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Mrs. Siobhan Smith Bradley
Office of Special Counsel
Washington, DC

Re: Second Supplemental Response to Report of Investigation for OSC Whistleblower Disclosure DI-12-2963.

Mrs. Smith Bradley:

I am in receipt of the report of investigation; presented by Under Secretary of State for Management Patrick Kennedy, for the Office of Special Counsel (OSC) Whistleblower Disclosure with the file number DI-12-2963. I am submitting the second supplemental response, as a corollary to the first two. The purpose is to disclose reprisal, and while doing so, make some final comments regarding actual costs/burden on the public and some clarifications.

I. Clarifications

A. Castelano v. Clinton

In the matter of Castelano v. Clinton, cited in the original response to the Agency's report of investigation (ROI), Mr. Jonathan Rolbin, who signed the settlement in Castelano v. Clinton on the behalf of the Department of Justice, is now the Director of Passport Services' Legal Office. This is further evidence that the Agency, particularly Mr. Rolbin, Managing Director for Passport Issuances Florence Fultz, et al., are fully aware of and are vacating their obligations under the Settlement. Mr. Rolbin is, or has been as of late, the Agency official responsible for writing adjudication policies.

B. Fee Scenarios and the Breadth of the Policy

In the explanation of an exhibit presented, I believe I may have incorrectly performed the math. Based on their own study of frequency for case types, the Agency concluded that 320(a) cases

constitute 0.74% of our workload nationally. That number is almost or more than doubled at the Western Passport Center and the New York Passport Agency. As I stated in the exhibit cover sheet, with the correct math and their 2010 statistic of approximately 14,000,000 applications processed for the year, there would be roughly 103,600 U.S. citizens affected by this policy. Assuming that each of these individuals was a minor at the time of application and applying for a single product type (e.g. all applications were for books or cards, but not a mix), we would be talking about $4,144,000 in fees at the minor rate of $40 for a passport card or $10,808,000 at the minor rate of $105 for a passport book. If each of these individuals was an adult (16 years or older) applying for a passport card, than the $55 fee would apply and the total fees collected would amount to $5,698,000; likewise, if each of these individuals was an adult (again, 16 years or older) applying for a passport book, than the $135 fee would apply and the total fees collected would amount to a whopping $13,986,000. Again, those numbers exist only in the hypothetical scenario where all applications were for the same product type and the applicants belong to the same age group. But consider another hypothetical where the application types were equally split into all four groups—25% of applicants were minors applying for passport cards, 25% minors applying for passport books, 25% adults applying for passport cards, and 25% adults applying for passport books—that would amount to $8,676,500 in total fees collected.

Granted, those numbers include the $25 acceptance fees, which go to the organization that accepts each application, e.g. the Department of State when applicants come to one of our public service counters or the Postal Service when applicants apply through routine procedures. But it is still a fee assessed and must be considered. Besides, the above hypotheticals only consider applications for one product type. Consider applications for both passport books and cards and a scenario where all 103,600 applicants were adults applying for both product types on a single application. This would involve $17,094,000 in fees. And that's not considering the cases that include the $60 expedite fees and $12.72 for overnight delivery. The point is, no matter how statistically insignificant the Agency attempts to make the affects of this policy, money is money, and it adds up quickly. But more importantly, people are people, and all people should be afforded their rights and privileges as written, intended, and uniformly applied in law, rule, regulation, and tradition.

C. Data Provided and Policy History

The financial scenarios in the preceding section are provided in an attempt to highlight the weight of this policy and its potential affect on applicants during the better portion of 2012, 2013, and onward, not in 2010. It makes sense that in 2010 information request letters sent to applicants for at-birth claims would constitute only 0.1% of the total applications processed (ROI, p. 11). Genuine at-birth claims are far more rare than 320(a) INA (Child Citizenship Act) cases, as was the intent of Congress, when the bill was passed and signed into law by President of the United States William Jefferson Clinton in 2000, to grant citizenship to individuals who could not otherwise acquire at birth under the INA. But the Agency seems to insert some rather deceptive details by a) implying that the policy has existed since 2010, and b) providing data only for that year. Per the Agency's ROI (p. 6), the Houston Passport Agency was inquiring into

documenting the earliest date of acquisition as late as January 13, 2012. Meanwhile, in 2010, the Union filed a grievance against WPC Management for its requirement that specialists at that office annotate "both the law under which the adjudicator believed the applicant had derived citizenship and any other laws the applicant may have had a potential claim under, if sufficient evidence had been provided" (emphasis mine.). If the policy, in its national form, truly extended all the way back into 2010, there would have been no need to file the grievance because the additional annotation would be [more] unnecessary.[1]

