

I. INS Employees' Allegations of Retaliation¹

A. Introduction

Six INS employees who provided information to Congress concerning the CUSA program claimed that INS retaliated against them for having testified before the Subcommittee on National Security, International Affairs, and Criminal Justice of the House Committee on Government Reform and Oversight (the Subcommittee) in September 1996, or for having otherwise cooperated with congressional investigators who sought information about INS' CUSA practices.² In this chapter, we describe our investigation of these

¹ Certain information in this chapter has been redacted in the interest of protecting the privacy of persons discussed in the chapter. We have provided an unredacted version to Congress under separate cover.

² A seventh employee, New York District Adjudications Officer (DAO) (redacted), also alleged that he had suffered retaliation by INS because of his statements about CUSA to the OIG. (redacted) had not testified before Congress or otherwise provided information to congressional investigators.

(redacted) had been an INS naturalization attorney more than 20 years before CUSA. He had accepted a voluntary downgrade to Immigration Examiner (Examiners were later identified as DAOs) when INS no longer required attorneys to conduct naturalization interviews. During CUSA, he served as a trainer in the New York District, although he had never taken the Immigration Officers Basic Training Course at the Federal Law Enforcement Training Center (FLETC). He alleged that he was selected and told to attend the training program at FLETC (a course that would last 12 weeks) only after he had been interviewed by the OIG about the CUSA program. The inference he drew was that this action of sending him for training—training he believed was belated and unnecessary—was in retaliation for his cooperation with the OIG and his criticism of the CUSA training program.

(redacted) was one of many New York employees who criticized INS' CUSA practices, and no other witness suggested that he or she had been retaliated against because of candor in interviews with the OIG. Furthermore, the substance of (redacted)'s interview with the OIG had not been revealed to INS. Finally, the FLETC training assignment, although oddly timed after (redacted)'s many years of experience, did not on its face suggest that INS sought to punish (redacted). Thus, there was no objective indication to corroborate (redacted)'s belief that he had suffered retaliation for his cooperation with the OIG. Nevertheless, in the event his assignment to FLETC was irregular or otherwise in contravention of INS policy, the OIG referred the matter to INS' Office of Internal Audit for further review.

allegations and, as appropriate, the results of referral of these allegations to the Office of Special Counsel (OSC).³

Three of the six cases of alleged retaliation concerned employees of the Los Angeles District Office. One employee, Special Agent James Humble-Sanchez, testified before the Subcommittee on September 24, 1996, to, among other problematic practices, irregularities in Los Angeles District's procedures regarding the criminal background checks of naturalization applicants. He and Kathy Bell, a clerical employee, in October 1996, also provided additional details concerning the District's compromised criminal history checking procedures to James Y. Wilon, Counsel for the Subcommittee.⁴ In addition, Rosa Arauz, another Los Angeles clerical employee, provided Wilon information in January 1997 concerning improper interview practices at Los Angeles off-site processing sessions and CBOs who were registering applicants to vote at off-site processing sessions before those applicants had naturalized as U.S. citizens.

In a letter to the Attorney General dated January 28, 1997, J. Dennis Hastert, then the Chairman of the Subcommittee, inquired as to the status of the three Los Angeles District employees. He expressed his concern that they might have been subjected to retaliation or intimidation by INS management as a result of their disclosures to the Subcommittee. These allegations of

³ The investigation of allegations by Department of Justice employees of retaliation for being a "whistleblower" falls within the jurisdiction of both the OIG and the OSC. The Special Counsel receives and investigates allegations of prohibited personnel practices under 5 USC § 1214, the Whistleblower Protection Act.

In May 1997, then-Inspector General Michael Bromwich advised the Subcommittee on Immigration of the Senate Judiciary Committee that the OIG's investigation of the CUSA program would include an assessment of allegations of retaliation against INS employees who had cooperated with the congressional inquiries.

⁴ Humble-Sanchez's allegations concerning fingerprinting procedures emphasized that Los Angeles District was processing cases so quickly that it had received many thousands of rap sheets from the FBI for applicants that had already naturalized. See our chapter on criminal history checking procedures, above, for our discussion about late-arriving rap sheets during CUSA.

We discuss the information brought to light by Kathy Bell in our Appendix concerning Los Angeles criminal history checking procedures.

retaliation were referred to the OIG and were investigated by the Los Angeles Field Office of the OIG's Investigations Division.

As detailed below, none of the Los Angeles employees' allegations of retaliation was substantiated. Humble-Sanchez's allegations were also the subject of a hearing before the Merit Systems Protection Board (MSPB). As a result of that hearing, the administrative law judge found that INS had established by clear and convincing evidence that the actions it took against the special agent would have been taken absent his whistleblowing activity, and thus his request for corrective action was denied.⁵

The other alleged cases of retaliation were investigated by the OSC with varying degrees of involvement by the OIG.

Two allegations of retaliation both concerned employees of the Chicago District. Two DAOs from the Chicago District advised the OIG during the course of our investigation that they believed they had been retaliated against by Chicago District managers because of their cooperation with the congressional inquiry. One DAO, Doree Stein, had not testified before the Subcommittee, but, like the Los Angeles clerical employees, had provided Wilon, the Subcommittee's Counsel, with information concerning CUSA practices in the Chicago District. When the OIG asked Stein to provide details concerning her complaint of retaliation, the information she offered showed that she was, in fact, alleging a pattern of mistreatment dating back to 1992 that did not primarily concern her role as a source of information about CUSA. Accordingly, the Chicago Field Office of the OIG's Investigations Division referred her allegations to the OSC for whatever further investigation they deemed appropriate. The other DAO, Joyce Woods, alleged that Chicago managers had failed to choose her for jobs for which she was qualified because in her testimony before Congress in September 1996 she had criticized Chicago District INS and, in particular, the Deputy District Director. The OSC did not substantiate Woods' claim of retaliation. As a result of our review of the matter, we also found insufficient evidence to support Woods' allegations.

