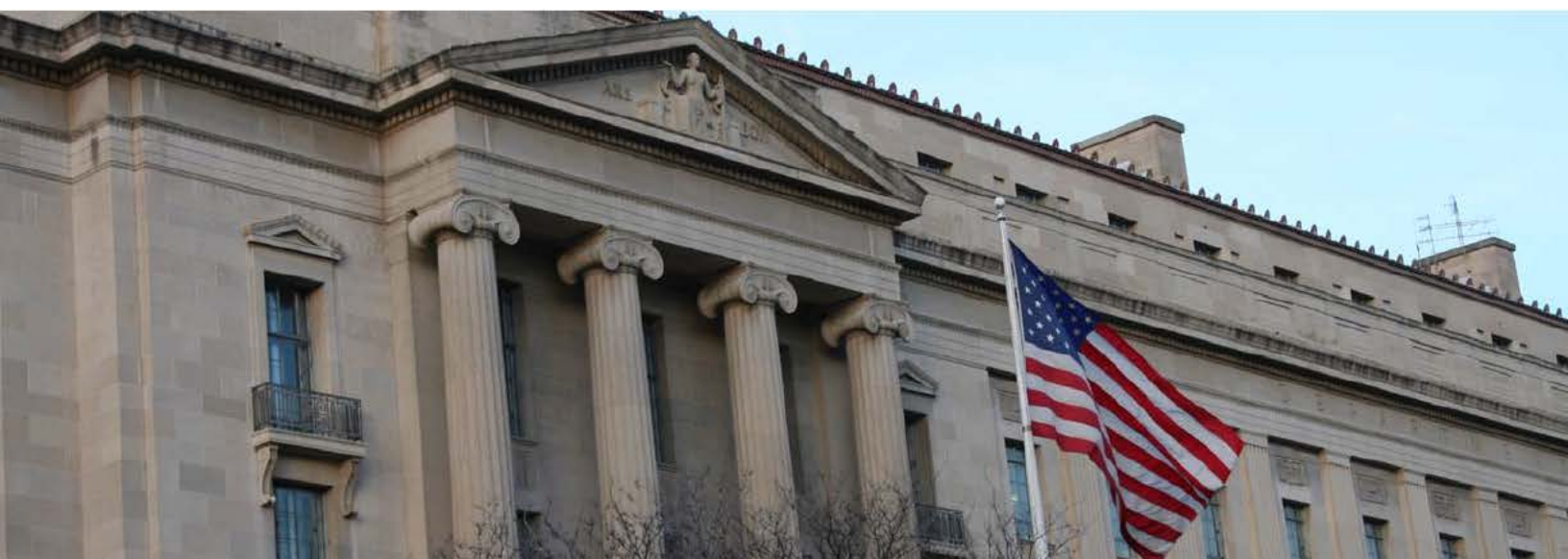




Office of the Inspector General U.S. Department of Justice

OVERSIGHT ★ INTEGRITY ★ GUIDANCE



An Investigation of Alleged Misconduct by FBI Los Angeles Field Office Assistant Director in Charge Paul Delacourt

I. Introduction

This report describes the Office of the Inspector General's (OIG) investigation of allegations that Assistant Director in Charge (ADIC) Paul Delacourt of the Federal Bureau of Investigation's (FBI) Los Angeles Field Office (LAFO) retaliated against [REDACTED], a Supervisory Special Agent (SSA) in the LAFO. On October 16, 2018, [REDACTED] reported to the OIG [REDACTED] concerns that LAFO executive management, including Delacourt, had violated FBI ethics policies when they attended Game 3 of the National League Championship Series (NLCS) at Dodger Stadium on the prior day. Other LAFO employees raised similar concerns within the FBI, [REDACTED].¹ Approximately 1 week following [REDACTED] OIG complaint, at an LAFO management retreat, Delacourt discussed reassigning [REDACTED] and transferring [REDACTED] duties to another person. At the time, Delacourt did not know about [REDACTED] OIG complaint, but instead suspected that [REDACTED] had made an internal FBI complaint. On [REDACTED] [REDACTED] Delacourt informed [REDACTED] that [REDACTED] was being reassigned to another SSA position within the LAFO and would no longer handle [REDACTED]. This reassignment ultimately occurred in [REDACTED]. [REDACTED] alleged that [REDACTED] reassignment was in retaliation for providing information to the OIG about LAFO executive management's attendance at Dodger Stadium. In response to [REDACTED] complaint, the OIG opened an investigation.

We conducted approximately 20 interviews and reviewed approximately 16,000 documents. In Section II below, we describe the applicable statutes and policies. In Section III, we provide background information. In Section IV, we summarize our factual findings, and in Section V we provide our analysis.

Unless otherwise noted, the OIG applies the preponderance of the evidence standard in determining whether Department of Justice (DOJ) personnel have committed misconduct. The Merit Systems Protection Board applies this same standard when reviewing a federal agency's decision to take adverse action against an employee based on such misconduct. See 5 U.S.C. § 7701(c)(1)(B); 5 C.F.R. § 1201.56(b)(1)(ii). We have provided a copy of our report to the FBI.

II. FBI Policy Directive 0727D Prohibiting Retaliation and FBI Offense Code 5.16

In general, retaliation allegations may give rise to two separate types of inquiries, subject to different legal standards and analytical constructs. One potential inquiry is whether the complainant is entitled to "corrective action" to place her in the position she would have been in absent the reprisal—which is adjudicated according to legal standards that are protective of whistleblowers and

¹ The OIG will be issuing a separate report regarding the alleged underlying misconduct related to that complaint.

requires an employee to demonstrate that a protected disclosure or protected activity was a "contributing factor" in a subsequent personnel action taken against the employee.² Once the employee has established that a protected disclosure or protected activity was a contributing factor in a subsequent personnel action taken against her, the burden of proof shifts to the agency to show by clear and convincing evidence that the personnel action would have been taken in the absence of the protected disclosure or protected activity.³

A second inquiry is whether the individual alleged to have committed retaliation has committed misconduct that may warrant disciplinary action. This report addresses only the latter type of inquiry because, with respect to the corrective action inquiry, [REDACTED] and the FBI entered into a mediated settlement agreement.

The FBI has an anti-retaliation policy that is broader than Section 2303 of Title 5, the federal whistleblower retaliation statute applicable to FBI employees. Policy Directive (PD) 0727D, entitled "Non-Retaliation for Reporting Compliance Risks," prohibits "[a]ll FBI personnel" from retaliating against "anyone for reporting a compliance concern that the reporting individual reasonably believes to be true," even if the FBI ultimately concludes that there was no compliance concern or violation.⁴ The purpose of PD 0727D is "to provide an effective process for all Federal Bureau of Investigation (FBI) personnel to express concerns or report potential violations regarding the FBI's legal and regulatory compliance, without retaliation, and to encourage the reporting of any such concerns."⁵ PD 0727D prohibits not only FBI employees but also contractors, interns, task force personnel, and detailees assigned to the FBI from retaliating, and, unlike Section 2303, is not limited to employees with the authority to take a personnel action.⁶

A "compliance concern" is defined as "a concern that the FBI has violated or is not complying with the policies, regulations, and laws that govern it."⁷ Unlike Section 2303, which requires an employee to report alleged wrongdoing to a designated official to be protected, PD 0727D provides that employees may report compliance concerns to a list of offices and personnel, including:

² See 28 C.F.R. pt. 27.

³ See 5 U.S.C. § 1214(b)(4)(B); 5 C.F.R. § 1209.4(e).

⁴ See PD 0727D § 8.1.2. To demonstrate a reasonable belief "an individual must believe that the compliance concern is true, and the belief must also be objectively reasonable; that is, a reasonable person, when confronted with the same or similar facts or circumstances, would conclude that the matter reported is likely to be true." PD 0727D § 16.4.

⁵ See PD 0727D § 7.

⁶ See PD 0727D § 16.1. In contrast, Section 2303 applies only to an FBI employee "who has authority to take, direct others to take, recommend, or approve any personnel action." 5 U.S.C. § 2303(a).

⁷ See PD 0727D § 16.2.

- (1) Persons designated to receive disclosures under the FBI Whistleblower Protection Regulation (28 C.F.R. § 27.1).⁸
- (2) Any member of the FBI Office of Integrity and Compliance (OIC) staff.
- (3) The FBI OIC Helpline.
- (4) Division compliance officers.
- (5) Any member of the Division Compliance Council.
- (6) Any supervisor in the chain of command of the person reporting the compliance risk.⁹

Under the FBI Integrity and Compliance Program Policy Guide, all CDCs are members of the Division Compliance Council.¹⁰

PD 0727D defines “retaliation” as “engaging or threatening to engage in conduct, direct or indirect, that adversely affects an individual who reports a compliance concern in accordance with this directive, as a consequence of such reporting.”¹¹ The policy defines adverse conduct as *any* conduct that “is based on a retaliatory motive and is reasonably likely to deter a reasonable employee from reporting a compliance concern.”¹² The conduct does not have to constitute a personnel action as defined under Section 2303.

PD 0727D references Offense Code 5.16, labeled “Retaliation,” and must be read in conjunction with it.¹³ Offense Code 5.16 states:

Taking, or threatening to take, an adverse employment action against an employee who engaged, or who was believed to have engaged, in a protected activity, including making a protected disclosure or exercising any other legitimate right authorized by the FBI. This Offense Code applies where the adverse action is motivated by both retaliatory and non-retaliatory reasons. *See, e.g.,* Whistleblower Protection Act.¹⁴

Offense Code 5.16 makes clear, although PD 0727D does not, that an FBI employee may be found to have retaliated even when that employee only believes, and does not actually know, that a person has reported a compliance concern, or otherwise

⁸ The OIG is a designated official under 28 C.F.R. § 27.1(a).

⁹ See PD 0727D §§ 8.1.2, 8.4.1. Pursuant to Section 2303, a disclosure of wrongdoing is protected if it is “made” to one of the designated officials or offices listed in the statute. 5 U.S.C. § 2303(a)(1)(A).

¹⁰ See 0814 Policy Guide §§ 2.16.5, 4.4.

¹¹ See PD 0727D § 16.3.

¹² See PD 0727D § 16.3.

¹³ See PD 0727D § 15.1.1.

¹⁴ Although Offense Code 5.16 uses the term “adverse employment action,” we believe this is a reference to “conduct” that “adverse[ly] affects” an employee as it is defined in PD 0727D.

[REDACTED]
[REDACTED] Delacourt was [REDACTED] rating and reviewing official for performance appraisal record (PAR) purposes.

IV. Factual Findings

A. Before Arriving at LAFO, Delacourt Receives Information Concerning [REDACTED] Job Performance

Prior to his arrival in LAFO, Delacourt told us that he “had hours of conversations” with the two previous LAFO ADICs, Bowdich and [REDACTED], as well as the acting ADIC, about numerous topics, including operational programs, the crisis management program, and personnel issues. Delacourt stated that these conversations included discussions with both [REDACTED] and Bowdich about the LAFO [REDACTED] process and [REDACTED]. According to Delacourt, [REDACTED] “warned [him] about [REDACTED]” [REDACTED]. Although Delacourt told the OIG he could not recall the specifics, he said that [REDACTED] essentially told him that [REDACTED] “had a negative reputation in the Division” and “often exceeded the scope of [REDACTED] authority.” Delacourt stated that [REDACTED] also expressed “structural” concerns about the LAFO [REDACTED] process, specifically mentioning that it was “unusual to have [an] SSA direct reporting to the ADIC.”¹⁵ We did not interview [REDACTED] about [REDACTED] conversations with Delacourt. [REDACTED]

Delacourt told us that Bowdich also warned him about [REDACTED] in two separate conversations. According to Delacourt, Bowdich described “a previous conflict with” [REDACTED] where [REDACTED] had done something where [REDACTED] went around him, or against his wishes, or outside his direction, and he had to reel [REDACTED] in.” Overall, Delacourt stated that he knew prior to his arrival in LAFO that he was “going to take a look” at how LAFO handled [REDACTED] because [REDACTED] and Bowdich “had warned me that I may need to reexamine this process...and I may need to be wary of” [REDACTED].

Bowdich told the OIG that, during his tenure as the LAFO ADIC, he “would hear...regularly” that [REDACTED] was “not well thought of” in the LAFO. Bowdich stated that he “inherited” [REDACTED] and would not have put [REDACTED] in the [REDACTED] position. Bowdich told the OIG that he recalled discussing [REDACTED] with Delacourt and telling him that he had “inherited [REDACTED] when [he] was there unfortunately.” Bowdich described [REDACTED] to the OIG as “diligent” but said that [REDACTED] sometimes “would get a little out of [REDACTED] lane.” Bowdich said that he recalled an incident with [REDACTED] in which an employee committed a minor infraction and that he told [REDACTED] he would handle the matter with counseling. According to Bowdich, he later found out that, despite his decision,

¹⁵ The FBI is largely structured in a chain-of-command fashion, where an agent reports to an SSA who, in turn, reports to an ASAC. The ASAC would then report to an SAC. A direct reporting structure—where a lower-level employee reports directly to a senior FBI executive—is atypical in the FBI.

