



United States Department of the Interior
OFFICE OF THE SOLICITOR
Washington, D.C. 20240

August 27, 2021

Hon. Henry Kerner
Special Counsel
U.S. Office of Special Counsel
1730 M Street, N.W. Suite 300
Washington, DC 200036

Dear Mr. Kerner:

The Department of the Interior (Department or Interior) writes to provide a response to your December 18, 2019 and April 13, 2020 referrals (OSC file no. DI-20-000156 & DI-20-000170) of two whistleblower disclosures for investigation by the Secretary of the Interior. I was referred this matter for response on behalf of Secretary Haaland and have been delegated the responsibility of submitting the Department's report to the Office of Special Counsel.

Pursuant to 5 U.S.C. § 1213(d), I am providing the attached Office of Inspector General (OIG) record of investigation (Attachment 1), a description of that investigation and the evidence collected, and the Department's determination. As described in greater detail below, the OIG concluded that none of the allegations referred were substantiated. My office has reviewed the OIG report and supporting documentation and has also concluded that all of the allegations referred are unsubstantiated and that no further action is necessary at this time.

U.S. OFFICE OF SPECIAL COUNSEL REFERRALS (OSC file no. DI-20-000156 & DI-20-000170)

On December 18, 2019 Special Counsel Henry Kerner referred an anonymous whistleblower disclosure regarding potential gross mismanagement, gross waste of funds, and an abuse of authority to then-Secretary of the Interior David Bernhardt, for investigation and resolution pursuant to the Special Counsel's authority under 5 U.S.C. § 1213(c). The December 2019 referral involved the alleged actions of [REDACTED], Director of Bureau of Indian Affairs' (BIA) Office of Justice Services (OJS). Specifically, the Special Counsel referred three allegations to be investigated:

1. Director [REDACTED] improperly instructed subordinates to reassign-25 OJS employees, including 4 OJS Special Agents, in an effort to force these employees to resign or retire;
2. as a result of these improper reassignments, BIA incurred nearly \$2 million dollars in relocation costs that otherwise would not have been expended; and
3. Director [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 Director [REDACTED] personal residence in Jay, Oklahoma without a legitimate operational justification in order to justify official travel.

On April 13, 2020, Catherine McMullen, Chief of the Disclosure Unit, Office of Special Counsel (OSC), referred a disclosure for an additional whistleblower involving OJS Director [REDACTED]. The whistleblower, [REDACTED], OJS Deputy Associate Director, had three additional allegations concerning Director [REDACTED] actions, two of which mirrored the allegations referred in the December 18, 2019 referral:

1. Director [REDACTED] directed the repeated and unwarranted geographic relocation of high-level OJS employees to facilitate their resignation or retirement;
2. Director [REDACTED] improperly expended significant amounts of money for the purpose of improperly relocating several OJS employees; and
3. Director [REDACTED] improperly instructed [REDACTED] to “get creative” in writing reassignment letters, particularly for the four special agents who [REDACTED]. [REDACTED] transferred.

DESCRIPTION OF THE OFFICE OF INSPECTOR GENERAL INVESTIGATION

The OIG initiated its investigation at the request of then-Secretary Bernhardt and provided an April 8, 2021 report of its investigation. During the course of the investigation, the OIG conducted at least 40 interviews of various persons within OJS, BIA, and the Department. Those interviewed included, but were not limited to:

1. [REDACTED] (Director of OJS) on four occasions.
2. [REDACTED] (Associate Director of OJS) on two occasions.
3. [REDACTED] (BIA Director) on two occasions.
4. The four Special Agents in Charge issued directed reassignments.
5. [REDACTED] (Associate Director of OJS) on two occasions.
6. Various OJS leadership, including various Associate Directors and other OJS managers, many of which signed the directed reassignment letters subject to the investigation.
7. Various BIA Human Resources (HR) personnel.

Additionally, during the course of the investigation, the OIG collected and reviewed a large quantity of relevant documents. The types of documents collected and reviewed includes but is not limited to:

1. Emails from/to various OJS and BIA employees.
2. Directed Reassignment letters, personnel documents, and other relevant documents from BIA HR, OJS, and BIA.
3. BIA Permanent Change in Station Cost data and supporting documentation.
4. Concur Travel Vouchers and other materials regarding Director [REDACTED] travel.

5. Submissions by employees within OJS, BIA, Assistant Secretary for Indian Affairs regarding the allegations investigated.

SUMMARY OF THE EVIDENCE OBTAINED AND CONCLUSIONS OF THE INVESTIGATION

I. Findings Regarding Directed Reassignments Issued by the Office of Justice Services

The investigation examined forty-eight (48) directed reassignments issued during the tenure of [REDACTED], OJS Director, which included reassignments issued to four Special Agents in Charge (SACs). As summarized below, the investigation revealed that the directed reassignments were based on legitimate justifications and 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.

