

July 26, 2013

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RE: OSC File No. DI-11-3562, Cheryl Lise Jacobo

Pursuant to our conversation on July 10, 2013, I am providing my comments to the supplemental report of investigation dated June 24, 2013 from the U.S. Department of Homeland Security (DHS), U.S. Customs and Border Protection (CBP) in response to my allegations that CBP, Customs-Trade Partnership Against Terrorism (C-TPAT), Washington, DC, engaged in conduct which constituted gross mismanagement and a substantial and specific danger to public health and safety. Specifically, CBP had failed to comprehensively address the high level of risk that traveling in Mexico presents to Supply Chain Security Specialist (SCSSs), even after two ICE Special Agents were ambushed by narcotics traffickers on a Mexican highway in February 2011, resulting in the death of one of the Special Agents. CBP was not adhering to the Department of State (DOS) Mission Mexico Travel Policy that specifies force protection requirements for locations throughout Mexico for government personnel and had not developed and implemented a viable Personnel Recovery Plan for SCSSs who may need to be recovered from a dangerous situation in Mexico.

After review of the supplemental report and receipt of email dated June 21, 2013 from C-TPAT, Washington, DC, forwarding copies of the DOS Mission Mexico Travel Policy; CBP MX Personnel Recovery Policy; and the DOS Mission Mexico Personnel Recovery Program, CBP has finally admitted that neither DHS nor CBP have an established Personnel Recovery Plan and will abide by CBP/MX's "Personnel Recovery Policy" dated February 21, 2013 and DOS Mission Mexico, "Personnel Recovery Program Requirements".

Although the supplemental report did not address my allegation that SCSSs are not being afforded the same force protection requirements as afforded to other government personnel in Mexico, since the inception of the OSC investigation, C-TPAT Washington began to regularly forward updated copies of the DOS Mission Mexico Travel Policy to SCSSs. The policy implements a comprehensive travel policy for government personnel under the Chief of Mission (The Ambassador's) authority and has been extended to apply to SCSSs while on official travel status. As an example, the DOS Mission Mexico Travel Policy identifies certain high risk areas in Mexico that require specific security measures such as travelling in armored vehicles. As a result of the OSC investigation, CBP has ceased travel to high risk areas in Mexico and is adhering to the DOS Mission Mexico Travel Policy. The above two allegations are deemed to be of utmost importance to the personal safety of SCSSs travelling in Mexico. I believe that these allegations have been efficiently addressed and I am satisfied with CBP's response

as long as compliance to these security directives is maintained by CBP. I will address CBP's response in the order presented in the supplemental report of investigation, as follows:

**1. CBP Action:** *C-TPAT management has rewritten the position description for all Supply Chain Security Specialists (SCSS) to specifically indicate that the position requires travel to countries and areas within countries that are high-risk for security matters. The position description is under review and will be distributed to all SCSSs as soon as final review is completed by CBP management.*

**Ongoing.** The new position description for SCSS was submitted to CBP's Human Capital Division for approval during FY 2012. As of this writing, there has been no further update.

**Response:** The effort to revise the position description for SCSSs is a CBP-led effort and not brought forward by me. However, I would emphasize that even though there are inherent safety matters related to this position; CBP is not exempt from the legal, moral and ethical responsibility of safeguarding SCSSs against potential injury in the performance of their official duties, that is, while on official government travel in Mexico.

**2. CBP Action:** *CBP will continue to hold monthly training for all SCSSs, which will include safety/security training. It will continue to solicit potential topics and enhance previous trainings to reiterate the most serious matters affecting SCSSs traveling in high-risk areas of Mexico.*

**Response:** CBP has made a concerted effort in providing SCSSs with regular safety and security-related training, primarily web-based training, as well as, the issuance of current non-classified intelligence affecting SCSSs traveling in high-risk areas in Mexico. The training aspect of this position is only part of the solution and as long as CBP maintains compliance with the above-referenced security directives, the level of risk in Mexico will be mitigated for the SCSSs.