██████████ had referred the matter to INSD for its handling. Bowdich said that he "chewed on" ██████████ for that and, because of this incident, he told ██████████ "[N]othing goes out of this office to [INSD] until I see it and I'm aware of it." Bowdich stated to the OIG, "You can't push everything [to INSD] because it just clogs up" INSD with minor infractions that can be more efficiently handled by the head of the field office.

B. December 18, 2017: Delacourt Discusses Potential Change in ██████████ Reporting Structure at His Initial LAFO Management Meeting

On December 18, 2017, approximately 1 week after his arrival in LAFO, Delacourt had a management meeting in which several topics were discussed, including ██████████. Delacourt told us that at this meeting "we were talking about engaging the SACs in the ██████████ process to make sure there was better coordination of ██████████ actions in" LAFO. Delacourt also provided the OIG with what he told us were his contemporaneous notes of the meeting. One section of those notes stated:

- ██████████
- Meeting already w/SSA ██████████¹⁶
- fairly regular arrival
- push to SAC for follow up action?
- ██████████ SAC to handle?
 - Realign
 - Significant commitment?
- Developmental experience

Delacourt explained that the reference to ██████████ SAC to handle?" shows that "on [his] radar in week one" was "the potential realignment of an ██████████ SAC to handle ██████████ responsibilities." He stated that the proposed realignment did not refer to removing ██████████ responsibilities from ██████████, but instead contemplated moving ██████████

██████████ Delacourt said that he had "a concern about the fact that I had an SSA directly reporting" to the ADIC and "skipping...two levels of the chain of command." Delacourt added that he was also already questioning "how much of a significant commitment of time is the ██████████ responsibility."

Delacourt stated that the "developmental experience" notation referred to the requirement that an SSA must "conduct ██████████ investigation in order to be promoted to ASAC." Delacourt continued, "I was already looking at the idea that we could spread ██████████ investigations among the entire cadre of FBI SSAs

¹⁶ Delacourt stated that he was scheduled to meet with ██████████ but had not yet met with ██████████ on December 18.

because it was a developmental experience for those SSAs." Delacourt noted that, on December 18, 2017, he had not yet met with [REDACTED] and had "not evaluated [REDACTED] SSA] position yet."

C. Events between December 18, 2017 and [REDACTED]

1. Delacourt Says He Receives Complaints Concerning [REDACTED]

Delacourt stated that he began receiving complaints about [REDACTED] early in his tenure as ADIC. Delacourt said that "the SACs were not happy with [REDACTED] performance or [REDACTED] reputation, or [REDACTED] tactics." Delacourt stated that "there was a near unanimous consent [among the SACs] that [REDACTED] was not the right person for" [REDACTED] role and "that role was probably, in their view, conceived improperly, because.. [REDACTED]"

[REDACTED] In a written timeline that Delacourt submitted to the OIG, Delacourt wrote that he had discussions with his SAC team in [REDACTED] about [REDACTED] job performance and the SACs cited "previous examples of bullying of witnesses and subjects, targeting, breaches of confidentiality, and other concerns."

[REDACTED] told the OIG that [REDACTED] received complaints from subordinates about [REDACTED] performance as [REDACTED] SSA shortly after [REDACTED]

[REDACTED] including that [REDACTED] was "unprofessional," treated people "in a demeaning manner," and was "gossipy" and "shared private information" with people who did not have a need to know. [REDACTED] stated that [REDACTED] informed Delacourt of these concerns soon after he became ADIC, and Delacourt told [REDACTED] that "he was new in the position," wanted to "get a better understanding of how the [REDACTED] process worked" in LAFO, and would take it "under advisement."

In response to the complaints, Delacourt stated that he reviewed [REDACTED] prior PARs and noticed that [REDACTED] had three previous [REDACTED] ratings. According to Delacourt, he was "stunned to learn that the two previous ADICs, who'd warned me about [SSA [REDACTED]], had also given [REDACTED]" At that point, Delacourt told us that he determined that he "was going to have to make a full and fair" evaluation of [REDACTED] over the course of the rating period.

2. [REDACTED]: Delacourt Reassigns [REDACTED] Duties from [REDACTED] to [REDACTED]

As noted above, in addition to [REDACTED] duties, [REDACTED] also had responsibility for managing the [REDACTED] process. Delacourt told us that he, and all of his SACs, thought [REDACTED] "was doing a bad job of this" and that [REDACTED] was not organized and inserted [REDACTED] own opinion [REDACTED]. Delacourt told the OIG that [REDACTED] handling of the [REDACTED] process "wasn't methodical," "strategic," or "transparent." He said that [REDACTED] was not coordinating properly with the SACs, and that, as a result, "[t]here were at least two contentious meetings,

where I had friction between [REDACTED] an SSA [REDACTED] being disrespectful and borderline insubordinate to my SACs in my meeting."

Delacourt stated that he decided a change was needed and, in approximately [REDACTED] he reassigned the [REDACTED] duties from [REDACTED] to [REDACTED]. Delacourt told us that he immediately noticed a marked improvement in the [REDACTED] process. Delacourt told the OIG he did not recall if he had a conversation with [REDACTED] about the reasons he was reassigning the [REDACTED] duties or whether [REDACTED] objected to this decision.

[REDACTED] told us that [REDACTED] believed the reassigning of the [REDACTED] duties occurred after [REDACTED] had a "conflict" with [REDACTED] during an early [REDACTED] meeting. [REDACTED] also stated that Delacourt brought up the topic of [REDACTED] during one of their scheduled bi-weekly meetings and asked whether [REDACTED] would have a problem with [REDACTED] taking over the [REDACTED] duties. [REDACTED] told the OIG that [REDACTED] told Delacourt that [REDACTED] was fine with the change because it took up a lot of [REDACTED] time and it was "a pain."

3. [REDACTED]: Delacourt Assigns [REDACTED] to Participate in [REDACTED] Meetings with [REDACTED]

Delacourt told the OIG that not long after the [REDACTED] duties were reassigned, he decided to bring [REDACTED] into the LAFO [REDACTED] process and asked [REDACTED] to attend the bi-weekly meetings with [REDACTED]. Delacourt explained that he included [REDACTED] in his meetings with [REDACTED] because "there had been a number of failures to communicate with SACs." Delacourt stated that he wanted a "buffer" between [REDACTED] and the other SACs, someone in his absence to oversee the process, and "a second set of eyes to evaluate the reporting and the documentation and the recommendations." Finally, Delacourt stated, he also wanted [REDACTED] because they "were incredibly poorly handled" by [REDACTED].¹⁷

4. [REDACTED]: Delacourt Rates [REDACTED] as [REDACTED] on [REDACTED] Midyear Performance Review

On [REDACTED], following one of their regular bi-weekly meetings, Delacourt presented [REDACTED] with [REDACTED] "Midyear Performance Review" (Midyear). Delacourt rated [REDACTED] overall, which was [REDACTED] below the [REDACTED] rating that [REDACTED] had been given during the last rating cycle.¹⁸ Delacourt noted that, by this point, he had probably only met with [REDACTED] "six or eight times" since becoming ADIC. He stated that [REDACTED] wasn't failing,

[REDACTED]

¹⁸ The FBI's performance appraisal process consists of a five-level rating system: "Outstanding," "Excellent," "Successful," "Minimally Successful," and "Unacceptable." See FBI Performance Appraisal System Policy Guide, 0489PG § 3.4 (May 2, 2012).

but there was room for improvement.” Delacourt stated that he spoke at length with [REDACTED] during the Midyear about his displeasure with how [REDACTED] had handled [REDACTED]. Delacourt told the OIG that he did not discuss with [REDACTED] his reasons for his earlier reassignment of the [REDACTED] duties because “the Midyear would have been [about] things that we can fix between April and October.” [REDACTED] also told us that there was no discussion during the Midyear of his decision to reassign [REDACTED] duties.¹⁹

5. [REDACTED]: Delacourt and [REDACTED] Describe Discussions about Reassigning [REDACTED] SSA Duties [REDACTED]

Delacourt told the OIG that he initially discussed the reassignment of [REDACTED] with [REDACTED] and that [REDACTED] may have even suggested that [REDACTED] take over the [REDACTED] duties. Delacourt stated that these discussions “came up largely in [REDACTED] and that he decided to reassign [REDACTED] by [REDACTED], and to assign the [REDACTED] duties to [REDACTED].”

While Delacourt said that he would have discussed [REDACTED] reassignment “more extensively” with [REDACTED] Delacourt stated that [REDACTED] reassignment was also a topic of discussion with the other SACs during the weekly management meetings.

Delacourt told the OIG that his decision to reassign the [REDACTED] duties [REDACTED] [REDACTED] had a “legitimate business purpose” and that it was about “[p]utting more supervisors in supervisory positions, over squads” and “[m]aking more positions operational.” Delacourt stated that one way he attempted to make more positions operational was to minimize the number of “enablers,” which Delacourt defined as “agents who don’t investigate and supervisors who don’t supervise,” such as FBI agents who serve as pilots or the SWAT team leader. According to Delacourt, “You need some of them [to enable the mission], but you need to make sure that you don’t have too many of them” in those enabling positions.

Delacourt told the OIG he considered the [REDACTED] SSA to be an “enabler” position [REDACTED]. Delacourt cited a number of factors for why he found that the [REDACTED] SSA position was an “enabler” position that could be “collapse[d] and “elevate[d].” These factors included: (1) the fact that it was “awkward” to have an SSA report directly to the ADIC; (2) that the [REDACTED] duties are considered a collateral duty in the vast majority of FBI field offices; and (3) he did not believe that the LAFO [REDACTED] duties justified a full-time position. We asked Delacourt what role, if any, [REDACTED]

¹⁹ [REDACTED] was also present at Delacourt’s Midyear with [REDACTED] because it occurred immediately after a regularly-schedule bi-weekly [REDACTED] meeting. [REDACTED] stated that he could not “recall anything about” the discussion.

performance as [REDACTED] SSA played into this decision. Delacourt stated that [REDACTED] performance was not the reason for this change." According to Delacourt, around this same time that he decided to reassign [REDACTED], he was taking steps to address other "enabler" positions, [REDACTED]. Delacourt said that when [REDACTED] retired, they were rehired as "professional staff" instead of agents, and the LAFO was then able to hire more agents. Delacourt also told us that at the time he made the decision to reassign [REDACTED]; however, he said he did not want to wait to convert [REDACTED] position [REDACTED] because of [REDACTED] "poor performance" and because [REDACTED] no longer had a full-time job" once the [REDACTED] duties were removed from [REDACTED] responsibility.

[REDACTED] told the OIG that [REDACTED] was the one who suggested to Delacourt that the [REDACTED] duties be reassigned to [REDACTED], although [REDACTED] said [REDACTED] made the suggestion to Delacourt shortly after [REDACTED]. According to [REDACTED] told Delacourt that, once Delacourt removed the [REDACTED] duties from [REDACTED], "[W]e're wasting a [REDACTED] SSA spot that we could use somewhere else." [REDACTED] told the OIG that Delacourt was "always looking to put agents back on the street from enabler positions."

[REDACTED] told us that Delacourt liked the idea and subsequently implemented it. [REDACTED] denied that [REDACTED] reassignment had anything to do with [REDACTED] performance and said it was "strictly" because it was the "sensible" thing to do in order to have an extra operational position filled.

Delacourt and [REDACTED] each stated that they had a conversation with [REDACTED] about the potential reassignment of [REDACTED] duties [REDACTED]. They both also told us that they did not document their conversations concerning the reassignment of [REDACTED] duties to [REDACTED]. Delacourt told the OIG that this conversation would have occurred before he notified [REDACTED] on [REDACTED] of the change because "who's taking over the [REDACTED] role would have been an important conversation to have before I take the role away," and he said the conversation would have taken place between the last 2 weeks of [REDACTED].

[REDACTED]

[REDACTED]. In that conversation, [REDACTED] mentioned that "they were just looking at...transitioning it from" [REDACTED]. [REDACTED] told the OIG that this conversation "wasn't right away" and stated that it

was "a couple of months" after [REDACTED]. [REDACTED] said that [REDACTED] did not explain why they were thinking about taking [REDACTED] duties away from [REDACTED].

None of the other SACs could recall when they first learned that Delacourt had decided to reassign [REDACTED], although they recalled some discussions about the reasons for [REDACTED] reassignment. We discuss their testimony below.