I happen to know that other passport agencies/offices are not interpreting the "earliest acquisition date" policy as frivolously as WPC has been. The fact that "Ms. Fultz expressed some surprise at the assertion that applications [would be] suspended solely on the basis of an applicant's indication that both of his or her parents were U.S. citizens" is of no surprise to me and perfectly evidentiary of this fact (ROI, p. 6). If suspending applications for at-birth claims based solely on the indication of the citizenship status of a second parent was part of national instruction, there would be no surprise on her part. So, while I do not refute the fact that dates of acquisition are important and the earliest should be sought when there is actual evidence of an at-birth acquisition, e.g. no evidence of a Permanent Resident Card (PRC) and the applicant submits the naturalization certificate for one parent while indicating that the other parent is a U.S. citizen by birth in the U.S., to do so when a PRC is presented or known to exist is duplicative and a waste of resources, both those of the government and of the applicants. For this reason, the Agency should provide data for at-birth information request letters sent during 2012, broken down by office, and the total applications processed at each office during that period. (You must consider WPC, which was the subject of this disclosure, has only been open since August 31, 2009 and has, at the time of this writing, 39 adjudicators. The National Passport Center[2], on the other hand, has approximately 400 adjudicators on three shifts and the Charleston Passport Center has more than two hundred adjudicators.) So what started as a disclosure over a policy as it was being applied solely at WPC has been made national by the Agency in its response in order to attempt to water down its affects using contrived evidence.

D. Foreign Affairs Manual (FAM), PRCs, and the CCA

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[1] Although the ROI correctly states the grievance was found to be 'without merit,' the Office of Adjudication did, later in the year, re-instruct WPC Management to discontinue the practice during November 2010. The 'without merit' determination was more of an example of how childish the Agency's labor relations unit can be when it comes addressing Union grievances and having to make written admissions of wrong doing in response to them. It saves them from having to bear the satisfaction of the Union, when they can make a 'no merit' claim, wait a few months, and then quietly tell Management to discontinue the practice in question.

[2] It is interesting to note that, according to the frequency study performed, the results of which have been provided as Exhibit B, the National Passport Center had a far lower rate of 320(a) cases than more specialized, border agencies and centers. This is due to the fact that they adjudicate work from all over the country and not specific regions. On the other hand, WPC, which adjudicates applications from Arizona, southern California, Washington State, Montana, Wyoming, Minnesota, Wisconson, and Colorado, all of which are border states and/or have large populations of Mexican American citizens, has a higher frequency of 320(a) cases.

In addition to the 7 FAM 1159.2 reference provided in the first response to the ROI, 7 FAM 1159.1(e) states the following:

> *Statutory requirements (for all children): A foreign-born child* ***automatically acquires U.S. citizenship when all of the following have been met****, regardless of the order:*
> *(1) The child has* **at least one United States citizen parent** *(by birth or naturalization);*
> *(2) The child is under 18 years of age (born on or after February 28, 1983); and*
> ***(3) The child is residing in the United States in the legal and physical custody of the United States citizen parent, pursuant to a lawful admission for permanent residence.***

The fact that the Agency concurs that LPRs are not issued to U.S. citizens proves that the policy is a violation of law, rule, or regulation, when it states: "[PRCs] are issued … ***as proof of permanent resident status*** in the [U.S.] and proof of eligibility to work,' and, "People who are already ***U.S. citizens are not eligible for (or in need of) [PRCs]*** as proof of U.S. permanent residence status" (ROI, p. 10).

So, the risk of "incomplete information at the time of original issuance or just simple error" when issuing PRCs constitutes justification for, as admitted to by the Agency as accepted policy (ROI, p. 10), suspending applications for U.S. passports based solely on the fact that the applicant submitted citizenship evidence of only one parent but identifies both as U.S. citizens on the application. That, I believe, sums up the substance of the complaint and the nature of why it is a violation of law, rule, or regulation; constitutes gross mismanagement; and constitutes an abuse of authority that creates bureaucratic redundancy while placing an undue burden on the applicants, tax paying citizens, who simply seek a passport for use to travel.

