

January 27, 2011

Carolyn N. Lerner
Special Counsel
Office of Special Counsel
1730 M Street, Suite 218
Washington, DC 20036-4505

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

Pursuant to 5 U.S.C. 1213 (e)(1), I am providing my comments to report of investigation dated December 19, 2011 received from the Department of Homeland Security in response to my allegation that Customs and Border Protection (CBP), Customs-Trade Partnership Against Terrorism (C-TPAT), Washington, DC, engaged in conduct which may constitute gross mismanagement and a substantial and specific danger to public health and safety.

After review of the report of investigation dated December 19, 2011, I was disappointed to learn that CBP's response to a viable and comprehensive Force Protection Plan that will protect Supply Chain Security Specialists (SCSS) traveling to high risk areas in Mexico did not include protection measures afforded to other government personnel traveling in Mexico, such as armored vehicle, police/military escort and tracking technology. CBP only mentioned one small element of a comprehensive safety plan, that is, on page 5 where CBP management indicated that they will ensure that all SCSSs are aware that they may coordinate with consular Regional Security Officer (RSO American Embassy Mexico) to obtain "vetted car service". The definition of a "vetted car service" is not clearly defined and may mean an approved taxi service for all I know. Nowhere in the report does CBP address the development and implementation of a viable Force Protection Plan to protect SCSSs traveling to high risk areas in Mexico. CBP has failed to comprehensively address the high level of risk that traveling in Mexico presents to 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.

To date, SCSSs have not been notified by CBP management that the American Embassy Mexico City has developed an *updated* Mission Mexico Travel Policy dated January 5, 2012 that articulates force protection requirements for locations throughout Mexico (Attachment A). I emphasize *updated* because a Mission Mexico Travel Policy articulating force protection measures for ICE personnel has always been in place. CBP has not informed the SCSSs of this very significant development nor did I become aware of the new Mission Mexico Travel Policy from CBP management. Is it because CBP is anticipating that SCSSs will be *exempt* from current Department of State travel restrictions and protection requirements while on official government travel in Mexico as in the past and pursuant to memorandum dated March 23, 2010 from CBP Representative Carlos L. Gonzalez to Regional Security Officer Timothy Haley, U.S. Embassy, Mexico City. This memorandum requested that SCSSs be exempt from travel restrictions

established for government employees by the U.S Embassy and the U.S. Department of State and to my knowledge has not been rescinded. This exemption allowed SCSSs to travel to violent border cities as recently as November 10, 2011 without any force protection measures in place. (Attachment B)

A reasonable person would expect that in light of the OSC investigation, CBP would cease ALL travel to Mexico until a comprehensive Force Protection Plan and Personnel Recovery Procedures are in place. If CBP has been aware of the requirements of personnel recovery and force protection measures since May 2010 as indicated in their response, why, over a year later are there still no viable procedures in place.

I will address the issues that have been brought forward by CBP management as detailed in the report of investigation:

CBP informs all SCSS applicants of the inherent safety matters related to the position (Page 2)

SCSSs acknowledge that travel to high risk areas of the world is a requirement of the position and that these areas are not tourist destinations. I also acknowledge that during my initial interview process in 2005, I was informed that the SCSS must travel to high risk countries. There were no subsequent interviews. However, in 2005, when I was interviewed by Director Michael Ginn, Miami Field Office, Mexico was not the security risk that the country represents today and Mexico was not used as an example of a high risk country. As a matter of fact, in 2007, I stayed for one week in Juarez, Mexico, to conduct C-TPAT validations. However, *today* Mexico is involved in the middle of the most violent drug war in their country's history and that fact necessitates that CBP management establishes real protective measures, beyond web-based safety training and security related intelligence, to ensure our safety while we are conducting C-TPAT validations in Mexico.

