



U.S. OFFICE OF SPECIAL COUNSEL

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

The Special Counsel

September 27, 2016

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

Re: OSC File No. DI-14-2972

Dear Mr. President:

Pursuant to my duties as Special Counsel, I am forwarding to you a report provided to me in response to a disclosure received from an employee of the Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO), Portland, Oregon. The whistleblower, Johnathan Kohlman, a Supervisory Detention and Deportation Officer (SDDO) of the Criminal Alien Program who consented to the release of his name, alleged that Assistant Field Office Director (AFOD) David Drasin falsified his time and attendance records by claiming he was working when he was not in the office and could not be reached on his government-issued cellphone. Mr. Kohlman further alleged that Mr. Drasin claimed Administratively Uncontrollable Overtime (AUO) on a daily basis for hours he did not work, was unreachable, and was not performing duties which qualified for AUO. I have reviewed the DHS report and, in accordance with 5 U.S.C. § 1213(e), provide the following summary of the agency investigation and my findings.<sup>1</sup>

Mr. Kohlman's allegations were referred to the Honorable Jeh Johnson, DHS Secretary, for investigation and a report pursuant to 5 U.S.C. § 1213(c) and (d). Secretary Johnson directed DHS's Immigration and Customs Enforcement, Office of Professional

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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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Responsibility (OPR) to conduct the investigation and delegated responsibility to ICE Deputy Director Daniel H. Ragsdale to review and sign the report. Mr. Ragsdale submitted the report to OSC on April 1, 2016. On April 21, 2016, OSC requested supplemental information from ICE regarding the disciplinary and corrective actions taken as a result of the report's findings. The supplemental information was provided to OSC through a series of updates in May, June, July, and August 2016. Mr. Kohlman declined to comment on the report.

### **I. The Allegations and the Agency Investigation**

The allegations against Mr. Drasin were substantiated. The investigation determined that Mr. Drasin falsified his time and attendance records by working just over six hours per day while claiming to have worked significantly more. Though the investigation acknowledged that Mr. Drasin sometimes attended meetings outside the office, Mr. Drasin could not corroborate that he attended outside meetings as frequently as he claimed and "exaggerated the number of times he visited the satellite offices" under his supervision. Further, the report concluded that Mr. Drasin appeared to have attempted to obscure the times he exited the office by using "routes that would not leave a PIV trail." Although the report acknowledged that Mr. Drasin's attendance improved somewhat just prior to the investigation, he still averaged only about seven hours of his required eight-hour workday in the office per day.

The investigation also substantiated Mr. Kohlman's allegation that Mr. Drasin improperly claimed AUO for hours he did not work and/or performed duties that did not qualify for AUO. This conclusion was based primarily on a review of Mr. Drasin's WebTA records, which indicated that Mr. Drasin claimed AUO in "consistent patterns," rather than irregularly and uncontrollably, as mandated by the regulations. The report further noted that Mr. Drasin regularly declared AUO hours when he was on partial leave. The report concluded, "[o]n those partial leave days, AFOD Drasin was rarely ever in the office for even as much time necessary to complete a regular eight (8) hour work day let alone the AUO alleged."

In response to Mr. Drasin's claim that he lacked an understanding of AUO, the investigation found that Mr. Drasin received more training on AUO than non-supervisory employees, that other employees interviewed pursuant to the investigation exhibited sufficient knowledge of AUO, and that Mr. Drasin offered no "plausible explanation" for his purported lack of understanding. Finally, the report found that Mr. Drasin consistently failed to submit the requisite paperwork justifying his claim of AUO. While he stated that he emailed some of these reports and hand delivered others to his supervisor, the timekeepers charged with maintaining these records could only produce one AUO report for one pay period in 2016 and a handful of reports for the latter half of 2015 for Mr. Drasin.

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In response to these findings, the report recommended an audit of all AUO submissions in the ERO Portland field office to ensure employees are complying with AUO regulations and policies. Specifically, with respect to Mr. Drasin, the report recommended referral of the two substantiated allegations to ERO management for possible discipline and that Mr. Drasin receive supplemental training on the use of AUO and preparation of AUO reports. Finally, the report recommended a refresher on AUO record retention requirements.

## **II. Agency Updates on Recommended Actions**

Since receipt of the report, the agency provided recurring updates to OSC regarding the recommended corrective and disciplinary actions. A proposed letter of suspension for Mr. Drasin was presented to the agency's Disciplinary and Adverse Action Panel (DAAP) in late May 2016. The DAAP approved and signed the recommended action, a ten-day suspension, which was issued to Mr. Drasin on June 7, 2016. With respect to the corrective actions recommended by the report, the agency notified our office on August 24, 2016 that it had completed the audit of AUO usage in the ERO Portland field office and forwarded the results to ERO headquarters and local management. In addition, training on the proper usage and administration of AUO is scheduled for the fall.

## **III. The Special Counsel's Findings and Conclusions**

I have reviewed the original disclosure and the agency report and updates. I thank Mr. Kohlman for raising these important issues. The allegations against Mr. Drasin were substantiated, and disciplinary and corrective action were taken as a result of these findings. Thus, I have determined that the report contains all of the information required by statute and that the findings appear reasonable.

As required by 5 U.S.C. § 1213(e)(3), I have sent a copy of this letter and the agency report to the Chairmen and Ranking Members of the Senate and House Committees on Homeland Security. I have also filed a copy of this letter and the redacted agency report in OSC's public file, which is available online at [www.osc.gov](http://www.osc.gov). This matter is now closed.

Respectfully,



Carolyn N. Lerner

Enclosures