. Individuals with latent TB do not feel sick, do not have any symptoms, and cannot spread TB to others, but some individuals with latent TB may get active TB. Many individuals who have latent TB never develop active TB, and TB can remain inactive for a lifetime without causing active TB. Individuals with a weakened immune system, such as individuals with cancer, diabetes, or undergoing specialized treatment for rheumatoid arthritis, are susceptible to active TB.

TB bacteria cannot survive long outside the body, and fresh air and sunlight kills TB bacteria. TB bacteria cannot be spread by sharing drinking containers or eating utensils; by saliva shared from kissing; through shaking an infected individual's hand; sharing food; touching bed linens; or sharing a toothbrush. TB is genuinely spread through prolonged contact over days or weeks with an individual who has active TB and typically co-located in an enclosed space with poor ventilation.

Interview of Supervisory Border Patrol Agent Francisco Yerena

SBPA Yerena advised that from May to July 2014, CBP experienced a surge of aliens that necessitated apprehension, resulting in overcrowding in the holding cells at the Laredo West Station. Many of the aliens were sick and coughing. The Station was sending seven or eight aliens to the hospital per shift where they were diagnosed with a viral infection and returned to the Station. The aliens were provided over-the-counter medicine like Tylenol for their fever.

In late July or early August 2014, SBPA Yerena started getting a nagging cough. He delayed seeking treatment because he thought his allergies were acting up. In early September 2014, he visited his primary care physician, who diagnosed him with a viral infection. His physician prescribed him antibiotics, suggested he take cough drops, and told him that he should feel better after two or three days. Thereafter, SBPA Yerena started getting a fever and one of the medicines his physician prescribed him was making him feel dizzy. SBPA Yerena stopped taking the medicine. When he did not feel better, SBPA Yerena went to a night clinic, and the doctor prescribed him Amoxicillin and told him to take Tylenol for his fever, but his fever never went down.

SBPA Yerena had a consistent fever of 102 or 103 degrees, and after a few days, his wife said he needed to go to the hospital.

SBPA Yerena went to the hospital on September 19, 2014. A doctor took chest x-rays that evidenced congestion in his lungs. The doctor ordered a CT scan, which showed that SBPA Yerena had damage in his lungs and a mass on his left lung. The hospital placed SBPA Yerena in isolation and initially suspected him of having pneumonia, a fungal infection, or a staph infection. A few days later, however, the doctor confirmed with a sputum test that he had TB. SBPA Yerena also suffered from diabetes. The doctors told him that when he became diabetic, the TB bacteria further compromised his compromised immune system, and his latent TB infection diagnosed in 1992 became active TB disease.

From the time of his diagnosis, SBPA Yerena took medicine to treat his TB. Three consecutive negative sputum tests would confirm that he was no longer contagious. He remained in isolation at the hospital for 40 days, and although he was not free of TB, the hospital allowed him to go home with restrictions such as confinement to his room and wearing a mask if he left his room. By December 20, 2014, SBPA Yerena had three consecutive negative sputum tests, and he was no longer considered contagious, at which time he was permitted to leave his home.

SBPA Yerena advised SOS Vincent Jimenez of his hospitalization, and told SOS Jimenez that he would not make it to work. SOS Jimenez told Patrol Agent in Charge (PAIC) Clara Torres and Deputy Patrol Agent in Charge (DPAIC) Oscar Escarcega that SBPA Yerena was in the hospital. PAIC Torres and DPAIC Escarcega visited SBPA Yerena in the hospital on September 21, 2014. At that time, SBPA Yerena had not yet been diagnosed with TB. Initially, the hospital doctors were not going to allow PAIC Torres and DPAIC Escarcega to see SBPA Yerena. When PAIC Torres explained her relationship to SBPA Yerena, doctors allowed PAIC Torres and DPAIC Escarcega to see SBPA Yerena, provided they put on protective suits and masks. On September 23, 2014, SBPA Yerena was diagnosed with TB from his sputum test results.

PAIC Torres asked SBPA Yerena to call her following his diagnosis. SBPA Yerena called her the same day about his TB diagnosis. PAIC Torres told SBPA Yerena that she had prepared a Significant Incident Report (SIR) for select individuals on the Command Staff with a need to know about his prognosis. This consisted of the Chief, Deputy Chief, Assistant Chief, and Division Chief.