On page 5, CBP stated that the Agency will rewrite the position description for the SCSS to state that travel to danger locations is required. Informing an applicant of the dangers of a position does not exempt the Agency of their ethical and moral responsibility to safeguard all employees against injury in the performance of their duties. In this case, affording every SCSS with the force protection measures stipulated in the new Mission Mexico Travel Policy.

CBP provides initial and on-going safety training related to travel in high-risk areas (Page 2)

CBP defends their safety training program by stating that all SCSSs receive initial and on-going safety training related to travel in high risk areas. The SCSS is very cognizant of the fact that Mexico represents a real threat to our safety, but again, web-based safety training and conferences and security related intelligence, is insufficient to

mitigate risk and guarantee the safety of SCSSs while on official travel in Mexico, especially in an ambush scenario.

The Agency has even added the Foreign Affairs Counter-Threat (FACT) training to this impressive list, implying that all SCSSs have undergone this training. CBP has been aware that this training is required by the Assistant Commissioner of the Office of International Affairs pursuant to memorandum dated September 27, 2010, however the field SCSS has not received this training. Select individuals, including management and training officers, have attended the training but SCSSs conducting travel abroad have not. To date, I have not received FACT training. CBP's response stated that SCSSs receive a variety of training on safety and security matters related to Mexico. Although the list of training sounds impressive, the sum of this training equates to approximately 10-15 hours of continued web-based training and regarding the risks of traveling in Mexico, which *again* does not replace a Force Protection Plan for SCSSs traveling in Mexico.

On page 5, CBP stated that they "will continue to hold monthly trainings." This is only part of the solution and CBP has ignored that concrete security measures must be in place to ensure the SCSS' safety while traveling in high risk areas of Mexico. Continued monthly web-based safety and awareness training does not protect or prepare an SCSS under the following circumstances:

- While traveling in Mexico with company representatives in private passenger vehicles and contrary to what CBP stated in their response to OSC, SCSSs are subject to forced, random vehicle checkpoints while traveling on Mexican highways. These checkpoints are manned by either legitimate law enforcement personnel or narcotics traffickers who may pose and dress as law enforcement personnel. The security concern lies with the fact that there is no way to determine the true identity or legitimacy of these individuals as exemplified by the February 15, 2011 ambush of the two ICE Special Agents by narcotic traffickers.
- Intelligence has confirmed that Mexican highways, airports and U.S. ports of entry have been blocked for extended periods of time by unknown individuals believed to be employed by narcotic traffickers.

Pre-Travel Procedures for each trip to Mexico by an SCSS include review of security matters (Page 3)

In CBP's response, the Agency repeatedly attempts to pacify OSC with statements as to how they have provided training and information resources to the SCSS. In two instances, the Agency stated that they "cancelled/rescheduled 136 validations due to security concerns in Mexico." Although these cancellations were made in reality by the Regional Security Officers (RSO), many violent areas of Mexico, including border towns such as Nuevo Laredo, Reynosa, Matamoros and Ciudad Juarez were still open to SCSS travel as recently as November 2011 and were designated as "no go zones" only

after CBP received notification of the OSC investigation. In other words, travel to violent border cities was allowed by CBP, the U.S. Department of State and the American Embassy as recently as November 2011 as all travel to Mexico must be approved by these entities prior to travel.

C-TPAT management's history of making arrogant decisions regarding the personal safety of SCSSs is exemplified by their request to the American Embassy Mexico City, detailed on page 2, to exempt SCSSs from current Department of State travel restrictions. The primary justification provided was as follows: "While our number one concern is and remains the safety of all C-TPAT Supply Chain Security Specialists (SCSS), the current restrictions on the Southwest border are having a negative impact on the number of validations that we can conduct." To date, this memorandum has not been rescinded and I am afraid that SCSSs will be exempt from the new State Department Mission Mexico Travel Policy that specifies force protection requirements for locations throughout Mexico for all government personnel.

