

United States Senate
WASHINGTON, DC 20510

May 22, 2024

VIA ELECTRONIC TRANSMISSION

The Honorable Joseph Cuffari
Inspector General
Department of Homeland Security

Dear Inspector General Cuffari:

As you are aware, since 2018, I have conducted oversight of the Department of Homeland Security (DHS) and Customs and Border Protection's (CBP) implementation of the DNA Fingerprint Act of 2005.¹ I copied you on three separate letters dated August 18, 2023, September 11, 2023, and September 27, 2023, to DHS and CBP regarding U.S. Office of Special Counsel (OSC) findings from their investigation into allegations of retaliation against Mr. Fred Wynn, Mr. Mike Taylor, and Mr. Mark Jones.² Since the August and September 2023 letters, I also sent two separate letters on November 1, 2023, and February 26, 2024, regarding DHS and CBP's continued failure to fully implement the DNA Fingerprint Act of 2005.³ In light of the clear retaliation against these brave whistleblowers – which continues to the date of this letter – and the blatant failures by DHS and CBP to comply with the DNA Fingerprint Act, I request that you immediately investigate both matters.

¹ Letter from Sen. Charles E. Grassley, Chairman, Senate Judiciary Committee, to the Honorable Kirstjen Nielsen, Secretary, Department of Homeland Security (Nov. 20, 2018); *see also* Letter from Sen. Charles E. Grassley, Ranking Member, Senate Budget Committee, to the Honorable Alejandro Mayorkas, Secretary, Department of Homeland Security (Aug. 18, 2023), https://www.grassley.senate.gov/imo/media/doc/grassley_to_dhs_-whistleblower_retaliation.pdf; *see also* Letter from Sen. Charles E. Grassley, Ranking Member, Senate Budget Committee, to the Honorable Alejandro Mayorkas, Secretary, Department of Homeland Security, and Troy A. Miller, Senior Official performing the Duties of Commissioner, Customs and Border Protection (Sept. 11, 2023), https://www.grassley.senate.gov/imo/media/doc/grassley_to_dhs_-whistleblower_retaliation_follow-up.pdf; *see also* Letter from Sen. Charles E. Grassley, Ranking Member, Senate Budget Committee, to the Honorable Alejandro Mayorkas, Secretary, Department of Homeland Security, and Troy A. Miller, Senior Official performing the Duties of Commissioner, Customs and Border Protection (Sep. 27, 2023)

https://www.grassley.senate.gov/imo/media/doc/ceg_to_dhs_-cbp_ny_post_comments.pdf; *see also* Letter from Sen. Charles E. Grassley, Ranking Member, Senate Budget Committee, to the Honorable Alejandro Mayorkas, Secretary, Department of Homeland Security, and Troy A. Miller, Senior Official performing the Duties of Commissioner, Customs and Border Protection (Nov. 1, 2023), https://www.grassley.senate.gov/imo/media/doc/grassley_to_dhs_-cbp_dna_collection.pdf; *see also* Sen. Charles E. Grassley, Ranking Member, Senate Budget Committee, to the Honorable Alejandro Mayorkas, Secretary, Department of Homeland Security, and Troy A. Miller, Senior Official performing the Duties of Commissioner, Customs and Border Protection (Feb. 26, 2024), https://www.grassley.senate.gov/imo/media/doc/grassley_to_dhs_-cbp_dna_collection1.pdf.

² Letters from Senator Grassley on Aug. 18, 2023, Sep. 11, 2023, and Sep. 27, 2023, *supra* note 1.

³ Letters from Senator Grassley on Nov. 1, 2023, and Feb. 26, 2024, *supra* note 1.

Whistleblower Retaliation

As noted in my August 18, 2023, and September 11, 2023, letters, on December 2, 2021, OSC sent a letter to DHS and CBP providing a summary of their findings from their investigation of whistleblower retaliation against Mr. Wynn, Mr. Taylor, and Mr. Jones.⁴ OSC found that CBP committed prohibited personnel practices in retaliation for their whistleblowing, violating 5 U.S.C. § 2302(b)(8) and (b)(9)(C).⁵ OSC stated, in part:

OSC's investigation supports a conclusion that the agency's actions constituted both a violation of section 2302(b)(8) and (b)(9)(C). Specifically, the agency retaliated against the Complainants for actual or perceived disclosures of wrongdoing.

...

In addition, the evidence shows that, from February 2018 through present, officials subjected the Complainants to a significant change in duties, responsibilities and working conditions....⁶

Further, these whistleblowers provided additional context and examples of retaliation to your office and the DHS Office of the General Counsel (OGC) on December 20, 2022, that took place following OSC's investigation.⁷ These examples included:

- George Talton IV, the acting Director of the Operational Field Testing Division (OFTD), during a U.S. Border Patrol (USBP) "all-hands meeting," which included the Chief of the Border Patrol, Rodney Scott, and hundreds of agents and staff, stated that there was an "issue" with whistleblowers assigned to the office creating a negative implication about lawful and protected whistleblower disclosures.⁸
- According to Mr. Jones, Mr. Talton admitted to Mr. Jones that he was aware of retaliation against the three of them, but his only concern was OFTD.⁹
- Mr. Jones and Mr. Taylor were the only two out of 10-15 employees who suffered financial and professional impacts because of the changes in titles and responsibilities outlined in a June 23, 2022, memorandum informing employees of their new Investigative Program Specialist titles.¹⁰ Specifically, Mr. Jones and Mr. Taylor were informed that their firearms and law enforcement (LE) authority would be removed. This

⁴ Letters from Senator Grassley on Aug. 18, 2023, and Sep. 11, 2023, *supra* note 1.

⁵ Letter from Alejandra Dove, U.S. Office of Special Counsel, to Mary M. Musilek, Attorney, Office of Assistant Chief Counsel, U.S. Customs and Border Protection, (Dec. 2, 2021), On file with Committee staff.

⁶ *Id.*

⁷ Email from Fred Wynn, to DHS OIG Whistleblower Protection Coordinator and DHS Office of General Counsel, (Dec. 20, 2022), Exhibit 4.

⁸ *Id.*

⁹ *Id.*; *see also* Letter from Senator Grassley on Aug. 18, 2023, *supra* note 1.

