



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

The Special Counsel

September 5, 2018

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

Re: OSC File No. DI-17-4920

Dear Mr. President:

Pursuant to my duties as Special Counsel, I am forwarding to you a report provided to the Office of Special Counsel (OSC) in response to disclosures received from an employee of the Department of Justice, Bureau of Prisons (BOP), Medical Center for Federal Prisoners, Springfield, Missouri (MCFP Springfield). The whistleblower, ██████████ who consented to the release of her name, is a clinical nurse at MCFP Springfield. ██████████ disclosed that her supervisor, ██████████ ordered MCFP Springfield nurses to withhold food from inmates in violation of BOP policy. She also alleged that ██████████ threatened MCFP employees with disciplinary action for failing to follow his direction. I have reviewed the report and, in accordance with 5 U.S.C. § 1213(e), provide the following summary of the investigation and my findings.¹

██████████ alleged that ██████████ directed his staff not to feed inmates bedside who had refused medical orders to eat in the dining facility. She alleged that ██████████ sent several e-mails to MCFP Springfield nurses reiterating this direction and further explaining his position that inmates who refuse to follow medical orders to eat in the dining facility have not been denied food – they have refused medical treatment. She reported that, at the time of her disclosure, ██████████ order had been in effect for approximately six months and affected approximately seven inmates.

██████████ further reported that several MCFP Springfield nurses believed that ██████████'s order was improper and have continued to feed inmates against his instruction.² According to ██████████ ██████████ threatened nurses who had

¹ The whistleblower's allegations were referred to Attorney General Jefferson B. Sessions III on November 28, 2017, pursuant to 5 U.S.C. § 1213(c). He delegated to Associate Deputy General Scott N. Schools the authority to sign the investigative report and take any actions deemed necessary as a result of the investigation. On January 8, 2018, BOP Office of Internal Affairs was charged with investigating Ms. Cox's allegations.

² Denying food to inmates is "cruel and unusual punishment" in that food is "a single, identifiable human need." See *Wilson v. Seiter*, 501 U.S. 294, 304 (1991).

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done so with disciplinary action. In addition, [REDACTED] explained that many of the inmates at issue receive insulin injections and other medications that require food just prior to scheduled meals and that withholding food could result in serious medical complications.

The agency substantiated [REDACTED] allegation that [REDACTED] directed MCFP Springfield nurses to withhold food from inmates in violation of BOP policy. The investigation concluded that [REDACTED] instruction violated Program Statement 6031.04 (inmate consent to medical treatment) and impeded compliance with Program Statement 5562.05 (Hunger Strike procedures). Specifically, the investigation found that [REDACTED] direction to withhold food from inmates who refused Out of Bed for Meals orders denied inmates the ability to refuse medical treatment without being denied food. The investigation further found that, absent MCFP nurses' clandestine feeding of inmates, Hunger Strike procedures would have been necessary. Because some MCFP nurses surreptitiously fed inmates, medical documentation was unreliable, resulting in an inability to comply with Program Statement 5562.05.

The agency did not substantiate [REDACTED] second allegation that [REDACTED] threatened MCFP Springfield nurses with disciplinary action if they failed to follow his instruction to withhold food from inmates who refused Out of Bed for Meals orders. The investigation found that [REDACTED] was not an eyewitness to the alleged threats, none of [REDACTED] subordinates claimed that he threatened them, and no threatening e-mails were discovered during the investigation. Rather, the investigation identified e-mails in which [REDACTED] stated that he would not take action against employees who failed to follow his instruction.

In response to these findings, on April 5, 2018, the agency informed all medical providers (including nursing) that food should not be withheld from inmates who refuse to get out of bed for meals. In this communication, the agency defined the protocol for responding to an inmate's refusal to comply with an Out of Bed for Meals Order. In addition, [REDACTED] who chose to step down from his nursing supervisor role in January 2018, will be disciplined to ensure that he does not engage in the same behavior again. The agency is considering suspending [REDACTED] for five days without pay. [REDACTED] declined to comment on the agency's findings.

I have reviewed the original disclosure and the agency report and have determined that the agency report contains the information required by statute, and the findings appear reasonable.

As required by 5 U.S.C. § 1213(e)(3), I have sent copies of this letter and the agency report to the Chairmen and Ranking Members of the Senate and

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House Committees on the Judiciary. I have also filed a copy of this letter and the redacted agency report in our public file, which is available online at www.osc.gov, and closed the matter.

Respectfully,



Henry J. Kerner
Special Counsel

Enclosures