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The Special Counsel

April 19, 2019

The President
The White House
Washington, D.C. 20050

Re: OSC File Nos. DI-14-2965, DI-14-2969, DI-14-3660, and DI-14-3663

Dear Mr. President:

I am forwarding to you a report provided to me in response to disclosures received from employees at the Department of Homeland Security (DHS), U.S. Customs and Border Protection (CBP), Laredo Sector, Laredo and Hebbronville, Texas. The whistleblowers, Border Patrol Agents [REDACTED], [REDACTED], consented to the release of their names. They disclosed that, in April 2014, DHS employees allowed substantial overcrowding at border patrol stations that endangered the lives and safety of many detainees and agency employees.

Specifically, the whistleblowers alleged that: (1) employees permitted border patrol stations in the Laredo Sector to exceed capacity levels on a daily basis resulting in extreme overcrowding; (2) minors were improperly held for more than seventy-two hours and kept in the same holding areas as adults in violation of agency rules; (3) the overcrowding led to unsanitary conditions, health issues, a shortage of resources and supplies, lapses in border coverage, and processing issues; (4) the overcrowding endangered the lives of the detainees, agents, and other employees; and (5) employees failed to take timely action when notified of violations and did not adequately respond to the whistleblowers' concerns. In addition, the whistleblowers alleged that the actions of CBP employees violated the U.S. Supreme Court's seminal decision in *Reno v. Flores*, 507 U.S. 292, 292 (1993)¹, the *Reno v. Flores* Stipulated Settlement Agreement, and DHS policies.

The agency substantiated allegations listed above as one through four, finding that the issues alleged were caused by the surge of alien families and unaccompanied alien children who attempted to enter the United States from April 1, 2014 to June 30, 2014 (2014 surge). The investigation also found that CBP management addressed the issues that existed after the 2014 surge related to these allegations and that operations within the hold room and processing facilities were operating normally. Further, the whistleblowers acknowledged that, after the 2014 surge was over, the issues raised in the allegations had been resolved and operations resumed normally at these locations.

¹ The *Reno v. Flores* decision addresses the rights of alien juveniles who are not accompanied by their parents or other adult relatives.

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DHS responded to these findings by ensuring that the immediate safety concerns regarding overcrowding and staffing were addressed, developing and releasing CBP's National Standards on Transport, Escort, Detention, and Search (TEDS) in October 2015, and continuing to comply with the orders issued by the *Flores* Court in order to fulfill legal and regulatory requirements for detained individuals.² DHS maintains that these responsive actions addressed the concerns of allegation five.

In his comments, [REDACTED] identified additional issues at CBP and indicated he may file new allegations with OSC. He also opined that DHS should provide more training for employees. The other whistleblowers chose not to comment on the agency report.

I have reviewed the original disclosure, the agency report, and the whistleblower's comments. Accordingly, I have determined that the report meets all statutory requirements and the agency's findings appear reasonable. As required by 5 U.S.C. § 1213(e)(3), I have sent copies of this letter and the agency report 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 redacted versions of the letter to the President, the report, the comments, and the § 1213(e) referral letter in our public file, which is available at www.osc.gov. This matter is now closed.

Respectfully,



Henry J. Kerner
Special Counsel

Enclosure

² The TEDS standards are enclosed as part of the agency's report.