



U.S. OFFICE OF SPECIAL COUNSEL
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Washington, D.C. 20036-4505

The Special Counsel

March 8, 2023

The Honorable Merrick B. Garland
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Re: OSC File No. DI-23-000261
Referral for Investigation—5 U.S.C. § 1213(c)

Dear Attorney General Garland:

I am referring to you for investigation a whistleblower disclosure that officials at the U.S. Department of Justice, Bureau of Prisons (BOP), Federal Detention Center Miami (FDC Miami), Miami, Florida engaged in conduct that constitutes a violation of law, rule, or regulation, gross mismanagement, a gross waste of funds, and an abuse of authority. A report of your investigation of these allegations and any related matters is due to the Office of Special Counsel (OSC) on May 8, 2023.

██████████, a case manager at FDC Miami who consented to the release of her name, alleged that inmates have been wrongfully denied participation in certain BOP programs at FDC Miami. The allegations to be investigated include:

- FDC Miami officials routinely fail to process inmate applications and referrals for certain BOP programs in a timely manner;
- FDC Miami officials directed ██████████ to post-date paperwork in order to appear compliant with BOP Program Statement 5140.42, *Transfer of Offenders To or From Foreign Countries* and Program Statement 5180.05, *Central Inmate Monitoring System*;
- FDC Miami officials have misinformed inmates during the admissions and orientation process as to the availability of certain BOP programs; and
- Any additional or related allegations of wrongdoing discovered during the investigation of the foregoing allegations.

██████████ has been employed as a Case Manager at FDC Miami since May 2020. She alleged that a persistent backlog of inmate applications and referrals for BOP programs has prevented eligible inmates from receiving placements in a residential reentry center (RRC) or

“halfway houses,” from participating in BOP’s International Prisoner Transfer Program (treaty transfer program), and from being released to home confinement pursuant to the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

Further, [REDACTED] disclosed that agency officials instructed her to duplicate an inmate’s treaty transfer application form originally submitted and dated in October 2021 but to date the duplicate form December 2022 to make FDC Miami’s application processing timeline appear compliant with BOP policy. She also disclosed that in July 2021 she was directed to backdate paperwork concerning an inmate’s classification in the Central Inmate Monitoring System (CIMS) because the inmate was not notified within 30 days of his CIMS classification as required by BOP policy.¹

[REDACTED] estimates that at least 40 inmates under her supervision either were not referred to a RRC or were not admitted because their referral paperwork was not completed at all or was not completed with sufficient time for the inmate to participate in the program. For example, [REDACTED] estimates that the applications for treaty transfers of at least five inmates have already exceeded the 60-day timeline for processing such applications.² [REDACTED] alleges that these processing delays have resulted in unnecessary expenses associated with holding inmates at FDC Miami beyond the time that they are eligible to be admitted to a halfway house, transferred to a foreign country, or released to home confinement.

[REDACTED] also alleges that FDC Miami’s Health Services Department failed to timely provide information regarding inmates who may have COVID-19 risk factors that would make them suitable for home confinement pursuant to the CARES Act and that the delay prevented her from completing the referral documents before at least one inmate was transferred to another facility.

Finally, [REDACTED] also alleged that agency officials provided inaccurate information to inmates during the admissions and orientation process on the availability of certain programs at FDC Miami.

Pursuant to my authority under 5 U.S.C. § 1213, I have concluded that there is a substantial likelihood that the information provided to OSC discloses a violation of law, rule, or regulation, gross mismanagement, a gross waste of funds, and an abuse of authority. Please note that specific allegations and references to violations of law, rule, or regulation are not intended to be exclusive. If, in the course of your investigation, you discover additional

¹ BOP Program Statement 5180.05 states, “The case manager shall ensure that the affected inmate is notified in writing as promptly as possible of the classification and the basis for it,” and further provides, “For purposes of this Program Statement, ‘prompt’ has been defined as within 30 days of classification.”

² BOP Program Statement 5140.42 provides that an inmate’s initial application for a transfer to his country of citizenship must be forwarded to the Assistant Administrator of the Correctional Programs Branch in BOP’s Central Office “within 60 calendar days of the inmate’s initial request.”

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violations, please include your findings on these additional matters in the report to OSC. As previously noted, your agency must conduct an investigation of these matters and produce a report, which must be reviewed and signed by you. Per statutory requirements, I will review the report for sufficiency and reasonableness before sending copies of the agency report along with the whistleblower's comments and any comments or recommendations I may have, to the President and congressional oversight committees and making these documents publicly available.

Additional important requirements and guidance on the agency report are included in the attached Appendix, which can also be accessed at <https://osc.gov/Pages/DOW.aspx>. If your investigators have questions regarding the statutory process or the report required under 5 U.S.C. § 1213, please contact Catherine A. McMullen, Chief, Disclosure Unit, at (202) 804-7088 or cmcmullen@osc.gov for assistance. I am also available for any questions you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "Henry J. Kerner", with a stylized flourish at the end.

Henry J. Kerner
Special Counsel

Enclosure

cc: The Honorable Michael E. Horowitz, Inspector General

APPENDIX

AGENCY REPORTS UNDER 5 U.S.C. § 1213

GUIDANCE ON 1213 REPORT

- OSC requires that your investigators interview the whistleblower at the beginning of the agency investigation when the whistleblower consents to the disclosure of his or her name.
- Should the agency head delegate the authority to review and sign the report, the delegation must be specifically stated and include the authority to take the actions necessary under 5 U.S.C. § 1213(d)(5).
- OSC will consider extension requests in 60-day increments when an agency evidences that it is conducting a good faith investigation that will require more time to complete.
- Identify agency employees by position title in the report and attach a key identifying the employees by both name and position. The key identifying employees will be used by OSC in its review and evaluation of the report. OSC will place the report without the employee identification key in its public file.
- Do not include in the report personally identifiable information, such as social security numbers, home addresses and telephone numbers, personal e-mails, dates and places of birth, and personal financial information.
- Include information about actual or projected financial savings as a result of the investigation as well as any policy changes related to the financial savings.
- Reports previously provided to OSC may be reviewed through OSC's public file, which is available here: <https://osc.gov/Pages/Resources-PublicFiles.aspx>. Please refer to our file number in any correspondence on this matter.

RETALIATION AGAINST WHISTLEBLOWERS

In some cases, whistleblowers who have made disclosures to OSC that are referred for investigation pursuant to 5 U.S.C. § 1213 also allege retaliation for whistleblowing once the agency is on notice of their allegations. The Special Counsel strongly recommends the agency take all appropriate measures to protect individuals from retaliation and other prohibited personnel practices.

EXCEPTIONS TO PUBLIC FILE REQUIREMENT

OSC will place a copy of the agency report in its public file unless it is classified or prohibited from release by law or by Executive Order requiring that information be kept secret in the interest of national defense or the conduct of foreign affairs. 5 U.S.C. § 1219(a).

EVIDENCE OF CRIMINAL CONDUCT

If the agency discovers evidence of a criminal violation during the course of its investigation and refers the evidence to the Attorney General, the agency must notify the Office of Personnel Management and the Office of Management and Budget. 5 U.S.C. § 1213(f). In such cases, the agency must still submit its report to OSC, but OSC must not share the report with the whistleblower or make it publicly available. See 5 U.S.C. §§ 1213(f), 1219(a)(1).