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Department of Homeland Security
Richard L. Skinner
Inspector General
245 Murray Drive, SW, Bldg 410
Washington, D.C. 20538

Re: Allegations of Misconduct at ICE/OI SAC-Denver and ICE OPR Denver

Dear Mr. Skinner;

I am writing today to make you and your office aware of what I believe to be numerous acts of misconduct, ethics violations and failures in leadership within the DHS-Immigration and Customs Enforcement (ICE), Office of Investigations (OI), and Office of Professional Responsibility (OPR) in Denver, Colorado.

As background, I should make you aware that in October 2006 I was employed as a senior special agent with ICE OI assigned to the Office of the Special Agent in Charge, Denver, Colorado (SAC-Denver). On October 13, 2006, I became aware of sensational and public allegations of misconduct levied against me by Mr. William (Bill) Ritter, who was then a candidate for the Office of Governor of the State of Colorado and who currently holds that elected office at the present time.

From the outset I recognized the sensational nature of the allegations that were raised in the context of a heated political contest. I believed then, as I do now, that the allegations were based upon distorted and speculative facts provided to a media market that was more than willing to report speculative and sensational allegations raised in the context of the heated political debate and contest. I immediately sought private legal counsel and was advised not to make any statements to media, law enforcement officials or others until the heated climate surrounding the political contest subsided and cooler heads had a chance to prevail when facts, rather than speculation and conjecture, would matter. I also believed then, as I do now, that the legal advice I received at that time was sound and proper considering the sensational nature of the allegations and the intense media scrutiny that followed.

I wish to make it clear that I was, at all times, completely confident in the propriety of my actions as I had reported all of the significant details related to my questioned activities to one of my immediate ICE supervisors who, at that time, I held in high regard and in whom I maintained a high level of trust and confidence. This supervisor, Mr. Anthony Rouco, supported my questioned activities and was in complete agreement that my

actions were legal, ethical and were consistent with our oath of office and official responsibility in regard to public safety and immigration law enforcement.

Within a matter of days of the allegations being made public, I was placed on paid administrative leave pending investigation on October 18, 2006. I learned through the media that I was the subject of a criminal investigation being conducted jointly by members of the Colorado Bureau of Investigation (CBI), Federal Bureau of Investigation (FBI), ICE OPR and the United States Attorney's Office for allegations relating to unauthorized access and misuse of the National Crime Information Center (NCIC) database, unauthorized dissemination of information and a possible Hatch Act violation – all based upon the distorted fact set reported in the media and the sensational allegations made by one campaign against another in the heated political contest.

From the outset, ICE OPR Senior Special Agent (SSA) Manuel Olmos was assigned to participate in the investigation relating to me and my questioned actions. He seized my government computer, cell phone and he searched my work cubicle where he seized several boxes of work related materials. He then taped up the work space with evidence tape and clearly identified the cubicle as a “crime scene”. Fellow agents in the office later commented to me that by the way my assigned work station was taped up and clearly marked as a “crime scene”, they expected to find the chalk outlining of a homicide victim inside the work station.

In late October and early November 2006 my private legal counsel made contact with the Assistant United States Attorney (AUSA) handling the case and offered my availability for an interview under safeguards in an attempt to get the truth of the matter into the hands of investigators. Our offer was immediately rejected and the AUSA made it clear that I was being considered for federal criminal prosecution. Then in early December 2006, my legal counsel met with the AUSA and investigators from the FBI and CBI and made them aware of certain facts relating to my activities including the fact that I had reported my activities directly to my supervisor Anthony Rouco.

I then did not hear any new information relating to the investigation being conducted against me but I was however subsequently ordered to report back to the DHS/ICE OI office in Denver where I was returned to duty on February 08, 2007 on a restricted duty status. My access to agency databases and indices was limited and restricted and I was assigned to travel to Atlanta, GA where I made an oral presentation, relating to an organized crime investigation I had participated in, at an ICE national leadership conference being held at the Ritz Carlton Hotel, Atlanta GA in late February 2007.

