



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

**The Special Counsel**

March 13, 2023

The Honorable Merrick B. Garland  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530-0001

Re: OSC File No. DI-23-000271  
Request for Investigation—5 U.S.C. § 1213(c)

Dear Attorney General Garland:

I am referring to you for investigation a whistleblower disclosure concerning employees of the Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Boston Field Division, Industry Operations, Boston, Massachusetts. The whistleblower alleged that ATF employees have engaged in activity that may constitute gross mismanagement, an abuse of authority, and a substantial and specific danger to public safety. A report of your investigation on these allegations and any related matters is due to the Office of Special Counsel (OSC) by May 12, 2023.

The whistleblower, who chose to remain anonymous, disclosed that ATF employees have failed to provide adequate oversight of federal firearms licensee [REDACTED] to ensure public safety. The allegations to be investigated include:

- Employees have failed to revoke [REDACTED] federal firearms licenses (FFLs) despite its failure to comply with a June 28, 2022 non-prosecution agreement entered into with the U.S. Attorney's Office for the District of Connecticut (USAO); and
- Any additional, related allegations of wrongdoing discovered during the investigation of the foregoing allegations.

The ATF Boston Field Division first issued a Notice of Revocation (NOR) to [REDACTED] on September 17, 2020, based upon over 600 willful, repeated violations of the Gun Control Act (GCA) and its implementing regulations, dating back to 2011.<sup>1</sup> The ATF amended the NOR to include additional willful violations and re-issued it on February 14, 2022. On July 5, 2022, the ATF issued the final NOR to [REDACTED] pursuant to a June 28, 2022 non-prosecution agreement between [REDACTED] and the USAO (the Agreement). In the Agreement, the revocation was stayed until September 26, 2022 to allow [REDACTED] to sell or transfer its firearms and ammunition in arms-

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<sup>1</sup> See 27 C.F.R. § 478.73.

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length transactions. The Agreement authorized the ATF to extend the stay of revocation in 60-day increments provided [REDACTED] submits a written request that is supported by a detailed status report on its efforts to complete the firearm and ammunition sales and transfers.

The whistleblower alleged that the ATF has improperly extended the stay of revocation three times. The whistleblower alleged the extensions are improper because [REDACTED] did not provide the required status report on firearm sales with the extension request and has continued to engage in repeat GCA violations by failing to report approximately 68 multiple sales to the ATF, as required by 27 C.F.R. § 478.126a. The whistleblower further alleged that there have been seven crime guns traced back to [REDACTED] since the initial NOR in 2020, and one of the traces occurred after [REDACTED] entered into the non-prosecution Agreement with the USAO in 2022. Thus, the ATF's failure to revoke [REDACTED] FFLs has allegedly created a substantial and specific danger to public 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 gross mismanagement, an abuse of authority, and a substantial and specific danger to public 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](mailto:cmcmullen@osc.gov) for assistance. I am also available for any questions you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "Henry J. Kerner", followed by a stylized flourish.

Henry J. Kerner  
Special Counsel

Enclosure

cc: The Honorable Michael E. Horowitz, 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).