



U.S. OFFICE OF SPECIAL COUNSEL

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Washington, D.C. 20036-4505

The Special Counsel

October 8, 2015

The President  
The White House  
Washington, D.C. 20500

Re: OSC File Nos. DI-15-1719 and DI-15-1780

Dear Mr. President:

Pursuant to my duties as Special Counsel, enclosed please find a Department of Homeland Security, U.S. Customs and Border Protection (CBP) report based on disclosures of wrongdoing at the Laredo West Border Patrol Station (Laredo West). The Office of Special Counsel (OSC) has reviewed the reports and, in accordance with 5 U.S.C. § 1213(e), provides the following summary of the agency investigation, whistleblower comments, and my findings.

The whistleblowers, Border Patrol Agent Brandon Budlong and Supervisory Border Patrol Agent Francisco Yerena, who consented to the disclosure of their names, alleged that managers at Laredo West engaged in conduct that may constitute a violation of law, rule, or regulation; gross mismanagement; and a substantial and specific danger to public health by failing to notify or test Laredo West employees who were potentially exposed to tuberculosis (TB), and failing to protect or test detainees who were potentially exposed to TB.

**The agency did not substantiate the whistleblowers' allegations. The agency determined that CBP followed relevant Centers for Disease Control (CDC) testing and notification guidelines for employees and detainees potentially exposed to TB. The agency could have taken additional steps to inform the Laredo West employees about potential exposure and support Mr. Yerena as he struggled from active TB. Nevertheless, the agency's findings meet all statutory requirements and its report appears reasonable given CDC and Laredo City Health Department guidelines.**

The whistleblowers' allegations were referred to Secretary of Homeland Security Jeh Johnson to conduct an investigation pursuant to 5 U.S.C. § 1213(c) and (d). Secretary Johnson referred investigation of the matter to CBP's Office of Internal Affairs. CBP Commissioner R. Gil Kerlikowske was delegated the authority to review and sign the report. On July 15, 2015, Commissioner Kerlikowske submitted the agency's report to OSC. Mr. Yerena provided comments on August 25, 2015; Mr. Budlong did not comment on the report. As required by 5 U.S.C. § 1213(e)(3), I am now transmitting the report to you.<sup>1</sup>

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<sup>1</sup> The Office of Special Counsel (OSC) is authorized by law to receive disclosures of information from federal employees alleging violations of law, rule, or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health and safety. 5 U.S.C. § 1213(a) and (b). OSC does not

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The whistleblowers alleged that Mr. Yerena displayed symptoms of TB approximately one month prior to an official diagnosis on September 19, 2014. They alleged that during this month he interacted with coworkers and detainees at Laredo West, potentially exposing them to TB. The whistleblowers asserted that after Mr. Yerena's diagnosis, no Laredo West employees or detainees were notified or tested for TB, beyond three employees who shared immediate physical space with Mr. Yerena.

The report explained that after Mr. Yerena was diagnosed with TB, nurses from the Laredo City Health Department identified individuals at high risk for TB exposure pursuant to CDC guidelines, including three Laredo West employees who shared immediate office space with Mr. Yerena. All three tested negative for latent TB. Under CDC guidelines, if they had tested positive, Laredo City Health Department officials would have expanded testing and notification to a group of CBP employees identified as medium risk. Because none of the employees in the high-risk group tested positive, it was determined that further testing was unnecessary. The report further noted that the Laredo Sector offered a Medical Surveillance Program, which incorporated quarterly TB testing and TB testing by appointment. As such, the report stated that CBP followed appropriate CDC guidelines to protect employees. With respect to the exposure of detainees, the report explained that based on the strain of TB at issue, and the nature and duration of exposure, detainees housed at Laredo West were not in a high-risk category for infection. Accordingly, when individuals at high risk for exposure tested negative, additional testing and notification for detainees was deemed unnecessary.

In his comments, Mr. Yerena stated that he felt that the entire CBP sector was placed in jeopardy due to his condition. He further noted that when his diagnosis was made, CBP should have made efforts to provide training and education to employees on communicable diseases and the availability of agency resources for combatting these conditions. He asserted that CBP's response to this situation indicated they are poorly equipped to respond to a public health crisis, and are hesitant to provide assistance to employees in need. He described the way CBP treated him after his diagnosis, and his concerns about CBP's failure to help others who were similarly suffering.

I have reviewed the original disclosure, the agency report, and Mr. Yerena's comments. Mr. Yerena's comments highlight the seriousness and sensitivity of the issue. It appears that CBP could have taken additional steps to inform the workforce about potential TB exposure, particularly those who were in close contact with Mr. Yerena but with whom he did not share an office, such as the individuals with whom he worked with closely on the floor or car-pooled. Indeed, doing so may have encouraged participation in the quarterly

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have the authority to investigate a whistleblower's disclosure; rather, if the Special Counsel determines that there is a substantial likelihood that one of the aforementioned conditions exists, she is required to advise the appropriate agency head of her determination, and the agency head is required to conduct an investigation of the allegations and submit a written report. 5 U.S.C. § 1213(e). Upon receipt, the Special Counsel reviews the agency report to determine whether it contains all of the information required by statute and that the findings of the head of the agency appear to be reasonable. 5 U.S.C. § 1213(e)(2). The Special Counsel will determine that the agency's investigative findings and conclusions appear reasonable if they are credible, consistent, and complete based upon the facts in the disclosure, the agency report, and the comments offered by the whistleblower under 5 U.S.C. § 1213(e)(1).

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Medical Surveillance Program, as employees who were unaware of the risk of potential exposure would not have been motivated to get tested. Nevertheless, while the agency could have done more, based on the agency report, it appears the agency took the measures specifically required by the CDC and local health departments. For these reasons, I have determined that the report meets all statutory requirements and the findings appear reasonable.

As required by 5 U.S.C. § 1213(e)(3), I have sent copies of the agency report to the Chairman and Ranking Members of the Senate Committee on Homeland Security and Governmental Affairs and the House Committee on Homeland Security. I have also filed copies of the agency report, and Mr. Yereña's comments in our public file, which is available at [www.osc.gov](http://www.osc.gov). OSC has now closed the file.

Respectfully,



Carolyn N. Lerner

Enclosures