I continued to work in a restricted duty capacity in the Denver ICE OI office throughout the summer of 2007 and into the fall. I did administrative duties relating to technical investigative support and vehicle fleet support. I also maintained a limited involvement in cases I had previously been assigned and I appeared and testified as a government witness in both administrative and criminal court proceedings.

In mid to late June 2007 the AUSA involved in my investigation contacted my attorney and scheduled a meeting at the CBI office in Lakewood, CO. During the meeting, my legal counsel met with agents from CBI, FBI, and ICE OPR as well as the AUSA. It was communicated to my counsel that the investigative team intended to charge me with a criminal offense and they showed a PowerPoint presentation that was intended to communicate an overwhelming amount of evidence of my guilt and liability in the matter. Additionally, the AUSA attempted to negotiate a plea deal with my counsel – before I had even been charged with a crime. My attorney immediately recognized that the PowerPoint presentation contained a great deal of speculative facts and other information that was distorted and presented in a manner which conveyed impropriety but was otherwise explainable and completely proper and innocent when considered in a proper and truthful context.

One of the glaring false assumptions that was immediately apparent during the PowerPoint presentation was the fact that the government investigative task force had erroneously assumed that an access to NCIC I had previously made the day following my questioned activities, relating to a long term confidential informant, was somehow related to the matter under investigation. This was a glaring mistake as the NCIC access was in no way connected or related to my questioned activities in any shape, manner or form. It's presence in the PowerPoint, as an allegation of misconduct, only betrayed the willingness of the government to base their allegations on nothing more than pure speculation and conjecture.

Needless to say, I, through my legal counsel, refused to accept any plea offer related to the matter. Then in mid-August 2007, the AUSA agreed to provide "limited discovery" to my legal counsel in a further effort to persuade me to accept some sort of "plea deal". At this point it is important to bear in mind that I still had not been formally charged with any crime, in any venue, related to the matter.

Upon receiving the discovery material, my legal counsel and I immediately located an FBI report related to an interview conducted with my ICE supervisor Anthony Rouco. Surprisingly, after my legal counsel had clearly advised the investigative team in early December 2006 that Group Supervisor (GS) Anthony Rouco was well aware of my questioned activities, the report made it clear that GS Rouco was not contacted and questioned by investigators until March 02, 2007 – more than five months following the questioned time period.

Not surprisingly, the FBI report reflecting GS Rouco's interview made it clear that Mr. Rouco was withholding significant relevant facts and made other outright false statements in an effort to keep from becoming involved in the matter that he clearly could see had caused me such turmoil and hardship.

Again my attorney rejected additional attempts by the investigative team (FBI, CBI, ICE-OPR) and the AUSA to persuade me to accept some sort of pre-charged plea deal relating to the matter. The AUSA specifically advised my legal counsel that I was "done at ICE" clearly implying that I would be removed from my employment. He also communicated

intent for the CBI to charge and prosecute me relating to the same matter through the Colorado state courts were I to be acquitted in federal court. My legal counsel recognized these statements to represent highly unusual attempts to coerce a plea acceptance on my part and he also believed the actions to be improper and unethical. Again, I steadfastly refused to accept any plea deal and my legal counsel strenuously advised the investigative team of FBI, CBI and ICE OPR agents that their investigation and conclusions were based upon a misinterpretation of fact and disinformation.

On October 25, 2007, I was at work at the ICE OI SAC-Denver office and I was directed and summoned to Assistant Special Agent in Charge (ASAC) Paul Maldonado's office. I was served with a notice placing me again on paid administrative leave pending agency investigation and due to a suspension of my security clearance. The notice was also accompanied by several attached documents including a request authored by ICE OPR Resident Agent in Charge, Denver CO (RAC-Denver) Donald Cherobee requesting my security clearance be suspended. This memorandum contained, again, many speculative and erroneous factual assertions. Specifically, it alleged that I had somehow misused the Treasury Enforcement Computer System (TECS) when in fact, the government well knew at that date that I had not made any queries whatsoever through the TECS database that were questioned or otherwise connected to the matter at issue. ASAC Maldonado then directed me to turn in my badge, firearm and other government property to GS Louis Nigro while GS Rouco, silently, acted as a witness to the action.