Four Special Agent In Charge Directed Reassignments:

The investigation revealed that SACs 1-4 were issued directed reassignment letters due to critical mission needs within OJS. During his interviews, Director [REDACTED] stressed that the motivation behind the direct reassignment of SACs 1-4 was to fill hard to fill positions in Aberdeen, South Dakota and Phoenix, Arizona, to ensure that there was leadership in the most complex OJS districts, and to place SACs where their skillsets would be most useful to fulfilling OJS's mission. Director [REDACTED] also stated that the four regions to which the SAC's were reassigned were by far the most complex and in need of leadership.

Specifically, Director [REDACTED] noted that the Aberdeen, SD position was the most complex, followed by Phoenix, Albuquerque, and then Billings. This sentiment was echoed by [REDACTED] Associate Director, who explained that at the time of the reassignments there were only four SACs but several vacant SAC positions in regional offices, and that the reassignments were done to fill those four crucial positions. Associate Director [REDACTED] explained that during the time in which the four SAC's were reassigned, he and Mr. [REDACTED] had considered the four SAC's strengths and which of the four SACs best fit the needs of the four complex OJS regions that were in need of leadership. During the course of the investigation, Associate Director [REDACTED] provided the investigators with a hand-drawn matrix that listed the OJS districts in question and the skillsets of each of the four SAC's who received directed reassignments that he developed with [REDACTED]

SAC 1 was issued a directed reassignment from Billings, MT to Albuquerque, NM. The directed reassignment letter explained that the reassignment was due to his experience, which included experience with narcotics, criminal investigation, community policing initiatives, high profile cases, and program management. In his interview, SAC 1 acknowledged that OJS had not been able to fill the SAC positions in Phoenix, Arizona and Aberdeen, South Dakota and that the vacancy in Albuquerque was the result of an attempt by OJS leadership to move around existing SACs to fill these hard to fill positions.

SAC 2 was issued a directed reassignment from a SAC position in Vancouver, Washington to a SAC position in Billings, Montana. The directed reassignment letter stated that the reassignment was done because of SAC 2's knowledge with narcotics, program reviews, contracts, and

employee benefits as well as his field experience with different BIA and Tribal programs and regions.

SAC 3 was issued a directed reassignment from a SAC position in Albuquerque, NM to a SAC position in Aberdeen, SD. This was done to improve the effectiveness of law enforcement services in District 1, Aberdeen, SD. SAC 3 had extensive experience in mentoring, program development and specialized programs. Additionally, during his interview with the OIG, SAC 3 also indicated that OJS had extreme difficulties in filling the SAC position in Aberdeen, SD and Phoenix, AZ.

SAC 4 was given a directed reassignment as a SAC from Bloomington, MN to Phoenix, AZ. SAC 4 was reassigned due to experience, which included experience in narcotics, criminal investigation, reorganization, disciplinary actions, and contracts. During his interview, SAC 4 reaffirmed what the other SAC's stated, which was that the Phoenix, AZ and Aberdeen, SD SAC positions were very difficult to fill and that OJS leadership had indicated that SACs may be reassigned to fill those positions in order to meet OJS needs that had not been met for a prolonged duration.

While one of the whistleblowers, [REDACTED], claimed that he was told to "get creative" as it relates to the justification listed in the directed reassignment letters for SACs 1-4, the investigation revealed that he was told by Associate Director [REDACTED] to use the information they had discussed to match each SAC's skillset to the needs of the district to which the SAC was being reassigned. The investigation revealed that BIA HR had initially returned the drafted directed reassignment letters for SACs 1-4 because they had been vague and did not contain the necessary information in them to justify the directed reassignments. Upon this occurrence, [REDACTED] reached out to Associate Director [REDACTED] and inquired as to what information should be put into the directed reassignment letters. Although [REDACTED] maintained that he was told to "get creative," the OIG did not find any evidence to corroborate [REDACTED] account of the exchange. Rather the OIG determined that the directed reassignment letters for SACs 1-4 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.¹ Ultimately, the directed reassignment letters for SACs 1-4 were reviewed and approved by BIA HR. Furthermore, the OIG determined that there was no credible information, testimony, or evidence to suggest that the reassignment of SACs 1-4 was done for any improper purpose such as for punishment or in an effort to force any individual to retire.

Forty-eight Directed Reassignments

Additionally, the investigation revealed that the other directed reassignments that occurred between January 2018 and September 2019 were done for legitimate business reasons, and there was no evidence of improper motive on behalf of Director [REDACTED] or the individuals who issued the directed reassignments. The OIG explained that they received a list of 93 OJS reassignments from BIA HR that were completed between January 7, 2018 and September 29,

¹ Although SACs 1-4 were issued directed reassignments, only SAC 3 and SAC 4 were ultimately reassigned. SAC 1 and 2 never received reassignments because the BIA Director at the time had put all directed reassignment within BIA on pause.