⁵ Humble-Sanchez had filed a complaint with the OSC in December 1997 alleging that he had been retaliated against for his whistleblowing activity and the OSC accepted the complaint for investigation. However, after more than 120 days without notice from the OSC that it would seek corrective action on his behalf, he filed his appeal with the MSPB.

The final allegations of retaliation we address here are those of Neil Jacobs, the Assistant District Director for Investigations in the Dallas District Office. Jacobs had testified before the Subcommittee in September 1996 that during CUSA the Dallas Examinations Division failed to refer any cases in which they suspected fraud or misrepresentation to the Dallas Investigations Division. Jacobs alleged that because such referrals to explore possible fraud took time, this approach would have been at odds with the goal of CUSA to complete as many naturalization cases as possible.

A few weeks after Jacobs testified, INS sought to terminate Jacobs' teaching relationship with the International Association of Chiefs of Police. Jacobs alleged that the termination of that relationship was an act of retaliation against him because of his September testimony. After the OIG investigation of the complaint, in July 1997 we referred it to the OSC, noting that in our view it was a "substantiated case of retaliation in response to an employee's complaints and congressional testimony."

In October 1997, INS proposed to discipline Jacobs on the grounds that his congressional testimony was "in reckless disregard" for the truth. The OIG reviewed the INS investigative report into the charge and disagreed with INS' conclusion that discipline on this basis was appropriate. INS then dropped the proposal.

The next year, in March 1998, Jacobs was suspended by INS for a variety of charges relating to alleged mistreatment of his subordinates. Jacobs claimed that the discipline was retaliation for his testimony before the Subcommittee in September 1996 that was critical of INS. Jacobs complained to OSC, who later sustained this additional charge of retaliation.

The allegations investigated in whole or in part by the OIG are discussed in greater detail below.

B. James Humble-Sanchez

James Humble-Sanchez has been employed by the Los Angeles District INS Investigations Division since 1987. As a special agent (criminal investigator, "1811" series) he had considerable experience in conducting administrative and criminal investigations. Within the federal "government service" (GS) scale that ranges from grade 4 to 15, he was a grade 12 employee. His knowledge of naturalization adjudication procedures stemmed from instruction he received while attending FLETC and from what he learned

from colleagues while president (from 1991 to 1995) of the bargaining unit of the National Immigration and Naturalization Service Council, American Federation of Government Employees (AFGE), Local 505.

Humble-Sanchez testified before the Subcommittee on September 24, 1996, and provided to Wilon on other occasions additional information critical of the CUSA program. Humble-Sanchez alleged that INS Headquarters had deliberately removed law enforcement oversight from the CUSA program. He criticized multiple aspects of INS' criminal history checking procedures and other aspects of naturalization administration.

1. The allegations of retaliation

In addition to Chairman Hastert's letter to the Attorney General referred to above, on February 20, 1997, Humble-Sanchez independently contacted the OIG's Los Angeles Field Office to report that he was being retaliated against for having testified before Congress. He claimed that INS managers within the Investigations Division at the Los Angeles District Office were deliberately punishing him for speaking out against CUSA. He reported that he was being harassed by his immediate supervisors and that their acts of retaliation included a job reassignment, the revocation of his permission to use a Government Owned Vehicle (GOV), (redacted), and the theft of his personal property.

In January 1996, Humble-Sanchez had been assigned the job of Fines Collection Officer by the Section Chief of the Worksite Enforcement Unit of the Investigations Division. The Section Chief had wanted Humble-Sanchez to develop a computer program to improve INS' fines collection system. The Section Chief who gave Humble-Sanchez this assignment was succeeded in the summer of 1996 by Paul Smith.

According to Humble-Sanchez, in late 1996, after his cooperation with the Subcommittee, he was reassigned from his job as the Fines Collection Officer to another job within the Worksite Enforcement Unit. He was told, without explanation, that he would be reassigned to work on "Government Accountability Program" (GAP) cases, cases concerning allegations of criminal activity in the hiring or harboring of undocumented workers that were referred to INS by the Department of Labor. He objected to the change in assignment and, on January 3, 1997, wrote to Los Angeles District Director Richard Rogers that the changes in his working conditions were "deliberate and willful retaliation" by Los Angeles managers, a violation of his rights under the Whistleblower Protection Act of 1989.

Humble-Sanchez did not specify to the OIG the reasons why he perceived the change in assignment as adverse except to note that he had been assigned a new supervisor and he was required to change desks.⁶ As an additional act of retaliation, however, he noted that when he requested the use of a Government Owned Vehicle (GOV) to work the GAP cases, his request was denied by his new supervisor, Karl Ullrich, because Ullrich did not have Humble-Sanchez's home address, a prerequisite for an employee to be assigned a GOV. After Humble-Sanchez provided his home address, Ullrich then told him there was a shortage of vehicles and he could not have one.⁷

Humble-Sanchez told the OIG that additional acts of retaliation occurred after he went on (redacted) leave (redacted) in January 1997 before he began his new assignment. Humble-Sanchez requested leave (redacted) on January 15, 1997. His supervisor, Jesus Quintanar, approved the request. Approximately 2-3 days after the original request had been approved, Quintanar called Humble-Sanchez at his residence and asked that Humble-Sanchez provide additional (redacted).

Finally, the theft that Humble-Sanchez alleged to the OIG concerned the removal of his personally owned computer equipment that had been attached to the INS computer assigned to him at his work station. One day in early January 1997, Humble-Sanchez's then-supervisor, Quintanar, had asked him to provide a list of any personally owned computer equipment he was using so that INS could replace the personal property on which Humble-Sanchez was relying with government equipment. On January 16, 1997 (after Humble-Sanchez had gone on leave), Humble-Sanchez went to the INS office after hours and discovered that his personal computer equipment was missing. Although he learned that Assistant District Director for Investigations (ADDI) John McAllister was the person who removed the equipment, Humble-Sanchez reported this as a theft to the Los Angeles Police Department. Humble-Sanchez cited this removal of his property as one more retaliatory act in a series he had suffered.