Shortly after being placed on paid administrative leave, the second time, on October 25, 2007, I was advised by my attorney that the United States Attorney's Office had issued a press release stating that I had been charged in United States District Court (USDC) for the District of Colorado with three misdemeanor counts of unauthorized access to the NCIC database. However, my attorney was unable to find any record at the court of charges being filed against me until approximately five hours after the press release when the AUSA did file a criminal information charging the three misdemeanor counts. It is important to note that I was charged via an information rather than a criminal complaint or grand jury indictment. A criminal information is only an allegation brought by a single prosecutor without grand jury review and concurrence or other judicial review.

Interestingly, count number 3 of the criminal information specifically related to the NCIC query I conducted the day following the other questioned queries that was in reference to the long term confidential informant who was in no shape, manner, or form connected or related to the other matter. In other words, I had been charged with a criminal offense where there was absolutely no evidence, or even a reasonable allegation, that anything untoward or illegal had occurred.

On November 07, 2007, I was served with an ICE proposal notice to place me on unpaid administrative leave. This notice was served on me by ASAC Maldonado and GS Anthony Rouco, who again acted as a silent witness to the personnel action and service of notice. The proposal made it clear that SAC Jeffrey Copp was the deciding official in the matter and advised that any response to the proposal notice should be directed to him.

Then in early November, my legal counsel filed a legal motion in USDC relating to the criminal information. This court filing again made it clear that I had reported significant important details of my questioned activities to my supervisor, with his concurrence and approval of my actions, among other important details relating to the case and matter.

I then filed a written response to the notice of proposal to place me on unpaid leave that was submitted by my legal counsel and directed to the attention of SAC Jeff Copp as the deciding official in the proposed administrative leave without pay matter. This written response also, again, set forth the fact that I had properly reported my questioned activities to my supervisor, GS Anthony Rouco.

On January 14, 2008, I attended a motions hearing in USDC relating to the criminal prosecution case against me. SAC Copp testified during the hearing and he claimed that he was not the deciding official in any "proposed personnel action" pending against me because he had "recused" himself from the matter "several months ago".

On January 17, 2008, three days following the false testimony by SAC Copp, I received a decision letter from ICE notifying me that I was to be placed on unpaid administrative leave effective January 23, 2008. The notice was signed by SAC Jeffrey Copp as the deciding official.

I subsequently filed an appeal of the decision to place me on unpaid leave with the Merit Systems Protection Board (MSPB). The appeal was originally assigned to a Denver MSPB Administrative Judge (AJ) but was later reassigned to a Washington, DC, MSPB AJ because of the Denver area publicity surrounding my case and potential for local political influence. In other words, the MSPB wanted to avoid any potential for an appearance of a conflict of interest and assigned the case to an outside official.

I later received discovery from the government in the MSPB appeal of the decision to place me on unpaid administrative leave. Within that discovery material I received several e-mail messages to and from SAC Copp, ASAC Maldonado and ICE Attorney Robert Erbe, relating to the decision to place me on unpaid administrative leave. One such e-mail chain clearly showed that Mr. Robert Erbe had sent SAC Copp a copy of the decision letter in my case, as an attachment, on January 07, 2008. SAC Copp then opened this e-mail, again on January 07, 2008, and forwarded it to ASAC Maldonado.

On January 14, 2008 ASAC Maldonado then sent Mr. Erbe an e-mail message stating that SAC Copp "wanted to wait until this hearing was over before serving [me] with the decision letter". That statement is further supported by another e-mail message sent on January 09, 2008 from ASAC Maldonado to SAC Copp where Maldonado advised SAC Copp that he had "spoke to Bob Erbe and advised him of our desire to delay service of the DAAP decision letter until after the current court proceeding".