Eventually, some BPAs at the Laredo West Station learned of SBPA Yerena's diagnosis. BPA Michael Kocian approached SBPA Yerena's son at Applebee's, the

son's place of employment, and asked, "How's your Dad?" Initially, SBPA Yerena's son was hesitant to respond because he did not know BPA Kocian, but he ultimately told BPA Kocian that his father was fine. BPA Kocian's wife told SBPA Yerena's son, "You can tell him, he's an Agent too." SBPA Yerena's son felt compelled to tell BPA Kocian that his father had TB. Thereafter, many employees at the Station became aware that SPBA had TB.

BPA Budlong then called SBPA Yerena and asked him for an update. At first, SBPA Yerena told BPA Budlong that he had a lung infection. BPA Budlong told SBPA Yerena that he heard that he had TB, and SBPA Yerena admitted thereafter. SBPA Yerena told BPA Budlong that at that point, he did not care whether other employees knew that he had TB. He said that if people were to ask him, he would admit that he had TB. SBPA Yerena did not appreciate the manner in which BPA Kocian cornered his son for information about his condition. Had BPA Kocian asked SBPA Yerena whether he had TB, he would have admitted it.

After SBPA Yerena was diagnosed with TB, nurses from the Laredo City Health Department interviewed him. The nurses asked him who he had been in contact with and when it had happened, in an effort to determine who he could have exposed to TB while he was displaying symptoms. SBPA Yerena told the nurses that he had contact with most of the BPAs he worked with on his shift, and the arriving and departing shifts. Based upon his interview, the nurses from the Laredo City Health Department tested his "immediate circle" for TB, which included his family, the two BPAs with whom he carpooled, and the BPA with whom he shared an office. SBPA Yerena's wife and his live-in nephew tested positive for latent TB.

The three BPAs tested negative for latent TB. It was SBPA Yerena's understanding that the individuals who were deemed high risk were tested first, and if those individuals tested positive, the Health Department would expand the testing to include those who were deemed medium risk. If an individual tested positive from the medium risk group, the Health Department expanded their testing even further. Because nobody in the high risk group at the Station tested positive, the Health Department advised that it was not necessary to conduct further testing.

SBPA Yerena believes that the Border Patrol should have told all the BPAs at the Station that they may have been exposed to TB and offer them an opportunity to take a TB test. SBPA Yerena said he was likely to have had as much contact with the detained aliens as he did with the BPAs on his shift, although he does not believe CBP could have protected the aliens from exposure since CBP did not learn that he had been diagnosed with TB until the aliens had been released.

SBPA Yerena advised that he tested positive for latent TB in 1992 when he worked at the county jail in Dallas and before he worked for CBP. He took medicine to treat his latent TB for one month, but he stopped taking the medicine after it caused uncomfortable side effects. It was not until SBPA Yerena was diagnosed with active TB that he learned that he should have taken the original prescription for six months to cure his latent TB. The doctors told him in 1992 that he would always test positive for TB because he would always have the bacteria in his body.

In May 2014, SBPA Yerena's rheumatologist suggested that he try a new medication for an undisclosed medical condition, which had a side effect of lowering his immune system. SBPA Yerena had a chest x-ray to rule out active TB before starting the new medicine. SBPA Yerena started the medication in June 2014, but he stopped taking it once he began to feel ill. After SBPA Yerena was diagnosed with active TB, the doctors advised him to stop taking the medication. In addition to the medication prescribed by his rheumatologist, SBPA Yerena was also taking other medication that also suppressed his immune system. The doctors at the hospital took him off them.

SBPA Yerena does not know whether the medications he was taking suppressed his immune system and made him more susceptible to transition from latent to active TB. The infectious disease doctor at the hospital told SBPA Yerena that TB is a slow-growing bacteria once it becomes active.

The Health Department nurse told SBPA Yerena that it performed genetic testing on his TB strain. The nurse told him that his strain of TB was a common strain in Texas. Nineteen other individuals in Texas and one individual in Oklahoma also had the strain. The nurse also told SBPA Yerena that he probably had the same strain when he lived in Dallas and it became active while his prior medication suppressed his immune system.

