



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

The Special Counsel

May 4, 2016

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

Re: OSC File No. DI-14-3679

Dear Mr. President:

Pursuant to my duties as Special Counsel, I am transmitting a report from the Department of Homeland Security (DHS), Transportation Security Administration (TSA), based on a disclosure of wrongdoing at the TSA offices in Arlington, Virginia, and Minneapolis, Minnesota. I have reviewed the report and, in accordance with 5 U.S.C. § 1213(e), provide the following summary of the investigation, the whistleblower's comments, and my findings.¹ In brief, I conclude that the agency's findings appear reasonable.

The whistleblower, Richard Mulkern, who consented to the release of his name, disclosed that on June 29, 2014, Sara Jane Olson, formerly known as Kathleen Anne Soliah, was improperly granted expedited screening through TSA's Pre✓ program despite having disqualifying criminal convictions. Mr. Mulkern disclosed that improperly clearing Ms. Olson for TSA Pre✓ expedited security screening demonstrated an error in the TSA Secure Flight program and a gap in aviation security.

OSC referred Mr. Mulkern's allegations to Secretary of Homeland Security Jeh Charles Johnson for investigation pursuant to 5 U.S.C. § 1213(c) and (d). Secretary Johnson referred the matter to the DHS Office of Inspector General (OIG) for investigation and designated TSA Deputy Administrator Melvin Carraway as the official responsible for providing the agency's report to OSC. Mr. Carraway submitted the agency's report to OSC on March 23, 2015.

¹ The Office of Special Counsel (OSC) is authorized by law to determine whether a disclosure should be referred to the involved agency for investigation or review, and a report. OSC may refer allegations of 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 or safety. 5 U.S.C. § 1213(a) and (b). Disclosures must include information that aids OSC in making its determination. Disclosures must include information sufficient for OSC to determine whether referral is warranted. OSC does not have the authority to investigate disclosures and therefore, does not conduct its own investigations. 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). 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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The OIG-14-3679 investigation substantiated Mr. Mulkern's allegation that Sara Jane Olson was improperly granted expedited screening through TSA's Pre✓ program despite having disqualifying criminal convictions. In response to this finding, the OIG recommended that the TSA chief risk officer amend rules in the Secure Flight program that extend TSA Pre✓ screening to unknown passengers. The OIG further recommended that the TSA assistant administrator for security operations (OSO) modify standard operating procedures to clarify transportation security officer (TSO) and supervisory TSO authority to refer passengers with TSA Pre✓ boarding passes to standard screening lanes when they believe that the passenger should not be eligible for TSA Pre✓ screening.

Pursuant to these recommendations, on November 21, 2014, the OSO assistant administrator provided guidance clarifying the articulable belief standard and the use of critical thinking skills by the field workforce. This information was also included in the National Shift Brief provided to front-line managers. On November 30, 2015, TSA Administrator Peter V. Neffenger issued a memorandum to DHS Inspector General John Roth, detailing actions initiated in July 2015 to improve the effectiveness of checkpoint screening and decrease the number of unknown passengers who receive expedited screening. On December 11, 2015, OIG confirmed that TSA is responding to the risks associated with individuals receiving TSA Pre✓ eligibility and, therefore, classified this recommendation as resolved but open pending receipt of documentation that TSA has appropriately amended rules in the Secure Flight program. In his comments, Mr. Mulkern noted that he was pleased with the agency's response to his disclosure and stated that he could already see changes within TSA in response to the investigation.

I have reviewed the original disclosures, the agency report, and Mr. Mulkern's comments. Based on that review, I have determined that the agency's report contains all of the information required by statute and the findings appear reasonable.

As required by 5 U.S.C. §1213(e)(3), I am now transmitting the unredacted agency report and the whistleblower's comments to you and to the Chairmen and Ranking Members of the Senate and House Committees on Homeland Security. I have also filed copies of the redacted agency reports and whistleblower's comments in OSC's public file, which is available online at www.osc.gov.² This matter is now closed.

Respectfully,



Carolyn N. Lerner

Enclosures

² TSA provided OSC redacted and unredacted (enclosed) copies of the report. The unredacted version of the report contains Sensitive Security Information (SSI) that is controlled under 49 C.F.R. Parts 15 and 1520 and must be handled and protected accordingly. The redacted version removed all SSI and, per TSA, may be posted in OSC's public file.