**3. CBP Action:** *C-TPAT will formalize a written procedure for SCSSs, in consultation with his/her Field Director, to request reports of investigation through the NTC.*

**Pending.**

**Response:** The initial allegation addressed a request for a higher TECS level access (other than TECS 2 level access) in order to capture derogatory information on corporations, such as those corporations that are the subject of an ICE criminal investigation so that the SCSS can determine eligibility for the C-TPAT program or conduct security-related intelligence and research prior to departure. The SCSS does not need to review Reports of Investigation. The SCSS only needs to know that a corporation participating in the C-TPAT program is a subject of an ICE criminal investigation so that the SCSS can make a determination as to continue with the C-TPAT validation process.

For example, an SCSS queries a Mexican foreign manufacturer or a highway carrier in TECS and the system responds with "No TECS Match" because the SCSS only has been authorized TECS 2 level access, when in reality the company may be the subject of an ICE criminal investigation.

**4. CBP Action: C-TPAT management will ensure that all SCSSs are aware that they may coordinate with consular RSO to obtain vetted car service.**

**Implemented.** SCSSs were informed via email and Security Directive 2010-012 to coordinate with perspective consular RSOs on certain areas requiring use of an armored vehicle.

**Response:** The SCSSs are currently aware that they have the authority to request vetted transportation services from the RSO pursuant to Security Directive 2010-012.

**5. CBP Action: On November 16, 2011, C-TPAT Headquarters disseminated a temporary Standard Operating Procedure for using SENTRI when returning to the U.S. from Mexico. C-TPAT reminded field personnel that the driver and vehicle must be authorized to use the SENTRI lane.**

**Implemented.**

**Response:** SOP entitled, SENTRI Lane Use for Specific Ports, has been disseminated to SCSSs.

**6. CBP Action: On October 31, 2011, CBP's Office of Training and Development issued a memorandum announcing officer safety trainings for CBP employees who travel outside the United States. The training is available in three separate tiers, and all C-TPAT personnel are required to complete by December 31, 2011. The Tier One course established a baseline for all personnel traveling outside the continental United States.**

**Implemented.** All C-TPAT employees completed Tier I (baseline for all personnel traveling outside the continental United States).

Due to sequestration, the OTD/ATC was forced to cancel many significant training programs beginning on or after April 1<sup>st</sup>. Beginning that date, the ATC cancelled the following training courses until the sequestration is lifted and/or reallocation of funding enables the ATC to deliver these programs later in the fiscal year.

**Response:** SCSSs have completed the Tier I online course for personnel traveling outside the continental United States. Most SCSSs have completed the Tier II course in Harpers Ferry, West Virginia and only a few have completed the Tier III course due to budgetary restrictions.

**7. CBP Action: C-TPAT will disseminate the "Interim Personnel Recovery Procedure" to all SCSSs through their respective Field Director.**

**Implemented.** C-TPAT has established and distributed an interim "CBP/Mexico (CBP/MX) Personnel Recovery Procedure" effective February 21, 2013, setting forth

procedures, protocols, responsibilities and requirements on how CBP/MX will prepare, train, equip, track and provide recovery support to personnel assigned to CBP/MX, absent a defined CBP, DHS or National Personnel Recovery Policy. Employees have also received recovery procedures from the Department of State and a security directive from the American Embassy in Mexico.

**Response:** Pursuant to email dated June 21, 2013 from C-TPAT Washington, DC, copies of the DOS Mission Mexico Travel Policy; CBP MX Personnel Recovery Policy; and the DOS Mission Mexico Personnel Recovery Program were received by the SCSSs.

I believe that the OSC investigation has forced CBP management to comprehensively address the high level of risk that traveling in Mexico presents to SCSSs. Currently, SCSSs are entitled to the same force protection requirements as other government personnel in Mexico and it is my hope that CBP continues to adhere to the DOS Mission Mexico Travel Policy that specifies force protection requirements for government personnel in Mexico. The fact that DOS and CBP are deferring travel to violent cities in Mexico is a direct consequence of a successful OSC investigation. Pursuant to the email referenced above, CBP acknowledged that neither DHS nor CBP have an established Personnel Recovery Plan and will abide by CBP/MX's "Personnel Recovery Policy" and DOS Mission Mexico, "Personnel Recovery Program Requirements". I sincerely thank the U.S. Office of Special Counsel for accepting my allegations for further investigation and providing support during this most sensitive situation.

Respectfully,

Cheryl Lise Jacobo