[REDACTED] told the OIG that [REDACTED] could not say for certain when Delacourt informed the SACs that he was reassigning [REDACTED], but [REDACTED] said that [REDACTED] believed it was in [REDACTED], around the time of performance appraisals. [REDACTED] stated that [REDACTED] recalled two conversations about [REDACTED] reassignment. [REDACTED] stated that the first conversation was a one-on-one conversation with Delacourt, and he informed [REDACTED] that one of the jobs he planned to offer [REDACTED] was in [REDACTED] Division. [REDACTED] stated that the second conversation occurred at a weekly SAC meeting. According to [REDACTED], Delacourt "didn't get into the specifics with us," but Delacourt "alluded" to the fact that "there had been some performance issues" with [REDACTED], and [REDACTED] believed that the fact that the [REDACTED] SSA position was an "enabler" position was another reason for the reassignment.

[REDACTED] told us that [REDACTED] could not recall the exact timing, but [REDACTED] believed the discussions began once [REDACTED]. [REDACTED] also said that [REDACTED] had little insight into the reasons for [REDACTED] reassignment, but thought that Delacourt had "some philosophical differences" about how [REDACTED] should be handled, meaning that Delacourt believed the [REDACTED] should oversee [REDACTED] matters.

[REDACTED] also did not recall the timing of the discussions about transferring the [REDACTED] responsibilities to [REDACTED]. [REDACTED] stated that Delacourt discussed wanting to shift [REDACTED] responsibilities to [REDACTED] since [REDACTED] was now involved in the [REDACTED] process. [REDACTED] added, "I think it had something to do as well with [REDACTED] past performance, but I don't know the details of that." [REDACTED] added that once Delacourt had made the decision to reassign [REDACTED] understood that Delacourt spoke with Bowdich to inform him of the decision. [REDACTED] told us that [REDACTED] did not know any other details about that conversation.

[REDACTED] told us that Delacourt said [REDACTED] reassignment was "performance based." However, [REDACTED] added that [REDACTED] reassignment was also connected to the discussion about "operational enablers."

As we describe below, other than the December 2017 notes from Delacourt's initial management meeting, the only documentary evidence that the OIG found that reflected discussions between Delacourt and the LAFO SACs about the possible reassignment of [REDACTED] responsibilities were from an LAFO management retreat on October 24 and October 25, 2018. This management retreat occurred approximately 1 week after Delacourt and LAFO executive management attended the Dodgers playoff game at Dodger Stadium, described in

the next section, that resulted in [REDACTED]
[REDACTED] reporting Delacourt and others for alleged misconduct.

D. October 15, 2018: Delacourt Holds an LAFO Executive Management Meeting at Dodger Stadium Prior to a Dodgers Playoff Game

On Monday afternoon, October 15, 2018, Delacourt held his weekly management meeting in the Stadium Club at Dodger Stadium prior to game 3 of the NLCS, which was scheduled to begin at 4:39 p.m. Members of Delacourt's executive management team were informed that the location of the meeting had been changed from the LAFO main office to Dodger Stadium, with the exception of CDC [REDACTED].²⁰ The LAFO main office is on the west side of Los Angeles, about 15 miles from Dodger Stadium, which is close to downtown Los Angeles. We were told that SAC Morgan arranged for the executive management team to hold its meeting that day in the Stadium Club at Dodger Stadium through her contact with the Dodgers' [REDACTED]. According to the Dodgers website, the Stadium Club is "a members-only full-service restaurant and bar." The LAFO executive management meeting was held at a table in the main area of the Stadium Club; also in the main room, and within earshot of the meeting, were civilians who were members of the club and who had tickets to the playoff game. Most, but not all, members of Delacourt's executive management team, including Delacourt, dined at the buffet available to fans inside the Stadium Club.

Beginning at 1:00 p.m., prior to the LAFO management meeting, LAFO executives attended law enforcement briefings regarding security for the game by the Los Angeles Police Department, Los Angeles Fire Department, and Los Angeles Department of Transportation in two different "command posts" (one outside the stadium and one inside the stadium).²¹ Additionally, after the LAFO management meeting, Delacourt, Morgan, and other FBI personnel conducted a walk-through of the stadium with the FBI's on-scene commander for the special event, which consisted of identifying various egress and access points, emergency incident response routes, and restricted access areas throughout the stadium.

At least one member of the LAFO management team watched almost the entire baseball game from the Stadium Club, while others, including Delacourt, watched at least part of the game. The table in the Stadium Club and access to the buffet were both provided to LAFO executives without charge. We discuss the misconduct issues concerning these events in more detail in a separate OIG report.

²¹ A "command post" is a field location where law enforcement establishes a physical presence in order to oversee an event or emergency situation.

E. October 16: Complaints Made by LAFO Employees, Including ██████████, Concerning LAFO Executive Management's Attendance at the Playoff Game

1. CDC ██████████ Expresses Concerns to Delacourt

On the morning of October 16, 2018, CDC ██████████ sought to speak with Delacourt to express his concern that LAFO management had violated ethics rules about gifts and sporting events by attending the playoff game the previous day. ██████████ stated that he wanted to speak with Delacourt about the issue because he "wanted to get to the bottom of it" and "hear from him exactly what occurred." ██████████ was alerted to the prior day's events when he contacted LAFO Employee 1 to find out Delacourt's schedule, and LAFO Employee 1 informed him that SAC Young had expressed concerns to her earlier that morning about management's trip to Dodger Stadium the prior day. LAFO Employee 1 told us that when SAC Young first arrived at work on October 16, he told her that management (including Young) had gone to Dodger Stadium and sat "near the window and watched the game," and that they had also "been given lunch at the club." LAFO Employee 1 stated that she told Young that he "needed to self-report to" ██████████.

██████████ told us that, while on his way to Delacourt's office that morning to speak with Delacourt, SAC Young stopped him, expressed concern to ██████████ about what had occurred the day before at Dodger Stadium, and informed ██████████ that Young had left the stadium as soon as he could and did not eat from the buffet. ██████████ said that, after speaking with Young, he proceeded to Delacourt's office and had a conversation about management's attendance at the playoff game. ██████████ told the OIG that he documented this conversation, along with other conversations during this time period relating to the Dodgers game, in an email that he sent to himself on October 18, 2018. ██████████ provided the OIG with a copy of the email, which tracks the information that ██████████ orally provided to us during his OIG interview.

██████████ described the beginning of his conversation with Delacourt in his October 18 email, stating:

After [Delacourt] finished his [telephone call] on an unrelated matter I advised him that I had been apprised that he and other senior executives had attended a Dodger playoff game the day before without paying for it and were provided an additional free lunch. I referenced [a Former SAC]²² situation and drew comparisons as to how this is contrary to Bureau policy. I advised that this was a matter that [the Inspector General] would investigate and should be remedied by divesting of the full market value.

²² ██████████ referenced a former LAFO SAC who resigned from the FBI after an OIG investigation found he violated government ethics rules by accepting tickets to a National Basketball Association event, lacked candor under oath, and engaged in numerous other FBI Code of Conduct violations. For privacy reasons, we have anonymized the former SAC's name in this report.

██████ told us he emphasized to Delacourt that this was "a very serious matter" and "could jeopardize their careers." In his October 18 email, ██████ wrote that Delacourt "responded by stating, 'I didn't realize we have a direct line to [the Inspector General].'" ██████ also wrote that he "took this comment as [Delacourt] questioning if I would inform" the Inspector General.

██████ stated that Delacourt defended his presence at the baseball game as "directly related to his official duties in regards to crisis management in special events." According to ██████, Delacourt explained to him that management had attended a security briefing, received a tour of the new command post, and then conducted their weekly management meeting. ██████ stated that he tried to stress to Delacourt "how inappropriate this was" and why it needed to be reported to FBI OIC Assistant Director (AD) Catherine Bruno and Deputy Director Bowdich. ██████ described Delacourt as "receptive" to his advice and added, "I left his office believing he understood what I said." According to ██████, Delacourt also "asked if it would be appropriate for [Delacourt] to send an email to all who attended" about these ethical issues. ██████ stated that he told Delacourt "that would be a great start."

Delacourt told the OIG that ██████ entered his office the morning after the game and "the first thing he said is, we have another [Former SAC] situation on our hands." Delacourt stated that he felt ██████ "immediately began looking at this with a microscope without any of the facts" and had "already passed judgment before he asked me a single question." Delacourt stated that he did not agree with ██████ "analysis" that the executives who were at Dodger Stadium needed to pay the fair market value for NLCS tickets. According to Delacourt, he "began to question why ██████] was unfamiliar after 8 years in Los Angeles with the crisis management expectations of" LAFO. Delacourt stated that he tried to explain to ██████ that management's "efforts were legitimate and forthright and conscientious." Delacourt stated:

I think it's incredibly relevant that we were there 4 or 5 hours before the game, in our suits, not our Dodgers gear, at the all-hands event, meeting all the people, giving the remarks, having the conversations. Like, I mean, the idea that I've developed this crisis management philosophy and responded to all these events over the course of 7 years as an executive, plus the three Olympics, so I could go to an NLCS game is nonsense.... This was a day at the office, and he's in here talking about luxury suites and fair market value of NLCS tickets, and I'm like, you're not listening to me. Why is it you don't know this? And he began to give me...lawyerly answers. I understand your position.... [T]o me [that] meant, screw you, I don't believe you. And that was how we started this conversation. Shame on him.

According to Delacourt, ██████ told him he needed to "fall on the sword immediately" and draft an email to the other attendees informing them of potential ethical issues that ██████ had identified. Delacourt said that he agreed to draft an email because ██████ told him he "needed to act immediately." We asked Delacourt if ██████ mentioned the OIG. Delacourt stated that he did not recall,

but said [REDACTED] may have mentioned FBI OPR. Delacourt added that the "OIG wasn't a thought when [REDACTED] was in my office."

2. Delacourt and [REDACTED] Exchange Draft Emails Concerning Executive Management's Attendance at the Playoff Game

Later that morning, Delacourt provided a draft email to [REDACTED] that Delacourt intended to send to the Dodger Stadium meeting attendees to inform them of the ethical issues that [REDACTED] had raised with Delacourt. [REDACTED] stated that he was "surprised" by Delacourt's draft and realized that he "didn't succeed in [his] initial conversation" with Delacourt. Specifically, [REDACTED] said that he was "shocked to see the word[s] 'playoff game' was not even in there." [REDACTED] continued, "If you read [the draft email]...it indicates that they went to Dodger Stadium and had a free meal. There's no indication that they watched a baseball game."

[REDACTED] told us that he then consulted with two of his ADCs to get their opinions on Delacourt's draft email. [REDACTED] stated that he and the two ADCs drafted a separate email to provide to Delacourt that included all of their concerns about what had occurred at Dodger Stadium. [REDACTED] then sent the email to Delacourt.

Delacourt told us that [REDACTED] draft email "made me angry" and "further screwed me into the roof." Delacourt explained, "Because not only did he not ask me a single question, but then, after I told him the facts, he ignored the facts and wrote his own version based on whatever conversation he had with, I don't know, whoever."

3. Delacourt Meets with [REDACTED] to Discuss [REDACTED] Draft Email, and [REDACTED] tells Delacourt that an LAFO Employee Complained to the CDC Office about Executive Management's Attendance at the Playoff Game

After lunch on October 16, [REDACTED] stated that Delacourt asked to speak with him. As [REDACTED] was leaving his office to meet with Delacourt, [REDACTED] said he was informed by CDC staff of a call the CDC office received earlier that afternoon from an SSA [REDACTED]. [REDACTED] said he was told that the SSA reported that there was "a rumor" that LAFO executive management had attended the Dodgers playoff game "as guests." [REDACTED]

[REDACTED] stated that, when he arrived at Delacourt's office, [REDACTED] was with Delacourt. [REDACTED] stated that Delacourt "was less than pleased" with [REDACTED] draft email. According to [REDACTED], Delacourt told him that the email was "inaccurate" and that [REDACTED] did not "fully understand the facts" or "the nature of [Delacourt's] official responsibilities." [REDACTED] stated that he asked Delacourt how he "justified his entire executive senior staff attending this briefing." According to

██████████, Delacourt replied, "Maybe they did not all need to be there," but then added that the SACs "all work together and need to coordinate."

██████████ stated that Delacourt also asked him to review a draft email that Delacourt had written, after receiving ██████████ draft email and revising Delacourt's first draft. ██████████ described it as "pretty much similar" to the prior draft that Delacourt had sent to ██████████ to review. According to ██████████, he told Delacourt, "[L]isten, those are your words....[Y]ou have to live with that. If that's what you're saying is true, then so be it." In his October 18 email, ██████████ wrote that ██████████ advised something to the effect ██████████—seeming to make the point that she was familiar with the gift rules and this was not a problem."

██████████ told the OIG that, during his conversation with Delacourt and ██████████ he informed them that the CDC's office had received a telephone call "from somebody at ██████████ asking about the Dodgers matter." ██████████ stated that he "used that fact [of the ██████████ call] to emphasize to them that this is something that they can't ignore" and to indicate that "even though it's a big field office, word travels fast."