¹⁰ Memorandum from George Talton, Acting Director, Operational Field Testing Division, CBP to All Employees, Operational Field Testing Division, (June 23, 2022), Exhibit 1; *see also* Letter from Senator Grassley on Aug. 18, 2023, *supra* note 1.

meant that Mr. Taylor would have his LE retirement coverage taken after 30 years of federal service.¹¹ The removal of their LE authority was effective February 26, 2023, as outlined in a letter to Mr. Jones and Mr. Taylor from Ms. Lissette Blanks, Director of OFTD, on February 7, 2023.¹² Ms. Blanks, according to the whistleblowers, was directed by Jakob Brecheisen (CBP OCC), Joshua Gough (Executive Director of OFTD), and Jason Toepfer (Deputy Executive Director of OFTD) to move forward with removing Mr. Jones and Mr. Taylor's LE authority.¹³

Additional examples of retaliation, include:

- On March 6, 2018, according to Mr. Jones, during a meeting between Acting Deputy Executive Director of Intelligence Operations, Juan Fernandez, and Mr. Jones, Fernandez stated to Mr. Jones that he needed to "stop, just stop and knock it off," and told Mr. Jones that if he was quiet it will "go easier on me."¹⁴
- On January 23, 2020, Mr. Jones and Mr. Taylor were placed under the supervision of Executive Director of Intelligence Operations Ronald Ocker and Acting Deputy Executive Director of Intelligence Operations Juan Fernandez. This is particularly concerning given that during this time, not only was there documentation of alleged retaliatory behavior by both Ocker and Fernandez, there was also an open investigation into the prohibited personnel practices of these individuals.¹⁵
- In his personal impact statement and subsequent disclosures to the OSC on December 17, 2020, Mr. Wynn highlighted the consequences he faced as a result of the retaliation. Specifically, Mr. Wynn saw that "purchase orders [were] killed and money abruptly reallocated, and, most significantly, WMD-related projects were allowed to fall off the table for no other reason than [Mr. Wynn, Mr. Jones, and Mr. Taylor] had been the ones working on them."¹⁶ Mr. Wynn was also denied professional growth opportunities.¹⁷ Specifically, he was "put [] in the unique position of being the intermediary between the people who develop WMDs for a living and the Officers who had a chance to interdict potentially dangerous materials before they got into the hands of bad actors. To be blunt, it was mind-blowing stuff, and CBP killed it out of a juvenile spite."¹⁸

¹¹ LEO Special Retirement Coverage, U.S. CUSTOMS AND BORDER PROTECTION, <https://www.cbp.gov/employee-resources/benefits/retirement/leo-ecbpo/leo-special-retirement-coverage>, In order to qualify for Law Enforcement retirement, a total of twenty (20) years of law enforcement service must be completed. Therefore, removing this designation effectively erases fifteen (15) years of LEO services and disqualifies Mr.

Taylor from an increased retirement payment; *see also* Letter from Senator Grassley on Aug. 18, 2023, *supra* note 1.

¹² Memoranda from Lissette Blanks, Director Operational Field Testing Division, CBP to Mark Jones, Operations Manager – Operational Field Testing Division, and Michael Taylor, Operations Manager – Operational Field Testing Division, (Feb. 7, 2023), Exhibits 2 and 3.

¹³ *Id.*; Disclosures on File with Committee staff.

¹⁴ Disclosures on File with Committee staff.

¹⁵ *Supra* note 5. "Moreover, we note that, when leadership transferred the team back to OI, it placed Mr. Jones and Mr. Taylor back under the supervision of, and in physical proximity to, the same official they were alleging had retaliated against them. At that time, OSC had already put the agency on notice of the Complainants' prohibited personnel practice complaint and was in the middle of facilitating a resolution of the matter via mediation."

¹⁶ Disclosures on File with Committee staff.

¹⁷ Disclosures on File with Committee staff.

¹⁸ Disclosures on File with Committee staff.

- According to Mr. Taylor, he had an April 4, 2023, conversation with Lissette Blanks, a member of the CBP OFTD team and the individual that signed the memo removing Mr. Jones and Mr. Taylor's LE authority, firearms, credentials, badges, and LE retirement. In that conversation, according to Mr. Taylor, Lissette Blanks' "comment was to the effect that the agency wants to bankrupt us, make us quit, die, kill ourselves or preferably all of the above. I would like to emphasize that she was not saying it maliciously towards me but basically summarizing the agency's clear intentions for Mark and me."¹⁹
- On March 19, 2024, Mr. Jones was subject to continued retaliation.²⁰ Specifically, Mr. Jones and members within his office were asked to move to a different workspace. When Mr. Jones arrived at his new workstation, he was the *only* employee without connectivity, power, or phone access at his workstation, which lasted for over three weeks.²¹

According to disclosures by Mr. Wynn, Mr. Taylor, and Mr. Jones, they contacted DHS OIG by direct letter, Hotline/Joint Intake Center Filings, and emails with little or no response from DHS OIG employees.²² Though your office has been aware of the OSC's findings and the additional whistleblower disclosures, it appears DHS OIG has not taken any actions to investigate those involved in the retaliation of Mr. Wynn, Mr. Taylor, and Mr. Jones. If that is not the case, please explain.

Those who subjected these whistleblowers to retaliation must be fully investigated and held accountable.

Implementation of DNA Fingerprint Act of 2005

According to OSC, the failure to fully implement the DNA Fingerprint Act has continued for nearly a decade—an assertion DHS and CBP disagree with.²³ On March 9, 2020, the Department of Justice (DOJ) settled the matter and finalized a rule that lifted the exemption that, as described in a U.S. Government Accountability Office (GAO) report, "had allowed DHS to not collect DNA samples from certain noncitizens for whom such collection is not feasible due to operational exigencies or resource limitations."²⁴

¹⁹ Disclosures on File with Committee staff.

²⁰ Disclosures on File with Committee staff.

²¹ Email from Mr. Jones to Committee staff.

²² Email from Mr. Taylor (Dec. 20, 2023), Exhibit 4; Letter and Email from Mr. Jones to DHS IG Joseph Cuffari (Oct. 2, 2019), Exhibit 5.

²³ Letter from Henry J. Kerner, U.S. Office of Special Counsel, to Donald J. Trump, President of the United States of America (Aug. 21, 2019), <https://osc.gov/Documents/Public%20Files/FY19/DI-18-3920,%20DI-18-3924,%20and%20DI-18-3931/Redacted%20DI-18-3920,%20DI-18-3924,%20DI-18-3931%20Letter%20to%20the%20President.pdf>.

