December 8, 2021

The President
The White House
Washington, D.C. 20500

Re: OSC File No. DI-20-000557

Dear Mr. President:

I am forwarding a report transmitted to the Office of Special Counsel (OSC) by the U.S. Department of Health and Human Services (HHS) in response to disclosures of wrongdoing at the Centers for Disease Control and Prevention (CDC), Washington, D.C. The whistleblower, who chose to remain anonymous, disclosed improprieties associated with the training and protection of front-line, CDC public health workers (PHWs) who assisted with the nationwide COVID-19 response at the beginning of the pandemic. I have reviewed the disclosure, agency report, and in accordance with 5 U.S.C. §1213(e), provide the following summary of the reports and my findings. The whistleblower did not comment on the agency report.

The Allegations

The whistleblower disclosed three allegations related to the deployment of PHWs to assist with the COVID-19 response at the John F. Kennedy International Airport (JFK) in New York City, New York during the initial stages of the pandemic. First, the whistleblower alleged that PHWs were not given proper training or personal protective equipment (PPE) at the Emergency Operations Center (EOC) in Atlanta, Georgia. The whistleblower explained that personnel attended a three-day pre-deployment training at the EOC in early February 2020. Upon arrival, the whistleblower submitted to a medical evaluation, including a respirator fit test, and received a PowerPoint presentation with general information about COVID-19. The whistleblower asserted that the presentation was the only training provided and did not explain the screening activities personnel would be responsible for performing. The whistleblower alleged that PHWs were not provided with training on completing secondary screenings or properly using PPE at any time.

Second, the whistleblower alleged that PHWs, who had direct contact with passengers arriving at JFK, did not have proper training or PPE necessary to perform their duties. The whistleblower explained that they were deployed to a quarantine station at JFK to perform
secondary screenings of airline passengers who arrived on flights with passengers who had traveled to China within the previous 14 days. In order to complete the secondary screenings, all passengers were required to wait in a confined area outside of the terminal while PHWs processed their documentation and assessed their current physical condition. As part of the screening duties, the whistleblower was required to come in direct contact with the passengers and handle their passports, travel documents, and health information forms. The whistleblower explained that PHWs were only given gloves and surgical face masks while completing secondary screening of the passengers who potentially had been exposed to COVID-19.2

Finally, the whistleblower disclosed that the agency did not give PHWs guidance or establish requirements for monitoring and reporting their own condition to public health authorities to prevent COVID-19 transmission. The whistleblower explained that most, if not all, CDC personnel at JFK used public transportation to report for duty and feared that the lack of guidance from the agency may have accelerated the transmission of COVID-19.

The Agency Report

The investigation fully substantiated the whistleblower’s allegations. While the investigation only focused on the timeline from January 1, 2020 through March 31, 2020, the report concluded that vulnerabilities existed in the health and safety protocols instituted and overseen by CDC officials. First, the investigation found that PHWs were not given proper training or PPE at the EOC in Atlanta, Georgia, in violation of OSHA standards. The report concluded that at no point during the period of review did CDC’s training for non-respirator PPE include all OSHA required content, nor did CDC’s PPE training require that employees demonstrate their ability to properly use the PPE to perform their job duties.

Second, the investigation found that as of March 2020, CDC still did not require secondary screeners to wear PPE as outlined in its hazard assessment for similar job duties. Most alarmingly, the report stated that PHWs reported that the policies implemented to limit the use of PPE may have been influenced by a desire to minimize public alarm. Another troubling element to this finding was that CDC did not allow JFK PHWs to voluntarily wear PPE beyond what was outlined in its policies, even when personnel requested to do so. The report ultimately concluded that due to the decisions to initially require minimal PPE and not implement other administrative controls, secondary screeners were exposed to symptomatic, infectious passengers and were potentially exposed to asymptomatic, infectious passengers.

Third, the investigation found that PHWs had insufficient guidance or requirements to monitor and report their own conditions to prevent transmission of COVID-19. Specifically, the report stated that CDC officials did not monitor or enforce the temperature checks and symptoms reports, and PHWs were not trained on how to monitor themselves for COVID-19 symptoms,

2Occupational Safety and Health Administration (OSHA) standards state that respirators offer the best protection for personnel who must work either in contact with or within six feet of people who at high risk for pandemic influenza; additionally, the guidance states that surgical masks are not designed or certified to prevent the inhalation of small airborne contaminants, which is how COVID-19 spreads. See 29 CFR 1910.134. According to the whistleblower, CDC management at JFK do not allow PHWs to wear respirators.
other than using temperature checks. While CDC had a self-reporting mechanism in place, the investigation discovered vulnerabilities in that process and determined that CDC could not ensure that PHWs were accurately reporting their symptoms. Of greater concern, the investigation found that the policies on social distancing and self-quarantining did not address self-quarantining while deployed, which resulted in PHWs exposing the public to COVID-19 when using public transportation.

HHS OIG recommended several corrective actions for CDC. Primarily, it suggested that CDC ensure that its PPE training meet OSHA standards and that personnel demonstrate an ability to use all PPE properly before performing their job duties. Additionally, HHS OIG recommended that CDC establish procedures for developing, implementing, and communicating internal controls to personnel for PPE requirements during an emergency response, and to establish a policy addressing whether personnel may don more PPE than what is required. Finally, HHS OIG recommended that CDC implement enhanced procedures to ensure that personnel have proper guidance on how to monitor for symptoms, social distance, self-quarantine, and limit their exposure to the public during an infectious disease response mission.

Following HHS OIG’s investigation, CDC was given an opportunity to address the findings as part of the final report submitted by Secretary Becerra to OSC. In its response, CDC took exception to HHS OIG’s characterization of CDC’s conduct and noted that the investigation examined CDC actions retroactively with a current understanding of the virus, rather than what was known between January and March 2020. Moreover, CDC indicated that the investigation failed to consider or address pertinent limitations during this time. For example, CDC noted the extreme PPE shortages nationwide and stated that the federal government was doing everything possible to acquire and preserve these resources.

CDC also highlighted that many of the HHS OIG recommendations were implemented in real time as the pandemic evolved and more information about the virus became available. CDC enhanced PPE training requirements among all personnel, ensuring that the trainings met OSHA standards. Further, CDC explained that it has since developed a risk assessment process for identifying appropriate PPE prior to deployments and that it has updated its policies and procedures for employees to follow should they choose to don more PPE than is required during deployment. Finally, CDC indicated that it also implemented the recommended HHS OIG corrective actions related to symptom monitoring, social distancing, and self-quarantining.

The Special Counsel’s Findings

I have reviewed the original disclosure and the agency report. I want to commend the whistleblower for bringing these allegations to OSC and acknowledging the significance of this matter. Because of the whistleblower’s courage and willingness to shed light on these issues, the agency has significantly improved the health and safety of HHS personnel.

I also find it important to recognize that the vulnerabilities and challenges documented in the report occurred in the very early stages of the pandemic when much of what we have come to learn about COVID-19 today was still unknown. It appears that following these early pandemic
operations, CDC implemented the necessary corrective actions to improve the safety of its employees. For these reasons, I have determined that the report meets the statutory requirements, and the findings appear reasonable.

As required by 5 U.S.C. § 1213(e) (3), I have sent a copy of this letter and agency report, which includes the HHS OIG’s findings and the CDC’s response, to the Chairs and Ranking Members of the Senate Committee on Health, Education, Labor, and Pensions and the House Committee on Energy and Commerce. I have also filed redacted copies of these documents and the redacted referral letter in our public file, which is available at www.osc.gov. This matter is now closed.

Respectfully,

Henry J. Kerner
Special Counsel

Enclosures