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SPECIAL COUNSEL ANNOUNCES SETTLEMENT IN U.S. CUSTOMS AND BORDER PROTECTION
WHISTLEBLOWER CASE

FOR IMMEDIATE RELEASE

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WASHINGTON, DC/July 21, 2011 – Special Counsel Carolyn Lerner announced today that the U.S. Office of Special Counsel (OSC) has reached a settlement with the U.S. Department of Homeland Security’s Customs and Border Protection (CBP) on behalf of whistleblower Ken Downey, a long-time supervisor in CBP’s Blaine (Washington) Sector Communication Center.

In a series of whistleblower disclosures to OSC from 2005 to 2007, Mr. Downey revealed compelling evidence of misconduct, management neglect, and abuses of overtime pay at Blaine Sector. Investigations initiated by OSC of Mr. Downey’s disclosures substantiated many of his allegations.

Mr. Downey also alleged that he was retaliated against after he disclosed the wrongdoing, and OSC’s investigation substantiated his claim. Specifically, OSC found a pattern of illegal retaliation including: retaliatory investigations that led to a proposed decision to fire Mr. Downey; a suspension; an indefinite transfer to another border patrol station; a reprimand; the removal of his supervisory duties; and a failure to promote him despite a favorable recommendation from his supervisor.

As part of the settlement process, Mr. Downey obtained relief for the retaliation he suffered, as required by OSC’s corrective action statute, and agreed to withdraw his complaint. OSC also arranged for and participated in a successful meeting between Mr. Downey and his managers to discuss how Mr. Downey and the agency would move forward following the settlement. CBP and Mr. Downey have agreed to refrain from making any public statements regarding the terms of their agreement.

Special Counsel Carolyn Lerner commented, “My office will vigorously protect courageous whistleblowers like Mr. Downey from retaliation. Mr. Downey suffered greatly during this ordeal, but I am heartened that the settlement process worked successfully. Indeed, after resolving the case, the parties met, talked through their differences, and Mr. Downey left the room as an integral part of management’s team. I want to thank and commend Commissioner Bersin, Chief Fisher and their staffs for their cooperation in resolving this difficult case.”

The U.S. Office of Special Counsel (OSC) is an independent federal investigative and prosecutorial agency. Our basic authorities come from four federal statutes: the Civil Service Reform Act, the Whistleblower Protection Act, the Hatch Act, and the Uniformed Services Employment & Reemployment Rights Act (USERRA). OSC's primary mission is to safeguard the merit system by protecting federal employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing. For more information, please visit our website at www.osc.gov.