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GAO

United States
General Accounting Office
Washington, D.C. 20548

General Government Division

B-125051



149407

June 16, 1993

The Honorable Jack Brooks
Chairman, Committee on the Judiciary
House of Representatives

Dear Mr. Chairman:

This letter responds to your March 2, 1993, request for information concerning corrective actions negotiated between the Immigration and Naturalization Service (INS) and the Office of Special Counsel (OSC). These corrective actions were based on inappropriate actions INS took against several of its agents. In discussions with your staff, we agreed to (1) determine the status of the corrective actions and (2) summarize new allegations of INS harassment these agents have raised. Enclosure I provides details regarding the data we obtained and the work we did.

BACKGROUND

In May 1989, we reported that actions INS took against anti-smuggling unit (ASU) agents in its Houston district office might have resulted partly from a September 1987 letter the agents had written to Members of Congress.¹ A subsequent OSC investigation concluded that INS district management had engaged in prohibited personnel practices against the agents in reprisal for the letter. Pursuant to OSC's finding, in May 1992, INS and OSC agreed on six corrective actions applying to seven agents.²

On February 1, 1993, five Houston ASU agents wrote you a letter alleging that INS had not fully implemented the agreed-upon corrective actions. The agents also alleged that

¹Immigration Service: Allegation of Adverse Actions Taken Against INS Agents (GAO/GGD-89-70, May 1, 1989).

²The corrective actions applied to the following ASU agents: Charles Griggs, Frederick Capio, Bill Burkland, Robert Moore, Gustavo DeLeon (all located in Houston, Texas); Larry Nave (located in Boise, Idaho); and Jamar Hayes (located in Los Angeles, California).

GAO/GGD-93-46R, INS Corrective Action

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INS' Houston district officials have continued to engage in harassment and retaliation against them for their 1987 letter.

CORRECTIVE ACTIONS

INS and OSC agreed to the following corrective actions. INS has complied with all of the corrective actions that are within its control, although it did not meet the agreed-upon time frames.

Priority considerations: INS agreed to provide priority consideration³ for three funded vacancies per year for a period of 3 years for ASU agents Charles Griggs, Bill Burkland, Frederick Capio, Gustavo DeLeon, and Robert Moore, and 2 years for former Houston ASU agent Larry Nave.

INS is meeting the terms of this corrective action as required. INS' Personnel Division notified the agents in a May 1992 letter that they had been awarded priority consideration. The letter explained the process the agents were to use in applying for vacancies under the program and identified a contact within the Personnel Division. Several of the agents have applied for positions using their priority consideration (one agent has used all of his first year's allotment); however, as of May 1, 1993, none had been selected.

Overtime; Merit pay; Leave restoration: INS agreed to (1) compensate ASU agent Charles Griggs with interest for administratively uncontrollable overtime lost during the time he was assigned to the employer relations program; (2) elevate the ratings of and compensate Mr. Griggs with interest for merit pay increases and bonuses that he would have received if he had been rated "Outstanding" for the 1987, 1988, and 1989 rating years; and (3) conditionally restore to Mr. Griggs annual and sick leave used during the period of October 1987 through March 1989.⁴

INS has completed these three corrective actions. Regarding the first two actions, INS' Southern Regional Office reviewed Mr. Griggs' time and attendance records; elevated his prior years' ratings; and calculated the overtime, merit pay, and bonuses owed to him for the time period in question. In

³Priority consideration allows an applicant to be considered for vacant positions prior to and separate from other applicants. It does not, however, guarantee selection.

⁴The restored leave was to be based on the extent that Mr. Griggs' actual leave usage during this period exceeded his average usage for similar periods directly preceding and following this period.

February 1993, the Justice Department issued Mr. Griggs a check, which he received the following month. Regarding the third action, in January 1993, the regional office completed a review of Mr. Griggs' annual and sick leave usage for the time period in question. However, INS determined that Mr. Griggs was not entitled to any leave restoration.

According to the terms of the negotiated agreement, finalized in May 1992, INS should have completed these corrective actions within 30 to 60 days. However, the actions were not completed until February 1993. According to INS officials, the delay was caused by (1) the significant amount of paperwork required to cancel and then correct the prior payroll actions and (2) INS' conversion at that same time to a new payroll system administered by the National Finance Center.

Attorney fees: INS agreed to reimburse one-sixth of the ASU agents' reasonable attorney fees (not to exceed \$3,613). This represented the pro rata share incurred by agent Charles Griggs in pursuit of the corrective actions.⁵ The reimbursement was contingent on the agents' attorney submitting, within 20 days of the May 1992 agreement, a listing of the hours worked and type of work done for the agents relating to the corrective action.

INS has not completed this corrective action as of May 1, 1993, because the agents' attorney has not submitted a bill to INS as required by the agreement. According to an INS General Counsel official, the attorney contends that the information requested is protected under the attorney/client privilege and therefore would not be submitted. The INS official added that even though the prescribed time frame has been exceeded, INS would likely provide reimbursement if the attorney complies with the billing documentation requirement.