TB Contact Investigation

The CDC Guidelines for the Investigation of Contacts of Persons with Infectious Tuberculosis, Recommendations from the National Tuberculosis Controllers Association and CDC, is a detailed and comprehensive guide for conducting a "contact investigation." A contact investigation identifies individuals who came into contact with a patient who has active TB. The purpose of the investigation is to prioritize and group individuals who have been exposed to TB based on factors such as date of exposure, age, immune status, and other medical conditions. Individuals who have been exposed to the patient with active TB are placed into three priority groups: high, medium, and low. Individuals in the high priority group are tested for TB initially and tested again

after eight weeks. If their tests are negative, no testing of the medium and low priority groups is necessary. If an individual in the high priority group tests positive for TB during the initial or subsequent test, the medium priority group is tested.

TB Elimination Program Supervisor Veronica Dominguez, City of Laredo Health Department, oversaw the contact investigation concerning SBPA Yerena's active TB. Based upon SBPA Yerena's interview and in accordance with CDC guidelines, the Health Department determined that SBPA Yerena's immediate family and three BPAs fell into the high priority group and required testing: the two BPAs he carpooled with and the one BPA he shared office space with. SBPA Yerena shared small, enclosed spaces with these three BPAs. The BPAs tested negative for TB twice. Because no individual in the high priority group at the Station tested positive for TB, Supervisor Dominguez recommended to CBP that no further testing be done. Nurse Dominguez reported that PAIC Clara Torres offered to test all of the BPAs at the Station, but Nurse Dominguez told her that it was unnecessary based on her contact investigation and CDC guidelines.

Nurse Dominguez explained that she oversees all contact investigations for patients in the Laredo area that are diagnosed with active TB. She confirmed that there were no diagnosed cases of TB in the past year from any individuals reporting that they had been to the Laredo West Station. Nurse Dominguez explained that each state is responsible for its own contact investigations. For example, if a patient with active TB in Oklahoma reported that he spent time in Laredo, the Oklahoma State Health Department would contact the Texas State Health Department, who would contact her to interview the individual that may have been exposed. Nurse Dominguez confirmed there were no instances in 2014 where an individual was diagnosed with active TB in another state and reported that he/she had been to Laredo.

Incidents of aliens diagnosed with active TB disease in Laredo Sector

Between January 1, 2014, and December 31, 2014, there were six aliens apprehended in the Laredo Sector who tested positive for active TB. Aliens who were diagnosed with active TB were treated at medical facilities in accordance with CBP Policy, described below, and records indicate that none of those aliens were transported to or processed at the Laredo West Station.

Genotyping and Epidemiologic Data for tracking TB cases

The CDC has a laboratory program to provide genotyping services to TB control programs, such as the program run by the Texas Department of State Health Services. Genotyping is the process of determining differences in the genetic make-up of an

individual by examining the individual's DNA sequence and comparing it to another individual's sequence or a reference sequence. In the case of SBPA Yerena, genotyping could show whether the TB strain that infected SBPA Yerena is related to a strain found in the Dallas area where he contracted his latent TB infection, whether the strain is related to a strain found in Laredo, or whether it is a previously unknown TB strain. CDC tracks all known strains of TB in the United States through the TB Genotyping Information Management System (TB GIMS). The TB GIMS stores and manages genotyping data on TB patients in the United States and links isolate data to patient-level surveillance data, provides reports on genotype clusters, including national genotype distribution and "provides national, state, and county maps of genotype clusters."

The CDC Guide to the Application of Genotyping to Tuberculosis Prevention and Control states that TB genotyping identifies genetic links between *Mycobacterium tuberculosis* isolates from different TB patients. If two TB patients have isolates with nonmatching genotypes, this indicates that the two patients are not involved in the same chain of recent transmission. Patients who have isolates with matching genotypes are said to belong to the same genotyping cluster. Patients in the same genotyping cluster who share known epidemiologic links are said to belong to an epidemiologically confirmed genotyping cluster.

The Texas Department of State Health Services, Tuberculosis and Refugee Health Services Branch, performs their own investigation on individuals that have been diagnosed with active TB disease in Texas. CBP-IA interviewed Peggy Wittie, Manager for Tuberculosis and Hansen's disease, and Laura L. Lane, Epidemiologist-Genotype Coordinator, however, they advised that they could not disclose any information related to SBPA Yerena's TB infection, or the genotype relationship between his strain of TB and any other strain. CBP-IA Special Agents were also unsuccessful in their attempts to obtain specific TB genotype information from the CDC or the U.S. Department of Health and Human Services.