²⁴ Letter from Senator Grassley on Nov. 1, 2023 *Id.*; *see also* On March 9, 2020, the Department of Justice (DOJ) finalized a rule that removed 28 CFR 28.12(b)(4), which authorized the Secretary of DHS to exempt certain detained aliens from the DNA-sample collection requirement. The Federal Register states, "[a]s a result, the rule restores the Attorney General's plenary authority to authorize and direct all relevant Federal agencies, including the Department of Homeland Security, to collect DNA samples from such individuals." DNA – Sample Collection From Immigration Detainees, 85 Fed. Reg. 13,483-13,484 (Mar. 9, 2020) (codified at 28 C.F.R. pt. 28), <https://www.govinfo.gov/content/pkg/FR-2020-03-09/pdf/2020-04256.pdf>; *see also*, U.S. Gov't Accountability

After the rule change, on May 17, 2021, DHS OIG released a report entitled, *DHS Law Enforcement Components Did Non Consistently Collect DNA from Arrestees*, which recommended that “DHS oversee and guide its law enforcement components to ensure they comply with the requirements of the DNA Fingerprint Act of 2005 and 28 C.F.R. § 28.12.”²⁵ Specifically, the report found that, “[o]f the five DHS law enforcement components we reviewed that are subject to these DNA collection requirements, only [the] United States Secret Service consistently collected DNA from arrestees. U.S. Immigration and Customs Enforcement and the Federal Protective Service inconsistently collected DNA, and U.S. Customs and Border Protection and the Transportation Security Administration collected no DNA.”²⁶ Notably, the DHS OIG report referenced the August 2019 letter from OSC to the President stating that:

CBP has failed to fulfill its responsibilities under the law and in so doing has compromised public safety. The failure to collect DNA clearly inhibits law enforcement's ability to solve cold cases and to bring violent criminals to justice. Furthermore, although CBP was granted a one-year exemption, as stated in the language of the exemption itself, CBP was supposed to use that period to begin complying with DNA collection. The passage of nearly a decade without compliance is unacceptable.²⁷

According to the report, DHS concurred with all four recommendations.²⁸ As of May 6, 2024, according to DHS OIG, two of these recommendations remain open.²⁹

Further, my staff has been provided an internal – and from what they were told, active – DHS and CBP directive from December 2020, which was signed by Mark Morgan, Chief

Office, GAO-23-106252 DNA Collections: *CBP is Collecting Samples from Individuals in Custody, but Needs Better Data for Program Oversight* (May 24, 2023), <https://www.gao.gov/assets/gao-23-106252.pdf>.

²⁵ DHS, Office of Inspector General, *DHS Law Enforcement Components Did Not Consistently Collect DNA from Arrestees*, <https://www.oig.dhs.gov/sites/default/files/assets/2021-05/OIG-21-35-May21.pdf> (May 17, 2021).

²⁶ *Id.*

²⁷ *Id.* at 27-28; *see also supra* note 20.

²⁸ *Id.* at 14, 30-33. “Recommendation 1: We recommend the DHS Office of the Secretary establish an oversight structure with central policy guidance and direction to ensure DHS law enforcement components comply with the DNA Fingerprint Act of 2005 and 28 C.F.R. § 28.12. Recommendation 2: We recommend the DHS Office of the Secretary ensure ICE, FPS, CBP, and TSA fully implement DNA collection for arrestees and non-U.S. detainees to comply with the DNA Fingerprint Act of 2005 and 28 C.F.R. § 28.12. Recommendation 3: We recommend the DHS Office of the Secretary ensure ICE, FPS, CBP, and TSA implement internal controls, including modifying booking systems to track and verify DNA collection. If components pursue memorandums of agreement with other agencies to collect DNA samples, they must implement internal controls to track and verify DNA collection. Recommendation 4: We recommend the FPS Policy Division update the FPS Detention and Arrest Directive to align with 28 C.F.R. § 28.12.”

²⁹ *Id.* “Recommendation 2: We recommend the DHS Office of the Secretary ensure ICE, FPS, CBP, and TSA fully implement DNA collection for arrestees and non-U.S. detainees to comply with the DNA Fingerprint Act of 2005 and 28 C.F.R. § 28.12. Recommendation 3: We recommend the DHS Office of the Secretary ensure ICE, FPS, CBP, and TSA implement internal controls, including modifying booking systems to track and verify DNA collection. If components pursue memorandums of agreement with other agencies to collect DNA samples, they must implement internal controls to track and verify DNA collection.”; *see also* Emails on file with Committee Staff.

Operating Officer and Senior Official Performing the Duties of the Commissioner of CBP.³⁰ This directive states that “CBP is required to collect DNA samples and accompanying biographical data for submission to CODIS from all persons in CBP custody that are arrested on federal criminal charges and from non-U.S. persons detained under CBP’s authority, who are not otherwise exempt from the collection requirement.”³¹ Despite being required by law and internal directives, and after the DHS OIG and OSC reports highlighted failures to follow the law, whistleblower disclosures indicate that DHS and CBP continue to fail to fully implement the DNA Fingerprint Act of 2005.

The consequences of this failure are clear. In my November 1, 2023, letter, I noted that according to the GAO and legally protected whistleblower disclosures relating to CBP’s DNA collection practices, in FY 2022, of the nearly 1.7 million individuals encountered by Border Patrol and the Office of Field Operations, the agencies collected DNA samples from about 634,000 of these individuals, or 37%.³²

In my follow up letter on February 26, 2024, to DHS and CBP, I highlighted that, according to legally protected whistleblower disclosures related to CBP’s DNA collections, in the first three quarters of FY 2023, the FBI received an alarmingly low percentage of DNA samples.³³

Quarter/ Fiscal Year	Nationwide Encounters ³⁴	DNA Samples FBI Received ³⁵	% FBI Received
Q1 FY23	865,333	347,231	40.13%
Q2 FY23	682,533	213,011	31.21%
Q3 FY23	762,659	282,786	37.08%

CBP’s DNA samples have led to hundreds of confirmed hits in CODIS, linking illegal immigrants via DNA matches to criminal conduct such as fraud, sexual assaults, homicides, burglaries, and assault on federal officers.³⁶ These DNA samples have been connected to unsolved cases.³⁷ Failing to collect these DNA samples at the border is not only a violation of law, but it undermines the service of justice and allows criminals to enter the United States to commit more crimes and threaten the safety of American citizens.

Recent legally protected whistleblower disclosures have given more cause for concern and show that DHS and CBP continue to fail to fully implement the DNA Fingerprint Act.

³⁰ Department of Homeland Security, U.S. Customs and Border Protection Directive, *DNA Sample Collection for CODIS* (Dec. 30, 2020). On file with Committee staff.

³¹ *Id.* at 2.

³² Letter from Senator Grassley on Nov. 1, 2023, *supra* note 1; *see also*, GAO-23-106252 *supra* note 19.

³³ Documents on file with Committee staff.

³⁴ U.S. Customs and Border Protection, *Nationwide Encounters*, (last modified Feb. 13, 2024)

<https://www.cbp.gov/newsroom/stats/nationwide-encounters>; *see also* Letter from Senator Grassley on Feb. 26, 2024, *supra* note 1.

³⁵ Letter from Senator Grassley on Nov. 1, 2023, *supra* note 1; *see also*, GAO-23-106252 *supra* note 19.

³⁶ *Id.*

³⁷ *Id.*

According to whistleblower disclosures to my office, CBP officials went to USBP processing facilities in Tucson, Casa Grande, Yuma, and San Diego and at no facility that these officials visited was DNA being collected.³⁸ This blatant disregard of the law deserves to be investigated, and those responsible should be held accountable.