This is important because the e-mail chain makes it clear that in the days immediately prior to the January 14, 2008 USDC motions hearing, SAC Copp received the decision letter, as the deciding official, in my case from Mr. Erbe, as the proposal notice had

clearly identified SAC Copp as the deciding official in the matter. Then on January 14, 2007, - the day of the Motions hearing- ASAC Maldonado advised Mr. Erbe through e-mail that the deciding official, SAC Copp, had made a decision to withhold service of the decision letter on me until after the scheduled January 14, 2008 motions hearing where SAC Copp testified in my case.

SAC Copp falsely testified on January 14, 2008 in USDC-CO that he was not the deciding official in the “proposed personnel action” against me. This was most clearly false and misleading testimony – Perjury (a federal felony offense!), committed by DHS/ICE SAC-Denver Jeffrey Copp. Additionally, the matter was important and material to the USDC proceedings at the time and SAC Copp failed to be forthright and truthful in his responses.

SAC Copp then signed the decision letter on January 17, 2008, – only three days following his false testimony - as the deciding official, placing me on unpaid administrative leave effective January 23, 2008.

SAC Copp lied under oath in USDC, in Judge Kane’s presence and courtroom, in an effort to down-play his importance and position relating to the matter of personnel actions affecting my employment and pay status so that his earlier questioning of me, at the request and direction of the CBI director, would not appear coercive or improper.

My legal counsel subsequently communicated to Mr. Robert Erbe the apparent impropriety and false and deceptive nature of SAC Copp’s testimony and I later received additional discovery that included an e-mail chain, dated March 21, 2008, from Mr. Erbe to SAC Copp where Mr. Erbe clearly suggests to SAC Copp a claim of his apparent confusion between “adverse action” and “personnel action”. Mr. Erbe also very clearly advised SAC Copp via e-mail that “you did not lie or anything of that sort. I will testify for you in a heartbeat and will discuss this with the AUSA”. Clearly, Mr. Erbe himself has an interest in constructing an alibi for SAC Copp and assisting in a cover-up of the felony offense of Perjury by SAC Copp. This clearly constitutes an act of subornation of perjury and obstruction of justice on the part of ICE attorney Robert Erbe as well.

ICE OPR subsequently received a complaint relating to SAC Copp’s false testimony and they conducted an “administrative inquiry” relating to the matter. The ICE investigators performed a very cursory and incomplete investigation of the matter that resulted in the matter subsequently being closed as “unfounded”. Significantly, SAC Copp was interviewed by ICE officials on May 15, 2008 and he claimed that he “did not notify anyone in his chain of command about the recusal, that there was no record documenting the recusal request and that he had no prior recusals in other cases”.

The final investigative report of the matter failed to mention or consider the e-mail exchange between ICE Attorney Robert Erbe, ASAC Maldonado and SAC Copp between January 07, 2008 and January 11, 2008, immediately prior to SAC Copp’s testimony of January 14, 2008. It appears to me from reading the final report in the matter, that the ICE investigator/fact finder contacted Mr. Erbe in an attempt to obtain those e-mails but

Mr. Erbe inappropriately and deceptively provided the later e-mail exchange, dated March 21, 2008, between himself and SAC Copp where Mr. Erbe attempts to explain away the false testimony and assures SAC Copp that he will “testify for [him] in a heartbeat”. This results in the ICE investigator/fact finder failing to receive and consider the important earlier e-mail chain, between January 07, 2008 and January 14, 2008, identified above.

Mr. Erbe was well aware of the January 07 through 14, 2008 e-mail exchange because he had provided those e-mail documents to my legal counsel in discovery and he had discussed them specifically with my attorney as evidence of false statements and misconduct. Mr. Erbe had an ethical and professional obligation to provide those documents to the ICE investigator/fact finder conducting the administrative inquiry into the matter and he purposefully failed in this fundamental responsibility (Obstruction of Justice).

As my March 30, 2008 trial date approached, the AUSA prosecuting the case continued to attempt to pressure me to take a plea deal in the case. One of the plea offers that I rejected on numerous occasions was an offer for me to plead guilty to one count of the misdemeanor information with a recommendation for “no jail time”, and a “five hundred dollar fine”.