⁶ Humble-Sanchez alleged to the OSC that this reassignment was a denial of promotion or a constructive demotion. However, the administrative law judge who presided at Humble-Sanchez's hearing found that the evidence did not support either contention.

⁷ Humble-Sanchez had been assigned use of a GOV since he was first hired as a special agent.

2. OIG review

At the outset, because it has a bearing on our conclusions about each act of retaliation alleged by Humble-Sanchez, we note that we found no evidence of retaliatory motive on the part of Humble-Sanchez's supervisors within the Investigations Division. Furthermore, we found no evidence of involvement by managers outside the Investigations Division in the actions about which Humble-Sanchez complained. First, Investigations Division managers denied any such motive, and Humble-Sanchez did not offer any evidence of statements by them that reflected a retaliatory motive.⁸ Second, although Humble-Sanchez's allegations were indeed critical of Los Angeles District's naturalization practices, they included complaints that the District did not sufficiently involve "law enforcement," or INS' Investigations Division, in CUSA—allegations that were not likely to provide a motive to his Investigations Division managers to retaliate against him.

The OIG did not find evidence to suggest that Humble-Sanchez's change in job assignment was an adverse action against him or that it was related to his testimony before Congress. According to Humble-Sanchez's Section Chief, Paul Smith, the Fines Collection work to which Humble-Sanchez had been assigned was not traditionally an assignment for a criminal investigator in a pay grade as high as that of Humble-Sanchez. He told the OIG that he chose to transfer Humble-Sanchez to the GAP assignment—work that was traditionally assigned to a criminal investigator—so that Humble-Sanchez could return to more traditional criminal investigative work. The Section Chief divided up Humble-Sanchez's previous Fines Collection work among lower-graded, non-criminal investigators. By September 1997, consistent with this explanation, the fines collection duties within the Worksite Enforcement Unit were assumed by lower-graded, non-criminal investigation employees on a part-time basis.

According to both Humble-Sanchez and his supervisors, Humble-Sanchez requested training for his new GAP position. That request was granted and according to Humble-Sanchez's immediate supervisor, Humble-

⁸ Humble-Sanchez had reported that his supervisor had spoken to him about the risks to his career if he appeared before the Subcommittee. However, at the MSPB hearing on Humble-Sanchez's allegations, based on the circumstances surrounding the comments made by the supervisor and based on evidence that the supervisor and Humble-Sanchez enjoyed a good working relationship, the judge found that the comments had been made out of concern for Humble-Sanchez's well-being and were not a veiled threat.

Sanchez was assigned to a new desk located next to his training agent. Humble-Sanchez admitted to the OIG that this was the reason provided to him for the desk transfer, although he said it was only offered as an explanation three days after the transfer had taken place.

With respect to (redacted) leave, federal regulations support Humble-Sanchez's supervisors' request for documentation about his continued absence. So did the agreement of the collective bargaining unit of which Humble-Sanchez was a member. Because the supervisors' request was appropriate and because Humble-Sanchez admitted that he failed to comply, the OIG did not further investigate (redacted) as an act of retaliation because the evidence clearly shows that the supervisors' actions were appropriate under the circumstances.

We found that Humble-Sanchez's allegation that he was denied use of a government vehicle as an act of retaliation is also not supported by the evidence. According to Humble-Sanchez's supervisors, the DADDI ordered that Humble-Sanchez's vehicle be returned to the INS office while Humble-Sanchez was on (redacted) leave. After agents had first attempted to retrieve the GOV from the address they believed was Humble-Sanchez's home, Humble-Sanchez's first line supervisor, Quintanar, discovered that Humble-Sanchez had not informed his supervisors of his correct home address. After making repeated and unsuccessful attempts to reach Humble-Sanchez by telephone and pager, Quintanar sought to learn Humble-Sanchez's correct home address through a Department of Motor Vehicles (DMV) query. That query revealed that Humble-Sanchez's driver's license had been suspended by the DMV in March 1996 and had not been reinstated. His license was reinstated, effective February 13, 1997, upon the payment of fines.

We found that the Investigations Division's action in requesting that Humble-Sanchez relinquish his government vehicle were proper, both because Humble-Sanchez was on leave and because he did not have a valid driver's license. When combined with the absence of any retaliatory motive on the part of supervisors, we found no support for this allegation.

Finally, in regard to Humble-Sanchez's allegation that his personally owned computer equipment was stolen, Investigations Divisions supervisors told the OIG that the equipment was removed because Humble-Sanchez had placed an unauthorized personal password on his combined government/personally owned computer, a password Humble-Sanchez had refused to provide others within the Unit who needed access to information in

the database. Humble-Sanchez admitted that he had secured the data on a government computer using personal passwords, but said that it had been necessary because he wanted to ensure the integrity of the data, data he was carefully maintaining because he would later be required to testify about it. He also said that he had discussed these security measures at length with the Assistant United States Attorney (AUSA) with whom he had worked on the case for which he had gathered the data. When interviewed by the OIG, the AUSA said that he had not told Humble-Sanchez to maintain the data in this fashion, nor did he ask that the data only be accessible by Humble-Sanchez.

Because the uncontradicted evidence shows that the computer equipment was removed only after Humble-Sanchez went on leave and that the data was accessible by a personal password known only to Humble-Sanchez, the evidence does not corroborate Humble-Sanchez's claim that removal of this equipment was a "theft," or that the removal was an act of retaliation against Humble-Sanchez.⁹

The OIG, therefore, found that the evidence does not support Humble-Sanchez's assertion that he was retaliated against for having testified before the Subcommittee or for having provided information about CUSA to congressional investigators.

C. Kathy Bell

By October 1996, Kathy Bell had worked in the Los Angeles District as an Office Automation Clerk in INS' Citizenship Branch for three and one-half years. Her primary duty during the early part of her tenure at INS had been to data-enter information from citizenship applications into INS' naturalization database (NACS). For 18 months before October 1996, she reviewed and

⁹ Humble-Sanchez's equipment was eventually returned to him.