Delacourt described this conversation with ██████████ as "a bit more heated" than his initial conversation with ██████████ i. According to Delacourt, he told ██████████ that not only was ██████████ draft email "wrong," but it showed that ██████████ had not been "listening to [him]." Delacourt stated that ██████████ responded with "some lawyer speak," such as "reasonable minds might disagree," which Delacourt described as "essentially gasoline on the fire." Delacourt told us that ██████████ entered his office for an unrelated issue around this time and "the appearance of the third party...made me realize this conversation was too heated." Delacourt stated that the conversation "deescalated" at this point, and ██████████ provided "some perspective on the Los Angeles history of crisis management." We asked Delacourt if he told ██████████ that maybe all of executive management did not need to attend the event at Dodger Stadium. Delacourt told us that he did not recall telling ██████████ that.

We asked Delacourt about ██████████ reference to a complaint by someone from ██████████. According to Delacourt, ██████████ never told him the identity of the caller ██████████. However, Delacourt stated that this comment from ██████████ suggested to him that ██████████ could be the caller. Delacourt explained:

[B]ecause when the call was—we've got another [Former SAC] situation on our hands. And that to me sounded like passing judgment without asking a single question, we've decided an SAC and an executive has acted inappropriately. That was passing judgment, so yeah, that struck me as, that might be ██████████

Delacourt reiterated that it was the presence of these two factors—the references to both ██████████ and the former SAC—that brought ██████████ to mind.

██████ described this conversation in Delacourt's office as "one of the most bizarre conversations" she had ever had with ██████, because he was "saying a lot of just incorrect things...." ██████ explained:

██████ said] we've gotten rid of ADICs and SACs for less than that, and he made reference to [Former SAC]. He's all, this is like a [Former SAC] thing, and that's when I said, stop ██████. Stop. It's not. It's so far different than the [Former SAC] thing. Delacourt I don't think had visibility on it, but I said, okay, ██████ you're reaching here, and you're just creating a problem that doesn't exist.

According to Morgan, ██████ was "so consumed with what he thought happened" that he was unable to "have a conversation" with Morgan and Delacourt. Ultimately, ██████ stated that both she and Delacourt "were livid with ██████ as far as his tone with us, and his perception without us talking."

4. ██████ Discusses with ADC1 the Possible Reporting of the October 15 Meeting to the OIG

Also on October 16, ADC1 stated that, following a previously scheduled meeting in ██████ office, ██████ referenced the Dodgers game to ██████ and mentioned that she and ██████ had "really butted heads on this." According to ADC1, ██████ "walked ██████ through" what happened and then asked ADC1 for ██████ thoughts. ADC1 told us that ██████ advised ██████ the "optics" were problematic, but "it does appear that you had some legitimate reasons" to be at Dodger Stadium. ADC1 stated that ██████ told ██████ she should "speak with ██████."

We asked ADC1 if the OIG came up during ██████ conversation with ██████. ADC1 stated that they "definitely discussed" the OIG and "the possibility" that there could be a referral to the OIG to investigate the Dodgers incident. ADC1 told us that ██████ and ██████ did not speculate on who might refer this to the OIG.

██████ told the OIG that, at ADC1's suggestion, she called her contact with the Dodgers to get the "fair market value" of the buffet, and, at the suggestion of ADC1, followed up with an email. According to ██████, ADC1 told her to get the fair market value "in writing, because ██████ assumed ██████ and ██████ - ██████ was going to report this to the" OIG. When asked if she also assumed either ██████ or ██████ would report this to the OIG, ██████ stated, "We both did. All of us did after things ██████ said and the tone. And we all did at some point." When asked if "all of us" referred to her and Delacourt, ██████ replied, "Without question."

5. Delacourt Informs FBI Deputy Director Bowdich about Complaints Regarding the Management Meeting and Expresses Frustration with ██████

On the evening of October 16, at the suggestion of ██████, Delacourt called FBI Deputy Director Bowdich about LAFO executive management's meeting at Dodger Stadium the previous day. Bowdich stated that Delacourt told him that Delacourt and his staff "had a law enforcement function out at that [playoff] game,"

that it was "a crisis management event," and that LAFO management had held a meeting while at Dodger Stadium. Bowdich said that Delacourt felt that their presence at Dodger Stadium "was not impermissible." According to Bowdich, Delacourt was "frustrated" about "allegations made against him and...at least some of his staff" that they had used their positions to "inappropriately access[]" a Dodgers game. Bowdich stated that Delacourt also "mentioned a sandwich law enforcement lunch that was available to all law enforcement." Bowdich stated that Delacourt also told him they "ended up" in a "box." According to Bowdich, Delacourt explained that the box area was a "standard place" to go "because that is sometimes where they run the command post from" and it was "where everything was." Bowdich told us that what he heard from Delacourt "did not sound unusual" to him and, regarding the food, Bowdich stated he was not concerned because he was told that "it was available to all law enforcement that were working" the event. Ultimately, Bowdich stated that he counseled Delacourt to report the incident to Bruno.

We asked Bowdich if Delacourt commented on the source of the allegations. Bowdich responded, "[Delacourt] had a theory at the time, yes, that it was [REDACTED] Bowdich stated that Delacourt "describe[d] his frustration with" [REDACTED] during this call.

Delacourt stated that he called Bowdich and "walked [him] through the attendance at the game," including the "crisis response preparation." According to Delacourt, Bowdich told him that it "sounds like that's completely in line with our expectations." We asked Delacourt if he told Bowdich that he suspected [REDACTED] was the source of the Dodgers allegations. Delacourt told us that he did not remember discussing [REDACTED] with Bowdich.

[REDACTED] said that Delacourt stopped by his office following Delacourt's call with Bowdich to inform [REDACTED] that he had spoken with Bowdich about the ethical issues relating to the Dodgers game and that he had also left a message for Bruno.²³ [REDACTED] email stated:

At this meeting, Delacourt also asked if he should notify [REDACTED] of the situation. I advised that he had made the correct notifications to [FBI Headquarters], that he could talk to [REDACTED] or that I could—but that by him already notifying OIC—they could make the referral to [INSD]. He said he would call [REDACTED] himself. My impression of this question was for him to determine if I had already discussed this matter with... [REDACTED] and if [REDACTED] was the source of the rumors/discussion coming from [REDACTED]

[REDACTED] told the OIG that he believed Delacourt asked him about [REDACTED] "to gauge my reaction" and to see if [REDACTED] "had any knowledge that [REDACTED] knew about" the Dodgers complaint. [REDACTED] added, "I think he wanted to know if

²³ [REDACTED] also documented this conversation in [REDACTED] email.

██████████ had been notified already or if ██████████ knew about it. Because I'm thinking at that point he thought that ██████████ might be the source."

Delacourt stated that he recalled updating ██████████ after he had spoken with Bowdich and ██████████. However, Delacourt told us that he did not remember asking ██████████ if he should report the Dodgers incident to ██████████.

6. ██████████ Reports LAFO Management Meeting to OIG

Also on October 16, unbeknownst to Delacourt, ██████████ contacted the OIG to report that LAFO executive management had held their weekly management meeting at a private restaurant inside Dodger Stadium on the day of a playoff game. ██████████ reported that ██████████ had been told that executive management dined at a buffet inside the restaurant and that at least some of the attendees also watched the game in a "luxury box." ██████████ told the OIG that ██████████ was concerned that this conduct violated FBI ethics policies, specifically citing the rules relating to acceptance of gifts.

7. Delacourt Speaks with Bruno on October 16 or October 17

On October 16 at 5:43 p.m. (PDT), Delacourt left a voicemail for Bruno about an "ethical concern" he wished to notify her about. Delacourt told us that Bruno returned his call either on the evening of October 16 or the following day. Delacourt stated that his conversation with Bruno "was a thorough conversation, and there were two topics—food and attendance." With regard to food, Delacourt described the conversation with Bruno as "very calming" and added, "[B]y the time I was done with my conversation with her, I felt like we had not stepped outside of any ethical boundaries with regard to the food at the Dodger game." Delacourt said his conversation with Bruno was his first discussion of the "20/50 rule," and stated that Bruno "walked [him] through the analysis and "confirmed that we were well within it."²⁴ Delacourt stated that he could not remember the details of the conversation about the valuation, but he stated that Bruno did inform him that they had 7 days to reimburse the Dodgers. According to Delacourt, his understanding was that their meal had fallen within the 20/50 rule, but he and the others ended up making a payment for the food to the Dodgers within 7 days of the event.

On the attendance issue, Delacourt stated that he told Bruno that LAFO executive management was at Dodger Stadium pursuant to their crisis management responsibilities for the special event. Delacourt stated that Bruno responded by stating, "That seems perfectly consistent with what we do around the Bureau." According to Delacourt, Bruno stated that she did not "really have any guidance on that" issue and added that the "only thing...that's even close" is an email about FBI personnel performing official duties at National Football League

²⁴ The "20/50 rule" is a reference to an exception to the ethical rule that generally prohibits executive branch employees from soliciting or accepting gifts from a prohibited source or gifts given because of an employee's official position. See 5 C.F.R. § 2635.202. Employees may accept unsolicited gifts valued at \$20 or less per occasion from a single source, as long as the aggregate value of gifts from a single source does not exceed \$50 in any given calendar year. See *id.* at 2635.204(a).

(NFL) games from former OIC AD Patrick Kelley. Delacourt stated that Bruno's point was that LAFO executive management's crisis management responsibilities would also appear to fall under the category of "official duties," and Delacourt told us that he therefore "felt like we were absolved."

F. [REDACTED] tells ADC2 [REDACTED] Belief that the OIG Would Investigate the Playoff Game Incident Because of [REDACTED]

On [REDACTED], ADC2 had two conversations with [REDACTED] about LAFO management's attendance at the Dodgers game on October 15. ADC2 documented the conversations in an email dated [REDACTED]

According to ADC2, [REDACTED] spoke at length about the legitimate reasons for executive management to be at Dodger Stadium, including "that all the SAC's needed to be there because they all had equities." ADC2 wrote that [REDACTED] told [REDACTED] that "in hindsight...they should not have partaken in the food."

Later that morning, ADC2 stated that [REDACTED] initiated a second conversation with [REDACTED] "to clarify with [REDACTED] why [REDACTED] was telling me all this information." ADC2 wrote that [REDACTED] and [REDACTED] "spent another hour together, much of it with [REDACTED] passionately explaining" why management's conduct at Dodger Stadium was appropriate. ADC2 wrote that [REDACTED] also spent a "fair amount of time" conveying management's "loss of trust in the CDC's office."

ADC2 told us that [REDACTED] also commented on the possibility that the OIG would look into the Dodgers incident. ADC2 told us that [REDACTED] felt like [REDACTED] was "fishing" to see if ADC2 knew if the Dodgers incident had been reported. According to ADC2, [REDACTED] advised [REDACTED] that the normal way the OIG would get involved is if Bruno referred this information to INSD. ADC2 wrote in [REDACTED] memorandum, "SAC [REDACTED] seemed to think that it would get to [the OIG] through [REDACTED]. [REDACTED] told me [REDACTED] had reliable sources that made [REDACTED] believe this. [REDACTED] believed that [REDACTED] was the instigator of the [call from [REDACTED]

We asked ADC2 specifically about [REDACTED] reference to [REDACTED]. ADC2 stated that [REDACTED] "takeaway feeling" from the conversation was that [REDACTED] "thought [REDACTED] was sort of causing trouble from [REDACTED] about" the incident. ADC2 stated that [REDACTED] told [REDACTED] did not believe [REDACTED] was the source of these allegations. Nevertheless, ADC2 told us that [REDACTED] told [REDACTED] agreed that [REDACTED] had a challenging personality and "zealous reputation." ADC2 continued:

When I acknowledged, I said [REDACTED] has this way of [REDACTED] that's like—but it's always been the case. Like, this has been this personality in this office for a long time. [REDACTED] said, you watch or you wait. One of those. Just you watch [or] just you wait.

ADC2 told us that [REDACTED] "consciously" did not include this in [REDACTED] written memorandum because [REDACTED] conversation with [REDACTED] was very emotional, and [REDACTED] thought that it was "just emotions talking" in the "heat of the moment." However, ADC2 stated that after [REDACTED] was removed from [REDACTED] job as [REDACTED] SSA, [REDACTED] now "feel[s] like it has significance."

We asked [REDACTED] about this conversation with ADC2. [REDACTED] told us that [REDACTED] remembered speaking to ADC2 during this time period, but "absolutely" denied making any comment akin to "just you wait" or "just you watch." [REDACTED] stated that [REDACTED] does not "use terms like that" and [REDACTED] does not "even know what that's in reference to." [REDACTED]

G. October 24 and 25: Delacourt and SACs Discuss Reassigning [REDACTED] at the LAFO Management Retreat

As noted above, on October 24 and 25, LAFO executive management attended a management retreat during which the issue of reassigning [REDACTED] was discussed. Delacourt, the five LAFO SACs, and the Special Assistant were present for this 2-day retreat.

