



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 300  
Washington, D.C. 20036-4505

The Special Counsel

October 13, 2015

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

Re: OSC File No. DI-11-3562

Dear Mr. President:

Pursuant to my duties as Special Counsel, enclosed please find Department of Homeland Security (DHS), Customs and Border Protection (CBP), Office of Field Operations (OFO) reports based on a disclosure of gross mismanagement and a substantial and specific danger to public safety by officials at CBP, Customs-Trade Partnership Against Terrorism (C-TPAT), Washington, D.C. 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, the whistleblower's comments, and my findings.

The whistleblower, Cheryl L. Jacobo, is a supply chain security specialist (SCSS) in C-TPAT's Miami, Florida office. She alleged that C-TPAT officials failed to adequately protect SCSSs who, pursuant to their job duties, travel to high-risk locations in Mexico. Ms. Jacobo consented to the release of her name.

**The investigation did not substantiate Ms. Jacobo's allegations. It did, however, propose specific CBP management actions to enhance the overall safety and security of SCSSs traveling in Mexico. CBP has confirmed that these proposed actions have been initiated or completed. I have determined that the reports contain all of the information required by statute and that the agency's findings are reasonable.**

OSC referred Ms. Jacobo's allegations to then-Secretary Janet Napolitano for investigation pursuant to 5 U.S.C. § 1213(c) and (d). Secretary Napolitano referred the OSC inquiry to CBP and delegated the authority to investigate and respond to the allegations to Thomas S. Winkowski, former assistant commissioner, CBP's OFO. Mr. Winkowski provided the agency's reports to OSC. Ms. Jacobo commented on both the original report and the supplemental report pursuant to 5 U.S.C. § 1213(e)(1). As

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required by 5 U.S.C. § 1213(e)(3), I am now transmitting the agency reports and Ms. Jacobo's comments to you.<sup>1</sup>

***I. The Disclosure***

C-TPAT is an anti-terrorism program established following the events of September 11, 2001. The program is a voluntary industry-government partnership that focuses primarily on supply chain security. Approximately 210 SCSSs working out of seven field offices are responsible for conducting supply chain security inspections, assessments, and validations of domestic and foreign transport companies and manufacturers around the globe. A significant portion of the approximately 2,500 inspections and validations executed each year are conducted in Mexico.

Ms. Jacobo alleged that CBP management failed to take adequate steps to ensure the safety of SCSSs traveling to high-risk areas of Mexico known for terrorism and narcotics-related violence. Ms. Jacobo asserted, for example, that although CBP acknowledged there are substantial risks associated with SCSS travel to Mexico, SCSSs are expected to travel regardless of Department of State travel restrictions. The agency justified the exemption of SCSSs from travel restrictions upon their assertion that SCSSs receive extensive security training. However, according to Ms. Jacobo, the training the SCSSs receive is not "extensive" but, rather, includes only two-weeks of security awareness training.

Ms. Jacobo cited several additional factors in support of her allegation that CBP failed to properly train, outfit, and support SCSSs traveling to Mexico. According to Ms. Jacobo, SCSSs do not have access to reports of investigation contained in Immigration and Customs Enforcement's (ICE's) Traveler Enforcement Compliance System (TECS), a database containing up-to-date information on individuals and organizations currently under ICE investigation. Ms. Jacobo alleged that SCSSs are required to cross the Mexican border into unsafe areas with only an official passport and,

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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 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(c) and (g). Upon receipt, I review 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). I 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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on some occasions, on foot or after waiting in long vehicle lines; SCSSs are not entitled to the benefit of expedited customs processing. According to Ms. Jacobo, prior to departure, SCSSs arrange to be escorted to and from inspection sites by a company representative. In many cases, the SCSS is unfamiliar with the company representative and the SCSS is driven to and from the inspection site in the company representative's personal vehicle. Ms. Jacobo asserted that law enforcement personnel and secure vehicles should be available to SCSSs traveling to and from the inspection sites. Finally, Ms. Jacobo alleged that C-TPAT management does not have established standard operating procedures (SOPs) to protect SCSSs. Ms. Jacobo maintains that, in addition to provisions permitting the use of secure vehicles and law enforcement escorts, these SOPs should include the use of tracking devices and the creation of a well-defined personnel recovery plan.