On page 3, CBP stated that there is no policy that requires an SCSS to travel with and be escorted by, a company official which seems to imply that we have had other alternatives when in Mexico. C-TPAT management indicated that SCSSs had the authority to request a list of vetted transportation services from the RSO. As SCSSs are not authorized to drive in Mexico and are not familiar with the roads and highways in Mexico, the SCSS, with management's knowledge, has always depended on company representatives to provide transportation to and from the foreign site to be visited. This practice is common and has been in place, at least since 2005, when I began employment with the C-TPAT program. Throughout the C-TPAT validation process in Mexico, we remain at the complete mercy of the company representative to return us to the U.S. border or the hotel.

CBP management's knowledge of this practice is exemplified by Supervisory SCSS Manuel Garza's attendance in Thailand and Hong Kong on a 2011 C-TPAT foreign validation with SCSS Phillip Thompson and me. Supervisory SCSS Garza is assigned to the C-TPAT Washington office. In both Thailand and Hong Kong, Supervisory SCSS Garza, SCSS Thompson and I were transported by company representatives to and from the foreign site validation meeting and the hotel.

Similarly, in Mexico, the C-TPAT team normally depends on company representatives for transportation to and from the foreign site to be visited. Additionally, CBP supervisors are required to annually attend a validation meeting with each SCSS and are aware that SCSSs depend on company management to provide transportation to and from the foreign site. Of course, there are situations where the C-TPAT team will use an alternative method of transportation, such as taking a taxi to and from the airport.

Again, not until CBP management received the OSC allegations, did SCSSs become aware that they had the authority to request vetted transportation services from the RSO as exemplified by an email dated November 10, 2011 from Supervisory SCSS Garza where he arrogantly assumes that all SCSSs had knowledge of this authority. If

this information had been presented to SCSSs, the information would have been logically contained in prior SOPs addressing Mexico and previously forwarded to the OSC, specifically the C-TPAT SOP and a C-TPAT Safety Strategy for the SCSS dated September 24, 2010 and September 28, 2010, respectively.

As a matter of fact, in August 2011, I requested law enforcement escort from ICE, Washington, DC as I was not aware of this particular procedure. The request for law enforcement escort was for anticipated travel to San Luis Potosi, Mexico. San Luis Potosi, Mexico was the area where the ICE agents were ambushed and one killed. When CBP Washington learned of my request, they threatened disciplinary action for “going outside the chain of command” but Director Michael Ginn, Miami Field Office, did not pursue this course of action. I emphasize that travel to San Luis Potosi, Mexico in August 2011 to conduct C-TPAT validations was approved by CBP, the U.S. State Department and the American Embassy *even after* the February 2011 ambush of two ICE special agents in the same area. SCSS Phillip Thompson and I were not afforded the benefit of force security measures during the August 2011 trip to San Luis Potosi, Mexico.

SCSS receive access to systems that allow him/her to conduct security related intelligence research prior to departure (Page 3)

On page 3, CBP stated that SCSSs receive access to systems that allow him/her to conduct security related intelligence and research prior to departure. The Agency identifies several cargo shipment entry data systems and one intelligence system, TECS. The Agency stated that SCSSs are given “the same level of [query] access as all CBP Officers. This level of access does not provide the SCSS with the ability to research reports of investigations.” CBP further stated that “if in the course of vetting a C-TPAT participant, a SCSS believes additional security related information is warranted, he/she can request reports of investigation from the CBP National Targeting Center (NTC).”

Without access to higher TECS level information, how will an SCSS know or even suspect that a C-TPAT participating company should receive further scrutiny? If when I query a Mexican foreign manufacturer or a highway carrier in TECS and the system responds with “No TECS Match” because I only have been authorized TECS 2 level access, when in reality the company may be subject of an ICE criminal investigation and I would require a higher TECS level access to capture that information, how would I know to request copies of reports of investigation from NTC? CBP also stated that SCSSs have access to ACE Automated Commercial Environment Secure Data Portal. I am not familiar with the ACE Automated Commercial Environment Secure Data Portal.