The Special Assistant told the OIG that, while the group was having dinner, [REDACTED] brought up complaints about the way in which [REDACTED] handled [REDACTED] duties. The Special Assistant explained that "the SACs, I think, just felt uncomfortable with" [REDACTED] performance and added that "people weren't really trusting [REDACTED]" The Special Assistant added that "it wasn't the first time" [REDACTED] had heard there were complaints about how [REDACTED] "handled [REDACTED]" When asked if [REDACTED] recalled any specific complaints raised about [REDACTED] the Special Assistant responded:

...I think they were saying something like, like there were certain instances where like [REDACTED] would...go to OIG instead of going through Inspection Division.... The SACs were saying that their employees didn't feel like they could come to [REDACTED] with these issues because [REDACTED] would go up and around or go outside of the Bureau....

The Special Assistant stated that the conversation then turned to having someone else take over the LAFO [REDACTED] duties. The Special Assistant continued:

And so they were thinking about potentially giving it to another...SSA. But then, but then they were sort of like, you know, the direction of the conversation said let's, you know, there's a lot of these in L.A. They're sensitive. It probably makes sense to have someone at a bit of a higher level be, be in charge of these moving forward. So that's why they decided to move it to [REDACTED]

The Special Assistant stated that there was "pretty general agreement" at the table about the move. The Special Assistant described the decision as not yet

"final, but it was pretty close," and the question was, "[W]here do we move [REDACTED] to and where do we think [REDACTED] be a good fit in the office?" The Special Assistant told the OIG that this was the first conversation [REDACTED] could recall about [REDACTED] being reassigned. The Special Assistant stated that the conversation ended with an understanding that management would "start thinking about moving [REDACTED] over" and "just need[ed] to figure out where" [REDACTED] would go.

We asked the Special Assistant specifically about Delacourt's reaction to these comments. The Special Assistant stated, "[Delacourt] had heard a number of these complaints about [REDACTED] before and that he felt like it was probably time to move [REDACTED] out of that position and transition it to [REDACTED]. When asked if there was any discussion about [REDACTED], the Special Assistant stated that [REDACTED] thought that they discussed it, "[b]ut [REDACTED] didn't] think any of them wanted to wait it out," and "the consensus" was that they should move forward "[REDACTED]"

On [REDACTED] the Special Assistant drafted a memorandum that "memorialize[d] the initiatives, takeaways and actions items" from the retreat. The 8-page memorandum detailed strategies reviewed, the top field office strategic priorities identified, and a category of "additional action items [that] were identified throughout the discussions held on LAFO strategy." Under "Strategy Review," the following item is listed as a way to "improve stewardship of resources:"

Gap: Workforce Planning/Realignment. LAFO executives will continue to look at ways to realign and plan for the most effective LAFO workforce. Specific initiatives will include realigning positions of confidence and trust with higher-level positions [REDACTED]

[REDACTED], among others. Though not a top office priority, this gap will have several sub-initiatives for action.

[REDACTED] Another action item on the list was "Realign [REDACTED] duties with [REDACTED] [REDACTED] was listed as the "accountable executive" and the next step was identified as "Further discussion at next [REDACTED]"

We also asked the LAFO SACs about this discussion. Apart from [REDACTED] none of the other SACs recalled whether they discussed [REDACTED] reassignment at the management retreat. [REDACTED] told us [REDACTED] recalled a discussion about "succession planning" and "realignment of supervisory positions" at the management retreat. [REDACTED] stated that this discussion occurred one evening at dinner when Delacourt, the five LAFO SACs, and the Special Assistant were present. [REDACTED] continued, "We were talking about where we thought [REDACTED] would be a good fit..." [REDACTED] said they discussed a number of positions, including positions [REDACTED]

told us that [REDACTED] did not recall how the discussion about [REDACTED] arose. [REDACTED] described Delacourt as "just listening" to this discussion, and [REDACTED] added that [REDACTED] did not recall Delacourt having a preference about where [REDACTED] would be reassigned. We asked [REDACTED] if this was the first time [REDACTED] - [REDACTED] reassignment had been addressed or if it had been an ongoing discussion. [REDACTED] stated that LAFO management frequently talks about realignment and succession planning, adding that it was not just [REDACTED] or the [REDACTED] position that was a topic of those discussions.

We asked Delacourt if he recalled a discussion of [REDACTED] reassignment at the management retreat. Delacourt stated that he did, but said "the conversation wasn't about if, it was about where." Delacourt stated that he also recalled a discussion where "each of the SACs offered up the available SSA positions" where [REDACTED] could potentially be reassigned. Delacourt continued, "So at this point, the removal of the duties [has occurred and]...already been assigned to [REDACTED]. But we have now in consensus identified all the possible positions that SSA [REDACTED] can go to and we're going to let [REDACTED] choose and we are going to enable a smooth transition."

We showed the Special Assistant's memorandum to Delacourt. Delacourt stated that the "Workforce Planning/Realignment" paragraph quoted above indicates that the decision to reassign [REDACTED] "was already made." Delacourt explained that the reference to the [REDACTED] position—" [REDACTED] "—meant that "we're going to find others like this one [position] that we've already changed." Delacourt continued, "The initiative is to continue to look at positions that can be collapsed and elevated. Like we collapsed and elevated the [REDACTED] position." Delacourt stated that the later reference to the [REDACTED] on [REDACTED] meant that they would formalize the decision by "put[ting] it into the system pursuant to the [REDACTED] on [REDACTED]"

Email documentation indicates that the next [REDACTED] discussion took place at the management meeting on [REDACTED]. We did not find documentary evidence concerning what was discussed at this meeting, and witnesses were unable to pinpoint for us at what meetings there were discussions about [REDACTED].

H. [REDACTED] Delacourt Informs [REDACTED] that [REDACTED] Will No Longer Have [REDACTED] Duties

At the end of the regularly-scheduled [REDACTED] briefing meeting with [REDACTED] on [REDACTED], Delacourt presented [REDACTED] with [REDACTED] Fiscal Year (FY) 2018 PAR and thereafter informed [REDACTED] that [REDACTED] duties would be reassigned to [REDACTED] and that [REDACTED] would take on a new role.²⁵ Both [REDACTED] and Delacourt stated that this was the first time [REDACTED] had been informed that the [REDACTED] duties would be reassigned [REDACTED].

²⁵ [REDACTED] was also present for this meeting.

Delacourt rated [REDACTED] as [REDACTED] overall on [REDACTED] FY 2018 PAR, a downgrade from [REDACTED] rating [REDACTED] "on [REDACTED] FY 2017 PAR, [REDACTED] Delacourt told the OIG that he had considered rating [REDACTED] as [REDACTED] but after reading [REDACTED] self-assessment, he "realized some of the complicated things that [REDACTED] handled" and that, based on [REDACTED] self-assessment, he rated [REDACTED] as [REDACTED] [REDACTED] According to Delacourt, [REDACTED] signed the PAR without reading it, "threw it back at [him] and told [him] it was [REDACTED] last one and then went off on [him]." Both Delacourt and [REDACTED] created contemporaneous written accounts of their meeting.

[REDACTED] drafted a memorandum on [REDACTED], documenting [REDACTED] conversation with Delacourt and [REDACTED] According to [REDACTED] memorandum, after Delacourt told [REDACTED] that they were "going to insert an [REDACTED] into [REDACTED] position," Delacourt "tried to lie to [REDACTED] and told [REDACTED] something to the effect of 'you clearly have talent and attention to detail' so we can use you elsewhere." [REDACTED] wrote that Delacourt "tried to tell [REDACTED] that it was a 'strategic' move on behalf of the LAFO," but [REDACTED] wrote, "that is completely inaccurate." According to [REDACTED] Delacourt said, "we are considering options of where to put you," and [REDACTED] said, "you better put me in [REDACTED] because [REDACTED] "instinctively felt that this was some sort of retaliation." [REDACTED] wrote that Delacourt described some possible positions, including [REDACTED]. According to [REDACTED], Delacourt told [REDACTED] that "the SAC's would discuss where to put [REDACTED] at their SAC meeting next week." [REDACTED] said that [REDACTED] "really pushed [Delacourt] by saying that he needed to talk to [FBI] headquarters about this decision," and that Delacourt responded by telling [REDACTED] that he had talked to Bowdich and that "Bowdich agreed that he could get rid of my position." [REDACTED] noted that Delacourt "went so far as to tell me that [Deputy Director] Bowdich wanted to get rid of my position when he was here."

[REDACTED] also wrote that Delacourt "probed my relationship with OIG in DC" and asked how [REDACTED] interacted with the OIG in Washington. According to [REDACTED] "It was apparent to me that he wanted to know if I communicated directly with OIG in D.C.," and [REDACTED] wrote that [REDACTED] told him that [REDACTED] interactions were with INSD, and through that, [REDACTED] had interactions with the OIG ASAC "that sits in INSD." Delacourt told the OIG that he did not recall discussing the OIG with [REDACTED] during this meeting. Finally, [REDACTED] wrote that [REDACTED] believed that [REDACTED] duties were being removed because "they suspect that I had direct contact with OIG about their ethical violations involving the Dodgers Playoff game and subsequent cover-up."

[REDACTED] also noted that [REDACTED] told [REDACTED] that [REDACTED] thought that it was more "appropriate" for [REDACTED] to talk to the OIG's SAC in the Los Angeles area. According to [REDACTED] "He actually told me that it is beneath [the OIG SAC] to talk to me since I am only a [REDACTED] SSA," and [REDACTED] said that [REDACTED] disputed this position.

██████ described ████████ as being unhappy when Delacourt told ████████ about the reassignment. ████████ stated that ████████ "brought up all kinds of reasons" for why reassigning the ████████ duties to ████████ was "a bad idea." ████████ said ████████ did not recall a discussion of any performance issues. ████████ also stated that ████████ told ████████ that ████████, may be able to interact better with the OIG SAC in the Los Angeles area. ████████ told us that Delacourt did not comment on this point. According to ████████, Delacourt also told ████████ that "he talked to Bowdich" about reassigning the ████████ duties. ████████ stated that Delacourt "never shared with ████████ what Bowdich told him." Delacourt told the OIG that he did not recall making this statement about speaking with Bowdich and that he did not think that he had discussed ████████ reassignment with Bowdich until ████████ ████████, a conversation we discuss in detail below.

██████ emphasized to the OIG that the decision to reassign ████████ was already made prior to the Dodgers game. ████████ told the OIG that after there were allegations in the office about the Dodgers game, ████████ assumed that ████████ had reported the incident to the OIG, and he realized that, because ████████ had not yet been informed of the reassignment, ████████ might perceive the reassignment as retaliatory once ████████ was told about it.²⁶ According to ████████, no one in the office discussed any suspicion that ████████ had reported the Dodgers incident to the OIG at that time, but ████████ said that ████████ thought "everybody probably felt that way." ████████ told the OIG that "because ████████ knew ████████," at the end of a meeting with Delacourt, ████████ "might have mentioned to [Delacourt], hey, ████████ might look at this as retaliatory that we're moving ████████." According to ████████, Delacourt did not respond. Delacourt told the OIG that he did not recall ████████ raising this issue with him.

Delacourt stated that he drafted an email to himself after the meeting because ████████ was "on the attack," and he stated that he "left the meeting "shocked at how it had gone." According to Delacourt, he was concerned that ████████ would file "a false EEO complaint" ████████. In his ████████ email to himself, Delacourt, after noting that ████████ signed ████████ PAR without reading it, wrote that he told ████████ that "we were strongly considering moving the ████████ function to an ████████ as part of a broader strategy" to "streamline resources" and to potentially open a position for an additional ASAC. The email further stated that, "SSA ████████ seized on the word streamline, and told [him] it would not streamline ████████ matters," and ████████ "made an impassioned defense of ████████ role as the ████████ SSA." According to his documentation, Delacourt told ████████ that "the move was part of a broader strategy" to "solve other issues" and said the decision was not "made in a vacuum." Delacourt wrote that ████████ asked to be reassigned to a position ████████ and he discussed with ████████ several positions that were available, ████████ ████████. According to Delacourt, he told ████████ that they "would be using ████████ experience in a more operational role." After listing ████████

²⁶ We did not find evidence that the managers we interviewed in LAFO were aware that a complaint had, in fact, been filed with the OIG shortly after the Dodgers game. Rather, we found that several managers suspected that ████████ had reported it.

stated preferences, [REDACTED], Delacourt wrote that he told [REDACTED] that "this would not be an overnight change" and they were "putting [REDACTED] in a position to succeed." Delacourt noted that at [REDACTED] suggestion, he would call INSD for "input," and that twice [REDACTED] "mentioned [REDACTED] intent to [REDACTED]"

We asked Delacourt if the language stating "we were strongly considering moving the [REDACTED] function" indicated that the decision was not yet final. Delacourt stated that he regretted that choice of words "because the decision was made." Delacourt stated that he only used that language in the [REDACTED] meeting with [REDACTED] because he "was trying to deescalate" the situation after [REDACTED] had "tried to take a dominant position" in the conversation and caught Delacourt "off-guard." Delacourt noted that the rest of the email suggests that the decision had already been made.

