



FOR IMMEDIATE RELEASE

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**DOJ OIG Releases Management Advisory Memorandum of Concerns Regarding the Federal Bureau of Prisons' (BOP) Treatment of Inmate Statements in Investigations of Alleged Misconduct by BOP Employees**

Department of Justice (DOJ) Inspector General Michael E. Horowitz announced today the release of a Management Advisory Memorandum to the Director of the Federal Bureau of Prisons (BOP) regarding the BOP's treatment of inmate statements in investigations of alleged misconduct by BOP employees.

The DOJ Office of the Inspector General's (OIG) concerns arose when the OIG recently inquired of the BOP's Office of Internal Affairs (OIA), a component of the BOP's Office of General Counsel (OGC), about a disciplinary action taken by the BOP following an OIG investigation that substantiated sexual abuse by a BOP employee. In response to our inquiry, we were told by OIA that, in cases that have not been accepted for criminal prosecution, the BOP will not rely on inmate testimony to make administrative misconduct findings and take disciplinary action against BOP employees, unless there is evidence aside from inmate testimony that independently establishes the misconduct, such as a video capturing the act of misconduct, conclusive forensic evidence, or an admission from the subject. The OIA further informed the OIG that the BOP uses inmate statements in administrative proceedings solely for investigative lead purposes.

After reading a draft of the memorandum, the BOP told the OIG that it does not have a practice of not relying inmate testimony in administrative misconduct cases and asked the OIG to speak with additional BOP employees, which we did. However, following these discussions, the OIG continues to have serious concerns about the BOP's treatment of inmate statements in administrative investigations and overall handling of alleged misconduct by BOP employees. The OIG found that, while the BOP does not have a formal policy or practice of categorically rejecting inmate testimony, the BOP is reluctant to rely on inmate testimony in administrative matters, has a general practice of avoiding calling inmates as witnesses in Merit Systems Protection Board (MSPB) and arbitration proceedings, and, at least in matters involving staff on inmate sexual assault, is effectively requiring significantly more than the applicable preponderance of the evidence standard to sustain employee misconduct and impose discipline. In addition, the OIG found that different officials within the BOP's OGC have differing views of how inmate testimony should be treated in employee misconduct investigations and that the BOP does not have a formal policy addressing this issue.

The OIG concluded that the manner in which the BOP is handling misconduct by BOP employees:

- Is contrary to federal regulations and BOP policy.

- Enhances the likelihood that employees who have engaged in misconduct avoid accountability for their actions and remain on staff, thereby posing serious insider threat potential, including the risk of serious harm to inmates.
- Places the BOP at risk of losing an adverse action appeal or an arbitration when inmate testimony could be helpful to establish employee misconduct or rebut an employee's claims or defenses.
- Could result in the BOP imposing unreasonably lenient penalties on staff that engage in serious misconduct because an employee does not have the right to appeal a disciplinary decision to the MSPB if the penalty consists of a suspension of less than 14 days.
- To the extent it is known to its employees, likely emboldens miscreant staff members in their interactions with inmates.
- Can result in the BOP failing to hold staff members accountable for patently false statements made during an investigation, as occurred in the OIG investigation that led to the memorandum.
- Is inconsistent with the federal court practice in criminal cases, and arbitrarily and unjustifiably dismisses inmate testimony, which may be highly credible and provided by several inmates.

The DOJ OIG made three recommendations to the BOP to address the concerns we identified. The BOP agreed with two of the recommendations and disagreed with one of the recommendations.

**Memorandum:** Today's memorandum is available on our website at the following link:

<https://oig.justice.gov/reports/management-advisory-memorandum-notification-concerns-regarding-federal-bureau-prisons-bop>

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