



**U.S. OFFICE OF SPECIAL COUNSEL**  
**1730 M Street, N.W., Suite 300**  
**Washington, D.C. 20036-4505**

**The Special Counsel**

December 22, 2023

The Honorable Merrick B. Garland  
Attorney General  
United States Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

Re: OSC File No. DI-24-000207  
Request for Investigation – 5 U.S.C. §1213(c)

Dear Attorney General Garland:

I am referring to you for investigation a disclosure that employees at the Department of Justice (DOJ), Drug Enforcement Administration (DEA), Albuquerque, New Mexico and the United States Attorney's Office (USAO), District of New Mexico, Albuquerque, New Mexico, engaged in conduct that may constitute a violation of law, rule, or regulation; an abuse of authority; and a substantial and specific danger to public health and safety. A report of your investigation on these allegations and any related matters is due to the Office of Special Counsel (OSC) on March 2, 2024.

The whistleblower, [REDACTED], a Special Agent at DEA [REDACTED] who consented to the release of his name, disclosed that at multiple times in 2023, the USAO for the District of New Mexico instructed DEA agents (agents) not to stop vehicles the agents strongly believed were transporting fentanyl. [REDACTED] alleged that this instruction violates agency policy,

[REDACTED]  
Further, [REDACTED] alleged that given the dangerous nature of even a small amount of fentanyl, permitting any amount to be distributed in the United States presents a risk to public health and safety.

The allegations to be investigated are as follows:

- On multiple occasions, the New Mexico USAO instructed DEA agents not to stop cars the agents had probable cause to suspect contained fentanyl in violation of the DOJ's Fentanyl [REDACTED]

- [REDACTED] explained that on [REDACTED], [REDACTED] participated in a surveillance operation that allowed agents to listen in on calls among drug traffickers in the Albuquerque area. Based on those conversations and similar operations from the days immediately prior, [REDACTED] and other agents believed a car would soon be delivering tens of thousands of fentanyl pills to another individual. Because of the dangers of fentanyl, which are consistently emphasized by the DEA, [REDACTED] asked Acting/Group Supervisor [REDACTED] if the agents in charge of the operation were going to stop the suspected car from making its delivery. [REDACTED] explained that the DEA agents would not stop the car and would let the delivery be carried out. Based on [REDACTED] experience, [REDACTED] believes that this decision came following a discussion with USAO New Mexico. That night, the surveilled car made two significant deliveries of fentanyl pills.

§ 87(2)(b) also recounted two instances on § 87(2)(b), in which § 87(2)(b) stopped cars suspected of involvement in a fentanyl sale over New Mexico USAO's objections. In both situations, § 87(2)(b) had recently completed wiretap operations that led § 87(2)(b) and a fellow agent to believe that a sale was imminent. Prior to conducting the stops, § 87(2)(b) communicated to the USAO that agency policy required stopping the cars and preventing the sales. However, in both instances, New Mexico Assistant U.S. Assistant Attorneys (AUSAs) § 87(2)(b) § 87(2)(b) insisted that § 87(2)(b) and § 87(2)(b) partner allow the sales to proceed. Despite the protests from the AUSAs, § 87(2)(b) stopped the cars § 87(2)(b) suspected contained fentanyl pills. On § 87(2)(b) § 87(2)(b) seized approximately § 87(2)(b) fentanyl pills and a firearm, and on § 87(2)(b) § 87(2)(b) seized a kilogram of § 87(2)(b) and a firearm, but no fentanyl. Following both stops, § 87(2)(b) and his partner were harshly reprimanded by § 87(2)(b) § 87(2)(b) for interfering in USAO operations.

Notwithstanding the authority of the USAO to oversee criminal investigations, DOJ's Fentanyl [REDACTED] sets explicit limitations on this authority for matters involving fentanyl. [REDACTED]

The Honorable Merrick B. Garland

December 22, 2023

Page 3 of 3

[REDACTED] Thus, the New Mexico USAO's direction not to apprehend those identified as potential fentanyl distributors appears contrary to DOJ's Fentanyl [REDACTED] which prioritizes public safety over the risks of compromising a criminal investigation.