We also questioned Delacourt about the fact that his email does not mention [REDACTED] work performance as one of the reasons for [REDACTED] reassignment. Delacourt stated that [REDACTED] performance was not the reason for the change. He stated that "it wasn't about [REDACTED] and that it was about "legitimate business reasons for the move of [REDACTED] role." He added that while he had documented his dissatisfaction with [REDACTED] performance in [REDACTED] PAR, Delacourt emphasized that [REDACTED] "performance was not the reason for the change."

Additionally, we asked Delacourt why, if he had made the decision to reassign [REDACTED] in [REDACTED] he did not tell [REDACTED] until [REDACTED]. Delacourt told the OIG that at the time the decision was made, they decided the change would take place at the end of FY 2018 but that "because of travel and [his] meeting schedule with [REDACTED], the notice didn't happen until [REDACTED]." According to Delacourt, there were ongoing discussions about when and where in connection with respect to reassigning [REDACTED] but "not the if...the if was decided." Delacourt stated that his "original expectation" was that the transition would take "30 to 60 days," but "[i]t wound up taking longer" because [REDACTED]. Delacourt stated that he had planned to announce the reassignment even before [REDACTED], but [REDACTED] asked him to delay the announcement "so that [REDACTED] could announce it to [REDACTED] division first."²⁷ As a consequence, [REDACTED] reassignment was not announced to LAFO until [REDACTED]. Delacourt told the OIG that [REDACTED] reassignment had nothing to do with the Dodgers game and was in no way retaliatory.

I. [REDACTED]: Delacourt Discusses [REDACTED] Reassignment with ADC3

LAFO ADC3 attended the LAFO weekly management meeting on [REDACTED] as the CDC representative. ADC3 told the OIG that the topic of moving

²⁷ [REDACTED] confirmed that [REDACTED] asked Delacourt to delay announcing [REDACTED] reassignment to the entire LAFO until [REDACTED] could do so [REDACTED] to [REDACTED] division.

██████████ to another position was discussed at the end of this meeting. ADC3 stated that while discussing the need to move a different LAFO SSA to another position, someone mentioned, "Oh yeah, well we need to move ██████████ too." ██████████

██████████ During this discussion, ADC3 stated that ██████████ felt Delacourt was trying to justify his decision to move ██████████ and he told ██████████ that "it's important that we move ██████████ because ██████████ not being effective because all of these other ADICs have told me before of how poorly ██████████ performs." ADC3 stated that the meeting ending shortly after this conversation.

Delacourt told us that he also recalled this conversation, although he thought it involved ADC2 instead of ADC3. Delacourt stated that he recalled asking the attorney whether they were "treading into any ill-advised territory" and that the attorney said that they were not and that they were "talking about succession planning." ██████████

J. ██████████ and ██████████ Meet with ██████████ to Begin Transition

On ██████████ ██████████ met with ██████████ and ██████████ for the bi-weekly ██████████ meeting. ██████████ documented this meeting in a contemporaneous memorandum. ██████████ wrote that ██████████ described this as a transition meeting and that ██████████ reported that Delacourt had approved ██████████ presence in the meeting. According to ██████████, ██████████ asked ██████████ if Delacourt was still planning to remove ██████████ from the ██████████ position, and ██████████ responded affirmatively and stated that Delacourt "was still trying to figure out what to say to the LAFO about ██████████ move." ██████████ continued, ██████████ made it clear that I would be removed on [sic] ██████████

K. ██████████ Delacourt Receives OIG Subject Notification Concerning Attendance at Playoff Game

On ██████████ Delacourt received an OIG subject notification stating that the OIG had initiated an investigation into whether Delacourt "may have violated ethics policies, rules, or regulations in connection with his attendance at a baseball playoff game at Dodger Stadium on October 15, 2018." Delacourt stated that, after his conversation with ██████████, he had "stopped thinking about" the Dodgers game as an issue until he received his subject notice on ██████████ Delacourt stated that he was surprised by the notice, stating it "came as a punch in the stomach."

Delacourt stated that he did not know at that time that [REDACTED] had filed a complaint with the OIG about the Dodgers game. He said he did not become aware of this until [REDACTED] filed a whistleblower retaliation complaint, and he received a subject notice from the OIG on [REDACTED], that referenced [REDACTED] allegation that [REDACTED] was retaliated against for making allegations about the Dodgers playoff game. Although Delacourt acknowledged that he assumed that the person from [REDACTED] who had reached out to the CDC's office the day after the Dodgers game may have been [REDACTED], Delacourt told us that he did not speculate that [REDACTED] had reported it to the OIG. Delacourt stated that he "never would have guessed that someone whose responsibility it is to handle [REDACTED] function in LA] would have filed a claim with the OIG [about the Dodgers game] without ever asking [him] a single question about [his] attendance." According to Delacourt, once he became aware that [REDACTED] had reported allegations about the Dodgers game to the OIG, he found it "irresponsible" for [REDACTED] to have reported allegations to the OIG without asking him questions about the incident, such as whether the executive team was at Dodger Stadium in an official capacity.

L. [REDACTED] Delacourt Informs Bowdich of Plan to Reassign [REDACTED], and Bowdich Expresses Concern and Instructs Delacourt to Contact [REDACTED] Before Doing So

Bowdich told the OIG that, at some point [REDACTED] he received a call from Delacourt about [REDACTED]. We found that this call occurred no later than [REDACTED], based on Bowdich's conversation with [REDACTED], which we describe below. Bowdich told the OIG that Delacourt informed him that he was "going to move [REDACTED] [REDACTED]. According to Bowdich, he asked Delacourt whether moving [REDACTED] was "punitive," and Delacourt denied it, stating that [REDACTED] had "lost [REDACTED] effectiveness." Bowdich also recalled Delacourt saying "something to the effect of the SACs have been complaining about" [REDACTED]. Bowdich added that Delacourt told him that the SACs, and "he may have even said [REDACTED]," were "very upset and frustrated with [REDACTED] and they felt" that moving [REDACTED] to another position "would be an appropriate way to go forward." According to Bowdich, this was not the first time Delacourt had expressed concerns to him about [REDACTED] performance. Bowdich told the OIG he recalled a previous discussion with Delacourt about [REDACTED] performance and recalled that the points raised by Delacourt were "legitimate."

Bowdich said that he was concerned about the [REDACTED] implications of this decision, and he directed Delacourt to discuss the decision with [REDACTED].²⁸ According to Bowdich, he told Delacourt, "[D]o not move [REDACTED] until you talk to [REDACTED]. If [REDACTED] says all right we're good so to speak. Then you go ahead and do it but not until you talk to him." We asked Bowdich why he instructed Delacourt to speak with [REDACTED]. Bowdich stated that he was concerned that reassigning [REDACTED] could be perceived as

²⁸ [REDACTED]

retaliation given Delacourt's "frustration with [redacted] performance" in the [redacted] SSA role and the fact that Delacourt had previously told Bowdich in October, when Delacourt called to report the Dodgers incident, that he suspected [redacted] of being the source of the Dodgers allegations.

We also asked Bowdich if Delacourt spoke with him about moving the LAFO [redacted] duties from an SSA to [redacted]. Bowdich stated that Delacourt had discussed it with him, although Bowdich could not recall the specifics of that discussion. Bowdich added that Delacourt said "that he thought that [the change] would be a much more effective way to" handle the [redacted] duties, and Bowdich noted that Delacourt felt "very strongly that [redacted] needed to be in charge of it." Bowdich stated that he did not have strong feelings—either positive or negative—about the change. We asked Bowdich if he gave Delacourt approval to move the LAFO [redacted] duties to [redacted]. Bowdich replied:

I may have, but I didn't need to give approval on that. I wouldn't normally get into a local structural decision on that, but again, to be clear, I told him don't do anything until you talk to [redacted]. Nothing involving [redacted].

According to Delacourt, he and Bowdich were discussing a number of things, including his (Delacourt's) "frustration with the Dodgers game," when he informed Bowdich that he was reassigning [redacted] to another position. Delacourt stated that he told Bowdich his reasons for moving [redacted], which he described as being about "enablers," and informed him that he was reassigning the [redacted] duties to [redacted] and that he told Bowdich that he had "documented it." According to Delacourt, it was a brief, "low key" conversation (approximately 3 minutes), and Bowdich said something to the effect of "Hey, you might want to call [redacted] whom Delacourt said that he had heard of but did not know at that time. Delacourt said that Bowdich did not tell him *not* to move [redacted] and that he did not understand Bowdich's reference to [redacted] to be a directive. Delacourt stated that perhaps he was "unclear" with Bowdich because Delacourt did not understand "what [redacted] was going to do" given that "the decision had already been made." Delacourt stated that, in hindsight, he "failed to make [Bowdich] understand that it was all done except the report date."

When asked why he mentioned [redacted] reassignment to Bowdich, Delacourt told the OIG that he knew—given how "angry" [redacted] was when he informed [redacted] about the move in [redacted]—that the decision was "not without controversy." According to Delacourt, he thought that [redacted] and, for this reason, he had documented his conversation with [redacted]. Delacourt said that immediately after he informed [redacted] that [redacted] was moving, he had to deal with a mass shooting and moving [redacted] was in his "rearview mirror."²⁹ Delacourt said that once he received notice of the OIG's investigation concerning the Dodgers game on [redacted], he

[redacted]

thought that [REDACTED] was one of the people who could have reported the allegations to the OIG and it was at that point that he thought again about a possible discrimination complaint being filed by [REDACTED]. According to Delacourt, it would have been "negligent" of him not to tell Bowdich about his reassignment of [REDACTED] because moving [REDACTED] was not "without peril."

We asked Delacourt if Bowdich made any comments about the merits of reassigning [REDACTED] during this phone call. Delacourt stated that Bowdich "thought it was risky," but Delacourt said that they did not discuss whistleblower retaliation and that he (Delacourt) was thinking about a possible discrimination complaint, not a retaliation complaint. We also asked Delacourt how he expected Bowdich to respond when informed of [REDACTED] reassignment. Delacourt stated that he thought Bowdich "would ask some questions" and "understand my course of action." Delacourt added that he "expected support from the executives in Washington, D.C.," because he was doing what was expected of him by "hold[ing] people accountable and "mak[ing] difficult personnel decisions."

M. [REDACTED] Without Contacting [REDACTED] as Instructed, Delacourt Informs [REDACTED] that [REDACTED] is Being Reassigned

Delacourt did not contact [REDACTED] following his conversation with Bowdich but instead moved forward with his plan to reassign [REDACTED]. On [REDACTED], Delacourt met with [REDACTED] and advised [REDACTED] that [REDACTED] told the OIG that this was the first time [REDACTED] had spoken directly to Delacourt since they met on [REDACTED]. According to [REDACTED] who documented the conversation in a memorandum, Delacourt told [REDACTED] the personnel move would be finalized on [REDACTED] and that he had discussed the move with INSD and was advised that it was within his authority to make the change. According to [REDACTED], [REDACTED] insisted to Delacourt that he was "removing" [REDACTED], but he insisted that "they were just re-allocating [REDACTED] position for the benefit of the office."

Delacourt described this meeting as "another aggressive meeting" where [REDACTED] "goes high and right on me again." Delacourt stated that he began discussing [REDACTED] transition to the new job, and [REDACTED] unexpectedly escalated the meeting by stating, "[Y]ou're still going on with that?" According to Delacourt, he told [REDACTED] that he intended to follow through on the decision he had told [REDACTED] about in [REDACTED], and that he had spoken with INSD about the decision and was advised that it was within "Division head discretion." Delacourt stated that [REDACTED] told him that he should "prepare to get spanked by" the FBI's Internal Investigations Section over this decision.

N. [REDACTED] Contacts Delacourt at Bowdich's Direction after Delacourt Fails to Call [REDACTED]

[REDACTED] told the OIG that on [REDACTED], [REDACTED] was in Bowdich's office for a meeting when Bowdich pulled [REDACTED] aside and asked if Delacourt had contacted [REDACTED]. According to [REDACTED], [REDACTED] told Bowdich that Delacourt had not contacted [REDACTED], and Bowdich replied, "He's got a personnel issue that I told him to call you about."

A few days later [REDACTED] told us [REDACTED] thought this occurred on [REDACTED]. [REDACTED] said [REDACTED] was meeting with Bowdich and Bowdich asked [REDACTED] again if Delacourt had called. [REDACTED] again told Bowdich [REDACTED] had not heard from Delacourt. According to [REDACTED], Bowdich then explained the situation to [REDACTED] mentioned [REDACTED] name, and said that there was an OIG investigation of the LAFO involving a sporting event. [REDACTED] stated that Bowdich "did not go into a great deal of detail" about the investigation, but Bowdich was concerned about the appearance of retaliation against [REDACTED] because Bowdich assumed that [REDACTED] had reported the Dodgers incident to the OIG and Delacourt was "contemplating reassigning [REDACTED]." [REDACTED] added that Bowdich said he had told Delacourt to call [REDACTED] "just to talk it through, before making any decision." Given that Delacourt had not contacted [REDACTED], [REDACTED] said that Bowdich instructed [REDACTED] to reach out to Delacourt about this issue.