Personnel files: INS agreed to remove any derogatory statements and documents based on information supplied by former District Director Ronald Parra, Deputy District Director Michael McMahon, or Assistant District Director for Investigations Carey Murphy from the ASU agents' personnel files for the period October 1987 to May 1992.⁶

⁵Reimbursable attorney expenses were authorized for those individuals who suffered loss of pay as a result of inappropriate personnel actions. This applied to only one of the six agents (Charles Griggs).

⁶This corrective action did not apply to material related to agent Larry Nave's transfer to the Northern Region.

Our review showed that the agents' personnel files at INS' Houston District and Southern Regional Offices contained derogatory statements within some of the agents' 1987-1992 performance appraisals (e.g., the agent ". . . has established a pattern of mistrust by his coworkers . . ."). We also found similar derogatory material on agent Charles Griggs in an informal supervisory file belonging to Houston Assistant District Director for Investigations Carey Murphy.

We discussed this issue with the Assistant Regional Administrator for Human Resources at INS' Southern Regional Office. He told us that although he had been notified of this corrective action, it was unclear what type of material was to be removed. According to him, the material we identified--derogatory narrative comments included in otherwise satisfactory performance appraisals--was overlooked. Following our discussion, he took steps to remove all the derogatory material in question from the district and regional personnel files, as well as from Mr. Murphy's informal supervisory file.⁷

AGENTS' NEW ALLEGATIONS

The agents claim that INS has continued to harass them. Since January 1991, the ASU agents have been the subject of seven internal investigations. Three of these have been completed; disciplinary or adverse actions were taken against the agents in two cases, and agents were exonerated in the third case. The other four investigations were still open as of May 1, 1993, and the subjects in these cases have not yet been charged or exonerated. A brief description of each investigation is presented in enclosure II. For the purposes of confidentiality, a letter rather than the agent's name is used.

We asked the INS Southern Regional Office to provide us with the number of investigations involving ASU agents in the Houston District and two other district offices in Texas--Dallas and San Antonio--that are comparable to Houston in size and are nonborder district offices. According to the Acting Operations Program Manager, no investigations were conducted against any other ASU agents in the Dallas, San Antonio, and Houston District Offices during the past 2 years.

⁷Because the personnel files of agents Larry Nave and Jamar Hayes are located in INS' Northern and Western Regional Offices, we did not physically verify whether they contained derogatory material. However, we contacted the Assistant Regional Administrators for Human Resources in those offices who assured us they would have any derogatory material removed from the agents' personnel files as required by the corrective action.

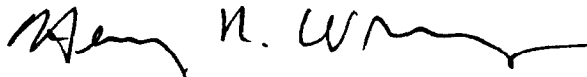
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In August 1992, the ASU agents were returned to the supervision of Assistant District Director for Investigations Carey Murphy, who had previously been disciplined for taking inappropriate action against them. The agents allege this to be further harassment and not in keeping with the spirit of the May 1992 corrective action agreement. INS officials told us they considered all the factors involved prior to taking this action and are satisfied that Mr. Murphy can treat the agents fairly and without retaliatory intent.

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This work was done by Philip D. Caramia and Christopher H. Conrad of our Dallas Regional Office and James M. Blume of my staff. If you have any further questions, please contact Mr. Blume or me on (202) 566-0026.

Sincerely yours,



Henry R. Wray
Director, Administration of
Justice Issues

Enclosures - 2

SCOPE AND METHODOLOGY

In conducting our work, we

- reviewed the settlement agreement reached between INS and OSC;
- discussed the corrective actions, allegations, and investigations with the five ASU agents and other INS Houston District officials, including the (1) District Director, (2) Deputy District Director, (3) Assistant District Director for Investigations (ADDI), and (4) Assistant District Director for Management;
- discussed the corrective actions, allegations, and investigations with the INS Southern Region's (1) Acting Regional Administrator, (2) Assistant Regional Administrator for Human Resources, and (3) Acting Regional Operations Manager;
- discussed the contents of the personnel files of Larry Nave and Jamar Hayes with the Assistant Northern and Western Regional Administrators for Human Resources, respectively;
- discussed the corrective actions, allegations, and investigations with INS headquarters officials, including the Acting Executive Associate Commissioner for Management and the Assistant General Counsel;
- discussed with OSC officials in Washington, D.C., Dallas, Texas, and San Francisco, California, matters related to the allegations by and investigations of the ASU agents;
- reviewed the ASU agents' personnel files at the Southern Regional and the Houston District offices;
- interviewed the attorney who represented the ASU agents;
- reviewed the internal investigation files involving the ASU agents; and
- reviewed data on the number of internal investigations against ASU agents in the Houston District office and other comparable district offices.

Because of the sensitivity of the information discussed and the need to ensure accuracy of the statements, we asked the ASU agents and the Houston District management officials to review and sign off on their individual statements to us, which they did.

INTERNAL INVESTIGATIONS AGAINST HOUSTON ASU AGENTS(1) Agents A and B

Date of incident: February 1989
Investigation: Initiated April 1991.
Investigator: San Antonio investigator
Allegation: Misuse of a government vehicle
Predicate: ADDI Murphy reported incident to Deputy District Director
Outcome: Unresolved
Summary: In 1989, the agents' government vehicles were seen parked at a local hotel after work hours by ADDI Murphy. He reported the sighting to the [former] Deputy District Director. According to the investigator, he prepared a report in May 1991 but regional officials could not find a copy at the time of our visit. As of May 1, 1993, the agents had not been charged or exonerated.