Even if the data the Agency reported in its ROI—14,000,000 applications, with only 16,000 letters sent, 0.1% of total applications processed—two years before the policy began, in the slightest way mimics the data for 2012 and, now, 2013; ***and even if*** the Agency was completely honest when it described the "unusual occurrence" of passport applicants applying under 320(a) INA submitting evidence of citizenship for one parent while identifying the second parent also as a U.S. citizen; ***the thing that I find most troubling about the Agency's position is that it rests on the fact that the low risk of PRCs being issued in error, combined with the 'rarity' applications that would be adversely impacted by the policy herein disclosed, justifies the suspension of, admittedly (ROI, p. 11), as many as 16,000 applications for U.S. citizens***. Leading back to the opening point, those 16,000 applications can represent anywhere from $640,000 (16,000 x $40) to $3,803,520 (16,000 x $237.72 (adult book, card, acceptance fee, expedite fee, and overnight shipping)) of the hardworking tax payers' money. Unfortunately, the statistics do not mimic today's, the occurrence is not unusual, and the cost upon the citizens is far greater than the OSC is being led to believe.

II. Reprisal

In this section, I am drawing no conclusions but rather simply restating events as they occurred as they are currently under investigation in multiple appeals procedures.

A. Investigatory Preparation and Conduction

I received the call from the Office of the Legal Advisor to set up a date and time for the investigatory meeting on a Monday, August 6, 2012, and it was scheduled for that following Thursday, August 9. I requested through my Assistant Director John Caveness two hours for that morning to prepare my notes, since I am familiar with the process and knew they engage you in a formal drilling of policies, procedures, law, regulation, etc., and wanted to ensure I had all my facts lined out[3] as well as possible. I was limited to one hour, and shortly after the one hour was authorized and began, I received an e-mail from the interviewers asking that I photocopy and scan copies of everything I intended to submit as evidence. By the time I found the materials, scanned them, and got them e-mailed, it was then time to meet with the systems administrators in order to set up the video teleconferencing equipment. So, I was arbitrarily limited in my time to prepare as a matter of absolute time, but then also asked to spend that time on the logistics.

When I met with systems to set up the teleconference, the admin made a comment, "Oh, yes. There're supposed to be a lot of people dialed into this conference." I only knew of three people who were to be there physically and only saw three. I noticed that Division Chief for Adjudication Policy Bennett Fellows, who was accompanied by an attorney from Passport Services Office of Legal Affairs and a second attorney from the Office of the Legal Advisor, kept looking to his right and nodding to someone. I also noticed that the camera for the equipment was aimed at the left side of the table, where everyone on camera was sitting. At one point, I saw Mr. Fellows slide a piece of paper over to the other side of the table and nod toward someone. Like in the investigation of DI-12-0320, a disclosure regarding the wrongful charging of consular fees, the Agency did not attempt to interview adjudicators but rather interviewed only supervisors and managers in my direct chain of command, including my past supervisor.

As I said in the first supplemental report, WPC Director Nancy K. 'Sam' Finn announced her retirement the following Monday.

B. The Disclosure Announced

This disclosure was made on or around May 11, 2012, but I notified WPC Management that I had filed it via e-mail on May 17, 2012 in my capacity as steward for the office. I disclosed it to WPC Management because of the severity of the issue, ignoring momentarily national statistics, due to the prevalence of 320(a) cases as a function of total applications processed compared to other offices. I made it known because I felt it was important to open the dialogue and because,

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[3] ROI, p. 4, fn. 5, it is said that I "did not provide a particular FAM citation."

as stated in the comments on DI-12-0320, the ability to communicate with decision makers and and provide feedback is slowly being chipped away from Passport Services. It was the only way for me to get the concerns, not only of myself but of all the adjudicators at the office, properly addressed.

In response to my informing WPC Management of this disclosure, Assistant Director John Caveness gave some sort of remark that, to me, suggested that no one was going to read or care about what I had to say, that '[and he supposes] someone will look at the complaint, review it, and take some sort of action,' he said, in paraphrase, as if asking a question. I then disclosed to him that I had filed DI-12-0320 back in October 2011 and the reasons why, to inspire communication and involvement of adjudicators in developing adjudication policy. Mr. Caveness asked me to withdraw the original '0320 disclosure.' When I told him that a disclosure to OSC cannot be withdrawn, he shortly thereafter sent me an e-mail informing me that he wanted to hold an investigatory meeting over an event between my former supervisor and I that had occurred more than a month and a half prior to this chain of communication. This was after I noticed that he and the director were in a teleconference in his office, from which I heard at one point, "just get rid of him."