In regard to Humble-Sanchez's police complaint, the Los Angeles Police Department had contacted ADDI McAllister, who explained that it was he who had removed the equipment, that it had not been stolen, and that Humble-Sanchez had been aware that it had been taken by McAllister before Humble-Sanchez had made the police report. The LAPD then attempted, without success, to reach Humble-Sanchez to further discuss the matter.

We also note that Humble-Sanchez failed to pursue this claim of theft at his hearing before the MSPB.

processed fingerprint cards and criminal history reports for naturalization applicants after those cards had been returned to INS by the FBI.

As discussed at length elsewhere in this report, Los Angeles District's procedures during CUSA for processing fingerprint cards and criminal history reports were extremely weak. Supervisors assigned insufficient resources to processing these records and, as a result, Bell bore responsibilities far beyond what could be appropriately expected of one employee, and beyond what should have been expected of an employee with her experience and pay grade. The information she provided to the Subcommittee, to the media, and to the OIG about Los Angeles' vulnerable procedures was corroborated in all material ways, and her role in increasing our understanding about those procedures was crucial.

As we also discuss elsewhere in this report (see our Appendix on Los Angeles criminal history checking procedures), district managers reacted defensively to Bell's disclosures to the press and to the Subcommittee. She was soon regarded by those managers as someone who had not been loyal to INS. However, we found no evidence that Bell suffered any adverse personnel action or that INS officials engaged in any prohibited personnel practice as a result of her cooperation with the Subcommittee or with the OIG.

1. The allegations of retaliation

On October 16, 1996, Bell provided an affidavit to Subcommittee Counsel Wilon and later that same day met with a news reporter. To both, Bell described Los Angeles' compromised background checking procedures, asserting that Los Angeles INS was naturalizing criminals and had destroyed many thousands of applicant fingerprint cards.

After her allegations appeared in local newspapers, Bell alleged that she was ordered into the office of the Assistant District Director for Adjudications (ADDA), Jane Arellano, on October 17, 1996. Present at that meeting were Bell's supervisors, Preston Prater and Janice Thompson, and Naturalization Section Chief John Amador. Lester Campbell, a representative from the AFGE, was also present to represent Bell.

According to Bell, she was asked why she had made the statements to the reporter and whether there was anything else she had said that had not been reported. Arellano told Bell that she was "just a clerk," implying that she did not understand the procedures about which she had spoken to the press. Bell

also said that she was told she “needed to be put in [her] place.” In addition, she was told that she had violated INS regulations by talking to the media and for taking extended lunch breaks. At the meeting in Arellano’s office Bell’s first and second-line supervisors (Thompson and Prater, respectively) began to question Bell’s time sheets, specifically, the lunch periods she had claimed on the previous two days. Bell said the meeting with her managers lasted approximately two hours and ten minutes.

According to Bell, the retaliation that followed this meeting was the removal of the telephone from her office and heightened scrutiny of her performance. She said that Arellano ordered Bell’s telephone removed from her office and then moved Bell from the individual office in which she had worked to a cubicle in a more open part of the office. Bell later told the OIG that the reason she was given for the telephone removal was so that she would not be able to receive telephone calls from the press. Arellano also directed that Bell be given a copy of her Performance Work Plan (PWP), the written description of her job duties.

Bell also told the OIG that on October 22, 1996, after returning from her allotted 15-minute break, her then-acting supervisor confronted her and asked her where she had been. The supervisor stated that everyone had to tell her (the supervisor) where he or she was going before leaving the office. Bell asked if the policy applied to everyone, and the supervisor replied “yes, that they would start now.”

Finally, Bell stated that since her disclosures in October 1996, supervisors Prater and Amador constantly passed by her desk to observe her work performance.

2. OIG review

OIG agents interviewed Bell’s supervisors in light of the retaliation allegations. ADDA Arellano admitted that she held a meeting with Bell and her supervisors after Bell’s allegations appeared in the press. At the meeting, according to Arellano and other supervisors, Bell admitted having taken two lunch breaks of one and one-half hours each to speak to the news media. These supervisors also told the OIG that the reason the telephone was removed from Bell’s office was that Bell herself had complained that it was a distraction, a fact that Bell also admitted to the OIG. The supervisors also said that her change of offices was in response to Bell’s complaint that the office she had been working in was too hot, because of the photocopy machine, and that

people walking in and out to use the machine interrupted her. As for providing Bell with a copy of her PWP, supervisors said that Bell made clear at the meeting that she did not know who her direct supervisors were, so they provided her with a copy of her work plan so that she would be familiar with her chain of command and her specific job description.

Supervisors Amador and Prater denied to the OIG that they increased their trips by Bell's desk to check on her. They asserted that they were cordial and did not treat her any differently than they treated any other employee.

AFGE representative Campbell confirmed that Bell had complained that the telephone in her office was always ringing and that the photocopy machine was noisy and created a lot of heat. Campbell said that Arellano told Bell that she would have the telephone removed. Campbell told the OIG that he did not feel removal of Bell's telephone was an act of retaliation and said he was not aware of any acts of retaliation against Bell.

Of the acts of retaliation alleged by Bell, her sense that her work was subjected to heightened scrutiny is not objectively verifiable. It is clear that District managers were unhappy that Bell had discussed District procedures with the media (as described in our subsequent Appendix), and it is likely that they made that dissatisfaction known to her. However, absent some adverse action taken against Bell in retaliation for her disclosures, this sentiment on the part of supervisors cannot be characterized as actionable retaliation.¹⁰ The actions that might be construed as actions taken *against* her—removal of the telephone and a change in her work station—were confirmed by her own union representative, and to a certain extent by Bell herself, as having been requested by Bell. Accordingly, the evidence does not show that Bell was retaliated against by Los Angeles officials because of her disclosures to the press or to the Subcommittee.