(2) Agent C

Date of incident: August 1988
Investigation: Initiated October 1989. Report dated May 1991.
Investigator: El Paso Office of Inspector General (OIG) investigator
Allegation: Conduct unbecoming an officer (theft)
Predicate: Alien complaint letter followed by memorandum from ADDI Murphy to District Director
Outcome: Unresolved
Summary of facts: An alien wrote a letter to the district office claiming the agent had taken money from him when he (the alien) was arrested. ADDI Murphy reported the alleged incident to the [former] District Director. The agent was not interviewed by the investigator in this case. The Deputy District Director drafted a proposal in April 1992 to remove the agent, but less than 1 month later declined to take any action based on input from the regional office that indicated the investigation report contained insufficient evidence of wrongdoing. As of May 1, 1993, the agent had not been charged or exonerated.

(3) Agent B

Date of incident: May 1991
Investigation: Initiated September 1991. Report dated December 1992.
Investigator: San Antonio investigator
Allegation: Destruction of a government vehicle (accident); conduct unbecoming an officer (DWI arrest)
Predicate: Accident report forwarded to INS regional office from ADDI Murphy
Outcome: Adverse action imposed: 60-day suspension (reduced to 22 days)
Summary of facts: The agent's government vehicle was involved in an accident and he was arrested and charged with DWI. His government driving privileges were suspended about 3 weeks later based on recommendation of ADDI Murphy. Following the investigation, the Deputy District Director proposed a 60-day suspension, which was subsequently begun in September 1992. While serving the suspension, the agent's union negotiated with INS to reduce the time served to 22 days, at which time the agent returned to duty and his driving privileges were restored.

(4) Agents D and E

Date of incident: January/February 1992
Investigation: Initiated May 1992. Report dated June 1992.
Investigator: Dallas investigator
Allegation: Willful misuse of a government vehicle
Predicate: Various district office agents complained to Deputy District Director
Outcome: Agents exonerated--adverse actions proposed but charges unsubstantiated by District Director
Summary of facts: The agents' government vehicle was seen by other district agents on several occasions at a local health club. These sightings were reported to the Deputy District Director, who forwarded them to the OIG. Following the investigation, the Deputy District Director proposed a 30-day suspension for agent E and a 35-day suspension and demotion for agent D. According to the Deputy District Director's proposal for disciplinary action, the severity was due to willful failure to follow Service policy as well as agent D's supervisory status. The agents were

exonerated by the District Director (with input from regional counsel) in October 1992 after OSC began investigating the case.

(5) Agent D

Date of incident: September 1992
 Investigation: Initiated October 1992. Report dated December 1992.
 Investigator: Harlingen investigator
 Allegation: Noncompliance with Service policy (stolen government vehicle and property)
 Predicate: Stolen car report from ADDI Murphy to Deputy District Director
 Outcome: Disciplinary action imposed: 3-day suspension
 Summary of facts: The agent's government vehicle and property were stolen when the vehicle was left, allegedly unsecured, at a local service station. Following the investigation, the Deputy District Director proposed a 3-day suspension, which the agent served in March 1993. The agent appealed the suspension to OSC, which found no reason to intervene. The agent also appealed to the regional office, which found no evidence of negligence but nevertheless upheld the charge and the suspension.

(6) Agent C

Date of incident: Unknown
 Investigation: Initiated October 1992. Report pending.
 Investigator: New Orleans investigator
 Allegation: Misuse of government funds (money taken from district imprest fund)
 Predicate: District personnel reported to ADDI Murphy, who reported the incident to the Deputy District Director
 Outcome: Unresolved
 Summary of facts: The agent allegedly took \$100 from the imprest fund to pay an informant but never did. The informant's complaint was made sometime after August 1991, following several arrests that were made on the basis of the informant's information. According to the Acting Regional Operations Manager, the investigator had not yet completed the investigation report as of May 1, 1993; but he is expected to submit it to the region shortly.

(7) Agent D

Date of incident: November 1992
Investigation: Initiated November 1992. Report dated February 1993.
Investigator: McAllen OIG investigator
Allegation: Misuse of government vehicle and falsifying official documents
Predicate: District personnel reported to ADDI Murphy who reported through chain of command to OIG
Outcome: Unresolved
Summary of facts: The agent's government vehicle was seen by district personnel at a local bar during work hours. This was reported to ADDI Murphy, who informed the Deputy District Director. Following discussions with the OIG, ADDI Murphy surveilled the bar location for several days taking pictures of the agent and vehicle. The investigation was presented to the U.S. Attorney, who declined criminal prosecution. The investigator submitted the investigation report to INS' Office of Internal Audit for administrative action, which forwarded it through the regional office to the district for consideration of disciplinary action and/or procedural changes needed in the District. The regional office requested a district response to the report by June 1, 1993.

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