



U.S. OFFICE OF SPECIAL COUNSEL
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The Special Counsel

May 18, 2020

The Honorable Chad Wolf
Acting Secretary
U.S. Department of Homeland Security
2707 Martin Luther King Jr Ave SE
Washington, DC 20528

Re: OSC File No. DI-20-0664
Referral for Investigation – 5 U.S.C. § 1213(c)

Dear Mr. Secretary:

I am referring to you for investigation a whistleblower disclosure alleging that the Federal Emergency Management Agency (FEMA) violated a law, rule, or regulation and engaged in gross mismanagement by providing unqualified and ineffective American Sign Language (ASL) interpreters to the deaf and hearing-impaired community in Puerto Rico in FEMA's response to Hurricane Maria and the 2019 earthquakes. A report of your investigation on these allegations and any related matters is due to the U.S. Office of Special Counsel (OSC) by July 17, 2020.

The whistleblower, [REDACTED], Program Liaison/ASL Technical Specialist with FEMA's Office of External Affairs, who consented to the release of [REDACTED] name, alleges that the sign language interpreters provided by FEMA in certain disaster response areas were unqualified to provide effective communication access to the deaf and hearing-impaired community. The whistleblower stated that FEMA engaged a contractor to provide qualified ASL interpreters at FEMA disaster recovery centers and other FEMA-sponsored information sharing events in its response to Hurricane Maria and the 2019 earthquakes in Puerto Rico and that FEMA's lack of oversight of those contracts resulted in FEMA falling short of meeting its statutory obligation under section 689e of the Post-Katrina Emergency Reform Act of 2006 to provide effective and inclusive communication access to all survivors of disaster areas. 42 U.S.C. § 5196f. Specifically, the allegations to be investigated include:

- In its response to Hurricane Maria and the 2019 earthquakes in Puerto Rico, FEMA did not perform effective oversight of the performance of the contracts for ASL interpreters:
 - FEMA did not ensure that the ASL interpreters hired for those disaster response missions were appropriately qualified.

The Honorable Chad Wolf

May 18, 2020

Page 2 of 3

- FEMA did not evaluate the quality of the services provided by the ASL interpreters to the deaf and hearing-impaired community.
- FEMA did not provide a meaningful avenue for recipients of sign language services to make complaints or otherwise provide feedback to FEMA concerning their experiences with the ASL interpreters.

The whistleblower contends that the FEMA contracts for sign language interpretation for the Hurricane Maria and 2019 earthquakes responses required that all ASL interpreters meet certain minimum qualifications, including that they be registered with the Registry of Interpreters for the Deaf (RID) and hold a certification of NIC (National Interpreter Certification) or CDI (Certified Deaf Interpreter) or have a state-equivalent certification/licensure. The whistleblower alleges that the ASL interpreters hired by FEMA's contractor did not meet those standards.

In addition, the whistleblower alleges that in its response to both Hurricane Maria and the 2019 earthquakes in Puerto Rico, FEMA did not provide a meaningful avenue for recipients of sign language services to provide feedback to FEMA on the ASL interpreters. Although the Statement of Work provides that recipients of sign language services may make complaints directly to FEMA, in these instances, they were not provided with any guidance on how to make such a complaint or otherwise provide feedback. Additionally, the whistleblower alleges that, for the Hurricane Maria response, even if deaf survivors were able to communicate their complaints to FEMA staff, the FEMA employees responsible for overseeing the contractor at issue had delegated their role in the review of complaints back to the contractor, resulting in the contractor effectively monitoring itself.

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 gross mismanagement. Please note that the 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 Appendix, which can also be accessed online at <https://osc.gov/Services/Pages/DU-Resources.aspx>. If your investigators have questions regarding the statutory process or the

The Special Counsel

The Honorable Chad Wolf

May 18, 2020

Page 3 of 3

report required under section 1213, please contact Elizabeth McMurray, Chief of the Retaliation and Disclosure Unit, at (202) 804-7089 for assistance. I am also available for any questions you may have.

As discussed above, your investigative report, including any remedial actions, is due to OSC by July 17, 2020.

Sincerely,

A handwritten signature in black ink, appearing to read "Henry J. Kerner", with a stylized flourish at the end.

Henry J. Kerner
Special Counsel

Enclosure

cc: The Honorable Joseph V. Cuffari, Inspector General

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/PublicFiles>. 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).