

**U.S. SENATE**  
**Senate Homeland Security and Governmental Affairs Committee**  
**Hearing: Blowing the Whistle on Retaliation: Accounts of Current and Former Federal**  
**Agency Whistleblowers**  
**Testimony of**  
**Jose Rafael Ducos, CBP Chief Officer**  
**June 11, 2015 at 10:30 AM**

**INTRODUCTION**

Chairman Johnson, Ranking Member Carper, Members of the committee, thank you for inviting me to appear before you today to help you blow the whistle on retaliation against Federal employees.

**I**  
**NATURE OF COMPLAINT**

I have been retaliated against for the past three years in my current employment as a CBP Chief Officer with the U.S. Customs and Border Protection (CBP), at 1300 Pennsylvania Avenue Northwest, Washington, D.C. as a result of my having reported fraud, waste, abuse and improper use of AUO. The CBP ongoing chronological retaliation against me is as follows:

**II**  
**STATEMENT OF FACTS**

- On September 14, 2012, I requested from the Office of Diversity and Civil Rights (DCR) an informal EEO process against the CBP Commissioner's Situation Room (CSR) Director Margaret McGrath and Assistant Director Matthew Hanna for discrimination on the basis of my national origin (Hispanic) and that I was subjected to a hostile work environment due to the irregularities that I notice upon my return to the CSR from my detail at the DHS National Operations Center. **(Exhibit # I)**
- On October 1, 2012, I made my disclosure to the Office of Special Counsel (OSC) and requested to be transferred to CBP NTC-C/CSI. **(Exhibit # II)**
- On October 2, 2012 I told Assistance Watch Officer Martin Whalen a coworker who I trusted from the CBP Office of Field Operations (OFO) all about the disclosure that I made to the OSC and ask for his support that he latter withdrew leaving me to stand alone to face the coming storm. **(Exhibit # III)**
- On October 12, 2012, during my CBP Employee Annual Proficiency Review meeting I told my immediate supervisor Senior Watch Officer Lorne Campbell all about the disclosure that I made to the OSC and ask for his support. I was under the impression that

he like me was under the OFO when in reality he is under the Office of Intelligence and Investigative Liaison (OIIL) and benefiting like the Border Patrol of the 25% AUO. I trusted him to do the right thing and he ended up pointing the finger at me to CBP upper management.

- Mr. Christopher Smoot from the DCR tried to schedule a mediation process from October 24, to December 19, 2012, to no avail and at the end I withdrew my EEO complaint on December 20, 2012, because the CSR Director was removed and relieved from her duties at the CSR on November 9, 2012.
- On January 2, 2013, the OSC sent a request for investigation to DHS after reviewing my CSR findings. **(Exhibit # IV)**
- On February 12, 2013, I requested from CBP DCR Reasonable Accommodations due to my current medical condition.
- On February 13, 2013, I was interrogated by the CBP Office of Internal Affairs (OIA) in reference to the AUO investigation requested by the OSC. Many times during the OIA interrogation I was asked off the record by two OIA agents if I was the whistleblower in this case. My answer to them was no but they continued drilling me until the end.
- On February 24, 2013, I was disarmed at the CSR by Border Patrol agents because I felt asleep involuntarily due to my medical condition after I was abruptly change from the night work shift to the day shift.
- During the months of February and March 2013 I was constantly harassed and micromanaged by CBP management.
- On March 6, 2013, I was removed and relieved from my duties at the CSR by order of the CSR Director Scott Foster and the CSR Assistant Director Matthew Hanna.
- On March 6, 2013, I reported for duty to OFO Director of Incident Management, Mark A. Pacheco and placed by him on administrative duties. Prior to Mr. Pacheco's promotions at CBP OFO he was a US Border Patrol agent. From that day forward I was subjected to countless humiliations that I endured at the hands of Mr. Pacheco and CBP upper management. **(Exhibit # V)**
- On March 8, 2013, I was assigned to the OFO Communication Action Team (CAT) to deal with the sequestration period. The operations were parallel and similar to those of the CSR.