I request DHS OIG fully investigate the acts of whistleblower retaliation as outlined in the OSC report and disclosures to your office, to include meeting with these brave whistleblowers. I also request DHS OIG perform a full and complete review of DHS and CBP's failure to implement the DNA Fingerprint Act of 2005.

If you have any questions, please contact Tucker Akin on my committee staff at (202) 224-0642.

Sincerely,

A handwritten signature in blue ink that reads "Charles E. Grassley". The signature is fluid and cursive, with "Charles" on the top line and "E. Grassley" on the bottom line.

Charles E. Grassley
Ranking Member
Committee on the Budget

Enclosure

³⁸ Email on file with Committee Staff.

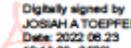
EXHIBIT 1

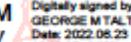
1300 Pennsylvania Avenue, NW
Washington, DC 20229



U.S. Customs and
Border Protection

MEMORANDUM FOR: All Employees, Operational Field Testing Division
Planning, Analysis and Requirements Evaluation Directorate
Operations Support

THROUGH: Josiah Toepfer 
Deputy Executive Director JOSIAH A. TOEPFER
Planning, Analysis, and Requirements Evaluation Directorate
Operations Support

FROM: George Talton 
Acting Director TALTON IV
Operational Field Testing Division
Planning, Analysis, and Requirements Evaluation Directorate
Operations Support

SUBJECT: Updating Investigative Program Specialist Position
Description and Reassignment of all GS-13 and 14 Personnel

Last year, Operations Support (OS) realigned the Operational Field Testing Division (OFTD) under the Planning, Analysis, and Requirements Evaluation Directorate (PARE). During this organizational change, the Office of Human Resources Management (HRM) and the Office of Chief Counsel (OCC) reviewed all aspects of the process to ensure that realignment complied with Federal employment laws, regulations, and policies. This comprehensive review revealed outdated and inaccurate position descriptions (PDs). As a result, we have determined, with the support of HRM Classification Operations and OCC, that the PDs for all OFTD employees must be updated to reflect the new and current organizational location, accurate job duties, and responsibilities.

Updated PDs (attached) were developed by PARE/OFTD and classified by HRM for the Investigative Program Specialist (OFTD Covert), GS-1801-13 and 14 positions, which more accurately describe the current location, duties, and responsibilities performed by the Investigative Program Specialists, Operations Managers/OAT, Intelligence Research Specialists, and Program Managers, assigned to OFTD. HRM's Classification Operations and OCC advised that these positions have not previously and will not meet the requirement for special retirement coverage and are classified as non-law enforcement positions in CBP, and subsequently the new Position Descriptions continue to reflect that determination.

This change will not have financial and professional impacts for most employees, and we encourage you to review them for any individual impacts. Therefore, OS leadership is providing

Authorized for public release by Ranking Member Grassley

OFTD Reassignment Notification

you with a 90-day notice prior to the effective date of reassignment to the updated PDs, to provide you with time to make any personal and professional decisions you deem necessary. All OFTD employees will be reassigned to the new PDs effective September 25, 2022 (pay period 20).

Let me reassure you that this will not change our mission or performance expectations. This change merely ensures we comply with all legal and regulatory requirements.

If you have any concerns or questions regarding the new position description, please contact me directly at ([REDACTED]) or at George.M.Talton-IV@GSA.gov [REDACTED]

EXHIBIT 2

1300 Pennsylvania Avenue, NW
Washington, DC 20229



**U.S. Customs and
Border Protection**

February 7, 2023

MEMORANDUM FOR: Mark J. Jones
Operations Manager
Operational Field Testing Division (OFTD)

Through: Joshua S. Gough **JOSHUA S GOUGH** Digitally signed by
Executive Director **JOSHUA S GOUGH**
Planning, Analysis, and Requirements Evaluation (PARE)
Operations Support **LISSETTE BLANKS** Digitally signed by
From: Lissette Blanks **LISSETTE BLANKS**
Director, Operational Field Testing Division
Planning, Analysis, and Requirements Evaluation (PARE)
Operations Support

SUBJECT: Updating Investigative Program Specialist Position Description and
Reassignment of Mark J. Jones

By memorandum dated June 23, 2022, you were notified that Operations Support (OS) officially realigned the Operational Field Testing Division (OFTD) under the Planning, Analysis, and Requirements Evaluation Directorate (PARE), and that affected OFTD position descriptions (PDs) must be updated to reflect the new and current organizational location, accurate job duties, and responsibilities.

Additionally, the June 23, 2022 memorandum provided all OFTD employees impacted by the PD change with a 90-day notice prior to the effective date of reassignment to allow time to make any necessary personal and professional decisions. The original reassignment date was September 25, 2022 (pay period 20 of Fiscal Year 2021).

Prior to the original reassignment date, you asked that CBP identify alternative positions to which you could be reassigned. CBP identified a specific position within CBP Watch, and you submitted a lateral reassignment request. You were granted an extension of the reassignment date to provide an opportunity for a lateral transfer. You were offered a lateral transfer to a position within the CBP Watch, you declined that offer, and you made no other lateral transfer requests. The reassignment process to the new OFTD PDs must now continue.

Accordingly, you will be reassigned to the Investigative Program Specialist PD, PL059A, effective February 26, 2023 (Pay Period 05).

If you have any concerns or questions regarding the new position description, please contact me directly at Joshua.S.Gough [REDACTED]

EXHIBIT 3

1300 Pennsylvania Avenue, NW
Washington, DC 20229



**U.S. Customs and
Border Protection**

February 7, 2023

MEMORANDUM FOR: Michael Taylor
Operations Manager
Operational Field Testing Division (OFTD)

Through: Joshua S. Gough **JOSHUA S GOUGH**
Executive Director Digital signature by
Date: 2023.02.08
07:17:11-05'00'
Planning, Analysis, and Requirements Evaluation (PARE)
Operations Support

From: Lisette Blanks **LISSETTE BLANKS**
Director, Operational Field Testing Division
Planning, Analysis, and Requirements Evaluation (PARE)
Operations Support

Digital signature by
LISSETTE BLANKS
Date: 2023.02.07
15:00:07-05'00'

SUBJECT: Updating Investigative Program Specialist Position Description and
Reassignment of Michael Taylor

By memorandum dated June 23, 2022, you were notified that Operations Support (OS) officially realigned the Operational Field Testing Division (OFTD) under the Planning, Analysis, and Requirements Evaluation Directorate (PARE), and that affected OFTD position descriptions (PDs) must be updated to reflect the new and current organizational location, accurate job duties, and responsibilities.

Additionally, the June 23, 2022 memorandum provided all OFTD employees impacted by the PD change with a 90-day notice prior to the effective date of reassignment to allow time to make any necessary personal and professional decisions. The original reassignment date was September 25, 2022 (pay period 20 of Fiscal Year 2021).

