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The Special Counsel

October 31, 2024

The Honorable Alejandro N. Mayorkas
Secretary
U.S. Department of Homeland Security
245 Murray Lane, S.W.
Building 410, Mail Stop 0525
Washington, D.C. 20528-0410

Re: OSC File No. DI-25-000063
Referral for Investigation—5 U.S.C. § 1213(c)

Dear Secretary Mayorkas:

I am referring to you for investigation a whistleblower disclosure alleging employees at the U.S. Department of Homeland Security, Customs and Border Protection (CPB), San Diego, California, are engaging in conduct that may constitute a violation of law, rule, or regulation and a gross waste of funds. A report of your investigation into these allegations and any related matters is due to the Office of Special Counsel (OSC) on January 3, 2025.

The whistleblower, who chose to remain confidential, disclosed that CBP's San Diego Centralized Processing Center (CPC) is improperly providing Medical Payment Authorization Requests (MedPARs) to migrants after they have been discharged from CBP custody, thereby allowing them to receive medical care at CBP's expense. The allegations to be investigated include:

- The agency's issuance of unauthorized 24-hour MedPARs to non-custodial migrants; and
- Any additional or related allegations of wrongdoing discovered during the investigation of the foregoing allegation.

Specifically, on September 28, 2024, [REDACTED], San Diego Sector Assistant Chief Patrol Agent-Acting, directed Border Patrol Agents to issue 24-hour MedPARs to migrants served with a Notice to Appear (NTA) and transported to the hospital after release, i.e., migrants who are no longer in CBP's custody. These 24-hour MedPARs allow the non-custodial

migrants to receive medical care at CBP's expense for 24 hours following their custodial release. The CBP Standard Operating Procedure (SOP) for Medical Payment Authorization Request and Pharmacy Benefits, which all employees are required to adhere to, states that "if a person in agency custody requires medical treatment, a supervisor will ... [s]ubmit a completed hardcopy of the MedPAR Worksheet to the treating medical facility..." While the SOP requires CBP to provide medical care to custodial migrants, it does not authorize CBP to expend agency funds on medical care for migrants after their release from CBP custody. In the last four months, the San Diego CPC has issued 55 24-hour MedPars to non-custodial migrants. Moreover, although this practice has been exclusive to the CPC for the last several months, on October 21, 2024, [REDACTED], Acting Deputy Division Chief for the San Diego Sector, directed this practice to extend to the other seven stations within the San Diego sector, thereby further increasing the agency funds spent on medical care for migrants released from CBP custody.

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 and a gross waste of funds. 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 5 U.S.C. § 1213, please contact Catherine A. McMullen, Chief, Disclosure Unit, at (202) 804-7088 or cmcmullen@osc.gov. I am also available for any questions you may have.

Sincerely,



Hampton Dellinger
Special Counsel

Enclosure

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.
- 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.
- The statute provides that the agency report shall be reviewed and signed by the agency head. 5 U.S.C. § 1213(d). Agencies should fulfill this Congressional mandate.
- 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. 5 U.S.C. §§ 1213(f), 1219(a)(1).