[REDACTED] stated that [REDACTED] and Delacourt traded phone calls, but eventually spoke on either [REDACTED]. According to [REDACTED], [REDACTED] told Delacourt that Bowdich asked him to call about "the potential reassignment of his [REDACTED] person," and Delacourt told him that he had already notified [REDACTED] that [REDACTED] was being reassigned [REDACTED] the previous week.

[REDACTED] said that Delacourt told him that reassigning [REDACTED] was not "an adverse action" because [REDACTED] had been reassigned without any loss of grade or pay." [REDACTED] stated that he then explained to Delacourt that under the whistleblower law, even a change of duties without a reduction in pay, if done for retaliatory reasons, can constitute retaliation. According to [REDACTED], Delacourt explained that [REDACTED] was a "substandard performer," and he criticized [REDACTED] for failing to keep the managers informed about investigations.

[REDACTED] stated that [REDACTED] had reviewed [REDACTED] personnel records prior to the call and he commented to Delacourt that Delacourt had recently evaluated [REDACTED] as [REDACTED]. [REDACTED] stated that [REDACTED] told Delacourt this "was not a helpful fact, if he thought [REDACTED] performance was so deficient, to warrant reassignment." According to [REDACTED], Delacourt viewed [REDACTED] rating as a significant downgrade [REDACTED]. [REDACTED] stated that Delacourt told [REDACTED] "he had a stack of documentation" of [REDACTED] poor performance and offered to send it to [REDACTED].³⁰ [REDACTED] stated that [REDACTED] told Delacourt that unless

³⁰ During his interview with the OIG, we asked Delacourt if he had any documentation in [REDACTED] "drop file," apart from [REDACTED] mid-year performance review. A "drop file" is the yearly file typically maintained by an FBI employee's supervisor containing information relating to the employee's job performance that year. Delacourt replied, "Nope. The mid-year is the only document. The mid-year, and this [REDACTED] email is perhaps, and the meeting notes from [a [REDACTED] meeting with [REDACTED] And the two others. That's the only things that would have been in the drop file." Delacourt also provided the OIG with numerous emails in which he critiqued [REDACTED] job performance, such as an [REDACTED] email where he told [REDACTED] that a memorandum [REDACTED] prepared "need[ed] some serious revision."

Delacourt was contemplating reversing the decision, then there was no point in providing documentation to [REDACTED]

[REDACTED] stated that [REDACTED] had also noticed in [REDACTED] file that [REDACTED] and pointed out that fact to Delacourt. According to [REDACTED]

[Delacourt] said he thought this had been a longstanding problem, that [REDACTED] had been an underperformer for many years, and none of the previous ADICs, including presumably Bowdich, was willing to take it on, and he felt he had a responsibility to address the situation and not just let it slide [REDACTED].

[REDACTED] stated that Delacourt also mentioned that he was making the [REDACTED] function a collateral duty for [REDACTED], and that this move fit into a number of changes within the office. [REDACTED] said [REDACTED] told Delacourt he needed to tell Bowdich that they had spoken, and [REDACTED] would let Bowdich know that Delacourt had already made the decision and had reassigned [REDACTED].

Delacourt stated that [REDACTED] called him at some point after Delacourt's early [REDACTED] conversation with Bowdich. Delacourt described the call with [REDACTED] as "very short." Delacourt stated that he advised [REDACTED] that the decision to reassign [REDACTED] "was already made" and asked [REDACTED] "What do you want me to do?" According to Delacourt, [REDACTED] told him that he would speak to Bowdich. Delacourt stated that he could not "remember any specifics beyond how brief the call was," including whether they discussed whistleblower retaliation, but stated that [REDACTED] may have mentioned [REDACTED] prior PAR ratings at some point. Delacourt said that he did not recall discussing [REDACTED] performance with [REDACTED] but said that those issues were relevant and would have been more familiar to [REDACTED]. Delacourt added that he would not have spoken with [REDACTED] about the structural reasons for [REDACTED] reassignment given that [REDACTED] was not involved in any of those issues.

O. On or around [REDACTED]: Bowdich Calls Delacourt Regarding Failure to Contact [REDACTED] before Reassigning [REDACTED]

Bowdich told the OIG that at some point he learned from [REDACTED] that Delacourt had reassigned [REDACTED] without talking to [REDACTED]. According to Bowdich, because he was "very angry" that Delacourt had not talked to [REDACTED] as he had instructed him, he waited a day, called Delacourt and told him that it was "downright insubordination." Bowdich said that he told Delacourt that he was "going to let it go" but "don't do that again." Bowdich said that Delacourt told him that "it wasn't that clear" that Bowdich expected him to call [REDACTED], and Bowdich disagreed. Bowdich said that they had a "good discussion" and that he told Delacourt that he was going to "end this here." Bowdich told the OIG that he was so upset because he does not often direct a subordinate to do something but that he "directed him on this because I'm looking out for the organization."

According to Delacourt, Bowdich called and reprimanded him for not contacting [REDACTED] and told him that he was "originally...considering whether or not this was insubordination." Delacourt said, "I apologized [to Bowdich] for not calling [REDACTED], because he clearly took something away different from our conversation than I did." Delacourt added that he clearly "had left [Bowdich] with the impression that this move hadn't happened yet" when in fact it was only that [REDACTED] "hadn't reported yet." Delacourt reiterated, "The decision had been made, which was why I was advising [Bowdich]. The decision had been made." We asked Delacourt why he did not call [REDACTED] Delacourt responded, "I didn't make a decision not to call [REDACTED] It was an oversight."

P. [REDACTED] Formally Reassigned to New Position

[REDACTED] reassignment to the position of SSA [REDACTED], was announced to the entire LAFO on [REDACTED] as part the monthly [REDACTED]. One week later, on [REDACTED] [REDACTED] emailed all LAFO personnel informing them that [REDACTED] would be reassigned effective [REDACTED] and, going forward, the new LAFO point of contact for all [REDACTED] related issues would be [REDACTED]. [REDACTED] was formally reassigned to [REDACTED] new position on [REDACTED]

V. Analysis

As noted above, we examined whether ADIC Paul Delacourt violated the FBI's anti-retaliation policy, Policy Directive (PD) 0727D, when he reassigned SSA [REDACTED]

[REDACTED] PD 0727D prohibits "[a]ll FBI personnel" from retaliating against "anyone for reporting a compliance concern that the reporting individual reasonably believes to be true," even if the FBI ultimately concludes that there was no compliance concern or violation.³¹ PD 0727D defines "retaliation" as "engaging or threatening to engage in conduct, direct or indirect, that adversely affects an individual who reports a compliance concern in accordance with this directive, as a consequence of such reporting." The policy defines adverse conduct as *any* conduct that "is based on a retaliatory motive and is reasonably likely to deter a reasonable employee from reporting a compliance concern." The conduct does not have to constitute a personnel action as defined under Section 2303.

In retaliation misconduct cases under PD 0727D, there are four elements to establishing that retaliation has occurred: (A) an employee reported a compliance concern; (B) another employee engaged or threatened to engage in conduct that affected the employee who reported the compliance concern; (C) the employee taking such action had knowledge of the reporting of the compliance concern or

³¹ See PD 0727D § 8.1.2. To demonstrate a reasonable belief "an individual must believe that the compliance concern is true, and the belief must also be objectively reasonable; that is, a reasonable person, when confronted with the same or similar facts or circumstances, would conclude that the matter reported is likely to be true." PD 0727D § 16.4.

believed the employee who was affected by the conduct reported a compliance concern; and (D) there is a causal connection between the protected activity and the conduct, i.e., whether the conduct was taken “as a consequence of” the reporting of the compliance concern.³² A causal connection in a misconduct investigation exists if preponderant evidence shows that the conduct is motivated by both retaliatory and non-retaliatory reasons, and the conduct is reasonably likely to deter a reasonable employee from reporting a compliance concern. Factors relevant to the causation element include:

- (1) the stated reasons for the conduct, including inconsistencies in the stated reasons for the conduct;
- (2) the timing between the protected activity and the conduct;
- (3) the presence of retaliatory animus or motivation; and
- (4) any disparate treatment between the employee and other similarly situated individuals who did not engage in protected activity.

In this case, there is no dispute that [REDACTED] reported a “compliance concern” when [REDACTED] alleged to the OIG on October 16, 2018, that LAFO managers had attended a Dodgers playoff game and were provided with a free meal. [REDACTED] told the OIG that [REDACTED] was concerned that this conduct violated FBI ethics policies, specifically citing the rules relating to acceptance of gifts, which is “a concern that the FBI has violated or is not complying with the policies, regulations, and laws that govern it,” as stated in PD 0727D. In addition, it is undisputed that Delacourt engaged in conduct that affected [REDACTED] when he reassigned [REDACTED] from handling [REDACTED] matters [REDACTED]

[REDACTED] Nevertheless, we found that Delacourt believed, prior to that date, that [REDACTED] had reported allegations concerning LAFO executive management’s attendance at the playoff game to CDC [REDACTED] Thus, we considered whether Delacourt reassigned [REDACTED] in retaliation for reporting allegations concerning the Dodgers game to CDC [REDACTED]

As previously discussed, CDC’s are members of the Division Compliance Council, an entity that may receive compliance concerns pursuant to PD 0727D. The evidence showed that Delacourt believed that [REDACTED] discussed LAFO executive management’s attendance at the playoff game with CDC [REDACTED] on October 16. Delacourt told the OIG that when [REDACTED] told him that he had received “a call from [REDACTED] alerting the CDC to possible ethics violations at the

³² See, e.g., in the whistleblower retaliation context, U.S. Office of Special Counsel, *Report of Prohibited Personnel Practice*, OSC File No. MA-14-3308, at p. 10. (available at <https://osc.gov/Resources/redacted%20PPP%20report%2C%20Teresa%20Gilbert%202-5-18.pdf>); see also General Services Administration Office of the Inspector General Investigation of Whistleblower Reprisal Complaint (relating to Thomas Sharpe) (June 21, 2017).

Dodgers game, Delacourt believed that [REDACTED] was one of the people who could have reported the allegations. In addition, Bowdich told the OIG that Delacourt told him in their telephone call on October 16 that he believed that [REDACTED] was the source of the allegation. Based on this evidence, we concluded that Delacourt believed that [REDACTED] had reported a compliance concern to CDC [REDACTED].³³ Thus, we turn next to whether there is a causal connection between Delacourt's reassignment of [REDACTED] and his belief that [REDACTED] had reported a compliance concern to the CDC, *i.e.*, whether the report of the compliance concern was a motivating factor in Delacourt's reassignment of [REDACTED].³⁴ We examine this issue in light of the several factors identified above.

The stated reasons for [REDACTED] reassignment: Delacourt asserted that [REDACTED] reassignment was based on his desire to "streamline" resources and ensure that personnel in "enabler" positions were placed into "operational" roles, and that this was the reason provided to [REDACTED] on [REDACTED] when he informed [REDACTED] of his decision to reassign [REDACTED]. Although Delacourt told the OIG that [REDACTED] had some performance problems, he emphasized to the OIG that [REDACTED] reassignment was not performance-based and was based solely on his desire to maximize the number of personnel in operational positions. This explanation is supported by the [REDACTED] email Delacourt drafted documenting his meeting with [REDACTED] which does not mention [REDACTED] performance as a factor in the reassignment. As support for his position that he had been considering changing the [REDACTED] position since early in his tenure as ADIC, Delacourt pointed to his notes from his first management meeting in December 2017 in which he questioned whether the [REDACTED] position was a full-time role. However, Delacourt acknowledged that, at that time in December 2017, rather than considering removing [REDACTED] duties, he was contemplating keeping the [REDACTED] duties with [REDACTED] and moving [REDACTED] to [REDACTED] where [REDACTED] would report to [REDACTED]. We also found that Delacourt took no action in furtherance of the December 2017 discussion until October 2018, 1 week after he believed [REDACTED] had reported him for alleged

³³ As discussed above, actual knowledge of the reporting is not required; the knowledge element is met even when an employee believes that another employee has reported a compliance concern whether or not the employee has, in fact, reported a compliance concern. See PD 0727D § 15.1.1, referencing Offense Code 5.16.