2019. From that list, the OIG concluded that 48 of the 93 reassignments were directed reassignments.

The OIG individually reviewed the directed reassignment letters for all 48 reassignments as well as other supporting documentation provided by the BIA HR. During the course of the investigation, the OIG determined that 17 of the direct reassignments justified further investigation to clarify why OJS managers reassigned the employees. The investigation revealed that there were some inconsistencies in how various OJS managers documented their justifications for reassigning employees, but that the reassignments were nevertheless done for legitimate business purposes such as filling vacancies, reallocating positions, and improving OJS services to tribes. Additionally, each of these directed reassignments were submitted to BIA HR officials for review and consideration, and each one was approved by a BIA HR official. Ultimately, the OIG determined that it found no evidence to suggest that any of these directed reassignments were done for prohibited purposes or that the business reasons identified in the DR letters were false or otherwise improper.

II. Findings Regarding Funds Expended as a Result of the Forty-eight Directed Reassignments

The investigation also revealed that only 20 of the 48 directed reassignments resulted in funding obligations and permanent change in station (PCS) costs. Specifically, the OIG investigation revealed that the PCS costs incurred for those 20 directed reassignments were approximately \$504,000 and that approximately \$1.1 million was obligated for costs associated with those reassignments. The documented costs were substantially smaller than the allegation that the Department obligated nearly \$2 million to relocate those employees who were issued a directed reassignment. The investigation concluded that because it had already determined that the directed reassignments were issued for legitimate business purposes, there was no reason to question the costs obligated or actually incurred by the government. Specifically, the OIG reasoned that because the directed reassignments were properly issued, there was no indication that the expenditure of funds through PCS costs to effectuate these reassignments was not proper. Nevertheless, the OIG reviewed the PCS cost data and concluded that there was no indication of fraudulent activity or inflated costs. Therefore, the OIG concluded that no gross waste of funds occurred because the costs were reasonable and because the costs were incurred related to directed reassignments that were properly issued in furtherance of the OJS mission.

III. Findings Regarding the Relocation of Various OJS Positions to Muskogee, Oklahoma

During the course of the investigation the OIG reviewed the relocation of nine existing OJS positions to Muskogee, Oklahoma between 2017 and 2019. The OIG determined that for each position the relocation to Muskogee was done for legitimate operational justifications and was properly documented. Furthermore, as discussed in greater detail below, the investigation indicated that the OJS positions were relocated for a variety of legitimate business reasons including an effort by the Department to reduce the OJS footprint in Washington DC, OJS's attempt to move positions into offices that were in the same city as the BIA regional office, and to ensure efficiency within OJS. Therefore, the OIG concluded that the relocation of these positions was not done by Director [REDACTED] for improper personal reasons and did not constitute an abuse of authority.

2017 Relocation of Two Associate Director Positions to Muskogee Oklahoma:

The OIG investigation revealed that in late 2017 when Director [REDACTED] was appointed to his position, the Department of the Interior's leadership at that time had mandated a reduction in OJS staffing at the Stewart Lee Udall Department of the Interior Building (hereinafter "Main Interior Building" or "MIB") in Washington, D.C. because some of the OJS' office space was being reassigned to another agency. Additionally, the Department at the time thought it was necessary for OJS to maintain a more active presence in the field and interact with the constituents that they served. Shortly thereafter, then-BIA Director [REDACTED], approved [REDACTED] relocation of four associate director positions from the MIB to available OJS office spaces in the BIA OJS regional offices. Two of those associate director positions were moved to Muskogee, Oklahoma and two were moved to Albuquerque, NM. The investigation revealed that these two offices were chosen as the relocation site because Muskogee and Albuquerque both had excess office space that were able to absorb employees. As discussed in greater detail below, the relocation of one of these Associate Director positions, Associate Director of Field Operations (AD-FO), to Muskogee resulted in the relocation of two subordinate deputy AD-FOs to Muskogee at the behest of the selected AD-FO in order to improve communication with his subordinates and to increase efficiency within OJS.

2018 Relocation of Three OJS Positions from Oklahoma City to Muskogee, Oklahoma in 2018

In 2018, Director [REDACTED] relocated three OJS positions back to Muskogee from Oklahoma City, which at the time was where several OJS employees were located in District II. These three positions would join the six OJS employees who remained in Muskogee. The split of the OJS employees between Muskogee and Oklahoma City was the result of a prior attempt to establish the OJS regional office in Oklahoma City. The three positions relocated were the OJS Special Agent in Charge for District II of BIA, the Assistant Special Agent in Charge, and a Law Enforcement Specialist. At the time of the relocation these positions were vacant and the change in duty station was reflected in the job solicitation notice. During the investigation, Director [REDACTED] told OIG investigators that the move of these three positions was specifically requested from the BIA Regional Director for District II at the time. Specifically, the Regional Director requested that OJS operations be fully moved back to Muskogee in order to improve communications between BIA and OJS officials and to improve the performance of both BIA and OJS within the district. Director [REDACTED] further noted that there had been a concerted effort to put OJS employees that had been moved to other offices back into office space that was also occupied by the relevant BIA Regional Office when those positions became vacant. The motivation behind these moves was to increase communication between BIA Regional employees and OJS employees and to provide the tribes with one office in which the various entities of BIA could be accessed in order to improve service.

