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The Special Counsel

April 2, 2024

The President
The White House
Washington, D.C. 20050

Re: OSC File No. DI-21-000866

Dear Mr. President:

I am forwarding to you a report transmitted to the U.S. Office of Special Counsel (OSC) by the Department of the Interior (DOI) in response to the Special Counsel's referral of a disclosure of wrongdoing at the National Park Service (NPS), Southeast Archaeological Center (SEAC), Tallahassee, Florida. I have reviewed the disclosure, agency report, and whistleblower comments, and in accordance with 5 U.S.C. § 1213(e), have determined that the report contains the information required by statute and the findings appear reasonable.¹ The whistleblower, [REDACTED], an archaeologist with the SEAC, consented to the release of [REDACTED] name. The following is a summary of the findings.

The Allegations

[REDACTED] disclosed that SEAC officials repeatedly violated statutes governing the protection of Native American cultural resources and engaged in other unethical and prohibited activities. Specifically, [REDACTED] alleged that SEAC Archaeologists [REDACTED] and [REDACTED] (the archeologists) violated the Archaeological Resources Protection Act (APRA) and the Native American Graves Protection and Repatriation Act (NAGPRA) by facilitating the transfer of looted Native American funerary items and human remains from a third party to NPS.

[REDACTED] explained that prior to 2018, [REDACTED] and [REDACTED] engaged with a suspected looter to facilitate the transfer of Native American funerary goods and human remains to NPS possession. According to [REDACTED], the individual looted the items in the 1960s or 1970s from burial sites on Bakers Landing on Tyndall Airforce Base (TAFB) in violation

¹ The allegations were referred to Secretary of the Interior Deb Haaland for investigation pursuant to 5 U.S.C. § 1213(c) and (d). Secretary Haaland directed the DOI Office of Inspector General (OIG) to investigate this matter and delegated the authority review and sign the report to DOI Acting Associate Solicitor for General Law Dondrae Maiden.

of the Antiquities Act.² [REDACTED] alleged that [REDACTED] and [REDACTED] were aware the items were looted but obtained them through a study in coordination with an ongoing NPS archaeological investigation at TAFB. According to [REDACTED] these actions violated APRA, which prohibits persons from selling, purchasing, exchanging, transporting, or receiving any archaeological resource if such resource was excavated or removed from public lands or Native American lands in violation of federal law.³ [REDACTED] also alleged that [REDACTED] and [REDACTED] violated NAGPRA, which prohibits the sale, purchase, use for profit, or transport for sale or profit of Native American remains without the right of possession.⁴ Relatedly, [REDACTED]. [REDACTED] alleged that [REDACTED] and [REDACTED] routinely evaded compliance with statutory, regulatory, executive orders, and agency policy requiring consultation with Native American tribes prior to disturbing sensitive burial sites.

[REDACTED] further alleged that [REDACTED] and [REDACTED] involvement with the Southeast Archeology Foundation (SEAF), a non-profit group they founded together, violated multiple federal ethics regulations. [REDACTED] alleged that through SEAF, [REDACTED] and [REDACTED] engaged in private fundraising and applied for research grant funding not available to federal agencies and used the funds obtained through SEAF donations to support their personal research interests. According to [REDACTED], [REDACTED] and [REDACTED] used SEAC funds to reimburse SEAF for questionable expenditures, creating a conflict of interest.⁵

Additionally, [REDACTED] alleged that [REDACTED] improperly used NPS time and resources to develop, produce, market, and fundraise for his personal business venture, and to promote a book he edited, though neither project had a connection to NPS. Relatedly, [REDACTED]. [REDACTED] alleged that [REDACTED] and [REDACTED] routinely evaded compliance with statutes, regulations, executive orders, and agency policies requiring consultation with Native American tribes prior to disturbing sensitive burial sites.

The Agency's Findings

The agency substantiated the allegations in part. The agency determined that in 2017, an archeological collector approached [REDACTED] and [REDACTED] and offered to sell them some Native American potsherds retrieved from burial mounds from TAFB in the 1960s. The collector

² The Antiquities Act, originally codified at 16 U.S.C. § 433, has since been recodified at 54 U.S.C. §§ 320301-320303.

³ 16 U.S.C. § 470ee(b)(2).

⁴ 8 U.S.C. § 1170(a) "Right of possession" is defined as "possession obtained with the voluntary consent of an individual or group that had authority of alienation." 25 U.S.C. § 301(13). Because the human remains in question were allegedly looted, they were not obtained with voluntary consent.

⁵ 5 C.F.R. §§ 2635.402 and 2635.502. Section 2635.402 prohibits employees from participating in matters in which they hold a financial interest. Section 2635.502 prohibits employees from participating in matters that create an appearance of a conflict of interest.

claimed he had a permit to excavate the items from TAFB, but the OIG was not able to locate the permit. The agency determined that the archaeologists did not buy the items from the collector but rather, arranged a donation of the items, which were determined to be potsherds and two Native American skulls, through a third party. ██████ confirmed that he later donated the artifacts to the state of Florida.⁶ Ultimately, the investigative team located the potsherds on a bookshelf outside ██████ office but could not question him further, as he invoked his right to counsel.

