



U.S. OFFICE OF SPECIAL COUNSEL

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The Special Counsel

November 15, 2016

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

Re: OSC File No. DI-15-5203

Dear Mr. President:

Pursuant to my duties as Special Counsel, I am forwarding Department of Health and Human Services (HHS) reports based on disclosures of wrongdoing at the Office of Refugee Resettlement (ORR), Washington, D.C. I have reviewed the reports and, in accordance with U.S.C. § 1213(e), provide the following summary of the agency reports, whistleblower's comments, and my findings.<sup>1</sup> The whistleblower, who requested confidentiality, disclosed that employees in ORR improperly released approximately 3,700 unaccompanied children to adults known as "sponsors" with criminal records. The whistleblower expressed particular concern regarding approximately 300 sponsors with serious criminal offenses unrelated to immigration. The Department of Homeland Security (DHS) initially takes custody of these children and subsequently transfers them to HHS, where ORR places them in the custody of adult sponsors who act as temporary custodians.

The whistleblower's allegations were referred to Secretary Sylvia M. Burwell for investigation pursuant to 5 U.S.C. §1213 (c) and (d). HHS's Office of Inspector General (OIG) conducted the investigation. On February 23, 2016, Secretary Burwell submitted the agency's report to the Office of Special Counsel (OSC). On April 15 and September 8, 2016, OSC requested supplemental reports. On May 6, 2016, HHS Inspector General Daniel R. Levinson submitted the first supplemental report to OSC. On October 11, 2016, HHS OIG Chief Medical Officer Julie K. Taitsman submitted the second supplemental

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<sup>1</sup> The Office of Special Counsel (OSC) is authorized by law to receive disclosures of information from federal employees alleging violations of law, rule, or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health and safety. 5 U.S.C. § 1213(a) and (b). OSC does not have the authority to investigate a whistleblower's disclosure; rather, if the Special Counsel determines that there is a substantial likelihood that one of the aforementioned conditions exists, she is required to advise the appropriate agency head of her determination, and the agency head is required to conduct an investigation of the allegations and submit a written report. 5 U.S.C. § 1213(c). Upon receipt, the Special Counsel reviews the agency report to determine whether it contains all of the information required by statute and that the findings of the head of the agency appear to be reasonable. 5 U.S.C. § 1213(e)(2). The Special Counsel will determine that the agency's investigative findings and conclusions appear reasonable if they are credible, consistent, and complete based upon the facts in the disclosure, the agency report, and the comments offered by the whistleblower under 5 U.S.C. § 1213(e)(1).

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report to OSC. The whistleblower provided comments regarding the reports on April 6, May 13, and October 17, 2016.

The investigation did not substantiate the allegations, concluding that the data provided by the whistleblower could not be used to prove or disprove the allegation that HHS placed a large number of minors with sponsors who had significant criminal backgrounds. Specifically, the whistleblower provided OIG with spreadsheets that included the names of sponsors and a separate column with a list of significant crimes. OIG had difficulty interpreting the spreadsheets and ultimately determined that the spreadsheets could not be used to match sponsors with the listed crimes. OIG's efforts to fully investigate these allegations were also hindered by the Federal Bureau of Investigation's (FBI) refusal to provide access to National Crime Information Center (NCIC) databases, which would have allowed OIG to perform more extensive background checks on sponsors. Notwithstanding OIG's concerns about the data, the whistleblower's information assisted OIG in identifying potential weaknesses in ORR's documentation of background checks. The OIG report determined that documentation to confirm background checks of sponsors was not always present in the reviewed case files, and, in some cases, other adults in the home did not receive background checks, in possible violation of ORR policy. OIG also acknowledged that since mid-2014, HHS OIG's Office of Investigations has received "significant incident reports involving allegations of sexual and physical abuse and fraud" perpetrated against children in this program.

In response to these concerns, HHS OIG stated that it is directing a review of the program, to be completed early in 2017, to determine if ORR is conducting appropriate background investigations. HHS OIG further noted that HHS is working with DHS to gather and exchange information about children after placement to ensure that children are safe and sponsors adhere to agreements. The initial OIG report also noted that HHS has made a number of recent enhancements to the sponsor screening process. For example, HHS has expanded disqualifying criteria to include convictions or pending charges for crimes that call into question the ability to ensure the safety and well-being of a child.

In comments provided to OSC, the whistleblower disputed the reports' conclusions. The whistleblower explained that the spreadsheets provided to HHS OIG were generated and circulated among senior DHS Managers in August 2015 by the Immigration and Customs Enforcement, Enforcement and Removal Operations unit (ICE ERO), for the purpose of planning an operation to target undocumented immigrants identified as sponsors. The whistleblower explained that sponsor information contained on the spreadsheet at issue was originally generated by HHS and provided to DHS. Only when ICE ERO conducted background checks on sponsors did it discover criminal histories. The whistleblower stated that this shows that ORR was systemically negligent in conducting background checks on applicants. The whistleblower also asserted that

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HHS OIG failed to run appropriate criminal background checks utilizing NCIC on individuals identified in the spreadsheets. The whistleblower commented that, given the vulnerability of these children, HHS should immediately conduct a review of all minors placed with sponsors by ORR and develop processes to protect them. In comments responding to the supplementary reports, the whistleblower asserted that HHS attempted to discredit the provided information.

I have reviewed the original disclosure, the agency reports, and the whistleblower's comments. While the agency reports meet all statutory requirements and the findings appear reasonable, many aspects of this matter remain unresolved and potentially problematic.

Specifically, despite a 2008 HHS OIG report calling for greater cooperation between HHS and DHS in administering this program, HHS OIG acknowledged that recommendations in that report remain unimplemented. One of the recommendations, for instance, calls for the creation of a memorandum of understanding between these two agencies resolving jurisdictional issues involving the physical custody of children. *See* OEI-07-06-00290. HHS and DHS must reach a formal agreement addressing each department's roles and responsibilities to ensure the well-being of these minors. In addition, although OIG asserted that the data provided by the whistleblower was not entirely accessible or usable, HHS and DHS should review the information and make their own determination about the existence of sponsors on the spreadsheets with criminal backgrounds. Finally, the FBI's refusal to provide HHS OIG access to NCIC appeared to inhibit the course of the investigation. I call on all involved agencies to prioritize efforts to ensure that no child is released into the custody of a sponsor who poses a risk to their safety and well-being and to quickly resolve any remaining deficiencies identified in the 2017 ORR audit.

As required by 5 U.S.C. § 1213(e)(3), I have sent copies of the agency reports and the whistleblower's comments to the Chairman and Ranking Member of the Senate Committee on Health, Education, Labor, and Pensions and the Chairman and Ranking Member of the House Committee on Energy and Commerce. I have also filed copies of these documents in our public file, which is now available online at [www.osc.gov](http://www.osc.gov), and closed this matter.

Respectfully,



Carolyn N. Lerner

Enclosures