2018 Relocation of Associate Director of Field Operations and Deputy Associate Director of Field Operations to Muskogee, Oklahoma

As stated above, four Associate Director positions previously located in Washington DC were slated to be moved to Muskogee and Albuquerque prior to Director [REDACTED] assumption of his position. As part of that effort, when the Associate Director of Field Operations (AD-FO) position that was stationed in the MIB at Washington, D.C. became vacant, a solicitation was sent out in 2018 that reflected that the new duty station would be either Muskogee or Albuquerque. These two offices, as explained above, were chosen as the potential duty stations

because of the Department's concerted effort to move OJS employees out to the regional offices in order to better serve stakeholders in the communities they served as well as to increase cooperation and communication between OJS and other BIA offices. [REDACTED] was selected through the competitive process and asked to be stationed in Muskogee. AD-FO [REDACTED] later requested that the two deputy-AD-FOs who reported directly to him be reassigned to Muskogee in order to improve oversight and communication. Director [REDACTED] explained that he approved AD [REDACTED] request because attempts to have the deputy AD-FOs in separate offices had resulted in an ineffective and confusing reporting structure that had negatively impacted OJS's ability to complete its mission. Furthermore, Director [REDACTED] explained that he later added a new law enforcement specialist position to Muskogee in order to support the AD-FO and the two deputy-AD-FOs in the performance of their duties.

2018 Relocation of Two Internal Affairs Division Agents to Muskogee

In 2018, two Internal Affairs Division agents were also relocated to Muskogee Oklahoma, as part of a wider effort by Internal Affairs to deconsolidate their office in Albuquerque, New Mexico and expand their presence in other regional offices. During the course of the OIG investigation it became clear that the relocation of these two Internal Affairs agents was part of a concerted effort to disperse agents throughout the United States in order for there to be a more effective investigatory process. Specifically, it was noted that in interviews Internal Affairs believed that several investigations were not being adequately pursued in various regions due to all agents being located in one central location. Therefore, the move of these two agents to Muskogee was initiated by Internal Affairs, was part of a wider effort to relocate agents throughout the regions and was not initiated by Director [REDACTED]

IV. Findings regarding Director [REDACTED] travel to Muskogee, Oklahoma.

Finally, During the course of the investigation, the OIG reviewed Director [REDACTED] travel records between January 2018 and January 2020 which consisted of approximately 50 trips. Those travel records indicated that Director [REDACTED] made 13 trips during that time frame that included stops at the Muskogee office. The OIG's review of the travel documentation indicated that each of the travel requests cited official business reasons for travel and were properly approved by Director [REDACTED] supervisor. The OIG's review consisted of reviewing email correspondence regarding the travel as well as all the travel requests and supporting documentation located within Concur, the Department's travel system. Director [REDACTED] did state during his interviews that he would pay for his own personal travel to Oklahoma where he has a property and that when necessary would work out of the Muskogee office if he needed to be in an office despite being there on personal time. He also indicated that some of the official travel records showed Muskogee, Oklahoma as the departure point because he would be on personal leave in Muskogee and would have to travel to various BIA regions from Muskogee and then return to Washington D.C. Furthermore, during the course of the investigation, Director [REDACTED] supervisor stated that he reviewed and approved each of Director [REDACTED] travel requests and that all of the travel requests were for legitimate business reasons. Ultimately, the OIG concluded that for each of the times that Director [REDACTED] traveled to Muskogee, Oklahoma he had a legitimate business purpose and that there was no suggestion that he improperly traveled to Muskogee using government funds.

DEPARTMENT'S EVALUATION OF THE OIG'S INVESTIGATION AND CONCLUSIONS

I. Directed Reassignments Issued By The Office of Justice Services

My office has reviewed the OIG's investigation report as well as the underlying documents collected and the transcripts of the interviews performed during the course of the investigation. Based on our review of the facts collected, the Department agrees with the OIG's conclusion that the directed reassignments issued by OJS officials were supported by proper considerations and that the evidence does not reveal an improper motivation. Therefore, no further action is necessary at this time. Directed reassignments must be for bona fide management considerations to promote the efficiency of the service. *Ketterer v. U.S. Department of Agriculture*, 2 M.S.P.R. 294, 298 (1980); *see also, Cobert v. Miller*, 800 F.3d 1340, 1349 (Fed. Cir. 2015) (emphasizing that *Ketterer* sets forth the correct legal standard for evaluating the sufficiency of a directed reassignment). Although individuals, especially those subjected to a directed reassignment, may disagree with the determination that their reassignment is in the best interest of the Department in order to promote the efficiency of service, that disagreement does not mean that the directed reassignment was illegal or that the reassignment was done for improper motivations.