Prior to the original reassignment date, you asked that CBP identify alternative positions to which you could be reassigned. CBP identified a specific position within CBP Watch, and you submitted a lateral reassignment request. You were granted an extension of the reassignment date to provide an opportunity for a lateral transfer. You were offered a lateral transfer to a position within the CBP Watch, you declined that offer, and you made no other lateral transfer requests. The reassignment process to the new OFTD PDs must now continue.

Accordingly, you will be reassigned to the Investigative Program Specialist PD, PL059A, effective February 26, 2023 (pay period 05).

If you have any concerns or questions regarding the new position description, please contact me directly at Joshua.S.Gough [REDACTED]

EXHIBIT 4

From: mjcjtay [REDACTED] 
Subject: Fwd: Ongoing Whistleblower Retaliation at U.S. Customs and Border Protection
Date: March 25, 2024 at 2:36 PM
To: jones.mark [REDACTED]

M

Sent to OIG. Separate emails with the same message were sent to other oversight groups on the same day. You should have been CC'd.

----- Original Message -----
From: FW <fredw17801 [REDACTED]>
To: "whistleblowerprotectioncoordinator [REDACTED]" <whistleblowerprotectioncoordinator [REDACTED]>, "ogfrontoffice [REDACTED]" <ogfrontoffice [REDACTED]>, "whistleblower [REDACTED]" <whistleblower [REDACTED]>
Cc: "jones.mark [REDACTED]" <jones.mark [REDACTED]>, "mjcjtaylor [REDACTED]" <mjcjtaylor [REDACTED]>
Date: 12/20/2022 4:52 PM EST
Subject: Ongoing Whistleblower Retaliation at U.S. Customs and Border Protection

Greetings:

If you are receiving this message, you and your organization are aware of the U.S. Office of Special Counsel's (OSC) findings regarding U.S. Customs and Border Protection's (CBP) intentional obstruction of the implementation of the DNA Fingerprint Act of 2005. (OSC letter to POTUS dated August 21, 2019 – Attached.) While the U.S. Attorney General and others promptly took explicit action to ensure that DHS and CBP enacted the law as required, we have been perpetually punished by CBP despite our assertions being upheld and our designation by the OSC as Whistleblowers. Each of your investigative or oversight groups has declined to investigate or further pursue this issue due to the blanket deferral of these matters to the OSC due to their Prohibited Personnel Practice (PPP) investigative authority.

Over four years later, the OSC has finally closed our Prohibited Personnel Practices (PPP) cases and issued a scathing letter (December 2, 2021- Attached) to CBP informing them of the agency's multiple acts of wrongdoing and reprisal against upheld Whistleblowers. The letter notes that "from February 2018 through the present, (CBP) officials subjected the Complainants to a significant change in duties, responsibilities, and working conditions...CBP had—and continues to have—a strong motive to retaliate against the Complainants". In short, based upon our identification of CBP's failure to comply with the law and our efforts to bring CBP into compliance, the agency dismantled our Division (the Weapons of Mass Destruction Division, or WMDD), abolished our positions, repurposed our funding, and left us idle with little to no duties and responsibilities, effectively icing us and bringing our careers to an abrupt halt. The agency continues to engage in ongoing retaliation despite the fact that we have all filed cases with the Merit Systems Protection Board (MSPB).

We should not have to remind anyone included on this message distribution that CBP has repeatedly refused to respond to multiple oversight entities' inquiries regarding this issue, starting with Senator Grassley's Letter from November 2018, which still remains unanswered by CBP. (Grassley's letter attached). Now that the OSC has removed itself from this matter, there are no excuses for not completing the misconduct and oversight investigations that are long overdue. In the August 21, 2019, Special Counsel Letter to the President and Oversight Committees, the Special Counsel stated "I write this letter to inform both the President and congressional oversight committees of this misconduct, and it is my hope that further action can be taken to bring CBP into compliance with the law. I strongly urge Congress to continue its robust oversight efforts in this area, with a particular focus on accountability for DHS and CBP officials who have known for years that this situation existed, but chose

not to act. I note that a number of CBP officials central to agency inaction were identified by the whistleblowers but never interviewed in the investigation because CBP dismissed the extent of their involvement." It should also be noted that some of the "CBP officials central to the agency inaction" are in the CBP Office of Chief Counsel (OCC), the same office that is representing CBP in the pending MSPB case. This is a conflict of interest at a minimum, and an inarguable attempt by CBP to shield its continued malfeasance and perpetual Whistleblower persecution from DHS and other external (to CBP) entities.

Our PPP cases against CBP have done nothing to mitigate CBP's aggression. After our lawsuits were filed with the Merit Systems Protection Board (MSPB), two of us were informed of the pending removal of our law enforcement authority and law enforcement retirement coverage. (Memorandum attached.) This was also AFTER the OSC closed our PPP cases and informed CBP OCC that we were still being subjected to ongoing reprisals.

Please consider the additional following transgressions that have occurred since our disclosures in 2018—which began nearly five years ago. This list is far from inclusive regarding documented acts of PPPs that we have been subjected to as defined by the OSC and codified in 5 U.S. Code § 2302 - Prohibited personnel practices. (Not everything applies to all three of us.)

- Eliminated or abolished the positions held by Jones (Director, WMDD) and Taylor (Deputy Director, WMDD).
- Reversed course on the planned elevation of those positions to GS-15 level.
- Eliminated WMDD as a Division and re-cast it as a branch of another Division, OFTD. (Before the reprisals began, WMDD had an approved annual budget in excess of \$2M and was set to grow to 25 full-time employees by 2023.)
- Stripped us of all or nearly all of our duties and job responsibilities, leaving us with little to nothing to do on a daily basis.
- Repurposed funding dedicated to WMDD to other uses by CBP.
- Transferred Jones and Taylor involuntarily three times (Twice placed under the direct and second-line supervision of named persecutors as listed in our PPP disclosures. CBP endorsed and approved these personnel actions with impunity.)
- Our organizational location as Whistleblowers was publicly "outed" and our disclosure was publicly ridiculed by senior CBP management, to include our direct supervisor and then-Acting Commissioner Mark Morgan on multiple occasions.
- CBP has failed to issue annual performance reviews that include any actual evaluation of our performance for **five** consecutive years, in violation of numerous laws and policies. The performance reviews CBP has issued include no evaluation and are essentially blank. The lack of any non-blank performance reviews effectively holds us as "prisoners" as we were and still are not free to apply for other positions without a meaningful and complete annual performance appraisal. The last such appraisal was issued on October 24, 2022, over four months AFTER we filed an MSPB appeal against CBP.
- We were called liars with "integrity issues" by recently named CBP Office of

Intelligence Assistant Commissioner Ron Ocker who had never met us previously and attributed slanderous statements to another CBP executive in our management chain. We were later told that Ocker's statements were absolutely untrue.

- We were stripped of premium pay, pending promotional opportunities, and annual performance awards.
- As recently as a few months ago, the FBI missed two national security targets due to the specific intentional actions of George Talton IV that were designed to further humiliate the Whistleblowers.