¹⁰ During a later interview with the OIG, Bell said that Los Angeles INS managers had not chosen her for several jobs for which she had applied and alleged that her failure to be selected was retaliatory. The OIG asked Bell to provide information concerning the jobs for which she had applied so that this allegation could be investigated. Bell declined to provide further information.

D. Rosa Arauz

Rosa Arauz had been employed by INS for nine and one-half years when she provided the Subcommittee with information about the Los Angeles District practices during CUSA. She began her career with INS as a Temporary Immigration Examiner (now called a District Adjudications Officer). She adjudicated Temporary Protected Status cases until 1989 when she accepted a position as an Immigration Inspector. When she did not complete the training requirements for the inspector position, she accepted a position as a clerk at the Los Angeles District Office. By the end of 1996, Arauz had been working at the Bellflower office within the Los Angeles District for approximately four years.

On January 5, 1997, Arauz provided Wilon an affidavit concerning the procedures followed at off-site interviews (scheduled through the Bellflower office) during CUSA. Arauz stated that citizenship interviews were merely a formality, part of a program that emphasized approvals. She alleged that some DAOs were completing far too many cases in the time period allotted, spending as little as four to six minutes per interview. Arauz also alleged that she witnessed citizenship interviews being conducted in Spanish when they should have been conducted in English. Arauz stated that these practices were all being carried out with the full knowledge of Supervisory DAO Sylvia Wilson in order to inflate the number of individuals being approved. She also alleged that CBOs were filling out voter registration cards for applicants who had just completed their citizenship interview even though the applicants were not yet citizens.

Arauz was a witness in an investigation conducted by the Orange County District Attorney concerning the alleged practice by a particular CBO of registering applicants to vote who had been approved for citizenship but not yet naturalized. According to Arauz, the retaliation described below began after she cooperated with this investigation.

1. The allegations of retaliation

Arauz alleged that in January 1997, after she offered her affidavit about CUSA to Wilon and after she had become a witness in the Orange County District Attorney's voter registration investigation, Wilson, her supervisor, retaliated against her. She said that Wilson referred to her as a "clerk" and told Arauz that she could not sit at the desk of a District Adjudications Officer. Arauz also claimed she was retaliated against by her first-line supervisor, Anne

Te'o, who placed Arauz on (redacted). Arauz also alleged that the retaliation included having a supervisor file unfounded allegations of misconduct against her.

Arauz's most troubling allegation, however, was that she had received a death threat for having exposed the improper voter registration practices at outreach interviews. She said that on January 20, 1997, she found a note that read "Rosa you are dead," that had been slipped under the door of her residence. She reported the threat to the local police department. Arauz pointed out that a news article had appeared a few days earlier in which she had been identified as having witnessed voter registration during outreach interviews.

2. OIG review

The OIG interviewed Arauz's supervisors and colleagues and reviewed the Torrance, California, Police Department's investigation of the alleged death threat. The evidence revealed a troubled relationship between Arauz and her supervisors dating back several years before CUSA. As to the specific workplace actions alleged by Arauz as retaliation for speaking with Subcommittee staff, her supervisors admitted several, but in each instance offered a reason for having taken the action other than any intent to retaliate against Arauz for her role as a witness concerning CUSA practices. As to the death threat, the matter was investigated by local law enforcement authorities and no further evidence concerning the threat was found.

Wilson denied that she had referred to Arauz as a "clerk" when telling Arauz she was to work at her own workstation. Wilson told the OIG that Arauz and other clerks had been told not to do their work in the offices of District Adjudications Officers unless specifically authorized by the supervisor. According to Wilson, Arauz had been told this on several occasions before January 1997. Wilson stated that employees were out of sight when working in the DAOs' offices and in the past Arauz, when working out of supervisors' sight in a DAO's office, had failed to complete her assigned work.

(redacted)

The confrontations between Wilson and Arauz were not the only difficulties Arauz experienced as an INS employee. Additional memoranda obtained from an OIG document request revealed that Arauz had had administrative problems with INS management well before the CUSA

program's inception. She had initiated a pay dispute in March 1995 that was settled in INS' favor by the Department of Labor. In April 1995, a different supervisor—Section Chief John Butler—advised ADDA Arellano of Arauz's failure to comply with a direct order to appear at a hearing at the Los Angeles District Office.

The threat made on Arauz's life was investigated by the Torrance, California, Police Department. No other witnesses were present when Arauz found the threatening message. She called her union representative upon finding the message, and he told her to call "911." The police department responded and documented the incident, but was unable to establish any leads concerning this matter and subsequently closed their investigation.

The OIG has not been able to determine the identity of the person who threatened Arauz in January 1997. Nor can we determine, without reaching far beyond the scope of our investigation, the extent to which the troubled relationship between Arauz and her supervisors is a function of poor employee performance and the extent to which it is a failure to manage and supervise. As to our inquiry concerning CUSA-related retaliation, however, the evidence does not indicate that any of the actions taken against Arauz by her supervisors were taken in response to her role as a witness or as a source of information critical of the CUSA program. Although the timing of the death threat, according to Arauz, suggested that it was connected to her role as a witness, we found no evidence to support this speculation. We found that the threat occurred shortly after Arauz had been involved in a workplace disturbance apparently unrelated to Arauz's role as a witness, a disturbance that could also have resulted in someone being angry at Arauz. Finally, none of the other Bellflower employees who were witnesses in the Orange County investigation, some of whom had also been critical of both INS and CBO practices and all of whom were also supervised by Wilson, complained of suffering any retaliation for having discussed CUSA with investigators. Although there is evidence of ill will between Arauz and her supervisors, there is no evidence that the supervisors' motive for the ill will was at all related to CUSA.

E. Joyce Woods

On September 24, 1996, Chicago DAO Joyce Woods testified before the Subcommittee about problems with the CUSA program in Chicago. As discussed in other chapters of our report, many of the allegations made by

Woods concerning the District's compromised naturalization adjudication practices were confirmed by our investigation.