First, with regard to the directed reassignments of the four SACs, the material collected by the OIG clearly documented a need to fill the SAC positions in Aberdeen, South Dakota and Phoenix, Arizona, which several OJS employees acknowledged were difficult to fill and had been vacant for extended periods of time. Additionally, the documentation supports the contention that these two regional offices, along with the offices in Albuquerque, New Mexico and Billings, Montana, were considered by OJS leadership to be the most complex and important within OJS. As such, it is a logical conclusion that in order to promote the efficiency of OJS it was necessary to reassign the only four SACs employed by OJS at the time to these positions. Furthermore, the directed reassignment letters further buttressed this contention by showing that the skill sets of the four SACs were considered when deciding to directly reassign them. Although [REDACTED] states that the rationales for the four SAC directed reassignment letters were fabricated, there is insufficient evidence to support this contention. First, the directed reassignment letters provided sufficient justifications to meet the legal standard expressed in *Ketterer*. Second, although [REDACTED] contends that he fabricated the reasons, [REDACTED] testimony refutes this assertion. Rather [REDACTED] testimony and contemporaneous documentation he provided demonstrate that [REDACTED] and [REDACTED] considered which SAC should go to which of the four priority regional offices based on which SAC's experience and skill sets would promote the OJS mission and the best interest of the government. Finally, as indicated above these directed reassignment letters were reviewed and approved by BIA HR, which had no indication that the directed reassignments were being issued for improper or illegal purposes.

With regard to the other 48 directed reassignments, there is no indication in the letters or in the testimony collected by the OIG that these reassignments were done for improper or illegal purposes. As indicated by the OIG, there were some inconsistencies in the documentation of the justifications, but there was no indication of an underlying improper rationale for those reassignments or that the reasons documented in the directed reassignment letters were not the actual reasons for the reassignments.

Based on the above, the Department concurs with the OIG's findings that the directed reassignments were done for legitimate business purposes and that there were no underlying improper or illegal motive underlying the decisions to issue the directed reassignment letters. Therefore, the Department will take no further action at this time regarding this allegation.

II. Costs associated with the execution of the directed reassignments

My office has also reviewed the OIG's investigation with regard to the allegation that the costs associated with the directed reassignments constituted a gross waste of funds. As indicated in the summary of the OIG's investigation, the OIG concluded that all of the directed reassignments that occurred within OJS between January 2018 and September 2019 were legally sufficient. As such the OIG concluded that the associated relocation expenditures and obligations were also proper. As the OIG noted only 20 of the 48 directed reassignments resulted in the obligation of Department funds. These obligations totaled \$1.1 million but only resulted in the expenditure of \$504,000. I agree with the OIG's assessment that upon review of these figures and underlying data, there is no indication that the costs associated with the moving of these employees were improperly inflated or otherwise fraudulent. Furthermore, the OSC referral draws a causal connection between the allegation that the directed reassignments were improper and the expenditure of resources to effectuate those improper relocations. In this case, my concurrence with the OIG's assessment that the directed reassignments were not improperly motivated, also leads to the conclusion that the expenditure of agency funds to accomplish those reassignments also was not improper or a gross waste of funds. Therefore, the Department will take no further action at this time regarding this allegation.

III. Relocation of Various OJS Positions to Muskogee, Oklahoma

With regard to the allegations concerning the relocation of various positions to Muskogee, Oklahoma, the Department also concurs with the OIG's assessment that the relocations were not done for the personal gain of Director [REDACTED] and that the relocation of these positions to Muskogee were done for legitimate business purposes.

First, as indicated by the OIG, prior to Director [REDACTED] assuming his role, the Department had made a concerted effort to reduce OJS's footprint in the MIB in Washington, D.C. and to increase its presence in the various OJS regional offices. As revealed during the course of the investigation, OJS had excess office space in Muskogee, Oklahoma and Albuquerque, New Mexico. This was affirmed by the reassignment of four assistant director positions, two to Muskogee and two to Albuquerque. Additionally, given that both New Mexico and Oklahoma have large Native American populations, it is practical that OJS would want an increased presence in those communities.

Second, with regard to the relocation of the three positions from the OJS offices in Oklahoma City, Oklahoma to Muskogee, Oklahoma the Department agrees with the assessment by the OIG that these were proper relocations. As indicated above, these positions previously had been located in Muskogee and their relocation back to Muskogee was done for legitimate business reasons. As indicated by the OIG review, the Regional BIA Director for District II had approached Director [REDACTED] and requested that OJS personnel be moved back to Muskogee so that OJS and BIA personnel could communicate in a more efficient manner. Furthermore, the relocation of OJS personnel to the respective BIA regional office occurred not only in Muskogee but also for other regional offices with OJS.

