



**U.S. OFFICE OF SPECIAL COUNSEL**

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**The Special Counsel**

June 29, 2016

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

Re: OSC File Nos. DI-14-0416

Dear Mr. President:

Pursuant to my duties as Special Counsel, I am forwarding to you unredacted reports provided to me in response to a disclosure from an employee at the Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), Enforcement Removal Operations (ERO), Salem, Virginia. The whistleblower, Andrew J. Komar, who consented to the release of his name, was an immigration enforcement agent and alleged the misuse of administratively uncontrollable overtime (AUO). I have reviewed these reports and, in accordance with 5 U.S.C. § 1213(e), provide the following summary of the agency investigation and whistleblower comments as well as my findings.<sup>1</sup>

This case is one in a series of disclosures regarding widespread abuse of AUO at DHS. On March 11, 2015, and March 24, 2016, I sent you letters concerning this issue and the reforms initiated as a result of whistleblowers' disclosure of information to the Office of Special Counsel (OSC).<sup>2</sup> As in previous reports received from DHS on this subject, the report on this matter substantiated the allegation that employees claimed AUO on a daily basis but either failed to provide sufficient justification for working the extra hours or failed to perform duties that qualified for AUO. Mr. Komar also alleged

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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).

<sup>2</sup> The cases closed on March 11, 2015 were OSC File Nos. DI-12-1105; DI-13-1556; DI-13-2853; DI-13-3516; DI-13-4124; DI-14-0581; DI-14-0631; DI-14-1093; DI-14-1100; and DI-14-1637. The cases closed on March 24, 2016 were OSC File Nos. DI-13-3418 and DI-14-0666.

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that ERO management knowingly approved the improper AUO use. However, this allegation was not substantiated.

OSC referred Mr. Komar's allegations to Secretary of Homeland Security Jeh Charles Johnson to conduct an investigation pursuant to 5 U.S.C. § 1213(c) and (d) on February 21, 2014. Secretary Johnson referred the matter to ICE for an investigation. ICE's Office of Professional Responsibility was assigned to investigate the matter. ICE Deputy Director Daniel H. Ragsdale was delegated authority to review the agency findings and submitted the agency's initial and supplemental reports to OSC on October 4, 2014, and February 11, 2015, respectively. Mr. Komar provided comments on the agency reports on June 13, 2016.

The investigative team reviewed time and attendance records and AUO justification forms for all of the employees in the ERO office over an 18-month period and determined that 84 percent of the AUO justifications reviewed were insufficient. However, the agency report indicated that "minimal updated agency guidance and lack of training regarding the use of AUO" contributed to the improper approval of AUO justifications that were either vague or did not qualify for AUO pay. On this basis, the OPR investigation did not substantiate the allegation that managers knowingly approved the improper use of AUO.

The report submitted on this matter reiterated ICE's commitment to administering overtime pay in a manner consistent with law, regulation, and policy. The report also emphasized ICE's commitment to the measures taken to ensure the proper administration of AUO throughout the agency. These measures include issuing guidance on proper AUO administration and premium pay, an updated form for recording AUO, development of premium pay training for both supervisors and employees, a position-by-position review of each position that was authorized for AUO, expanded audits to monitor the success of ICE's ongoing efforts to promote and maintain a culture of AUO compliance, and the agency's commitment to promptly investigate all claims of AUO abuse.

In his comments, Mr. Komar questioned some of the factual findings in the reports. For example, Mr. Komar objected to the agency finding that ERO managers had not received training, guidance, or instruction on the proper administration of AUO. In support, Mr. Komar cited a June 2007 memorandum from ICE headquarters to all field office directors regarding the proper administration of AUO. Mr. Komar noted the report's finding that he "took it upon himself to research the statutory guidelines governing AUO and . . . raised concerns" about certain job duties he was told qualified for AUO. Mr. Komar questioned why, if he could research this issue, higher ranking managers had failed to do so.

I have reviewed the original disclosure, the agency reports, and Mr. Komar's comments. Based on that review, I have determined that the agency's reports contain all of the information required by statute and that the findings appear reasonable. I thank Mr.

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Komar for coming forward; his disclosures have resulted in marked progress on the proper administration of AUO.

As required by 5 U.S.C. § 1213(e)(3), I have sent copies of this letter, the unredacted agency reports, and Mr. Komar'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 this letter, the redacted agency reports, and Mr. Komar'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