- From March 11, to March 26, 2013, I told CBP managers, Mark A. Pacheco, Jenifer De La O, Aileen Suliveras and Margaret Braunstein about the AUO situation and the discrimination that I was facing. They were offended because I took such action against corruption within our ranks and told that if I knew what was better for me I was to look the other way. Also, I was ask how dare I accused my brothers in the Border Patrol.
- During the months of April, May, and June 2013 I was constantly harassed and micromanaged by Mark A. Pacheco and Jenifer De La O. Also, I was required to report for a Fitness for Duty Examination. **(Exhibit # VI)**
- On July 1, 2013, I was transferred to work at the Office of Information Technology in Springfield, VA.
- On September 30, 2013, I was served by Mark A. Pacheco with a Federal employment option letter with three options. Resign from CBP, retire or change my job series to other than 1895. **(Exhibit # VII)**
- On October 2, 2013, I was served with a Furlough Notice by Margaret Braunstein and I was the only one form CBP OFO OPS that was furlough from my division even when my employees from OIT had to come to work during those 14 days. **(Exhibit # VIII)**
- On October 22, 2013, I replied to Mark A. Pacheco options letter. **(Exhibit # IX)**
- On October 31, 2013, the OSC concluded their investigation and reported their findings to the President and the Senate. On that same day The Washington Post reported the AUO fraud and abuse.
- On November 1, 2013, I received a message by Susan Holliday advising me of what we could be facing from that moment forward and she was not far from reality. **(Exhibit # X)**
- On November 4, 2013, I started my investigation on possible abuses of AUO at the NTC-P and NTC-C in VA.
- On November 25, 2013 I finished my AUO investigation that revealed the likelihood of fraud and abuse at the NTC- P&C. **(Exhibit # XI)**
- On December 20, 2013, the OSC sent a request for investigation to DHS after reviewing my NTC-P and NTC-P findings. **(Exhibit # XII)**
- On January 7, 2014, I reported CBP IA that Mark A. Pacheco continue to retaliate by among other things falsifying and altering my time and attendance in COSS for several pay periods. After a quick investigation I was paid in full for my missing work hours **(Exhibit # XIII)**

- On February 14, 2014, out of good faith to CBP management I submitted to the Acting CBP Commissioner Thomas S. Winkowski a remedy proposal to end my current retaliation and EEO case. **(Exhibit # XIV)**
- On February 20, 2014, I received a contestation to my remedy proposal from the CBP Chief of Staff, Kimberly O'Connor to no avail. **(Exhibit # XV)**
- On April 22, 2014, as per CBP immediate request I provided Mark A. Pacheco with a drug test and a full panel blood test. **(Exhibit # XVI)**
- On April 28, 2014, I provided Mark A. Pacheco with a letter from the VA Assistant Chief of Neurology stating that I was stable and compliant with my medical treatment. **(Exhibit # XVII)**
- On May 1, 2014, I provided Mark A. Pacheco with a medical evaluation letter performed by Dr. Mina Son that attested to my full medical recovery. **(Exhibit # XVIII)**
- On June 3, 2014, CBP requested a psychiatric evaluation but I refused because it was out of the scope related to my past temporary medical condition.
- On May 2, 2014, I provided Mark A Pacheco with a letter from Dr. Tajender Vasu reporting that my restless leg syndrome is under control. **(Exhibit # XIX)**
- On August 22, 2014, as per CBP request I provided Mark A. Pacheco with a Sleep Study Report performed by the same contractor chosen by CBP during the original Fitness for Duty Examination. The report attested to my full medical recovery. **(Exhibit # XX)**
- On November 14, 2014, as per as per CBP request I provided Mark A. Pacheco with a Wakefulness Maintenance Test Report performed by the same contractor chosen by CBP during the original Fitness for Duty Examination. The report attested to my full medical recovery. **(Exhibit # XXI)**
- On December 19, 2014, Mark A. Pacheco returned me to full duty status and provide me with a final determination on my past request for Reasonable Accommodations. **(Exhibit # XXII)**
- On January 7, 2015, I reported to OFO Operations Director, Jenifer De La O at CBP Headquarters (HQ) in Washington, D.C. with the Field Liaisons Division for several days. I was under the believe that I was going to be returned to my original position as a Senior Watch Officer or a Watch Officer at the Commissioner's Situation Room (CSR).
- On January 11, 2015, I was transferred to the Field Operations Readiness Team (FORT)
- From the moment that I was assigned to FORT there were no permanent cubicle nor duties assigned to me and because of my whistleblower status I have never been welcome to this team.