Third, with regard to the relocation of the AD-FO, as stated the position was advertised for either Muskogee or Albuquerque as the duty station. The advertisement of these two duty stations is consistent with testimony elicited during the OIG investigation that these two offices contained the most excess office space to accommodate the relocation of positions from the MIB in Washington, D.C. As stated above, [REDACTED] was eventually selected for the position and chose the Muskogee office as his duty station. Upon assuming the AD-FO position, [REDACTED] requested that the two deputy-AD-FOs be moved to Muskogee to better increase efficiency and oversight. These facts lead to the conclusion that Director [REDACTED] did not abuse his authority to place these three positions in Muskogee. In fact, the individual hired for the AD-FO actively chose Muskogee as his duty station and requested his subordinates be assigned to the same office in order to create a more efficient system within OJS. Therefore, there is nothing to suggest that Director [REDACTED] improperly used his authority to relocate these positions to Muskogee.

Finally, with regard to the two Internal Affairs positions those positions were moved to Muskogee at the behest of Internal Affairs as part of Internal Affairs' own efforts to deconsolidate their presence in one location, Albuquerque. As explained by the OIG, this effort was undertaken because of a concern within Internal Affairs that investigations and complaints were not being properly pursued throughout all the regions because the Internal Affairs Agents were all singularly located in one office. The move of these two positions to Muskogee coincided with the move of other Internal Affairs agents to regional offices throughout the country in attempt to improve Internal Affairs ability to receive and investigate complaints.

For all the reasons stated above, the Department concurs with the OIG's investigation and findings concerning the relocation of various OJS positions to the Muskogee office. As demonstrated in the record the relocation of these positions all had legitimate business purposes. Additionally, a majority of the positions were relocated at the behest other individuals including Departmental Leadership, the BIA Regional Director, the AD-FO, and Internal Affairs. As such, we cannot substantiate that Director [REDACTED] abused his position by approving these relocations nor that he did so in order to personally benefit himself by filling the Muskogee office with more OJS employees to justify his travel to Oklahoma where he has a personal residence. Therefore, the Department will take no further action at this time regarding this allegation.

IV. Director [REDACTED] Travel to Muskogee, Oklahoma

Finally, my office has reviewed the OIG's investigation concerning the allegation about Director [REDACTED] travel to Muskogee, Oklahoma and the Department concurs with their findings. As mentioned above, from January 2018 until January 2020 Director [REDACTED] took 50 trips on official government business with 13 of those trips starting or including a stop in Muskogee, Oklahoma. All of those trips were approved by Director [REDACTED] supervisor and went through the Departmental process for approval. The investigation revealed that the number of trips with a Muskogee, Oklahoma stop or origin may be inflated because Director [REDACTED] official travels could have started from Muskogee, Oklahoma rather than Washington D.C. if he was on personal leave in Oklahoma at the time. Regardless, as the OIG indicated, there is nothing in the requests for travel or the approvals that suggests that Director [REDACTED] travel was not for official Department purposes or that he excessively traveled to Muskogee, Oklahoma for personal reasons. Therefore, the Department will take no further action at this time regarding this allegation.

CONCLUSION

Therefore, for all of the reasons stated above we concur with the extensive investigation and report of the Office of the Inspector General and have determined that none of the allegations referred as part of DI-20-000156 & DI-20-000170 were substantiated. Therefore, no further action will be taken at this time.

If you have any questions or concerns please contact Jeffrey Scott, Attorney-Advisor, Office of the Solicitor at (202) 513-0512 or at Jeffrey.Scott@sol.doi.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "S. de la Vega", followed by a long horizontal flourish line.

Scott A. de la Vega
Associate Solicitor for General Law



OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR

Allegations Against a BIA Office of Justice Services Official

I. EXECUTIVE SUMMARY

We investigated allegations referred by the U.S. Office of Special Counsel (OSC) from an anonymous whistleblower against a senior official from the Bureau of Indian Affairs' (BIA's) Office of Justice Services (OJS). The senior official allegedly engaged in gross mismanagement, a gross waste of funds, and abuse of authority by (1) directing the repeated and unwarranted geographic reassignments of approximately 25 OJS employees, including 4 special agents in charge (SACs), to facilitate their resignation or retirement; (2) obligating almost \$2 million for allegedly improper reassignments; (3) directing the relocation of 7 senior OJS managers to an OJS district office to establish an OJS presence in an area in which he had personal connections to justify his frequent travel to the area; and (4) instructing a subordinate OJS employee to "get creative" in writing justifications for the directed reassignment (DR) letters for the four SACs.

We did not substantiate the allegations that the senior OJS official's actions constituted gross mismanagement, a gross waste of funds, or an abuse of authority, or that he violated any Federal law, regulation, or policy. Specifically, we found insufficient evidence to refute the legitimate business reasons cited for the DRs. Therefore, we had no reason to question the associated costs. Further, we concluded that the evidence supports a finding that the senior official relocated the OJS positions to the district office for legitimate business reasons and not to personally benefit himself. Finally, we did not substantiate the allegation that the senior official or any other manager told the OJS employee to "get creative" or to use false or misleading justifications when writing the four SACs' DR letters.

We provided our report to the Secretary of the Interior for any action deemed appropriate.