1. The allegations of retaliation

Woods was a GS-12 DAO (series 1801) at the time she testified before the Subcommittee. She wanted to work for INS in a law enforcement capacity (series 1811), even though entry-level law enforcement jobs began at the GS-5 pay grade. Woods was aware that series 1811 law enforcement officers were compensated for Administratively Uncontrollable Overtime (AUO), a lump-sum payment above salary, and also were eligible for retirement earlier than non-law enforcement employees. Furthermore, she told the OIG that she believed if an INS employee accepted another job at a lower pay grade, the employee would soon be raised back in increments to his or her former pay grade, provided it was within the pay range of the new job. Woods did not have prior law enforcement experience other than occasional details as an Immigration Inspector.

To pursue a law enforcement position at INS, Woods participated in a competitive testing program administered by the Office of Personnel Management (OPM). The written skills test was used by OPM to qualify applicants for certain entry-level positions at INS, including Criminal Investigator, Immigration Inspector, DAO, and Deportation Officer. When INS uses OPM to recruit for one of these positions, OPM prepares a roster of candidates for the job and provides INS a "Certificate of Eligibles" that ranks the eligible candidates according to their score on the OPM-administered test. Woods took the test in April 1996 and received a perfect score of 100.

By way of background, we note that although Woods' score of 100 made her a strong candidate, she was not a veteran of the armed forces, and veterans received certain hiring preferences. In competitive examining, qualified candidates on OPM's Certificate of Eligibles who also have the "Veterans' Preference" have their scores increased by five or more points to reflect their veteran status. A selecting official may not select a lower-ranked non-veteran over a higher-scoring veteran on the OPM list without obtaining OPM's concurrence. In addition, certain former military members were eligible for a special emphasis program established by the Veterans' Readjustment Act (VRA). Eligible applicants were placed on a VRA list and these lists were used by INS to recruit new employees in addition to the OPM lists. VRA lists were compiled by local INS offices and were made up of qualified veterans

who served on active military duty for over 180 days during or after the Vietnam War and who were thereby eligible for excepted service appointments.¹¹ Selecting officials may choose from *either* the VRA *or* the OPM list, or from any other permitted recruitment source.

Woods told the OIG that she applied for three law enforcement positions at INS, but learned that she had not been selected for any of them. She believed that her role as a witness before the Subcommittee may have biased the selecting officials against her. In November 1997, she requested that the INS personnel office give her copies of the OPM Certificates of Eligibles for the positions for which she had applied. She received no response to this request.

In January 1998, Woods requested a meeting with the District Director, Brian Perryman, because he had told her that she should tell him if she ever experienced retaliation for her congressional testimony.¹² As a result of the meeting, Perryman said he would look into the matter, and, at Perryman's request, the OPM Certificates of Eligibles from which INS had made its selections for the three jobs were provided to Woods for review.

After her meeting with the District Director, Woods applied for two more law enforcement jobs at INS. One was in Indianapolis, Indiana, and Woods was later advised it had been "filled through another recruitment source," referring to a source other than the OPM list on which Woods' name appeared. In February 1998, Woods learned of a deportation officer opening in Chicago, but in March learned that the position had been canceled.

In October 1998, Woods turned 37 and thus became ineligible, under rules governing positions in the 1811 series, to apply for positions of this type.

Woods believed that she had not been selected for the positions because of her testimony before the Subcommittee in September 1996. The basis for her belief was that her testimony had been critical of Chicago district managers

¹¹ VRA eligibles must not have been dishonorably discharged and may or may not have Veterans' Preference from OPM. Applicants apply to be placed on VRA lists and submit their DD-214 military discharge forms to establish eligibility.

¹² Perryman had also disseminated a memorandum to his management staff on October 9, 1996, noting that acts of retaliation against the Chicago employees who had testified before the Subcommittee in September would not be tolerated.

and of the CUSA program. In particular, she had criticized the conduct of Chicago's Acting Deputy District Director during CUSA (although he was unnamed in her testimony), Robert Esbrook.¹³ Esbrook's wife, Diane Esbrook, also worked at INS and was the selecting official for two of the five positions for which Woods had applied, and had conferred with the selecting official on one of the other positions.

Woods originally made her allegations to the OSC. In September 1998, OSC advised Woods that it had not substantiated her allegations of retaliation.¹⁴ In January 1999, Woods asked the OIG to review the matter.

2. OIG review

The OIG reviewed the hiring decisions made for each position for which Woods had applied. We also interviewed each selecting official.

¹³ DAO Woods' testimony about Esbrook concerned his having instructed her and other INS employees not to "look under the red sheet" in naturalization applicants' files. Files of applicants who had adjusted to permanent residents under the Legalization program segregated the legalization application from the rest of the information in the file by using a red cover sheet. As discussed in our chapter on interviews and adjudications, many offices, incorrectly interpreting statutory confidentiality provisions, instructed DAOs not to review the material under the red sheet in conjunction with the evaluation of the naturalization application.

Woods testified before the Subcommittee: "They told us all actually in a staff meeting we had, they said you are not to look under the covers, you are to look only at the application and nothing prior to them getting their residency. In fact, I questioned the acting deputy district director at the time [Esbrook] and I said, 'what if we need to do an investigation or do something, like we have a lot of fraud. There is a lot of fraud with documents,' et cetera. He said that 'that is really not going to happen. That isn't working.' I said, 'well, actually I have done a lot of investigations and I have been successful in my attempts.' He got kind of mad, but still, the problem is we were told you are not to look before they got their residency, you are not to look in the file."

¹⁴ If the OSC declines to pursue a complaint before the MSPB, the individual complainant can pursue a direct appeal to the MSPB at his or her own cost. Generally, a direct appeal to the MSPB must be taken within 65 days of the date that the complainant is notified that the OSC has terminated its investigation. Woods did not take a direct appeal to the MSPB; instead, she requested that the OIG investigate her claim and communicate its findings to the OSC.

The first law enforcement position for which Woods had applied was a GS-5 deportation officer position in Chicago. Diane Esbrook, then the District's Acting Assistant Director for Detention and Deportation, was the selecting official.