- From January 14, 2015 to the present I have been trying unsuccessfully to get a CBP program to manage and a permanent cubicle to work from.
- On March 4, 2015, I reported to the OSC that back on the first week of November, 2013 at the CBP Advance Training Facility in Harpers Ferry, West Virginia CBP Border Patrol agents used the photo of me that was published on the October 31, 2013, AUO fraud story by the Washington Post. There were many witnesses to my photo shooting incident including CBP Officer, Glen Woodley, who was present at the time and is willing to give testimony under oath.
- On March 11, 2015, after trying to unsuccessfully approach my chain of command I tried to engage the CBP Deputy Commissioner, Kevil Maleenan to inform him that after the AUO was suspended to the Border Patrol now they were engaging in another form of fraud and corruption by claiming overtime under the Fair Labor Act Standard (FLSA). **(Exhibit # XXIII)**
- On March 17, 2015, Senator Ron Johnson sent a letter to DHS Secretary Jeb Johnson instructing to resolve my situation.
- On March 18, 2015, I was told that I have to follow my chain of command if I want to talk to CBP upper management or people outside the agency. **(Exhibit # XXIV)**
- On May 22, 2015, I received an invitation to testify before the U.S. Senate Committee on Homeland Security and Governmental Affairs on Tuesday, June 2, 2015, at 10 a.m. at a hearing titled "Blowing the Whistle on Retaliation. On that day I provided copy to my immediate supervisor for him to make arrangements in my work schedule for June 2<sup>nd</sup>.
- On May 26, 2015, on the very next day after the long Memorial Day weekend I was assigned a temporary cubicle outside the FORT division area and clerical work not related to my line of work or my job series description to add insult to injury.
- On May 26, 2015, at 15:46 hours I went to the CSR to ask the Senior Watch Officer a question about the current CSR staffing and TDY's assignments. Before I had a chance to talk to anyone I was intercepted by Mr. Rodney S. Scott, a Deputy Chief Border Patrol Agent and currently Acting Executive Director of the Joint Operations Directorate at the Office of the Commissioner. At his office he told me in a very hostile verbal way and intimidating demeanor that my question was illegal and in direct violation of the CBP Standard Code of Conduct. Then he told me and I quote "If you have any questions you come directly to me and from this moment forward you are prohibited to visit or make contact with any CSR employee without his prior authorization." Then he said and I quote again "Are we clear and do you understand me." I responded yes Sir. During the obvious one way conversation my demeanor was humble, polite and respectful. I answered to all his questions and demands with yes Sir or No Sir and my posture was very professional. At the end I ask for his business card, reached out and shook his hand and thanked him for his time, followed with my prompted departure from his office.

Later, I was able to login a computer that was available and got the information from the CBP Global Public Directory. Also, on May 27, 2015, during a phone conversation with CSR SWO Martin Whalen instructions were given on May 27, 2015, by Acting Executive Director, Rodney S. Scott to all CSR personnel not to talk to me under no circumstance without his prior approval on or off duty. **(Exhibit # XXV)**

- On June 5, 2015, up to this moment and time I don't have a CBP program to manage, a permanent office to work from, assigned computer, hard line telephone number, office equipment and the require Blackberry phone. Also, I am not kept in the loop on any emerging OFO situations via email distribution list. **(Exhibit # XVI)**