³⁴ In comments submitted after reviewing a draft of this report, Delacourt's attorney stated that a violation of PD 0727D can only occur when the reprisal is "a 'but-for' cause of a personnel action." Delacourt's attorney continued, "As [PD 0727D] states: The reassignment must be a 'consequence' of the protected disclosure. This rule also implies that the reprisal motivation must be a substantial [], not a mere factor among others, in the decision to reassign." Delacourt's argument is misplaced. PD 0727D defines "retaliation" as "engaging or threatening to engage in conduct, direct or indirect, that adversely affects an individual who reports a compliance concern in accordance with this directive, **as a consequence** of such reporting." Section 16.3 (emphasis added). PD 0727D therefore only requires a finding that the alleged retaliatory conduct be "a" consequence of such reporting and not "the" consequence. Likewise, PD 0727D states, "Conduct adversely affects an individual" if it is "based on a retaliatory motive," which acknowledges that FBI personnel can violate PD 0727D if they are motivated by both retaliatory and non-retaliatory reasons. FBI Offense Code 5.16, which prohibits retaliation, is in accord; it applies where the adverse action is "motivated by both retaliatory and non-retaliatory reasons." We therefore find that retaliation under PD 0727D can occur when an action is motivated by numerous reasons, only one of which is retaliatory.

misconduct to the CDC's Office. Thus, we did not find the December 2017 discussion as supporting Delacourt's position that his decision was non-retaliatory.

We did find some testimonial evidence to corroborate Delacourt's stated reasons for reassigning [REDACTED]. [REDACTED] testified that Delacourt was "always looking to put agents back on the street from enablers positions" and that once the [REDACTED] duties were taken from [REDACTED] in [REDACTED], [REDACTED] told Delacourt, "[W]e're wasting a [REDACTED] SSA spot that we could use somewhere else." [REDACTED] also corroborated the fact that Delacourt was generally concerned about maximizing the LAFO's resources when [REDACTED] stated "LAFO management had had ongoing discussions about enabler positions since Delacourt's arrival in LAFO."

However, we found that this evidence of a possible legitimate, non-retaliatory reason for [REDACTED] reassignment was undermined by Delacourt providing inconsistent explanations about the reasons for [REDACTED] reassignment. First, when we asked Delacourt about what he expected from Bowdich in connection with [REDACTED] reassignment, Delacourt stated that he expected "support" because he was doing what was expected of him by "hold[ing] people accountable and mak[ing] difficult personnel decisions." This testimony by Delacourt indicates that the reason for [REDACTED] reassignment was performance-based, contradicting his testimony that [REDACTED] reassignment was based solely on the operational needs of the office. In addition, several witnesses reported that Delacourt informed them that the basis for [REDACTED] reassignment was performance-based. The Special Assistant reported that at the management retreat on October 24 and 25, the discussion concerning [REDACTED] focused more on [REDACTED] poor performance than anything else. In addition, in a meeting with ADC3 on [REDACTED] weeks after he had informed [REDACTED] that [REDACTED] was being reassigned in order to streamline resources—Delacourt justified [REDACTED] move to ADC3 entirely in terms of performance. Likewise in telephone calls with Bowdich and [REDACTED] in [REDACTED], Delacourt described his reasons for reassigning [REDACTED] primarily in terms of [REDACTED] poor performance. Inconsistent explanations suggest that the proffered explanation is a pretext for an improper motive.³⁵

The timing between the compliance concern and the conduct: A short time span between the reporting of the compliance concern and the alleged retaliatory conduct may support an inference that an employee's reporting of a compliance

³⁵ U.S. Office of Special Counsel Prohibited Personnel Practice Report Involving Teresa Gilbert, OSC File No. MA-14-3308 at 13 (holding that "[t]he lack of clear and consistent explanations for contested personnel actions makes it difficult to prove that they were taken for a reason other than Gilbert's engaging in protected activity"); *Donahue v. Clair Car Connection, Inc.*, 736 F. Supp. 2d 294, 317 (D. Me. 2010) (in an age discrimination case under the Age Discrimination in Employment Act (ADEA), holding that the employer's "shift in explanation [for plaintiff's layoff] in itself constitutes evidence of pretext"); *Velez v. Thermo King De Puerto Rico, Inc.*, 585 F.3d 441, 449 (1st Cir. 2009) (in an age discrimination case under the ADEA, holding that "[t]he fact that the employer gave different reasons at different times for its action surely supports a finding that the reason it ultimately settled on was fabricated"); *Trafton v. Sunbury Primary Care, P.A.*, 689 F. Supp. 2d 180, 197 (D. Me. 2010) (in a discrimination case under the Americans with Disability Act, holding that "[o]ne way a plaintiff can establish pretext is by showing weaknesses, inconsistencies and contradictions in the employer's proffered legitimate reasons for termination").

concern was a motivating factor in the retaliatory conduct.³⁶ We concluded that the decision to remove [REDACTED] responsibilities from [REDACTED] and reassign [REDACTED] to another position was made at the LAFO management retreat on October 24 or 25, a little more than a week after Delacourt suspected that [REDACTED] had alleged misconduct by him to the CDC office in connection with the Dodgers playoff game.

There is evidence that Delacourt was at least considering changing something about [REDACTED] position before the Dodgers playoff game: the fact that he questioned whether it was a full-time job shortly after he became ADIC in December 2017; the fact that he reassigned the [REDACTED] duties to [REDACTED]; and the fact that he added [REDACTED] to participate in the bi-weekly [REDACTED] meetings with [REDACTED], also in [REDACTED]. Moreover, Delacourt and [REDACTED] both told the OIG that the decision to reassign [REDACTED] was made before the Dodgers game and provided some evidence to support their assertion. However, the written summary that the Special Assistant prepared from the management retreat, and [REDACTED] detailed recollection of their discussion, show that no concrete plan to reassign [REDACTED] was actually made until the management retreat.

Because we concluded that the decision to reassign [REDACTED] occurred close in time to Delacourt's conversation with [REDACTED] about the Dodgers playoff game allegations, the timing supports an inference of retaliation.

In a recently submitted memorandum to the OIG and in comments provided to the OIG after reviewing a draft of this report, Delacourt and his counsel argue that the decision to reassign [REDACTED] "was made well before [Delacourt] was aware of any alleged protected activity" by [REDACTED] and that "[a] causal connection cannot exist where the wheels had already been put in motion to collapse and elevate the LAFO [REDACTED] role, and the lateral reassignment of SSA [REDACTED]" Delacourt specifically cited the testimony of [REDACTED] and [REDACTED] as support for the "stubborn fact" that Delacourt's decision to reassign [REDACTED] "was firmly made in [REDACTED], and reinforced in [REDACTED] well before" [REDACTED] suspected disclosure to [REDACTED]. While, as stated above, there is evidence to support the fact that Delacourt was at least considering changing something about [REDACTED] position before the Dodgers playoff game, the Merit Systems Protection Board has made clear in whistleblower matters that personnel actions that are "contemplated," rather than "firmly decided upon," "initiated," or "approved" before learning about a protected disclosure are not exempt from review. See *Fickie v. Dep't of Army*, 86 M.S.P.R. 525, 530 (2000);

³⁶ U.S. Office of Special Counsel Prohibited Personnel Practice Report Involving Teresa Gilbert, OSC File No. MA-14-3308 at 10-12 (holding one type of evidence establishing the causal connection between the protected activity and the personnel action was the close timing between employee's protected disclosures and the personnel actions); *Culver v. Gorman & Co.*, 416 F.3d 540, 546 (7th Cir. 2005) (in a Title VII and Equal Pay Act retaliation case, holding "[o]f major significance is the fact that only three days had elapsed between Culver's initial complaint of discrimination and her termination...[t]his short 72-hour period clearly gives rise to an inference of suspicious timing"); *Ashok v. Barnhart*, 289 F. Supp. 2d 305, 315 (E.D.N.Y. 2003) (in a Title VII retaliation case, holding "a period of only two months between a protected activity and an adverse action may permit a reasonable jury to find the acts to be temporally proximate and causally related").

Anderson v. Dep't of Justice, No. 1221-12-0544, 2015 WL 5530112 (Sept. 21, 2015); *Sherman v. Dep't of Homeland Sec.*, 122 M.S.P.R. 644, 650-51 (2015).

We disagree with Delacourt's contention that a preponderance of the evidence demonstrates that the decision to reassign [REDACTED] was made or even "firmly decided upon," prior to the Dodgers game. The evidence shows that Delacourt did not take concrete steps to reassign [REDACTED] until a management meeting 10 days after the Dodgers game. Specifically, the Special Assistant described a conversation on October 24 or 25 where complaints about [REDACTED] performance led to a "pretty general agreement" among the SACs that the [REDACTED] duties needed to be transferred to someone else. According to the Special Assistant, "[Delacourt] had heard a number of these complaints about [REDACTED] before and that he felt like it was probably time to move [REDACTED] out of that position and transition it to [REDACTED]." We found the Special Assistant's testimony, that the first time [REDACTED] reassignment was discussed at a management meeting was on October 24 or 25, particularly persuasive given that one of [REDACTED] duties was to [REDACTED]. In addition, notes taken by the Special Assistant at the October 24 or 25 management meeting indicate that [REDACTED] documented the realignment of the [REDACTED] SSA duties with a [REDACTED] as an "action item" from the retreat.

Apart from the Special Assistant's testimony and [REDACTED] notes, witness testimony concerning the transfer of [REDACTED] duties to [REDACTED] also supports our conclusion that the decision to reassign [REDACTED], while contemplated earlier, was not "firmly decided upon" until after October 16, 2018. [REDACTED] told the OIG that [REDACTED] first learned about the "possibility" of [REDACTED] taking over the [REDACTED] duties "a couple of months" after [REDACTED]. Despite Delacourt's assertions to the contrary, [REDACTED] corroborated [REDACTED] testimony, explaining that prior to "pull[ing] the trigger" on reassigning [REDACTED] before asking [REDACTED] if [REDACTED] would be able to handle the [REDACTED] responsibility." Delacourt's own testimony shows that he did not "decide" to reassign [REDACTED] from [REDACTED] until after he spoke to [REDACTED] about whether [REDACTED] could handle the additional responsibility. As Delacourt explained, "[W]ho's taking over the [REDACTED] role would have been an important conversation to have before I take that role away." This testimony undercuts Delacourt's contention that the decision to move [REDACTED] was "firmly made in [REDACTED], and reinforced in [REDACTED]."

The presence of a reprisal motive or retaliatory animus: Because Delacourt was the subject of, or may have been embarrassed by, the allegations concerning the Dodgers game, the presence of a retaliatory motive is high. In addition, some of Delacourt's statements about [REDACTED] could be interpreted as reflecting animus toward [REDACTED] connected to [REDACTED] making a complaint. Delacourt told the OIG that the fact that [REDACTED] accused him of using his position to get access to a luxury suite at a playoff game made him angry, and the evidence shows that Delacourt believed that [REDACTED] told [REDACTED] this information. Delacourt also said that he found it "irresponsible" for [REDACTED] to have reported

allegations about the Dodgers game to the OIG without first asking him questions about the incident, suggesting that he also found it irresponsible for [REDACTED] to have reported the allegations to [REDACTED] as he believed [REDACTED] had done. However, the FBI's anti-retaliation policy does not impose a requirement that employees discuss their compliance concerns with the subject prior to making a protected disclosure. Rather, Section 8.4.1 of the FBI's anti-retaliation policy allows FBI personnel to directly report his or her compliance concerns to six categories of offices/personnel. Therefore, Delacourt's "frustration" with [REDACTED] for reporting a non-frivolous allegation to the OIG without first advising him of the concern may be further evidence of retaliatory animus. Moreover, we concluded that Delacourt's failure to follow Bowdich's direction to discuss [REDACTED] reassignment with [REDACTED] also calls into question Delacourt's motive. Even if Delacourt understood Bowdich's direction to be a suggestion and not an order, Delacourt did not act on the Deputy Director's suggestion about a personnel decision that he himself said he recognized as "not being without controversy." Despite the Deputy Director's caution to consult with a personnel law expert during their phone conversation in early [REDACTED], Delacourt told [REDACTED] that he intended to follow through on [REDACTED] reassignment during a meeting with [REDACTED] on [REDACTED], which occurred within days of Delacourt's conversation with Bowdich. For these reasons, we concluded this decision to proceed without following the Deputy Director's suggestion is further circumstantial evidence supporting an inference of retaliatory motive.

Any disparate treatment between the employee and other similarly situated individuals who did not engage in protected activity: We found some evidence to suggest that Delacourt replaced some employees who were in what Delacourt described as "enabler" positions (like [REDACTED] with non-agent professional staff. [REDACTED]

[REDACTED] We did not obtain evidence, however, of another employee occupying an "enabler" position who had their duties removed and were reassigned to a new position, as was [REDACTED]

VI. Conclusion

For the reasons stated above, we concluded by a preponderance of the evidence that ADIC Delacourt's reassignment of [REDACTED] was motivated by both retaliatory and non-retaliatory reasons, which constitutes a violation of the FBI's anti-retaliation policy, PD 0727D. We are referring our findings to the FBI for potential disciplinary or administrative action.³⁷

³⁷ This report was originally issued in April 2020. The FBI subsequently advised the OIG that, following its receipt and review of the report, the FBI made the decision to reassign Assistant Director in Charge Paul Delacourt, which reassignment is anticipated to occur not later than August 1, 2020. The report was updated to add the information in this footnote.



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