The OPM Certificate of Eligibles for this position was issued in September 1997 and Esbrook made her selection from the OPM list. Two candidates with veteran's preference were ranked higher on the list than Woods. After the top-ranked candidate failed to confirm his availability for the position, the next highest-ranked candidate accepted the job.

When questioned about whether Woods was deliberately passed over for this (or any other) position, Esbrook denied that Woods' role as a witness before the Subcommittee 18 months earlier had any influence on her hiring decisions. Esbrook said she had simply chosen the candidate she thought was best qualified for the position. She denied that she had ever discussed Woods' testimony with her husband, Robert Esbrook, the former Acting Deputy District Director for Chicago.

The second position for which Woods applied was a criminal investigator position in the Chicago District. The selecting official was the Assistant District Director for Investigations, Thomas Farris. The person selected for the position had, like Woods, scored 100 on the requisite test and had foreign language skills. In addition, the candidate had also been a Customs Inspector at both the northern and southern U.S. borders and thus had significantly more criminal investigator experience than Woods, one reason Farris cited for choosing him.

When questioned by the OIG, Farris said Woods' role as a witness before the Subcommittee had not affected his evaluation of her candidacy for the job. In fact, he said he had not been aware that Woods had been a witness until after the OSC had contacted him to investigate Woods' claim of retaliation.

The third position for which Woods applied was another GS-5 deportation officer job in Chicago. The selecting official was David Venturella, who had resumed his duties as the Assistant District Director for Detention and Deportation (he had been the Acting Deputy District Director, and for that reason Diane Esbrook had been Acting in his place). Venturella told the OIG that he wanted a person who had previous law enforcement experience. Consequently, he said he first chose a candidate from the OPM list (whose score was equal to Woods') who had been an Immigration Inspector at

airports in New York and Chicago, but this candidate declined the offer. Next, Venturella offered the job to a candidate on the VRA list who had criminal investigation experience from having worked in “diplomatic protection” at the State Department. Venturella said he conferred with his supervisors and with Diane Esbrook during the selection process. By the time this second candidate also declined the position, however, the OPM roster of eligible candidates had expired (they are valid for only 90 days). Chicago officials resumed their efforts to fill the vacancy later in 1998 (see below).

Venturella told the OIG that he knew that Woods had been a witness before the Subcommittee, but said he had not spoken about her testimony with other Chicago managers nor had he heard negative comments concerning Woods’ ability as an employee. Venturella said he did not choose Woods for the deportation officer position because he believed the other candidates had superior law enforcement experience, a factor he told the OIG that he always weighed heavily in his selections for these positions.

Meanwhile, Woods applied for a fourth position, this one in Indianapolis as a criminal investigator. In January 1998, the Officer-in-Charge in Indianapolis selected an employee who had previously worked for him, who was on the VRA list, and who had law enforcement experience both as an Immigration Agent and as a Detention Enforcement Officer.

The last law enforcement positions for which Woods applied before becoming ineligible because of her age were two GS-5 deportation officer vacancies in the Chicago District. One of these vacancies was the position described above for which the OPM roster had expired.

Venturella, the original selecting official for these vacancies, chose a candidate from the OPM list who had a higher score than Woods and had experience as a security guard in the Marines and as an ammunitions technician. This candidate, however, declined the job offer, by which time Venturella had left the district for a detail to INS Headquarters. Consequently, Diane Esbrook became the selecting official for these vacancies.

Esbrook chose two candidates from the VRA list, both of whom had some prior law enforcement experience. One accepted the position, while the other turned the job down. According to the personnel management specialist who worked to fill these vacancies, by the time INS learned that the second

candidate had declined the offer, INS had lost its authority to fill the position because the Central Region could not support additional staffing during 1998.¹⁵

Prior to our investigation of Woods' allegations, she provided the OIG with the OSC's letter informing her that they had not substantiated her allegations of retaliation. Because it appeared that the OSC had not interviewed all the witnesses we interviewed and examined all the information we reviewed in this case, we forwarded copies of our interviews of relevant witnesses to OSC staff for their review. In March 2000, the OSC advised us that it had reviewed the information provided by the OIG and again found that Woods' allegation of retaliation was not substantiated.

For four of the five positions for which Woods had applied, INS hired candidates who were qualified for the positions and who demonstrated experience that the selecting officials believed was superior to Woods'. As to the fifth position, the candidates originally selected were similarly qualified, and the evidence indicates that the passage of time (resulting in the loss of hiring authority) rather than bias against Woods prevented INS from hiring someone for the position.

We found Woods' concerns that she was retaliated against for her congressional testimony were not spurious allegations raised by a disgruntled employee. That said, the district officials interviewed by the OIG offered explanations for the actions they took that we were able to corroborate from the candidates records, and all of the officials vehemently denied any retaliatory intentions when making the selections outlined above. Furthermore, we did not find evidence of animus against Woods among any of the selecting officials whom we interviewed.

Accordingly, we concur in the OSC's conclusion that there is insufficient evidence to support Woods' claim of retaliation.

F. Neil Jacobs

Neil Jacobs was the Assistant District Director for Investigations in INS' Dallas District Office. During his over 25 years' service with INS, he had been associated with initiatives that won national recognition, including a Hammer

¹⁵ Diane Esbrook told the OIG that she had been unaware that the second candidate had declined the job, and was unaware that Chicago District later lost its authority to hire someone for the position.

Award for Reinventing Government from the Office of the Vice President and a Ford Foundation award. He had been cited for bravery by INS and had received many outstanding performance and achievement awards. (redacted).

On September 24, 1996, Jacobs testified before the Subcommittee. In his testimony, Jacobs focused on the fact that “not a single case” of fraud or misrepresentation revealed during the naturalization adjudication process had been referred from the Dallas Examinations Division to Investigations during CUSA. He said, “[I]f there was an intent on keeping the integrity in the system, enforcement could have been brought in from the beginning and been a partner in the citizenship program.” He added, “we weren’t included in it, and I believe we were kept out because had we been brought in we would have slowed the process down and the numbers could not have been reached.”