### **III RECOMEDATIONS**

- Implement provisions to force Federal agencies to provide the OSC with full access to witnesses and transparency to all the information requested by them and other relevant offices as deem by them during their retaliation investigations.
- Provide me with the payment of my attorney's fee, compensatory damages, punitive damages and other equitable remedies. I'm entitled by law to the "make whole "relief.
- Provide to the White House, OSC, U.S. Senate and the OSC all the up to date information in reference to the CBP developing plan as per mandate from the U.S. Senate Committee on Homeland Security and Governmental Affairs to DHS requesting to hold accountable corrupt CBP employees who knowingly abused the AUO and require them a flat rate AUO restitution payment to CBP for abusing government funds for their own personal gain.
- Require all CBP employees to receive mandatory training on whistleblower protected activities. This training will include information to all ranks on their rights and responsibilities; and procedures to follow in the event that they experience any adverse situation of such topic. The training can be provided via a Town Hall Meeting, the CBP VLC computer-base system and in-person by a group supervisor or a CBP management muster.
- Require from all Federal agencies specific responses to workplace issues related to whistleblowing retaliation. Ensuring at all times that vulnerable Federal employees and the traveling public are protected by implementing proactive effective plans that will be in place to respond to issues where they happen. Draft a plan tailor to meet the specific need at criminal level to discourage any one to commit acts of retaliation.
- Address the root causes of the issues that prevent and discourage Federal employees from reporting wrong doing within their ranks, including the loop holes and practices that contribute to the many ongoing problems.

- Create an information supply chain to feed the Senate committee all the gather resolution data results and input the same into a management system improvement plan to end similar reemerging situations.

### **III MY RELIEF**

- Reinstatement to the CBP Commissioner's Situation Room (CSR) and promotion to the Senior Watch Officer (SWO) GS-14/ 1895, a position that I am fully qualify for and with more than 11 years on the job experience at the CSR. On November 2014, I was not able to apply to vacancy announcement number: IHC-1209799-LLB-MP, due to the fact that I was disarm by retired OFO Incident Management Director, Mark A. Pacheco and assigned to administrative duties at several locations out of the CSR. I believe that I have demonstrated many times over that I earn and well deserve to be at this leadership position at the CRS after more than a decade of faithful service to all the past and present Commissioners.
- Have CBP clear my official and unofficial employee record file of any known or unknown derogatory information
- Update my SF-50 to reflect all the missing and accurate information and provide me with the pins and certificates for my 15, 20 and 25 years of service in the Federal Government.
- Bestowed upon me the responsibility to serve CBP as a public speaker during town hall meetings promoting awareness on prohibited personnel practices, whistleblowing disclosures to the OSC, harassment and discrimination practice to CBP employees around the Nation. Tell them my true story to promote trust in our organization with my real life story.
- A written official public apology letter from DHS and CBP management for all the documented whistleblower retaliation, harassment, discrimination and career isolation that I have endure during the past several years.
- Bestowed upon me the Commissioner's Integrity Award to send a clear message to all DHS and CBP employees that our agency is fully committed to the CBP Core of Values and encourage whistleblowing of unlawful acts in and outside the CBP ranks. Integrity start at the very foundation of our agency and our faithful commitment to protect the Constitution of our great Nation. Sir, this action on your behalf will clear my good name that is currently plague with the stigma of a "snitch" and it will boost morale across the ranks by ensuring that all CBP employees can do their job without the fear of false allegations being brought against them as form of retaliation, retribution and discrimination for whistleblowing activities reported the OSC in reference to fraud, corruption, abuse of authority, waste of government funds and activities to cover up gross incompetence and violations to the Rule of Law.

- Provide me with the payment of my attorney's fee, compensatory damages, punitive damages and other equitable remedies. I'm entitled by law to the "make whole" relief.

Moreover, my professional reputation have been tarnish in social media and my family has suffered the ill effects to my wellbeing. These are the facts and evidence that I have provided to staff members of the committee. They speak for themselves. Now more than ever, I will ensure that all Federal employees fell secure to report acts of corruption, waste, abuse, gross incompetence and lack of safety or security. Whistleblowers are America's First Responders when it comes to Federal agencies commit acts of wrongdoing. We are no scoundrels we are the undercover cops on the lookout to prevent Uncle Sam from being pickpocketed.

Thank you for allowing me the opportunity to testify before you today. I would be pleased to answer any questions.