Interview of Patrol Agent in Charge Clara Torres and Deputy PAIC Oscar Escarcega

PAIC Torres and DPAIC Escarcega learned that SBPA Yerena had been taken to the hospital from SOS Jimenez, who is a friend of SBPA Yerena. SOS Jimenez initially told them that SBPA Yerena had been taken to the hospital for a respiratory infection, possibly pneumonia. PAIC Torres and DPAIC Escarcega went to see SBPA Yerena the day after they found out he had been taken to the hospital. They learned from SBPA Yerena that he had a cough, but he dismissed it as related to his allergies. SBPA

Yerena told CBP-IA that he did not seek medical attention sooner when he first began to feel ill because his diabetes causes him to feel sick all the time; thus, he initially attributed his condition to the diabetes. However, he felt worse in this instance than he has from his diabetes, which caused him to seek medical attention.

PAIC Torres and DPAIC Escarcega explained that some of the other supervisors mentioned to them that they had noticed that SBPA Yerena had been under the weather, but it did not appear out of the ordinary because he also suffers from diabetes and lupus, which cause him to feel ill. They also learned from SBPA Yerena when they visited him in the hospital that he had been under stress because his son was suffering from a mental disorder.

PAIC Torres stayed in contact with SBPA Yerena while he was in the hospital. When SBPA Yerena was finally diagnosed with TB, the Health Department interviewed SBPA Yerena at the hospital. PAIC Torres believes that SOS Jimenez gave her the business card from Nurse Dominguez, who had interviewed SBPA Yerena at the hospital. SOS Jimenez had already spoken with Nurse Dominguez and learned about the Health Department Contact Investigation. Specifically, he learned that individuals considered high risk would be tested for TB, and if an individual from that group tested positive, the Health Department would expand testing to the medium risk group.

PAIC Torres contacted Nurse Dominguez and offered to cooperate and facilitate TB testing at the Station or at the Health Department. PAIC Torres told Nurse Dominguez that if Nurse Dominguez would like, the Station would have all of the BPAs tested. PAIC Torres advised that CBP offers all BPAs free TB testing quarterly by the Laredo Sector Health and Safety Department, or whenever they wish to be tested, by making an appointment with the FOH nurse.

Nurse Dominguez explained to PAIC Torres that the immediate circle of high-risk individuals were SBPA Yerena's family, the two BPAs with whom he carpooled, and the BPA with whom he shared an office. That week or the next, the three BPAs identified by the nurse were tested at the Health Department. Each tested negative for TB.

PAIC Torres asked Nurse Dominguez about next steps. The nurse told her that the Health Department did not recommend testing anyone else if the three high risk individuals in the immediate circle tested negative. Nurse Dominguez told her that if the high risk individuals were not infected, there was no need to test anyone else. To PAIC Torres' knowledge, no Agent other than SBPA Yerena has tested positive for TB since she has been at the Laredo West Station.

PAIC Torres said she notified her chain of command at Laredo Sector and contacted its CBP Health and Safety Representative, Mark Hassell, about the potential exposure to TB. In turn, Mr. Hassell contacted the Occupational Safety and Health Administration (OSHA), as per Border Patrol policy.

PAIC Torres and DPAIC Escarcega reported that many aliens were sent to the hospital during the surge upon showing symptoms of coughing and fever, but none were diagnosed with TB. All aliens arriving at the Station are interviewed and examined to determine whether they present symptoms of illness. If an alien appears sick, he or she is sent to the emergency room at Doctor's Hospital of Laredo. The Station makes an effort to keep sick aliens out of the holding cells until they have been to the hospital and diagnosed and treated.

PAIC Torres and DPAIC Escarcega did not have a conversation with their chain of command about whether to notify all of the BPAs at the Station of a potential TB exposure. They never considered that option because they were following the guidance of Nurse Dominguez, who advised them of the procedures to follow for notification and testing. To protect SBPA Yerena's privacy, they were careful to limit discussion of his diagnosis to those in their chain of command with a need to know. Nurse Dominguez was very specific about not recommending testing of anyone else after the three BPAs who were in the high risk group tested negative for TB. Nurse Dominguez advised that all of the BPAs at the Station could be tested for free at least once quarterly. Both PAIC Torres and DPAIC Escarcega advised that BPAs were reminded at muster to use personal protective gear to guard against contracting illnesses.