Jacobs reported that approximately 12,500 applications were processed in the Dallas District Office during CUSA without a single fraud referral. In answer to a question during the hearing before the Subcommittee, he estimated that a “norm” for fraud referrals of “between 5 and 10 percent would be a conservative estimate.”

Jacobs also described for the Subcommittee a conference at which EAC Aleinikoff gave a speech about the integrity of CUSA. At the conference, Jacobs criticized what he saw as the apparent lack of integrity in the naturalization initiative, calling CUSA “a Jiffy Lube process.”

According to an OSC report, shortly after Jacobs’ testimony, his superior, Dallas District Director Arthur Strapp, wrote a letter published in the October 3, 1996, *Washington Times* and referred to complaints from his office that had been featured in an earlier article as coming from “a disgruntled employee whose personal agenda goes far beyond telling the truth.” Although the letter did not name Jacobs, it was construed to have been referring specifically to him. A few weeks later, on October 18, 1996, Commissioner Meissner sent a letter to the Senate Subcommittee on Immigration that referred to Strapp’s refutation of Jacobs’ allegations as being “completely credible.”

Within weeks of his congressional testimony, INS attempted to terminate a teaching relationship Jacobs had established with the International Association of Chiefs of Police (IACP) which carried with it some visibility and prestige, although no remuneration. In August 1996, the IACP had specifically asked for Jacobs based on his presentations during the previous five years and INS Headquarters had approved his appearance, as had his

immediate supervisor and regional officials. Associate Regional Director Curtis Aljets, however, rejected the recommendation to permit Jacobs to address the IACP, calling him a “loose cannon” who “circumvented the chain of command.” Only after further IACP appeals did INS relent and extend the teaching relationship.¹⁶

(redacted)

1. The allegations of retaliation

In October 1997, INS proposed to discipline Jacobs for recklessly testifying before Congress that there had been no referrals of possible fraud cases from the Dallas Examinations Division during CUSA. Other charges related to various instances of alleged mistreatment of subordinates. Although Acting Executive Associate Commissioner for Field Operations William Yates had already signed a letter proposing to separate Jacobs from the service, he did not send the letter following, among other things, consultations with the OIG. The OIG had advised INS that such action would be the “wrong decision.”¹⁷

In March 1998, INS refiled disciplinary charges against Jacobs, this time without mentioning his congressional testimony, and subsequently suspended him. Jacobs complained to the OSC that the discipline was an illegal retaliation for his whistleblowing testimony before Congress and the OSC eventually sustained the charge of retaliation.¹⁸

¹⁶ As previously noted, the OIG investigated INS’ initial decision to terminate Jacobs’ teaching relationship with IACP. We also referred it to the OSC as a “substantiated case of retaliation in response to an employee’s complaints and congressional testimony about program abuses and deficiencies.”

¹⁷ INS’ OIA had briefed the OIG about INS’ proposed action against Jacobs in order to assess the quality of OIA’s investigation.

¹⁸ The OSC investigated Jacobs’ claim of retaliation and filed a petition with the MSPB to stay the discipline INS sought to impose on Jacobs. That stay was granted in November 1998. In May 1999, the OSC filed a petition for corrective action with the MSPB after INS failed to take voluntary corrective action. The matter was scheduled for hearing in March 2000, but that month, before the hearing, the OSC complaint was settled. Jacobs was awarded a reassignment to the Hawaii District (with moving expenses for him and his family to be paid by INS), restored leave, back pay, attorneys’ fees, and an additional lump sum of \$30,000.

1. OIG review

The OIG did not investigate Jacobs' claim of retaliation concerning the March 1998 disciplinary charges. However, the OIG did review OIA's investigative report into the truthfulness of Jacobs' testimony before Congress to assess whether INS had a basis for contending that Jacobs' testimony was reckless. In our view, INS did not have such a basis.¹⁹

The gist of the INS proposed discipline was that Jacobs had testified that his Division had not received a "single referral" of possible application fraud from the Dallas Examinations Division arising from CUSA adjudications. In an effort to rebut Jacobs' allegation, the OIA report identified anecdotally five to seven criminal referrals during this period from Examinations to Investigations. From our analysis, it appeared that three of the referrals arose from the special circumstance that an Examinations Division employee was married to an employee in Investigations. We assessed the referrals as resulting from spousal communication rather than being representative of more formal referrals or routine District Office practices. Perhaps more significantly, the witnesses who recalled the five to seven referrals did not indicate that they had a recollection of referrals other than those noted above. Equally telling was the fact that OIA's investigative report described interviews of many other Dallas District employees who could not recall any referrals they made in 1996 or any by co-workers during this period.²⁰

Based upon our review of OIA's report, we concluded that Jacobs' testimony about the lack of referrals was generally accurate. The few exceptions noted above appeared to us to be *de minimus* and not enough to undercut the thrust of his statement to Congress.

¹⁹ The OIG did not conduct the investigations that led to INS' proposal to discipline Jacobs. Those investigations were part of the 15 or more reviews that INS' OIA conducted of Jacobs and/or the Dallas office.

²⁰ Two investigators in the Dallas Investigations Division were funded out of the Examinations Fee account; i.e., their positions were dedicated to handling examinations-related investigations. Neither of these employees recalled receiving any CUSA-related referrals. If fee-account workers were dedicated to do fee-account work, these witnesses' failure to recollect any referral from CUSA is particularly probative.

G. Conclusion

We did not find that INS retaliated against the majority of employees who provided information to Congress that was critical of CUSA. Indeed, during our investigation, INS managers themselves were among those most critical of the CUSA program.

While the Jacobs case is supportive of a charge of retaliation by INS because of his testimony, his record also provided grounds that might separately have been a cause for a proposal of discipline. The evidence does not suggest a reason why INS would single him out from the group of employees who criticized CUSA. We found that INS' actions against Jacobs were not characteristic of its response to the many witnesses who provided information to Congress and to the OIG.