The MSPB proceedings have only produced more foot-dragging and delay by the agency, which claims it cannot respond to discovery until March 2023, at the earliest. Meanwhile, the administrative judge has taken an unreasonably narrow view of his jurisdiction that ignores the fact the agency dismantled and relegated our entire Division (of which we were the only members by that point) and rendered us essentially idle as reprisal for whistleblowing activity. We do not have the resources to support multiple rounds of litigation at the MSPB and, therefore, have sought to challenge the judge's jurisdictional findings, but even in litigation CBP remains brazenly unrepentant.

Need for Investigation

The OSC has cleared the way for the numerous investigating authorities to initiate or resume Whistleblower retaliation investigations as required by law and promulgated by public mission statements (<https://www.oig.dhs.gov/whistleblower-protection>, HSGAC and Senate Judiciary press releases, etc.). Specifically, George M. Talton IV, the former (A) Director of the Operational Field Testing Division (OFTD) in the Planning, Analysis, and Requirements Evaluation (PARE) Directorate, Operations Support, has committed three irrefutable acts of Whistleblower reprisal against us. By CBP and DHS policy and statute, the penalty for two acts of Whistleblower reprisal is dismissal. There are no mitigating provisions in the CBP Table of Offenses (B05 – Whistleblower retaliation by a supervisor). Law and policy demand that he must be removed from federal service.

Additional CBP Management Retaliatory Acts Not Included in the December 2021 OSC Report

- On March 16, 2021, during a U.S. Border Patrol "all-hands meeting" which included the Chief of the Border Patrol (and approximately 1,000 agents and staff), George Talton IV, acting Director of the OFTD, gave a presentation about the division, focused primarily on its mission, objective, and testing methodology. In addition to informing USBP staff about the nature of the group's work, the presentation was intended to encourage eligible USBP staff to consider applying for the permanent OFTD Director position when it was announced, as it could be a useful part of an employee's career ladder. After slides that discussed the history and work of the Division, there was a slide on the screen that included the bullet "Personnel Issues". At this point, Talton informed the audience that there was an issue with "whistleblowers assigned to our office". Given that the agency professes to value the courage and integrity of whistleblowers (as we are reminded annually on National Whistleblower Appreciation Day), how could whistleblowers assigned to OFTD be an "issue"? This was done to "out" the current location of the involuntarily transferred Jones and Taylor, and remind everyone that Jones and Taylor (and Whistleblowers in general) are an "issue". Inexcusable and a clear violation of multiple laws and policies

- On April 25, 2022, Talton, Taylor, and Jones were on a Teams Meeting call to discuss the unclassified particulars of an FBI meeting planned for April 26, 2022. (The Whistleblowers were the senior managers in the WMD Division before CBP illegally dismantled the division in 2018 as punishment for reporting the agency's obstruction and malfeasance.) Talton accepted the meeting invitation from Taylor and confirmed his desire to attend the prior week on April 20, 2022. The discussion became centered upon WMD issues and related efforts exclusive of the upcoming FBI meeting. Jones said that he was recently contacted by a staff member from CENTCOM and was questioned about the lack of CBP engagement in WMD matters and its now-defunct WMD program. Talton stated that Taylor and Jones were as relevant to WMD as the 10-year retired agent was to the current status of the Border Patrol. He articulated that CBP made their position regarding Taylor and Jones crystal clear when both Taylor and Jones were assigned to him in OFTD. They were dead to the agency. Period.

Talton told Jones and Taylor that their career executions were being handled above him and that he had no input. Talton admitted that he was aware of numerous incidents of retaliation against Taylor, Jones and Wynn but his only concern was OFTD. He fervently denied that he was aware of or used any WMD funds that were allegedly (wrongfully) diverted to him. (This is in sharp contrast to his statement on June 21, 2021, (on file with the OSC) when he told the OFTD team on that morning's conference call that the team may have an additional one million dollars in funding that no one can figure out how OFTD may have it other than it is tied to Mark and Mike.) Talton was combative, condescending and patently disingenuous during this call that lasted approximately one hour.

Approximately two hours after the call ended, Talton emailed both Taylor and Jones demanding that they attend administrative training the next day in Lorton, VA both before and after the scheduled FBI meeting in Washington, DC. While there are certainly integrity issues in attending a 6.5 hour course for an hour or two and then falsifying training records, the bigger issue is that Talton knew that Taylor and Jones could not return for the FBI meeting in DC in time and would therefore embarrass themselves horrifically in front of their FBI WMD colleagues when they failed to show up for a meeting that Taylor had arranged. The purpose of the meeting was to ensure that a national security program continued unabated despite CBP's punishment of Jones and Taylor and continued contempt for mandated WMD programs. **TALTON EFFECTIVELY ATTEMPTED TO CANCEL A NATIONAL SECURITY PROGRAM MEETING FOR THE SOLE PURPOSE OF HUMILIATING JONES AND TAYLOR.** Taylor canceled the meeting unilaterally and immediately upon receiving orders to (partially) attend inconsequential administrative training. The FBI, aware of the circumstances surrounding the Whistleblowers' employment conditions at CBP, later confirmed that at least two national security targets were missed due to Talton's intentional actions to ensure that critical information wasn't passed in order to humiliate Jones and Taylor. Talton made this decision despite the fact that he was never read into the program and had no idea what the classified meeting was about. Not only was this clearly an act of reprisal, but his actions (Whistleblower Retaliation), which directly "jeopardize(d) the agency's mission", as defined in E010 in CBP's Table of Offenses, warrants dismissal, with no mitigating factors.

- On June 23, 2022, Jones and Taylor received notice from Talton informing them that their firearms and LE authority would be removed from them at the end of September and that Taylor will have his law enforcement retirement coverage taken from him. This is by far the most egregious act of reprisal taken thus far and clearly a final act towards the dismantlement of our careers and the ultimate degradation. It will also reduce Taylor's retirement pension significantly after 29 years of federal service. This was done unilaterally and without discussion despite the fact that they are Office of Special Counsel-designated and upheld Whistleblowers that were involuntarily transferred to the OFTD. As stated previously, this message was also sent AFTER litigation was filed (complete with assigned case numbers, etc.) and a litigation hold notice was sent to CBP.

There are no more obstructions or deferments applicable to justify further inaction by any of the investigatory or oversight groups with jurisdiction that are duty-bound to address this on-going matter. We would like to emphasize that there are over a dozen other documented, verifiable transgressions applicable to our cases which we will gladly expound upon when necessary. Thank you for your time and necessary attention to this matter.