Pursuant to my authority under 5 U.S.C. § 1213(c), I have concluded that there is a substantial likelihood that the information provided to OSC discloses a violation of law, rule, or regulation; an abuse of authority; and a substantial and specific danger to public health and safety. Please note that specific allegations and references to specific violations of law, rule or regulation are not intended to be exclusive. If, in the course of your investigation, you discover additional violations, please include your findings on these additional matters in the report to OSC. As previously noted, your agency must conduct an investigation of these matters and produce a report, which must be reviewed and signed by you. Per statutory requirements, I will review the report for sufficiency and reasonableness before sending copies of the agency report along with the whistleblower's comments and any comments or recommendations I may have, to the President and congressional oversight committees and making these documents publicly available.

Additional important requirements and guidance on the agency report are included in the attached Appendix, which can also be accessed at <https://osc.gov/Pages/DOW.aspx>. If your investigators have questions regarding the statutory process or the report required under section 1213, please contact Catherine A. McMullen, Chief, Disclosure Unit, at (202) 804-7088 or [cmcmullen@osc.gov](mailto:cmcmullen@osc.gov) for assistance. I am also available for any questions you may have.

Respectfully,



Karen Gorman  
*Acting Special Counsel*

Enclosure

cc: The Honorable Michael E. Horowitz, Inspector General

[REDACTED]

## **APPENDIX**

### **AGENCY REPORTS UNDER 5 U.S.C. § 1213**

#### GUIDANCE ON 1213 REPORT

- OSC requires that your investigators interview the whistleblower at the beginning of the agency investigation when the whistleblower consents to the disclosure of his or her name.
- Should the agency head delegate the authority to review and sign the report, the delegation must be specifically stated and include the authority to take the actions necessary under 5 U.S.C. § 1213(d)(5).
- OSC will consider extension requests in 60-day increments when an agency evidences that it is conducting a good faith investigation that will require more time to complete.
- Identify agency employees by position title in the report and attach a key identifying the employees by both name and position. The key identifying employees will be used by OSC in its review and evaluation of the report. OSC will place the report without the employee identification key in its public file.
- Do not include in the report personally identifiable information, such as social security numbers, home addresses and telephone numbers, personal e-mails, dates and places of birth, and personal financial information.
- Include information about actual or projected financial savings as a result of the investigation as well as any policy changes related to the financial savings.
- Reports previously provided to OSC may be reviewed through OSC's public file, which is available here: <https://osc.gov/Pages/Resources-PublicFiles.aspx>. Please refer to our file number in any correspondence on this matter.

#### RETALIATION AGAINST WHISTLEBLOWERS

In some cases, whistleblowers who have made disclosures to OSC that are referred for investigation pursuant to 5 U.S.C. § 1213 also allege retaliation for whistleblowing once the agency is on notice of their allegations. The Special Counsel strongly recommends the agency take all appropriate measures to protect individuals from retaliation and other prohibited personnel practices.

#### EXCEPTIONS TO PUBLIC FILE REQUIREMENT

OSC will place a copy of the agency report in its public file unless it is classified or prohibited from release by law or by Executive Order requiring that information be kept secret in the interest of national defense or the conduct of foreign affairs. 5 U.S.C. § 1219(a).

#### EVIDENCE OF CRIMINAL CONDUCT

If the agency discovers evidence of a criminal violation during the course of its investigation and refers the evidence to the Attorney General, the agency must notify the Office of Personnel Management and the Office of Management and Budget. 5 U.S.C. § 1213(f). In such cases, the agency must still submit its report to OSC, but OSC must not share the report with the whistleblower or make it publicly available. See 5 U.S.C. §§ 1213(f), 1219(a)(1).