The investigatory meeting was held the following day, and on August 1, just days before being called on by the Office of the Legal Advisor to arrange the meeting over the disclosure, I was issued a proposal for a three-day suspension, which included accusations of violating the Department's prohibition of workplace violence. In addition to including in the proposal, which was determined would remain indefinitely in my personnel folder, a photocopy of a letter of reprimand that had been issued to me more than a year prior (which was only supposed to stay in my personnel folder for a year, and as reported by Meghan Markey, CA/EX HR Specialist, was removed as of May 12, 2012).

I requested a Stay of Action pending several statutory appeals investigations revolving around different aspects of this action and others, and it was refused. In October, it was announced that Sonia Crisp, Director of the Bureau of Consular Affairs, Human Resources Division, would be at the agency for a town hall with the office staff. I requested to meet with her regarding office-wide issues in representation of the other employees. On October 17, I was informed that the decision to suspend was upheld, and it was conveniently scheduled for October 23, 24, and 25, the three days during which Ms. Crisp would be at the office. The suspension was served, without pay, on those dates.

During late August-early September I wrote to the Office of the Legal Advisor attorney who investigated the disclosure. I gave her a timeline and this list of occurrences, and asked whether I needed to contact the Office of the Inspector General to report the issue. I was essentially told, "Since you reported it to the OSC, take it up with them." "We're not going to help you."

It became very apparent, if you file one disclosure, "you're not a team player." File a second, and you're only an employee of the Department by virtue of the fact your name is still on payroll. But even that, it seems, will only last as long as it takes to find a reason to remove you from service, and attempting to document your behavior as "violent" is certainly a step in that direction.

C. AWOL For Responding to the ROI

On January 8, 2013, while on my way to work, running admittedly shortly behind, I was calling my supervisor and manager to request time to work on the report from home. Prior to my arrival time, I left a voicemail for my supervisor after she did not pick up the phone. I then called my second-line manager, who did pick up. I requested the time, and she told me for now that was fine, but she would talk to Mr. Caveness and Mrs. Gonzalez, and if they decided that it was not appropriate I would be called back in. Shortly after 9:00 AM, my arrival time under a reasonable accommodation, I turned around and headed home to file the complaint. Due to some concerns that I had with snooping into my government computer and missing e-mails related to this and the '0320' disclosures disappearing, it was recommended to me that I write it on a personal computer. The collective bargaining agreement provides for Union Time from home if a contact phone number is provided along with the request.

At 11:20 AM, more than two hours later, I received a voicemail from Adjudication Manager Marti Rice, telling me they were denying my time and that I had to report immediately to work. I called Mr. Caveness, and I explained to him that I suspect he is going to attempt to use it as an excuse to charge me AWOL. Mr. Caveness would not tell me he was not going to charge me AWOL, so I called Ms. Rice. She and Mrs. Gonzalez were in the office and the call was on speaker phone. Mrs. Rice asked me, very specifically, when the deadline was for the response to be completed, **and I told her that Mrs. Smith Bradley gave me until Friday, January 11**. Upon arriving at work, the two were still in a single office, on a teleconference. I was to meet with them upon arrival to discuss the morning. Mrs. Gonzalez approached my desk and told me that if I responded to questions provided to me in an e-mail, we would not need to meet. She returned to the office with Ms. Rice, and I responded to the questions.

Later that day, Ms. Rice told me that they were not going to consider me AWOL and that they would consider that morning some sort of 'other administrative task.' I said that was fine by me, offered to deduct it from my Union Time, and she insisted that was unnecessary. That following Monday, I checked my MIS records (system for reporting the day's duties and the amount of time spent on each) for that week. After the January 11 deadline that had been reported to Management passed, they went back through my reports for that day and added to my January 8 'comments' field: "Per A12-AWOL ..." I sent the e-mail from Ms. Rice from January 8, saying they would not count me as AWOL, to the Management team, and they have not responded to date nor have they changed the AWOL comment. I understand they have submitted me for disciplinary action based on the charge.

/s/
Joel J. Warne
Chief Steward
IAMAW FD1 NFFE 1998
The National Federation of Federal Employees