

United States Senate
WASHINGTON, DC 20510

September 11, 2023

VIA ELECTRONIC TRANSMISSION

The Honorable Alejandro Mayorkas
Secretary
Department of Homeland Security

Mr. Troy A. Miller
Senior Official Performing the Duties of the Commissioner
Customs and Border Protection

Dear Secretary Mayorkas and Mr. Miller:

On August 18, 2023, I sent the Department of Homeland Security (DHS) a letter with respect to U.S. Customs and Border Protection (CBP) retaliating against Mr. Fred Wynn, Mr. Mike Taylor, and Mr. Mark Jones. After that, CBP publicly stated that it “takes whistleblower protection very seriously and has policies and procedures in place to ensure appropriate protections for such individuals.”¹ That’s what was said, but that’s not how DHS and CBP are acting. For example, DHS has failed to respond to the August 18, 2023, letter by the September 1, 2023, deadline.

A December 2, 2021, letter from the U.S. Office of Special Counsel (OSC) to Mary M. Musilek, Assistant Chief Counsel of the U.S. Department of Homeland Security, U.S. Customs and Border Protection, outlines CBP’s retaliation against Mr. Fred Wynn, Mr. Mike Taylor, and Mr. Mark Jones, in violation of 5 U.S.C. § 2302(b)(8) and (b)(9)(C).² It specifically states,

[f]rom the evidence we have seen, it seems clear that the agency does not have strong evidence in support of the personnel actions against these Complainants, and that the actions were motivated by the agency’s displeasure with the Complainants’ perceived and actual involvement in bringing to light the agency’s intentional, decade-long failure to implement a law designed to protect public safety.³

¹ Josh Christenson, *Sen. Grassley calls on Secretary Mayorkas to end retaliation against CBP employees*, NY POST, (Aug. 22, 2023), <https://nypost.com/2023/08/22/sen-grassley-calls-on-secretary-mayorkas-to-end-retaliation-against-cbp-employees/>.

² 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).

³ *Id.*

OSC also concluded, “the agency’s actions...harmed the Complainants” and “the agency’s treatment of the Complainants is particularly pernicious because it has a potential chilling effect on other agency employees, as it sends the clear message that whistleblowing will derail one’s career.”⁴

Moreover, CBP publicly stated that “[t]he Office of Special Counsel (OSC) terminated its investigation into these claims without issuing a Prohibited Personnel Practice Report or seeking corrective action.”⁵ My staff has spoken to OSC twice and each time OSC unequivocally stated that they did seek corrective action with CBP. This proposed corrective action for the events that OSC investigated is, according to OSC, found in the final paragraph of the December 2, 2021, letter to CBP.⁶ Although the copy that has been provided to my office has been redacted, OSC confirmed that the redacted portion summarizes what OSC proposed to be proper corrective actions for CBP to take. Accordingly, in light of CBP’s demonstrably false public statement, when will it issue a public retraction to make clear that OSC did in fact seek corrective action?

DHS and CBP have failed to protect these whistleblowers. When can I expect a response to my August 18, 2023 letter with respect to your plans to initiate corrective action regarding the retaliatory conduct against these whistleblowers and hold the retaliators accountable? Please provide responses to this letter and the August 18, 2023 letter, no later than September 18, 2023.

If you have any questions, please contact Julian Wilson of my committee staff at (202) 224-0642.

Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Budget

cc: The Honorable Joseph V. Cuffari
Inspector General
Department of Homeland Security

⁴ *Id.*

⁵ Josh Christenson, *Sen. Grassley calls on Secretary Mayorkas to end retaliation against CBP employees*, NY POST, (Aug. 22, 2023), <https://nypost.com/2023/08/22/sen-grassley-calls-on-secretary-mayorkas-to-end-retaliation-against-cbp-employees/>.

⁶ 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).