Security matters are monitored and assessed while the SCSS is in Mexico (Page 4)

On page 4, CBP stated that “all SCSSs are going to be included in the RSO SMS blast messaging system, which sends a message via blackberry so that the SCSSs can be informed **immediately** of an incident or security threat in Mexico and take appropriate action.” For the first time ever, on January 19, 2012, SCSSs received an email from Field Directors forwarded from Supervisor SCSS Garza. The email had been forwarded from the U.S. State Department RSO in Nuevo Laredo, Mexico. This is an improvement, but is still not direct, immediate messaging, as the “Bureau of Diplomatic Security Spot Report” was actually dated January 18, 2012 and relayed information about a tortured body being dumped by the narcotic terrorists near the U.S. Consulate/national monument.

SCSSs have access to the Dedicated Commuter Lane for re-entry to the United States when returning from official business in Mexico (Page 4)

On page 4, CBP stated that SCSSs have been given “access to the Dedicated Commuter Lane [SENTRI—Secure Electronic Network for Travelers Inspection] for re-entry to the United States when returning from official business in Mexico.” CBP’s response makes it sound as if the Agency has made special arrangements to expedite SCSS clearance across the border through special access. The Agency has not *given* special access to any SCSSs, it is an access afforded to *any person* possessing a SENTRI card and a SENTRI sticker on a registered vehicle. In reality, CBP oversees the SENTRI program, conducting background investigations and interviews of applicants, prior to charging \$122.25 for issuance of a SENTRI card. The Agency stated in their response, that “CBP Personnel who are on official duty and have been to Canada or Mexico in their official capacity may pass through a Dedicated Commuter Lane.” This is true but only under the circumstances outlined below:

- The driver of the vehicle, normally an unknown company representative, must possess a SENTRI card and the vehicle equipped with a SENTRI sticker.
- The SCSS must possess a SENTRI card in order for the SCSS to have access to the dedicated commuter lane.

The fact that CBP “informed all SCSSs that they can utilize this service through the issuance of C-TPAT SENTRI SOP dated November 16, 2011” constitutes management’s acknowledgement that SCSSs do travel in passenger vehicles driven by unknown company representatives.

Even under the above special circumstances, in late 2011, two SCSSs were detained in a CBP holding cell at a U.S. port of entry (POE) border crossing for using the dedicated commuter lane when returning from official government business in Mexico. It is obvious with this example that CBP has failed to work with the ports of entry to ensure that CBP Officers at the U.S. border are aware of the SENTRI procedures as it refers to SCSS usage of dedicated commuter lanes.

In case of a security emergency at a U.S. POE border crossing, SCSS should receive expedited processing regardless if a SENTRI card has been issued, as SCSSs have government credentials identifying them as CBP Officers and carry an official government passport when on official business. This is the type of expedited processing that CBP should be pursuing as Mexico poses such a serious risk at border crossings as described on page 3.

C-TPAT has established an interim personnel recovery procedure (Page 4)

On page 4, CBP stated that “Since May 2010, the C-TPAT program has engaged different DHS/CBP components in regards to the Personnel Recover (PR) efforts. These efforts include identifying what actions are needed to prepare personnel for the risk of hostage-taking or other isolated events.” So far, “engaging” and “identifying” have not produced any definitive results, even though the response indicates that an “Interim Personnel Recovery Procedure” was effective July 20, 2011 but has not been provided to SCSS, “pending final vetting and approval.” However, travel to Mexico continues, primarily by the Miami and Houston Field Offices. If the Agency was truly concerned about employee safety and security and has always strived to ensure the safety and well being of every employee while traveling abroad, then why did it take an OSC investigation to divulge that an interim personnel recovery procedure has been in place since July 20, 2011? To date, these procedures have not been disseminated to the SCSSs.