PAIC Torres and DPAIC Escarcega opined that SBPA Yerena could have contracted TB from any individual at any location. They said some BPAs had far more contact with aliens on a daily basis for months at a time, especially the Border Patrol Emergency Medical Technicians, who came into prolonged contact with aliens showing symptoms of illness.

Review of CBP Policy addressing TB infection of employees

The CBP Occupational Safety and Health Handbook HB 5200-08B, Chapter 30: Tuberculosis (TB) Exposure Control Program, provides uniform policy guidance about TB control for CBP employees. In particular, the policy describes the steps required to reduce employee exposure to active TB in the workplace. The policy also describes the testing procedures and early detection of infection in CBP employees who are at significant risk of occupational exposure, or who have experienced an occupational exposure. CBP's Office of Human Resources Management, Occupational Safety and

Health Division, manages the FOH contract for medical surveillance and testing of at-risk employees. The Medical Surveillance Program in the Laredo Sector includes free quarterly testing to every BPA for TB infection, and makes TB testing available anytime by appointment.

HB 5200-08B, Chapter 30.10: Decontamination of Spaces Occupied by Persons with Active TB Disease, states that "... dried secretions or fomites (i.e. indirect transmission through potentially contaminated inanimate objects such as clothing) in themselves do not pose a significant hazard. Therefore, when a case of active pulmonary TB disease is discovered, there is virtually no danger of it being spread through by [sic] handling blankets, or other surfaces that are touched."

HB 5200-08B, Chapter 30.13: Medical Surveillance, states that "CBP employees discovered to have active disease will be referred to their private physician for medical management and will not return to work until a written statement from their physician indicates that they are no longer infectious."

HB 5200-08B, Chapter 30.14: Investigation of Exposure Incidents, states that "Each employee involved in an exposure incident...will receive an immediate TB skin test, with a repeat skin test in 10-12 weeks." "Positive TB skin test reactors will be referred for medical evaluation to their private physician to determine whether prophylactic measures will substantially decrease their chance of progression to active disease. Medical evaluation procedures and prophylactic measures shall be at the discretion of the evaluation physician."

IV. INVESTIGATIVE FINDINGS

Allegation 1: CBP failed to notify or test CBP employees who were potentially exposed to TB.

The evidence does not support the allegation that CBP failed to notify or test CBP employees who were potentially exposed to TB. CBP followed the recommendations of the Laredo Health Department, acting on behalf of the Texas Department of State Health Services, and followed CDC guidelines. Additionally, all BPAs in the Laredo Sector are encouraged to participate in the CBP Medical Surveillance Program, which includes offering quarterly testing to every BPA for TB infection and otherwise makes TB testing available at any time by appointment.

Allegation 2: CBP failed to protect detainees who were potentially exposed to TB.

The evidence does not support the allegation that CBP failed to protect detainees who were potentially exposed to TB. The aliens detained at the Laredo West Border Patrol Station were not determined to be in the high priority category according to the contact investigation conducted by the Laredo City Health Department, acting on behalf of the Texas Department of State Health Services, and following CDC guidelines. When those individuals designated in the high priority category at the Station tested negative for TB exposure, CBP actions were prudent based on the circumstances and recommendations provided by the TB healthcare experts.

V. DESCRIPTION OF ACTION TAKEN OR PLANNED

Exposure to TB and blood borne pathogens is an inherent, known risk to CBP officers and agents working on the southern border. Recognizing that the intrinsic danger of disease exposure in their positions cannot be eliminated, CBP implements the following tools through its TB Exposure Control Program to provide a safe environment for its employees:

- Initial and annual training to enable employees to identify individuals with potentially active TB
- Free quarterly TB testing and additional TB testing upon request
- Reminders of TB testing in daily musters
- Isolation of individuals suspected of having active pulmonary TB in a suitable room with specified engineering protections
- Designated local safety officers, supervisors, and/or local health officials available for further evaluation of individuals suspected of infection
- Engineering controls to minimize the potential spread of infectious airborne aerosols.
- OSHA required respirators
- Screening high risk employees and available therapy to prevent disease progression
- Investigation of exposure incidents
- Medical surveillance
- Occupational risk assessments
- Confidential medical records maintenance

These measures have proven to be effective in protecting CBP field officers and agents from prolific exposure to active TB. Therefore, no further action will be taken.