II. RESULTS OF INVESTIGATION

A. Facts

1. The Senior OJS Official's Demand for Improved Performance and Increased Accountability in the OJS

We found substantial evidence demonstrating that before the senior OJS official was selected for that role, BIA and Office of the Assistant Secretary – Indian Affairs (AS-IA) leaders saw the OJS as underperforming in its support of tribes, and they determined that management changes were needed. After the senior official was selected, he regularly told OJS managers that he demanded improved performance and increased accountability from the OJS' managers and employees.

The senior OJS official told us he believed the OJS' management culture was complacent. He also said he believed that district SACs commonly failed to effectively manage their relationships with tribal leaders and that the OJS had failed to provide an acceptable level of tribal law enforcement support, which resulted in many tribal complaints to OJS headquarters. Several OJS managers told us they disagreed with the senior official's critical characterization of the OJS' managerial culture. Many opined that his criticisms were self-serving and said that he espoused such opinions to justify his aggressive use of DRs.

2. According to the BIA, 48 DRs Occurred From Early 2018 Through Fall 2019

A DR is the permanent reassignment of an employee to a different position and does not need to be voluntary. A DR may or may not involve a geographic relocation and may result in permanent change of station (PCS) costs to the U.S. Government. An employee who declines a DR may be removed from Federal service for refusing the order; that person may also opt to retire (if eligible to do so), resign, or request a change of position to avoid geographic relocation. BIA Human Resources (HR) provided us a list of 93 OJS reassignments completed between early 2018 and fall 2019.¹ Of those reassignments, 48 were DRs.

Our review of the 48 DRs established that the BIA's written justifications for 17 of them justified further investigation to clarify why OJS managers reassigned the employees.

Our investigation of these 17 DRs found some inconsistencies in how OJS managers documented their justifications for reassigning employees. However, we did not find evidence indicating that employees were selected for DRs for prohibited reasons or that the business reasons identified in the DR letters were false or otherwise improper. The business reasons documented in the letters included justifications like filling vacancies, reallocating positions, and improving the OJS' level of service to tribes. Ultimately, we concluded that the DRs fell within management's lawful discretion to reposition resources in furtherance of the OJS' priorities.

3. Twenty of the 48 DRs Resulted in Obligated Costs of Approximately \$1.1 Million and PCS Costs of Approximately \$504,000

Data provided by the BIA established that only 20 of the 48 DRs resulted in funding obligations and PCS costs. The total PCS costs incurred for those 20 DRs were approximately \$504,000, with approximately \$1.1 million obligated for the reassignments.

The evidence reflected that the OJS' priority in ordering the DRs was ensuring that OJS employees were assigned to complex districts, critical programs, and hard-to-fill positions, and that costs were a secondary consideration. In addition, we learned that the OJS frequently assigned employees and managers to temporary rotations in order to staff vacant critical law enforcement positions, which, according to the senior OJS official, cost more than reassigning employees permanently to the positions. We therefore concluded that the evidence supported a finding that the OJS' priority in these assignments was to best meet agency needs.

4. The Senior OJS Official Relocated Several OJS Positions

The evidence showed that sometime after the senior OJS official was selected for his position, Department of the Interior leadership mandated a reduction in OJS staffing at the Stewart Lee Udall Department of the Interior Building (hereinafter "Main Interior Building" or "MIB") in Washington, DC, because some of the OJS' office space there was being reassigned to another agency. Shortly thereafter, the BIA Director approved the senior OJS official's relocation of four

¹ We began investigating the senior OJS official's alleged improper use of DRs in fall 2019 and requested the information from the BIA's HR at that time.

managerial positions from MIB to available OJS office space in three district offices, including one office in an area in which the senior official had personal connections.² As discussed below, the evidence also showed that the senior OJS official relocated nine positions to this district office.

This district office had once shared space with a BIA regional office, but had been moved to another city some years before.³ In 2018, the senior official moved the district office back to its former location, resulting in the relocation of three OJS positions. The senior official said he made this change after the BIA regional director complained to him about a lack of OJS visibility to tribes in his area and offered him more office space. In addition to addressing the BIA regional director's concerns, the senior official told us that relocating OJS positions back to the BIA regional office was intended to improve coordination between OJS and BIA leaders.

In 2018, an OJS managerial position at MIB became vacant, and the candidate selected for the position asked to be stationed in the OJS district office. The senior OJS official also moved two supervisory positions to the district office at the OJS manager's request. Later, the senior official added the support of a law enforcement specialist to the district office, and he relocated two more employees there based on a request from their division to improve its effectiveness in the region.

5. The Senior OJS Official's Travel

According to official travel records, the senior OJS official made 13 trips from 2018 to 2020 that included stops at the district office. The records cited official business reasons for the travel and were properly approved by the senior official's supervisor. The senior official confirmed that he had personal connections near the district office but denied that he relocated OJS positions to the office to justify his travel to the area. He further pointed out that the office had existed before he assumed his role at the OJS and that he did not need to relocate employees there to justify his travel to the area.

