



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

The Special Counsel

September 10, 2024

The Honorable Merrick B. Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Re: OSC File No. DI-24-001399
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 Department of Justice, Bureau of Prisons (BOP), Federal Correctional Institute Three Rivers (FCI Three Rivers), Live Oak County, Texas, engaged in actions that may constitute a violation of law, rule, or regulation and gross mismanagement. A report of your investigation of these allegations and any related matters is due to the Office of Special Counsel (OSC) on November 11, 2024.

The whistleblower, Case Manager [REDACTED], who consented to the release of his name, alleged that BOP officials are failing to update Inmate Financial Responsibility Program (IFRP) assignments, load court-ordered financial obligations into BOP's SENTRY database, and collect these financial obligations from reincarcerated inmates, in violation of BOP Program Statement P5380.08 and 28 C.F.R. § 545.11. The allegations to be investigated include:

- BOP is failing to reset inmates' IFRP assignments to "unassigned" when leaving BOP custody. Accordingly, when individuals are reincarcerated, prior assignments are retained in the SENTRY database.¹

¹ See, BOP Program Statement P5380.08, § 9 SENTRY Requirements ("The Unit Team must enter an appropriate IFRP assignment into SENTRY no later than initial classification").

- For reincarcerated inmates, BOP Case Managers and Correctional Counselors are failing to identify new court-ordered financial obligations², input such information into the SENTRY database³, establish new financial plans⁴, or document the inmates' refusals⁵; and
- Any additional, related allegations of wrongdoing discovered during the investigation of the foregoing allegations.

██████████ identified 32 inmates at FCI Three Rivers with IFRP assignment dates that were prior to their incarceration dates, indicating that their assignments were not reset to "unassigned" when they left BOP custody and that new assignments were not entered into the SENTRY database when they were reincarcerated. ██████████ alleged that these inmates collectively have \$11,910 in financial obligations that are not being repaid to courts and crime victims. ██████████ explained that these inmates were not given an opportunity to enter into a financial plan to repay their obligations. At the same time, these inmates also avoided potential negative consequences associated with refusing to participate in the IFRP, such as unfavorable parole recommendations, preclusion from favorable work assignments, and commissary purchase restrictions. While ██████████ does not have access to court-ordered financial obligation information for inmates at other BOP facilities, he identified 2,517 additional inmates in BOP custody whose IFRP assignment dates are prior to their incarceration dates. In sum, the whistleblower alleges that the failure to assist reincarcerated inmates in establishing a financial plan prevents them from satisfying their financial obligations to the courts and crime victims, and prevents BOP from imposing negative consequences on reincarcerated inmates that refuse to participate in the IFRP.

I have concluded that there is a substantial likelihood that the information provided to OSC discloses a violation of law, rule, or regulation and gross mismanagement. Please note that specific allegations and references to specific violations of law, rule or regulation are not intended to be exclusive. As previously noted, your agency must conduct an investigation of these matters, and 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.

² See, 28 C.F.R. § 545.11(a) ("At initial classification, the unit team shall review an inmate's financial obligations, using all available documentation, including, but not limited to, the Presentence Investigation and the Judgment and Commitment Order(s)").

³ See, BOP Program Statement P5380.08, § 9 SENTRY Requirements ("Unit staff are responsible for entering data into the IFRP SENTRY module accurately").

⁴ See, 28 C.F.R. § 545.11 ("When an inmate has a financial obligation, unit staff shall help that inmate develop a financial plan and shall monitor the inmate's progress in meeting that obligation").

⁵ See, BOP Program Statement P5380.08, §9 SENTRY Requirements ("'"Refused to Participate in Program' is entered immediately when an inmate verbally refuses to participate in the program").

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Additional important requirements and guidance on the agency report are included in the attached Appendix, which can also be accessed at <https://osc.gov/Services/Pages/DU-Resources.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 cursive script that reads "Hampton Dellinger".

Hampton Dellinger
Special Counsel

Enclosure

cc: The Honorable Michael E. Horowitz, DOJ 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.
- 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.
- The statute provides that the agency report shall be reviewed and signed by the agency head. 5 U.S.C. § 1213(d). Agencies should fulfill this Congressional mandate.
- 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. 5 U.S.C. §§ 1213(f), 1219(a)(1).