VR,

Mike Taylor Fred Wynn Mark Jones

Dec 2 2021 OSC OFTD - Aug 21 2019 Grassley
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EXHIBIT 5

From: Mark Jones jones.mark [REDACTED] [REDACTED] [REDACTED]
Subject: Allegations of willful obstruction of the DNA Collection Act of 2005 and subsequent Department of Justice (DOJ) regulations by the leadership of the Department of Homeland Security (DHS) Headquarters, Immigration and Customs Enforcement (ICE), and the continued obstruction by United States Customs and Border Protection (CBP) senior management in light of the Office of Special Counsel (OSC) Findings dated August 21, 2019.
Date: October 2, 2019 at 12:20 PM
To: joseph.cuffari [REDACTED]
Cc: Mike mijcjayo [REDACTED], FW [REDACTED]; jones.mark [REDACTED]; John Young jyoung [REDACTED]

MJ

October 2, 2019

Dr. Joseph V. Cuffari, Inspector General
DHS Office of Inspector General/MAIL STOP 0305
Attn: Office of Investigations - Hotline
245 Murray Lane SW
Washington, DC 20528-0305

Via Email - joseph.cuffari [REDACTED]

Re: Allegations of willful obstruction of the DNA Collection Act of 2005 and subsequent Department of Justice (DOJ) regulations by the leadership of the Department of Homeland Security (DHS) Headquarters, Immigration and Customs Enforcement (ICE), and the continued obstruction by United States Customs and Border Protection (CBP) senior management in light of the Office of Special Counsel (OSC) Findings dated August 21, 2019.

Dear Dr. Cuffari:

On August 21, 2019, the Honorable Henry J. Kerner, OSC Special Counsel, sent a letter to President Trump and to the Senate Homeland Security and Governmental Affairs Committee (HSGAC) and the House Committee on Homeland Security regarding the validated contentions of three CBP Whistleblower employees. His letter clearly articulated CBP's malfeasance and the consequences of its deliberate behavior for its willful non-compliance with the DNA law and pertinent DOJ regulations:

- *"The agency's noncompliance with the law has allowed subjects subsequently accused of violent crimes, including homicide and sexual assault, to elude detection even when detained multiple times by CBP or Immigration and Customs Enforcement (ICE). This is an unacceptable dereliction of the agency's law enforcement mandate."*
- *"CBP has failed to fulfill its responsibilities under the law and in so doing has compromised public safety. The failure to collect DNA clearly inhibits law enforcement's ability to solve cold cases and to bring violent criminals to justice."*
- *"I seriously question CBP's conduct in this matter, and I have determined that its findings appear unreasonable."*
- *"I strongly urge Congress to continue its robust oversight efforts in this area, with a particular focus on accountability for DHS and CBP officials who have known for years that this situation existed, but chose not to act. I note that a number of CBP officials central to agency inaction were identified by the whistleblowers but never interviewed in the investigation because CBP dismissed the extent of their involvement."*

OSC reviewed and unequivocally upheld the allegations of the three CBP Whistleblowers regarding CBP's willful non-compliance with the DNA collection law. The authorization to investigate the surreptitious actions of CBP and DHS employees whom we allege actively obstructed the implementation of this law, under the color of law, falls outside the mandate of the OSC Disclosure Unit. We are requesting that the DHS Office of Inspector General (OIG) actively investigate these allegations, in conjunction with the Senate Judiciary Committee and the Senate Committee on Homeland Security and Governmental Affairs (HSGAC). Both entities have initiated investigations into this matter.

Our group was tasked to implement this law in 2016 at the direction of then-CBP Commissioner Gil Kerlikowske. When he departed the agency and it became known that we were close to implementing a DNA collection pilot, our group was eviscerated. We were slandered, orally, and in writing, as "rogue", "self-aggrandizing", and "acting without authorization" in our attempt to implement the DNA collection law. Dozens of programs and initiatives that we were responsible for were removed from our group, and no less than 12 articulable, derogatory, and significant actions were taken against our unit within the next 30 days of the agency's concerted obstruction efforts. Concurrently, multiple employees at Immigration and Customs Enforcement (ICE) and DHS Headquarters were inexplicably and hastily removed from all DNA collection implementation efforts. Some of these employees were also reassigned and/or punished for their participation in any DNA collection initiatives. These employees are and have been willing to be interviewed again and document/articulate the negative repercussions that they have experienced due to their association with the program.

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Oddly, DHS OIG declined investigative interest when presented with these allegations by OSC. Expectedly, CBP's internal investigation into the matter found absolutely no wrongdoing on CBP's behalf. Their "investigation" was publicly cited as farcical by the Special Counsel. Not one of the alleged conspirators/perpetrators was interviewed by the CBP Office of Professional Responsibility (OPR).

Both Senate Committees and the OSC have the documents, witness lists and statements that we believe substantiate our allegations of criminal obstruction of the DNA collection law by public servants at CBP, ICE, and DHS Headquarters. We (OSC, both committees and us) believe that the DHS OIG should be given the opportunity again to exercise its investigative and oversight authority regarding this matter before the issue is referred to the DOJ and the Federal Bureau of Investigation (FBI).

The obstructive acts, false statements, intentional actions and inactions by certain CBP and DHS employees that refuse to implement the DNA collection law have inarguably contributed to the sexual assaults, murders, and other violent crimes perpetrated upon innumerable U.S. citizens and others in our country by criminal illegal aliens. The OSC and the FBI have unequivocally substantiated the harm caused by CBP and DHS not implementing the law as required. These identifiable public servants that choose to selectively not implement the laws passed by Congress, especially those of incredible public safety importance, must be held accountable and meaningfully punished. The victims that were injured or killed due to these individuals' malfeasance deserve no less.

A concurrent Disclosure has also been filed with the OSC addressing this matter. The OSC Disclosure is attached for your reference. Additionally, both Senate Committees have also been provided with copies of this document and the OSC Disclosure.

We look forward to your response and further addressing this matter with your office.

Very Respectfully,

Mark J. Jones, Michael J. Taylor, and Fred A. Wynn

CC: Office of Special Counsel
Senate Homeland Security and Governmental Affairs Committee
Senate Judiciary and Oversight Committee
Attachment(s)

Supplemental Statement

CBP/DHS maintain that they are not in conflict with any applicable laws due to a "waiver" that OSC (and others) contend has not been in effect for almost 10 years. If the Department and agency have been fully compliant with all applicable laws and regulations since 2010, there is no explanation for the following actions and alleged surreptitious behavior:

