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**The Special Counsel**

June 12, 2024

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

Re: OSC File No. DI-23-000376

Dear Mr. President:

I am forwarding to you reports transmitted to the U.S. Office of Special Counsel (OSC) by the Department of Justice in response to the Special Counsel's referral of a disclosure of wrongdoing at the Federal Bureau of Prisons (BOP), United States Penitentiary Florence (USP Florence), Florence, Colorado. The BOP's Office of Internal Affairs (OIA) conducted the investigation. I have reviewed the disclosure, agency reports, and whistleblower comments, and in accordance with 5 U.S.C. § 1213(e), have determined that the reports contain the information required by statute and the findings appear reasonable. The whistleblower, [REDACTED], a BOP Special Investigative Agent, consented to the release of his name. The following is a summary of the findings.

*The Allegations*

[REDACTED] alleged that USP Florence Complex Warden [REDACTED] and Associate Warden [REDACTED] directed staff to physically restrain inmates who engaged in sexual acts under BOP Program Statement No. 5270.09, Table 1, "Prohibited Acts and Available Sanctions," number 205, notwithstanding the nature of the sexual act. In keeping with this policy, Corrections Officers (COs) began inappropriately restraining inmates in violation of BOP Program Statement 5566.08, CN-1, OPI CPD/CBP, "Use of Force and Application of Restraints."<sup>1</sup> [REDACTED] further disclosed that around this same time, [REDACTED] implemented a disciplinary protocol requiring that inmates adjudicated to have engaged in sexual acts participate in a "One Hour Watch High Visibility Program" (High Visibility Watch Program) for sexual offenders.

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<sup>1</sup> BOP Program Statement No. 5566.06, CN-1, OPI CPD/CBP, "Use of Force and Application of Restraints," states, in relevant part, that "[f]orce will ordinarily be used only when attempts to gain voluntary cooperation from the inmate have not been successful." Section 2a. The directive also provides that restraint and force are only authorized when an inmate assaults another individual, destroys governmental property, attempts suicide, inflicts injury upon [him]self, or becomes violent or displays signs of imminent violence. BOP Program Statement No. 5566.06, §552.20, a-e.

Despite [REDACTED] ongoing reports of these improper practices to agency leadership, including [REDACTED], [REDACTED], and, later, USP Warden [REDACTED], they continued.

As a Special Investigative Agent, [REDACTED] reviewed incidents of both inmate and staff misconduct within USP Florence. He disclosed that during a staff meeting held on May 24, 2022, [REDACTED] and [REDACTED] directed staff that, going forward, if they observed inmates engaging in sexual acts or “205s,”<sup>2</sup> they should immediately request assistance, deploy pepper spray, and place the inmate in restraints. [REDACTED] identified masturbation as the specific sexual act at issue. The BOP Table of Offenses provides that committing a sexual act is a high severity level offense and while masturbation is included within this definition, [REDACTED] explained that masturbation is generally not considered a violent act and does not meet BOP criteria for the use of restraints or other physical interventions. However, following the May 24, 2022 meeting, [REDACTED] reported an increased number of complaints involving inmates engaging in non-violent sexual conduct (masturbation) that culminated in the inmates being restrained and placed in the facility’s special housing unit (SHU).

[REDACTED] reported that [REDACTED] also implemented a “One Hour Watch High Visibility Program,” with the intention of deterring such behavior. Placement in this program required inmates to wear a specific khaki jumpsuit without pockets and display a placard signifying the inmate is in the program and must be subject to CO observation every hour. [REDACTED] alleged the program immediately labeled these inmates, most of whom were included only because they had engaged in masturbation, as sexual predators and subjected them to potentially violent retaliatory conduct by other inmates. [REDACTED] also alleged that the policy created an increase in inmate protective custody requests.

### *The Agency’s Findings*

The agency substantiated the allegations in large part. Through a review of incident reports and accompanying video surveillance, the agency found that between May 26, 2022 and February 8, 2023, COs repeatedly placed inmates in the SHU, and subsequently, ambulatory restraints, for engaging in masturbation in the presence of staff when video footage showed the inmates were “compliant, under control, and not a threat to staff or others.” The agency also confirmed that [REDACTED] directed staff to use their OC<sup>3</sup> spray outside of prescribed guidelines and on inmates who did not present a threat to staff safety.

The agency further substantiated that “sometime in 2022,” [REDACTED] developed and implemented the High Visibility Watch Program specifically for placement of inmates who engaged in sexual misconduct, and that this program constituted an ongoing violation of BOP

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<sup>2</sup> “205s” refer to sexual acts, as defined in BOP Program Statement Mo. 5270.09 Table 1, “Prohibited Acts and Available Sanctions, number 205.