## ***II. The Agency Investigation***

The initial OFO report found that all SCSS applicants are informed of the inherent dangers of the SCSS position during the interview process. The investigation determined, however, that it was not standard procedure to obtain written confirmation from the applicant acknowledging that these dangers were actually discussed. The investigation further determined that the SCSS position descriptions under which Ms. Jacobo was hired in 2005 did not specifically identify the inherent dangers of the position. With respect to Ms. Jacobo's concern about the lack of SCSS security training, the investigation found that SCSSs receive an initial briefing on the inherent dangers of foreign travel, which includes completion of a three hour "Foreign Travel Safety" course, specifically about the violence and narcotic-related matters in Mexico. In addition, SCSSs are required to complete recurring and episodic training on safety/security-related matters. The report indicated that SCSSs have the opportunity to request additional special training should a SCSS believe additional training is needed.

The investigation found that all C-TPAT foreign travel must be approved in advance by the Department of State Electronic Country Clearance System. In addition, SCSSs must submit an email notification to the Department of State regional security officer (RSO) prior to traveling to Mexico. This email notification must include detailed information regarding the exact location of the site to be visited, a Google map of the location, point of contact information, and information regarding the means of transportation to and from the site. The RSO must approve the request prior to the SCSS's travel and can cancel the trip should security concerns arise.

With respect to the transportation issue identified by Ms. Jacobo, the report concluded that there is no policy specifically requiring that SCSSs travel with and/or be escorted by a company official. While SCSSs are required to arrange their own transportation, SCSSs have the authority to request a list of vetted transportation services

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from the RSO. Nevertheless, the investigation determined that C-TPAT could not confirm that SCSSs were aware of this resource.

The report explained that SCSSs have seven databases and electronic analysis tools to review, research, and vet companies being considered for validation prior to travel to Mexico. However, the report confirmed Ms. Jacobo's assertion that SCSSs cannot access ICE reports of investigations via TECS. The report concluded that if, within the context of vetting a C-TPAT applicant, a SCSS believes additional security related information is warranted, he or she can request reports of investigation from CBP's National Targeting Center, but not all SCSSs were aware of their ability to access the TECS reports in this manner.

With respect to Ms. Jacobo's allegation regarding the challenges faced by SCSSs in expeditiously crossing the Mexican border, investigators identified the Secure Electronic Network for Travelers Inspection (SENTRI) policy, which provides that CBP personnel who have traveled to Canada or Mexico in their official capacity may pass through a "dedicated commuter lane." On November 16, 2011, a C-TPAT SENTRI SOP was issued informing all SCSSs of this service and explaining how it can be utilized.

Finally, with respect to Ms. Jacobo's allegation that the C-TPAT program has no personnel recovery program, the report indicated that an "Interim Personnel Recovery Procedure" was established effective July 20, 2011. This plan, as described in the report, "...involves communication and coordination with the CBP Attache's Office in the Mexico City Embassy, the National Commander of the Special Response Team, and the CBP Situation Room."

### ***III. Agency Supplemental Report***

In response to the concerns raised by Ms. Jacobo, OSC requested additional information regarding the action plan outlined in its December 19, 2011 report. In a June 24, 2013, supplemental report, the agency indicated that it drafted new position descriptions for SCSSs. The new position descriptions specify that the SCSS position requires travel to high-risk areas in other countries. The report stated that CBP has implemented requirements that all SCSSs be regularly trained and briefed on safety and security issues. C-TPAT initiated steps to formalize a written procedure for SCSSs to request reports of investigations through the NTC and to ensure that all SCSSs are aware that they may coordinate with consular RSOs to obtain vetted car service. Further, a SOP has been implemented and disseminated instructing SCSSs on the use of SENTRI when returning to the U.S. from Mexico. Finally, the report noted that C-TPAT will disseminate an "Interim Personnel Recovery Procedure" to all SCSSs through their respective field directors.