Based on the foregoing, the agency did not find that the archaeologists violated either APRA or NAGPRA. Specifically, the agency determined that to establish a criminal violation under ARPA, the government must establish that an archeological resource that falls within the statute's meaning was removed from public or Indian lands without a permit. Although the agency was not able to locate the permit that the archaeological collector asserted he possessed in the 1960s, the agency determined there was also no evidence disproving the assertion by the archaeologist and ultimately, his widow, that he possessed the proper permit. Furthermore, TAFB officials indicated the base lost a significant number of paper records in a 2018 hurricane. With respect to NAGPRA, the agency found that the statute prohibits the intentional excavation and removal of Native American human remains and objects without complying with consultation requirements. The regulations implementing NAGPRA clarify that consultation requirements arise when notice is received that remains are or are likely to be Native American.⁷ The agency concluded that it could not establish a violation of NAGPRA because it could not establish that NAGPRA was applicable to the excavation or purchase of the potsherds as all evidence suggested that the archeological collector obtained the items before NAGPRA's enactment in 1990. Thus, the agency did not substantiate that ██████ and ██████ evaded compliance with statutes, regulations, executive orders, and agency policies requiring consultation with Native American tribes prior to disturbing sensitive burial sites.

The agency substantiated that both ██████ and ██████ violated multiple federal laws, regulations, and policies related to ethical conduct. Specifically, in April 2016, ██████ incorporated the "partner organization," the SEAF, with the state of Florida and paid for the filing fees with his personal funds. The agency confirmed ██████ assigned ██████ to join him as a liaison to the SEAF. The agency confirmed that neither ██████ nor ██████ consulted with an NPS ethics officer prior to establishing SEAF, which was contrary to NPS Director's Order 21, establishing that NPS employees "...should consult with an NPS ethics officer to ensure compliance with applicable requirements." Further, the agency substantiated that ██████ involvement in fundraising through SEAF for an NPS facility project violated both 5 C.F.R. § 2635.808 and NPS Director's Order 21. The agency also determined that ██████

⁶ The State of Florida denied receiving the potsherds because it was illegal to obtain artifacts not retrieved on state land.

⁷ 43 C.F.R. § 10.5(a).

██████ violated 18 U.S.C. § 209 when he engaged in travel related to archeological work using funding from SEAF.

Further, the agency substantiated that ██████ used a debit card obtained through SEAF to pay for airline travel, hotel, and parking expenses to attend a conference in an official capacity as an NPS employee, but did not obtain prior ethics approval, which the agency concluded created, at minimum, the appearance of a potential personal financial interest in SEAF's receipt of grants.⁸ The agency confirmed that ██████ and ██████ also used the NPS logo on publications generated for SEAF, violating multiple ethics standards, and that they applied for federal grants on behalf of SEAF. Additionally, ██████ admitted to sending an undated letter in an official NPS capacity on NPS letterhead to the state's historic preservation grants program recommending it consider funding SEAF, also violating multiple government ethics standards.⁹

Finally, the agency substantiated that ██████ violated multiple ethics standards through the use of government resources and his own title in connection with personal business activities, including, but not limited to, creating and maintaining files for his personal business on his government laptop without obtaining NPS permission to do so; utilizing his public position as an archaeologist with NPS in a manner that the public might construe as government endorsement of personal activities; establishing his own nonprofit group and electronically signing for his nonprofit group's bank account with a government issued PIV card¹⁰; and paying for invoices from his nonprofit group, including services for webinars and web design, with his government-issued purchase card.¹¹ Based on these findings, the agency referred this matter to the U.S. Attorney's Office which ultimately declined to prosecute. While the agency proposed disciplinary action against both ██████ ██████, both archaeologists separated from the agency during the pendency of this matter.

The Whistleblower's Comments

██████ challenged the agency's legal analysis of the statutes, asserting that it incorrectly concluded that ██████ and ██████ did not violate ARPA or NAGPRA, as there was ample information available to the investigators that the individual from whom the archaeologists obtained the artifacts was a known looter, with no right of possession over the artifacts. Additionally, while ██████ acknowledged that the agency substantiated multiple ethical violations relating to ██████ and ██████ personal business ventures, ██████ emphasized that the findings highlight the agency's prioritization of financial wrongdoing

⁸ 5 C.F.R. § 2635.101(b)(14).

⁹ 5 C.F.R. §2635.101(b)(2); 5 C.F.R. § 2635.101(b)(14).

¹⁰ According to the agency, this nonprofit group is a separate entity from SEAF.

¹¹ The agency determined these actions violated 5 C.F.R. § 2635.702, "Use of public office for private gain."

The President
April 2, 2024
Page 5 of 5

over violations of cultural resources laws and Native American civil rights, which are at the heart of ARPA and NAGPRA.

The Special Counsel's Findings

In accordance with 5 U.S.C. § 1213(e), I have determined that the report contains the information required by statute and the findings appear reasonable. That said, I commend [REDACTED] for bringing these allegations forward. OSC urges DOI to make every effort to retrieve the skulls and return them to the appropriate tribal authorities. As required by 5 U.S.C. § 1213(e)(3), I have sent a copy of this letter, the agency report, and whistleblower comments to the Chairs and Ranking Members of the Senate Committee on Energy and Natural Resources and the House Natural Resources Committee. I have also filed redacted copies of these documents and the redacted referral letter in our public file, which is available online at www.osc.gov. This matter is now closed.

Respectfully,



Hampton Dellinger
Special Counsel

Enclosures