Although I was very much aware that a federal criminal trial would cost me substantially more than the “five hundred dollar fine” offered, I rejected this insane offer and committed myself to the trial option as I maintained confidence in the propriety and legality of my questioned actions.

On the morning that my trial began, the AUSA prosecuting the case, Mr. James Anderson, filed a motion with the court requesting that count 3 of the criminal information be dismissed. A government witness, CBI agent Jan Simpkins, later testified on cross examination that count 3 of the information had been dismissed because the NCIC query relating to the individual (my informant) could not be linked to criminal activity. In other words, the government admitted that I had been charged with a crime where they admittedly could not establish or support that a crime had been committed.

Also at trial, numerous other instances of government misconduct became readily apparent. It was clear that AUSA Anderson had badgered and intimidated a government witness, ICE Senior Special Agent (SSA) Judith Jordan, and had failed to notify my legal counsel that she earlier had disputed several key statements attributed to her in an FBI report and also utilized and relied upon in a government court filing and motion response filed with the court. I have recently received information indicating that AUSA Anderson was subsequently administratively disciplined regarding this matter by receiving a relatively short unpaid suspension from employment regarding the matter.

ICE OPR SSA Manuel Olmos testified at trial that his role in the task force type investigation had been to advise the other agency investigative agents on ICE policy and procedure even though he later testified that he had little or no training or practical

experience in immigration law enforcement procedure or policy. This is significant because many of the issues central to the charges and allegations against me involved complex immigration policy questions within an agency in formation and transition, where no new policy had yet to be promulgated and old policy from the former agency (legacy INS) was the only guiding policy on the particular matters in question.

SSA Olmos also testified at trial about a “green duty officer log book” that did not contain any entry or information reflecting a receipt by me of information relating to the matters at issue at trial. This testimony was solicited by AUSA Anderson and offered by SSA Olmos in an attempt to persuade and mislead the jury into believing that I somehow had a responsibility to make such entry into the “green log book” and that my failure to do so indicated misconduct and guilt on my part. On cross examination, my attorney questioned SSA Olmos as to whether or not I had been the “duty officer” in the relevant time period and SSA Olmos admitted I had not been. My attorney then discredited SSA Olmos relating to the matter by making it clear that since I had not been the “duty officer” at the relevant time period, I did not have any responsibility or expectation to place information in the “green log book”. This incident is just one example of the type of sleazy and disingenuous arguments the government attempted to use in their effort and zeal to secure a criminal conviction against me.

My attorneys also utilized several documents turned over to the defense as discovery by SSA Olmos and AUSA Anderson that related to the confidential informant connected to the previously dismissed count three of the information. In front of the jury, my attorney elicited testimony from ICE SSA Jorden that showed this individual was a deactivated informant and fugitive from justice who she had attempted to locate, for official purposes, along with me during the relevant time period at trial. AUSA Anderson and the government did not object in any manner to this line of relevant questioning.

SSA Olmos was also questioned by my attorney in front of the jury in open court about the documents turned over in discovery that showed this subject in question was a former informant. SSA Olmos attempted to refrain from testifying about the matter citing ICE agency regulations regarding the protection of informants. However, the District Court Judge did not agree with SSA Olmos’ attempt to conceal the relevant information and ordered him to testify regarding the matter. SSA Olmos complied and read in open court a document turned over to defense in discovery by himself through AUSA Anderson that clearly showed the subject in question was an informant recruited, cultivated and controlled by me for a long period of time. The following day a Rocky Mountain News article appeared in the local newspaper titled, “Error Leads Government to Drop Count Against Agent”. The article went on to elaborate and stated, “The defense then embarrassed Olmos by making him read a page in [the Informant’s] file that stated he was a paid confidential informant for ICE. The document was signed by Voorhis, but Olmos had missed it”. Without question this newspaper article was very embarrassing for SSA Olmos and called into question his investigative abilities, due diligence, and competence.