- In 2012/13, the CBP Tucson Border Patrol Sector committed to the Federal Bureau of Investigation, Federal DNA Database Unit (FBI-FDDU), that their Sector would provide 60,000 DNA CODIS Collection Samples over the year 2012/13. No samples were ever sent to the FBI-FDDU, nor was the FBI ever given an explanation for CBP not doing so. Source: Section Chief, Tina Delgado of the FBI-FDDU. **Why would such a "resource-limited" agency agree to this measure if they were "exempt" due to their "waiver"?**
- Circa 2013/14, the CBP Commissioner's Office, Office of Policy and Planning (CBP-OC-OPP), developed, circulated, vetted and approved the DNA Collection Directive to implement a DNA Collection plan under the DNA Fingerprint Act of 2005. It was presented to the CBP Commissioner's/Deputy Commissioner's Office. It was never signed or acted upon. **Why was this policy ever developed and circulated for approval if a waiver excusing the agency from compliance existed?**
- Circa February 2018 - A Staffer for Congressman Scott Perry provided statements to a Senate Judiciary and Oversight Committee Staff Investigator that while the Staffer was previously working at the Department of Homeland Security HQ, **they personally witnessed actions taken against employees/detailees that attempted to advocate or implement the DNA Collections Act of 2005 within DHS.** One example of alleged action taken against a detailee concerns USBP Agent Monique Grame who was detailed to DHS Office of Policy and was allegedly sent back to USBP after she responded to an email from Chad Wood where she states 'In our read, the Napolitano-Holder letter was never intended to be a permanent exemption.....' and this email surfaced. (Email is dated February 8, 2018 2:48 PM from Grame to Wood)
- February 15 2018 - Chad Wood a DHS employee serving a Joint Duty Assignment (JDA) to the CBP Weapons of Mass

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Destruction Division (CBP-WMDD), had sent a series of emails to colleagues in the Office of the DHS Secretary, DHS Policy, and Department of Justice Deputy Attorney General's Office regarding his frustration with CBP's non-compliance with and intentional obstruction of the DNA collection law. Allegedly, one or more of these emails were shared directly with then-DHS Secretary Nielsen. Secretary Nielsen contacted then-acting CBP Commissioner Kevin McAleenan recalling him from a west coast trip to discuss the CBP WMDD DNA Collection Pilot on or about February 18-20, 2018. **These emails were factual, polite, and informative regarding the state of the DNA collection program at CBP. They are available for review.**

- February 16, 2018 – Mark J. Jones, receives email from OI Acting Executive Director **instructing the WMDD to reverse course on planned meetings with the DNA Project Partners and to cancel all activities as OI Executives would be handling**
- February 20, 2018 – Mark J. Jones, receives email from OI Acting Deputy Assistant Commissioner instructing Jones and the WMDD DNA Project Team to continue to coordinate with internal CBP Offices and Immigration and Customs Enforcement but, **to have NO contact with DOJ or DHS regarding the project.**
- February 21, 2018 - Mark J. Jones was informed that the CBP WMDD DNA Collection Pilot was shut down and that the **DNA Collection Pilot Team was not to have any further contact with the FBI, ICE, DOJ, or anyone, without explicit permission from CBP Leadership.**
- February 23, 2018 – As a result of Secretary Nielsen recalling then-acting CBP Commissioner Kevin McAleenan from his West coast trip on or about the week of February 15th and the email correspondence by Chad Wood with DHS HQ and DOJ, **McAleenan ordered Wood to be walked out of CBP Headquarters and stripped of his building credentials on February 23, 2018.**
- April 18, 2018 - Conference Call coordinated by CBP-OC-OPP. The meeting was opened by Ms. Meghann K. Peterlin, Office of the Commissioner, who in her opening statements said "C1 (acting Commissioner McAleenan) is pissed off... does not want to do this (DNA Collection Pilot)... is pushing back on the Secretary (DHS Secretary Nielsen)... will only do the DNA Collection Pilot... if forced to do so". It was during this conference call where participants from CBP OFO, USBP, CBP-OC-OPP, CBP-OC and others openly conspired to make the discussed DNA Pilot fail through a variety of tactics. **When HSGAC Investigators asked for the call roster and any associated material, CBP OCC stated that the call was "deliberative" in nature, exempt from disclosure or discussion, and refused to provide the requested materials or otherwise cooperate.**
- April 26, 2018 – DHS Secretary Nielsen testifies before the House Committee on Homeland Security - Hearing: "Strengthening the Safety and Security of Our Nation: The President's FY2019 Budget Request for the Department of Homeland Security". Congressman Scott Perry of Pennsylvania asks then-DHS Secretary Nielsen about the status of the DNA Collection Pilot. Secretary Nielsen responds to Congressman Perry that DHS is working on implementing the DNA Collection Pilot. In short, **the commitment by DHS Secretary Nielsen to Congressman Perry was either an intentionally false statement or she misspoke after being misled by others regarding the status of the program.**
- May 4, 2018 - Meeting notes provided by the CBP-OC-Policy Directorate stated that the CBP Deputy Commissioner had informed DHS Secretary Nielsen that CBP was declining to participate in the possible larger DHS DNA Collection Pilot and that it should be ICE that would pilot the DNA Collection. Purportedly, ICE Leadership agreed to move forward with the DNA Collection Pilot at that meeting. Approximately one week later, **the ICE Project Manager for the DHS DNA Collection Pilot was directed by his supervisor, now acting ICE Director Matt Albence, to "shut the DHS DNA Collection Pilot down" and "to keep his f@#king mouth shut."**
- Circa May 2018 - DHS OIG declined investigative interest when presented with these allegations by OSC. Therefore, personnel from the CBP Office of Professional Responsibility (OPR) were given complete documentation and several hours of testimony regarding these allegations. Despite the fact that a named person from the CBP Office of Chief Counsel (OCC) was cited by the group as a willful conspirator in obstructing the implementation of the law, that person was never interviewed. More incredulously, CBP OPR later sent their findings to CBP OCC for editing and approval. **The target of the investigation was allowed to edit the agency's "findings" regarding the allegations before releasing them to the OSC.**
- August 21, 2019 - Office of Special Counsel Letter to the President is made public and there is subsequent reporting by Fox News correspondent Catherine Herridge. Herridge reports that she has received a statement from DHS ascribed to the Acting Secretary that he was directing DHS to begin working with DOJ towards the immediate implementation of a DNA Collection Program that complies with the law from 2005. However, an internal DHS Memo released shortly after the Fox News report directly contradicts the statements provided to Fox News by DHS HQ and attributed to Acting Secretary McAleenan. **The internal document further states that OSC is wrong in its assertions and that CBP is NOT going to implement the law. Furthermore, these talking points were marked as "have been cleared by CBP Counsel".**
- September 2019 – Acting CBP Commissioner Mark Morgan makes several statements on television and in writing, that CBP has done nothing wrong. "I want to clarify one of the false narratives out there that DHS – because this is really a DHS issue – has violated some law by not doing this. And that's just factually inaccurate and... when we are ready to

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BYE ISSUE – has violated some law by not doing this. And that's just factually inaccurate and ... when we are ready to actually execute it effectively, then that's when we will do it". **The OSC has been clear: "I take serious issue with CBP's conduct in this matter....This is an unacceptable dereliction of the agency's law enforcement mandate."**

The OSC estimates that CBP may have released as many as 950,000 violent, partially identified offenders back into society due to their willful non-compliance with the law. This is an **ongoing matter with grave public safety implications.**