<sup>3</sup> “OC” refers to Oleoresin Capsicum Spray, which is an aerosol spray used to subdue inmates where there is a serious threat to the safety of staff, inmates or others.

policy. Significantly, the agency noted that BOP directives for High Visibility Watch Programs pertained only to inmates "...with a history of escape from a secure facility, conspiracy to escape from a secure facility, inmates who are determined to have the financial resources to effect a successful escape, and inmates who, at the Warden's discretion, are determined to be an escape or security risk."<sup>4</sup> The agency further determined that [REDACTED], as [REDACTED] supervisor during this timeframe, was aware of the program but did not take any action to curtail it. The agency also concluded that [REDACTED] failed to "provide...sufficient managerial oversight" over [REDACTED] regarding implementation of this program.

The agency did not substantiate [REDACTED] allegation that there was a correlation between the High Visibility Watch Program and an increase in inmate requests for protective custody. The agency further determined that [REDACTED] was only generally aware of these disciplinary policies and began researching and reviewing the potential concerns when [REDACTED] reported them to her in late 2022. The agency found that due to this investigation in response to OSC's referral, [REDACTED] had taken steps to curtail the High Visibility Watch program as of May/June 2023 and no additional incidents of inappropriate inmate restraints for sexual acts were documented after February 2023.<sup>5</sup>

#### *The Whistleblower's Comments*

[REDACTED] expressed dismay that the agency's findings appear to minimize [REDACTED] level of culpability for this serious and persistent misconduct. [REDACTED] emphasized that though she arrived at a leadership position after [REDACTED] and [REDACTED], the timeline of events shows that she was, and still is, the highest-ranking official at the facility and would necessarily be privy to, and ultimately responsible for, all actions by employees and inmates.

#### *Supplemental Report*

OSC sought additional information on corrective actions, including disciplinary action against responsible officials. OSC also requested further clarification of the timing of USP's and [REDACTED] knowledge of the wrongdoing and inquired as to why the agency did not hold her accountable for these persistent violations, particularly given her status as the highest-ranking official at USP Florence. The agency verified that since OSC's referral of this matter in April 2023, Federal Prisons Program Statement 5566.06 related to Use of Force is undergoing a review that will include revisions, such as adding a directive that employees must recognize and act upon the affirmative duty to intervene to prevent or stop, as appropriate, fellow law enforcement officers from engaging in excessive force; mandating training for all employees on confrontation

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<sup>4</sup>United States Penitentiary Florence Colorado Institution Supplement 5500.14, "Inmate Accountability."

<sup>5</sup> The agency's findings appear to provide conflicting information on the duration of the improper inmate restraint incidents. At one point, the agency states that the cases of improper inmate restraint persisted from May 26, 2022 to February 8, 2023. The agency elsewhere states that "The OIA was also able to determine that the practice of using restraints on inmates solely for engaging in sexual acts had ceased and ...the last incident identified occurred in December 2022."

avoidance and use of force techniques; revising guidance related to medical and mental health consultation in use of force and application of restraint incidents; ensuring video documentation commences as soon as possible to ensure an accurate portrayal of inmate actions and the integrity of employee response. The agency also confirmed that currently, all BOP employees must take part in ongoing use of force training, including an annual refresher. The agency also confirmed that disciplinary action against [REDACTED] and [REDACTED] was pending.<sup>6</sup>

Finally, the agency found that [REDACTED] had only limited knowledge of policies related to Use of Force and Application of Restraints when she took her position in August 2022, and relied mostly on accounts of the program from employees. The agency further found that [REDACTED] began looking into the High Visibility Watch Program when she became aware of it through [REDACTED] report in late 2022. The agency indicated that once [REDACTED] became fully aware of the nature of the program and how [REDACTED] was implementing it, she took steps to curtail it, and the program ceased by early July 2023. Finally, the agency confirmed USP Florence has not resumed, and does not plan to resume, any similar High Visibility Watch Programs at this time.

#### *The Special Counsel's Findings*

I commend [REDACTED] for his diligence as a BOP Special Investigative Agent in reporting this matter, and I am encouraged that the agency has taken meaningful steps toward improving agency policy. As required by 5 U.S.C. § 1213(e)(3), I have sent a copy of this letter, the agency reports, and whistleblower comments to the Chairs and Ranking Members of the Senate Committee on the Judiciary and the House Judiciary 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](http://www.osc.gov). This matter is now closed.

Respectfully,



Hampton Dellinger  
*Special Counsel*

Enclosures

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<sup>6</sup> The agency noted that [REDACTED] was not interviewed during this investigation as he was on extended leave beginning in June 2023. In an update, the agency confirmed that [REDACTED] retired as of April 4, 2024. The agency noted that if [REDACTED] returns to federal service the disciplinary action will be reopened.