



U.S. OFFICE OF SPECIAL COUNSEL
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The Special Counsel

March 4, 2025

The Honorable Kristi Noem
Secretary
U.S. Department of Homeland Security
301 7th Street, S.W.
Washington, D.C. 20024

Re: OSC File No. DI-25-000591
Request for Investigation—5 U.S.C. § 1213(c)

Dear Secretary Noem:

I am referring to you for investigation a whistleblower disclosure that employees at the Department of Homeland Security, U.S. Customs and Border Protection (CBP), Progreso Point of Entry (POE), Weslaco, Texas, engaged in conduct that may constitute a violation of law, rule or regulation, gross mismanagement, 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) by May 5, 2025.

The whistleblower, [REDACTED], a CBP Officer at the Progreso POE who consented to release of his name, disclosed that the CBP management officials stationed at the CBP Progreso POE immigration checkpoints are routinely directing CBP officers to allow U.S. residents crossing the border between Progreso, Texas and Nuevo Progreso, Mexico, to bring controlled substances into the U.S. without enforcing compliance with federal importation laws and CBP directives.

Federal importation laws and regulations provide that “[a]ny individual who has in his/her possession a controlled substance listed in schedules II, III IV or V [of the Controlled substances Act, 21 U.S. C. §812] which he/she has lawfully obtained for his/her personal medical use...” may enter or depart the United States with the substance provided the substance is in its original container and provided the individual makes a declaration to the

appropriate customs officer that complies with the law.¹ Federal regulations also provide that the importation must not exceed “50 dosage units *combined of all such controlled substances in the individual’s possession that were obtained abroad for personal medical use.*” (emphasis added).² However, this 50-unit personal use limitation does not apply if the U.S. resident obtained the controlled substance pursuant to a prescription from a DEA-registered medical professional.³

Further, federal law expressly provides that, to the extent that state law provides criminal penalties for possession of specifically delineated controlled substances, the state law takes precedence, and CBP officials conducting customs procedures should act accordingly, including advising individuals of potential prohibitions under state law, seizing the materials, and/or effectuating arrests, if appropriate.⁴ Similarly, CBP directives implementing the foregoing federal regulations warn that individual state laws may be more restrictive than federal laws and that individuals should make themselves aware of state restrictions before bringing controlled substances across the borders.⁵ For example, importation of Tramadol, an opioid and schedule IV controlled substance, is allowed to be imported under federal law in any quantity with a valid prescription or in quantities of less than 50 units without a valid prescription. However, Tramadol is considered a “Group 3” controlled substance under Texas law, and possession of Tramadol in any quantity without a valid prescription constitutes a criminal offense.⁶ Thus, under applicable federal and state law and CBP regulations, an attempt to import Tramadol in any quantity without a valid prescription may result in seizure of the substance or possibly arrest.⁷

██████████ explained that while working at the Progreso POE, he routinely witnesses agency management officials permitting individuals to import controlled substances in excess of 50 units in violation of the foregoing laws, regulations and directives. ██████████ provided several examples of violations he personally witnessed over the past two months that included, but were not limited to, the following incidents:

¹ This includes declaring the controlled substance is possessed for the individual’s personal use and ensuring the trade or chemical name is apparent and complies with all additional requirements. 21 U.S.C § 956 (1998); 21 C.F.R. §1301.26.

² These regulations pertain to U.S. residents as defined in 21 C.F.R. §1301.26(c).

³ Requirements for a valid prescription include the patient’s name and date of birth; medication name, strength, dosage, quantity and directions; route of administration; frequency of use; medical professional’s full name, address and Drug Enforcement Administration number; prescription date and signature of the prescriber. 21 C.F.R. §1306 (2004).

⁴ 21 U.S.C § 956(a).

⁵ CBP Directive No. 3310-006A (July 22, 2003), Section 6.2, “Procedures.”

