



U.S. OFFICE OF SPECIAL COUNSEL
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The Special Counsel

March 1, 2022

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

Re: OSC File Nos. DI-20-000156 and DI-20-000170

Dear Mr. President:

I am forwarding to you a report transmitted to the Office of Special Counsel (OSC) by the U.S. Department of the Interior (DOI) in response to the Special Counsel's referral of disclosures of wrongdoing at the Bureau of Indian Affairs (BIA), Office of Justice Services (OJS), Washington, D.C. The whistleblowers, [REDACTED] and a whistleblower who chose to remain anonymous, alleged that agency officials engaged in conduct that constituted gross mismanagement, a gross waste of funds, and an abuse of authority. Specifically, the whistleblowers alleged that [REDACTED] engaged in wrongdoing related to employee reassignments. The whistleblowers did not comment on the report. I have reviewed the report and, in accordance with 5 U.S.C. § 1213(e), determined that it appears to be reasonable. The following is a summary of my findings.¹

In December 2019, OSC referred three allegations from the anonymous whistleblower. First, the whistleblower alleged that [REDACTED] improperly instructed subordinates to reassign 25 OJS employees, including four OJS Special Agents, in an effort to force these employees to resign or retire. Second, because of these improper reassignments, BIA incurred nearly \$2 million dollars in relocation costs that otherwise would not have been expended. Third, [REDACTED] improperly moved seven high-level OJS management positions from various locations throughout the United States to Muskogee, Oklahoma, for the purpose of relocating the OJS administration to a location closer to [REDACTED] personal residence in Jay, Oklahoma, without a legitimate operational justification.

¹ The whistleblowers' allegations were referred to former DOI Secretary David Bernhardt for investigation pursuant to 5 U.S.C. § 1213(c) and (d). Former Secretary Bernhardt tasked the DOI Office of Inspector General (OIG) with the investigation and delegated the authority to review and sign the report to Interior Associate Solicitor for General Law Scott de la Vega.

Following the December 2019 referral, [REDACTED] came forward to disclose similar allegations but also asserted that [REDACTED] improperly instructed [REDACTED] to “get creative” in writing reassignment letters, particularly for the four special agents who were transferred by [REDACTED]. OSC referred [REDACTED] allegations in April 2020.

The agency did not substantiate the allegations. The investigation examined 52 reassignments during [REDACTED] tenure: four reassignments of Special Agents in Charge (SACs) and 48 reassignments of other employees. The OIG determined that all 52 were “based on legitimate justifications and [were made] to improve the efficiency of the federal service, and there was no evidence of improper motive or that the justifications cited in the directed reassignments were not truthful.” The agency found that the reassignments of SACs were implemented to “plac[e] leadership in the most complex OJS districts...where their skillsets would be most useful to fulfilling OJS’s mission.” The investigation found that 17 of the 48 non-SAC directed reassignments required additional examination, but the agency ultimately determined that all 48 directed reassignments under [REDACTED] had legitimate business purposes.

The investigation also did not substantiate the allegation that [REDACTED] improperly instructed [REDACTED] to “get creative” in writing reassignment letters. The investigation determined that the directed-reassignment letters for the SACs cited legitimate business reasons and were consistent with attempts by OJS leadership to improve OJS services by placing SACs in hard to fill and complex regions.

The agency found that 20 reassignments resulted in funding obligations and permanent change-in-station (PCS) costs. But because these reassignments were found to be legitimate and proper, the allocation of these funds was appropriate.

Finally, the agency did not substantiate the allegation that [REDACTED] improperly moved seven high-level OJS management positions from various locations throughout the United States to Muskogee, Oklahoma, to relocate the OJS administration closer to [REDACTED] personal residence. The report states that the relocations to Muskogee had legitimate operational justifications and were properly documented. The relocations were justified by DOI’s efforts to reduce the OJS footprint in Washington, D.C., to move positions into offices that were in the same city as the BIA regional office, and to promote efficiency within OJS. Therefore, the report concluded that the relocations were proper.

I thank the whistleblowers in this matter for bringing their allegations to OSC. Based on the foregoing, I have determined that the findings of the report appear reasonable and meet all statutory requirements.

The President
March 1, 2022
Page 3 of 3

As required by 5 U.S.C. § 1213(e)(3), I have sent a copy of this letter and the agency report to the Chairs and Ranking Members of the Senate Committee on Energy and Natural Resources, the Senate Committee on Indian Affairs, and the House Committee on Natural Resources. 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,

A handwritten signature in black ink, appearing to read "Henry J. Kerner", followed by a stylized flourish.

Henry J. Kerner
Special Counsel

Enclosure