6. The Four SACs' DR Letters

A subordinate employee of the senior OJS official told us that an OJS manager, not the senior official, instructed him during a meeting to "get creative" and put the justifications "in a positive light" when writing the DR letters for the four SACs. We did not find evidence corroborating the allegation that this employee was told by anyone to "get creative" when drafting the justifications. On the contrary, the SACs' DR letters cited legitimate business reasons for the DRs and were consistent with the senior OJS official's attempts to improve performance and accountability within the OJS.

We found that, after reviewing the OJS employee's draft letter template, BIA HR suggested that he cite a "more substantial reason" for each of the DRs. The employee said he was frustrated at the time and did not know what information to include because he disagreed with the DRs. The

² The senior OJS official told us that he opted to keep three positions at MIB because he believed their leadership responsibilities required them to be located in that building.

³ At that time, six OJS employees remained in the district office.

senior OJS official gave the OJS employee and manager copies of DR letters that were issued with BIA approval in the past, and the employee used these as examples to revise the letters.

The senior OJS official denied telling subordinates to avoid using negative language in the DR letters. He said, however, that he may have told them to keep the DRs separate from any performance concerns.

The OJS employee said he interpreted the guidance to mean he should write the justifications in a complimentary manner and avoid citing negative reasons. The OJS manager denied telling the employee to “get creative” in revising the letters. He said he told the employee to use the information they had discussed and fit each SAC’s skillset to the needs of the district to which the SAC was being reassigned. The manager provided us with a hand-drawn matrix listing the OJS’ districts and SACs and identifying those SACs suitable for reassignment, which the manager said he drafted during his discussion with the employee.

B. Analysis

We found insufficient evidence to support the allegations that the senior OJS official engaged in gross mismanagement, a gross waste of funds, or an abuse of authority by ordering DRs to facilitate resignations or retirements. We also found insufficient evidence that he improperly caused the Government to obligate almost \$2 million in funding for reassignments, ordered DRs to establish an OJS presence near the area in which he had personal connections, or instructed a subordinate to “get creative” in writing justifications for some DRs. Further, we found insufficient evidence demonstrating that he took or directed reassignments for an impermissible purpose in violation of law, rule, or regulation.

Gross mismanagement is defined as “a management action or inaction which creates a substantial risk of significant adverse impact upon the agency’s ability to accomplish its mission.”⁴ The Merit Systems Protection Board instructs that “[m]ere differences of opinion between an employee and his agency superiors as to the proper approach to a particular problem or the most appropriate course of action do not rise to the level of gross mismanagement.”⁵ In the current matter, we found differences of opinion as to whether the DRs at issue were necessary or an effective way to accomplish the senior OJS official’s stated objectives. However, we determined that he was authorized to take or direct the personnel actions at issue, and we found insufficient evidence to conclude that his actions created a substantial risk of significant adverse impact upon the BIA’s ability to accomplish its mission. Instead, the evidence supported a finding that the DRs were taken for legitimate business purposes that were well within the BIA’s discretion. Accordingly, we did not substantiate the allegation that the senior official’s actions constituted gross mismanagement.

We also did not substantiate the allegation that the senior official’s actions caused the Government to obligate \$2 million for the DRs. Instead, the evidence showed that the amount obligated was approximately \$1.1 million and that the actual PCS costs incurred for the DRs was

⁴ *Kavanagh v. Merit Systems Protection Board*, 176 Fed. Appx. 133, 135 (Fed.Cir.2006) (citing *White v. Dep’t of the Air Force*, 63 M.S.P.R. 90, 95 (1994)).

⁵ *White v. Dep’t of the Air Force*, 391 F.3d at 1381.

approximately \$504,000. Moreover, because we found that the DRs were accomplished for a legitimate business purpose, we had no reason to question the costs obligated or actually incurred by the Government. Accordingly, we did not substantiate the allegation that the senior official's actions resulted in a gross waste of funds.

Finally, we did not substantiate the claims of an abuse of authority. An abuse of authority occurs if "authority is exercised in an arbitrary or capricious fashion and 'adversely affects the rights of any person or . . . results in personal gain or advantage to [the official] or to preferred other persons.'" ⁶ As stated previously, the BIA and the senior OJS official provided legitimate business reasons for the DRs, and we found insufficient evidence to conclude that the senior official took or directed the reassignments for an arbitrary or capricious reason. Further, we determined that the senior official had sufficient business justifications for the reassignments to the district office, and although he had personal connections to the area, we found insufficient evidence suggesting that the reassignment of personnel to an existing office was done to personally benefit him or resulted in "personal gain or advantage" to him.

III. SUBJECT

A senior OJS official.

IV. DISPOSITION

We provided our report to the Secretary of the Interior for any action deemed appropriate.

⁶ *Gilbert v. Dep't of Commerce*, 194 F.3d 1332, (Fed Cir, 1999) (citing *D'Elia v. Dep't of the Treasury*, 60 M.S.P.R. 226, 232-33 (1993)).