The agency stated in their December 1, 2010 Personnel Recovery Webinar Training provided to all SCSSs that, “It is the accepted philosophy within government that if a manager sends personnel into harms way, they have the moral and ethical responsibility to bring those personnel back. This is the basis for the implementation of a PR system in any government organization.” The December 1, 2010 Personnel Recovery Webinar Training was the last mention by the Agency that personnel recovery measures were being identified and developed until I received a copy of the report of investigation addressing my allegations.

On page 4 under Investigative Findings, CBP stated that they “consider employee safety and security to be of paramount importance. The Agency has always strived to ensure the safety and well being of every employee while traveling abroad.” If this statement was accurate, why did it take an OSC investigation for CBP to attempt to address the fact that SCSSs are allowed to enter violent cities in Mexico without the benefit of force protection requirements as afforded to other government employees? These same security concerns were brought forward by me in a prior Congressional Inquiry dated February 22, 2011.

I believe that since notification of the OSC investigation on October 27, 2011, CBP has scrambled to develop and document procedures that should have been in place prior to the OSC investigation. This failure to adequately address the Mexico risk is exemplified by the flurry of emails from Supervisory SCSS Manuel Garza, C-TPAT, Washington, DC who had been designated by the Agency to “focus on Mexico Travel

Security (page 3) and, in conjunction with the U.S. Department of State and the American Embassy, continued to allow travel to violent border towns until November 10, 2011 when travel was deferred by CBP to these areas of Mexico.

Interestingly, Supervisory SCSS Garza forwarded an email dated January 26, 2012 to the field emphasizing that the RSO, American Embassy, has the final authority to approve or deny travel to locations in Mexico (Attachment C). Why is our Agency not divulging that new force protection requirements are in place for government personnel traveling to Mexico? It seems to me that CBP is “passing the buck” to the American Embassy and the U.S. State Department regarding final decision on travel to high risk areas in Mexico. CBP is fully aware that the OSC investigation has been completed without any real accountability by CBP management. It appears to me that CBP is depending on the U.S. State Department and the American Embassy to continue to approve travel to high risk areas of Mexico pursuant to the “Exemption” letter without affording the SCSS the opportunity to enjoy the force protection measures articulated in the new Mission Mexico Travel Policy.

The Agency has mandated that SCSSs continue to travel to Mexico as exemplified by the list of Mexican companies that I have been assigned in calendar year 2012 to conduct C-TPAT validations. In calendar year 2012, Houston and Miami are identified as the offices with the most required travel to Mexico. (In calendar year 2007, the Houston office was solely established to conduct a majority of Mexican validations, and therefore, conduct a majority of C-TPAT validations in Mexico.) Surprisingly, not all seven C-TPAT offices are required to travel to Mexico. Of seven C-TPAT offices, two offices have conducted no travel to Mexico and are free of the inherent risks that Mexico poses.

Finally, CBP should explore other options in lieu of traveling to Mexico without a concrete Force Protection Plan and a viable Personnel Recovery Plan in place. Training and information resources are not a replacement for a Force Protection Plan and a Personnel Recovery Plan. However, if SCSSs are mandated to travel to those areas designated as requiring force protection measures as detailed in the new Mission Mexico Travel Policy, I sincerely hope that both CBP and the American Embassy in Mexico City affords *all* SCSSs the same force protection requirements as afforded to other government personnel.

I respectfully request that the OSC continue their investigation and receive **written confirmation** from CBP that *all* SCSSs traveling to high risk areas in Mexico will be afforded the same force protection requirements as afforded to other government personnel *before* closing their investigation. After reviewing CBP’s response to the OSC investigation, I am not convinced that SCSSs will be afforded the same force protection requirements as afforded to other government personnel while traveling in Mexico. We are at the mercy of CBP management and the American Embassy to provide a safe working environment while traveling abroad.

Respectfully,

Cheryl Lise Jacobo

Attachment A: Mission Mexico Travel Policy
Attachment B: Exemption Memorandum
Attachment C: Email dated January 26, 2012