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***IV. Ms. Jacobo's Comments***

Ms. Jacobo was skeptical that the measures outlined in the reports would be implemented. She was equally skeptical that the measures, even if adopted, would be sufficient to ensure the personal safety of SCSSs while traveling to dangerous areas in Mexico. Ms. Jacobo maintained that SCSSs should not be forced to travel to areas of Mexico designated by current intelligence as “volatile” to conduct C-TPAT validation visits. Finally, Ms. Jacobo contended that if SCSSs are forced to conduct C-TPAT validation visits in high-risk areas, they should be entitled to receive danger pay.

***V. Agency Updates to Proposed Corrective Actions***

In a June 23, 2014 update, the agency stated that C-TPAT will follow the Mission Mexico Travel Policy for travel within Mexico, pursuant to which all C-TPAT employees are required to take a new Department of State course entitled “High Threat Security Overseas – HTSOS.” As a result of concerns raised in the initial report, C-TPAT field directors and supervisors were provided with an updated list of RSOs and advised to distribute the list to employees to assist them in arranging for a vetted car service if the company is unable to provide transportation or if the SCSS would prefer the RSO sanctioned car service. According to the agency, C-TPAT has drafted and approved a Personnel Recovery Policy and, on June 17, 2014, C-TPAT field directors and supervisors were notified of the new policy via email and advised to distribute it to their employees.

The update indicated that the position descriptions for the SCSSs had not, as of that time, been finalized. The update further indicated that the NTC is “not prepared to conduct vetting for C-TPAT,” and that C-TPAT is in the process of exploring whether other DHS component agencies are able to assist with the vetting process. With regard to the question of whether SCSSs should be able to use SENTRI when returning to the U.S. from Mexico, the OFO budget advised C-TPAT that the agency is prohibited from using appropriated funds for employee participation in the Trusted Traveler program.

In its August 3, 2015, response, the agency provided a second update regarding the corrective actions it had committed to take. The agency informed OSC that the revised SCSS position descriptions have been submitted to the Office of Human Resources Management for review. Language contained in the revised position descriptions recognizes that the duties of SCSSs may include exposure to hazardous conditions and extensive travel to high-risk locations. With respect to the agency commitment to find a component agency to assist C-TPAT in vetting high-risk companies, the agency indicated that it has created “a new vetting model” which is designed to centralize information regarding target companies and facilitate SCSS access to the information. The update specifically indicated that, pursuant to this new vetting

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model, SCSSs will have access to the TECS database on individuals and organizations currently under ICE investigation.

***VI. The Special Counsel's Findings***

Based on my review of the original disclosure, the agency's original and supplemental reports, Ms. Jacobo's comments in response to both the original and supplemental reports, and the updates provided by the agency to my office, I have determined that the reports contain all of the information required by statute and that the findings appear to be reasonable. I commend Ms. Jacobo for coming forward with her disclosure and the agency for responding to the shortcomings uncovered by its initial investigation. As a result of the disclosure and ensuing investigation, the agency took significant actions toward facilitating the safe travel of SCSSs to high-risk locations.

As required by 5 U.S.C. § 1213(e)(3), I have sent copies of the agency reports and Ms. Jacobo's comments to the Chairman and Ranking Member of the Senate Committee on Homeland Security and Governmental Affairs and the Chairman and Ranking Member of the House Committee on Homeland Security. I have also filed a copy of the letter to the President, the agency reports, and Ms. Jacobo's comments in our public file, which is available online at [www.osc.gov](http://www.osc.gov), and closed the matter.

Respectfully,



Carolyn N. Lerner

Enclosures