⁶ Texas Health and Safety Code, Tx. Stat §481.117 (a). This law prohibits the knowing possession of any controlled substance in penalty group 3, which includes Tramadol, “unless the person obtains the substance directly from or under a valid prescription or order of a practitioner acting the course of professional practice,” and classifies the possession as a misdemeanor criminal offense.

⁷ 19 USC 1595(a).

- On or about January 11, 2025, an individual attempted to import 50 Tramadol pills and 3 injectable vials of liquid Tramadol without a valid prescription. This individual was referred to “secondary inspection”⁸ pursuant to agency protocol, where Supervisory Border Protection Officer (SCBPO) [REDACTED] intervened and instructed the CBP officer conducting the secondary inspection to allow the individual to import the substance.
- On or about January 11, 2025, an individual attempted to import two bottles containing approximately 30 pills each of Adderall without a valid prescription.⁹ This individual was referred to secondary inspection where [REDACTED] intervened and instructed the secondary inspection officer to allow the individual to import the substance.
- On or about February 6, 2025, [REDACTED], the assigned primary customs officer, witnessed an individual attempt to import 30 Alprazolam pills and 60 Phentermine pills without a valid U.S. prescription. [REDACTED] referred the individual to secondary inspection where SCBPO [REDACTED] intervened and instructed the CBP officer conducting the secondary inspection to allow the individual to import the substances.¹⁰
- On or about February 6, 2025, [REDACTED], the assigned primary customs officer, witnessed an individual attempt to import 90 Phentermine pills without a valid U.S. prescription. [REDACTED] referred the individual to secondary inspection where [REDACTED] intervened and instructed the inspector to allow the importation of the substance.¹¹

[REDACTED] explained that he has encountered similar violations on an ongoing basis over the last two years. He reported his concerns to former Progreso POE Port Director [REDACTED] in December 2024, providing a copy of the applicable CBP directives to [REDACTED]. However, [REDACTED] failed to acknowledge the violations and declined to take action to address them.¹² [REDACTED] estimates that approximately 3,000 individuals cross the border via the Progreso POE each day and that he encounters these types of violations almost daily. [REDACTED]

⁸ [REDACTED] explained that CBP officers work multiple post assignments throughout their shifts. On any given shift, CBP officers are assigned as “primary” and “secondary” customs officers. The primary officer conducts the initial customs review. If further investigation into the matter is warranted, the primary CBP officer refers the individual to the secondary officer who may conduct searches, pat-downs, drug unit counts, or more detailed examinations of the substance(s).

⁹ Adderall is federally classified as a Schedule II controlled substance and is a central nervous system stimulant.

¹⁰ Under federal law Alprazolam is a Schedule IV depressant and under Texas State law it is a Penalty Group 3 controlled substance. Texas law also criminalizes possession of Alprazolam in any quantity without valid prescription (Class A Misdemeanor).

¹¹ Under federal law Phentermine is a Schedule IV stimulant and under Texas State law it is a Penalty Group 3 controlled substance. Texas law also criminalizes possession of Phentermine in any quantity without valid prescription (Class A Misdemeanor).

¹² [REDACTED] recently left this position and was replaced by Port Director [REDACTED] who, according to the whistleblower, had adopted the same policies and procedures as his predecessor.

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█ asserts that this culture of non-adherence to federal, state, and CBP directives has resulted in excessive amounts of controlled substances crossing over the United States-Mexico border, undermining CBP's mission to protect the borders, and creating an undue risk to public health and safety.

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 violations of law, rule, or regulation, gross mismanagement, 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/Documents/Public%20Files/1213%20Appendix.pdf>. 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 for assistance. 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(c)

GUIDANCE ON 1213(c) 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 when an agency evidences that it is conducting a good faith investigation that will require more time to complete.
- OSC requests that agencies fulfill the Congressional mandate that the report “shall be reviewed and signed by the head of the agency.” 5 U.S.C. § 1213(d). At a minimum, OSC requires a clear statement in the report that states the head of the agency is personally aware of the whistleblower’s allegations, agrees with the agency’s investigation findings, and supports the proposed remedial actions or lack thereof.
- 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(c) 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).