



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

The Special Counsel

September 4, 2025

The President
The White House
Washington, D.C. 20500

Re: OSC File No. DI-24-000207

Dear Mr. President:

I am forwarding to you a report transmitted by the Department of Justice (DOJ) in response to the Office of Special Counsel's (OSC) referral of disclosures of wrongdoing at the Drug Enforcement Administration (DEA), New Mexico (DEA-NM) and the United States Attorney's Office (USAO), District of New Mexico (USAO-NM), New Mexico. OSC has reviewed the disclosure, the agency report, and the whistleblower's comments, and, in accordance with 5 U.S.C. § 1213(e), I have determined that the report contains the information required by statute, and the findings appear reasonable.¹ The allegations were not substantiated. The following is a summary of the findings and whistleblower comments.

The Allegations

The whistleblower, [REDACTED] a Special Agent at DEA who consented to the release of [REDACTED] name, disclosed that at multiple times in 2023, USAO-NM instructed DEA agents not to stop vehicles believed to be transporting fentanyl. [REDACTED] alleged that this instruction violated DOJ Criminal Division's guidance and recommendations on managing the risk fentanyl presents in Title III investigations [REDACTED] [REDACTED] alleged that USAO prosecutors and DEA investigators disregarded the guidance during ongoing operations, permitting the trafficking of multiple significant shipments of fentanyl pills. [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.

¹ The whistleblower's allegations were referred to then-Attorney General Merrick Garland for investigation pursuant to 5 U.S.C. § 1213(c) and (d). DOJ's Office of Professional Responsibility conducted the investigation. Then-Associate Deputy Attorney General Bradley Weinsheimer was delegated authority to review and sign the report.

[REDACTED]

The Agency Report

In its report, DOJ's Office of Professional Responsibility (OPR) found that DOJ does not interpret the fentanyl guidance to require agents to stop targets of investigation any time they suspect fentanyl may be present, but rather, to allow investigative teams to use discretion when deciding how to handle an investigation. The report notes that the fentanyl guidance permits investigators to weigh the risks of seizing suspected fentanyl against concerns of public safety or longer-term goals of the investigation and allows appropriate supervisory personnel to contribute to the decision-making process. The report noted that DEA agents and supervisors as well as current and former attorneys and supervisors in the DOJ Criminal Division, including personnel in the Office of Enforcement Operations (OEO), interpret the guidance to include this discretion.

The report investigated instances in which USAO and DEA investigators advised taking action other than immediately stopping and seizing a suspected fentanyl shipment. OPR found that in the cases it reviewed, the decisions were made with adequate oversight of supervisory personnel and appeared reasonable under the circumstances. Thus, given the discretion permitted by the fentanyl guidance, the report did not substantiate the allegation that USAO and DEA personnel violated a law, rule, or regulation, abused its authority or engaged in action that constituted a substantial and specific danger to public health and safety.

The Whistleblower Comments

In [REDACTED] comments, [REDACTED] disagreed with the agency's findings. First, [REDACTED] objected to the use of the term "fentanyl guidance" in the report, as [REDACTED] felt it represented an attempt to minimize its significance and the obligation of employees to comply with its terms. [REDACTED] explained that complying with its terms is not discretionary, as is clear from plain language of the document. Further, in meetings with fellow employees and OEO attorneys over the last several years, [REDACTED] stated that the fentanyl guidance had been consistently interpreted to require the stopping of all individuals and vehicles believed to be transporting fentanyl. To the extent that the fentanyl guidance allows for agents to take "reasonable efforts" to mitigate risks to the public, they did not do so in the investigations on which [REDACTED] worked. [REDACTED] also underscored the significant risk that permitting the trafficking of hundreds of thousands of fentanyl pills poses to the American public.


[REDACTED] also criticized the report's accounting of the trafficking investigations that formed the basis of [REDACTED] referral. [REDACTED] stated that these accounts lacked critical details, misrepresented facts, and distorted [REDACTED] statements. [REDACTED] also asserted that the report overstated the risk stopping a suspected trafficker's car would have on an investigation and downplayed the seizures that occurred because of these stops.

The Special Counsel's Findings

I thank the whistleblower for bringing the allegations to OSC and greatly appreciate [REDACTED] dedication to stopping the deadly threat of fentanyl. We recognize the whistleblower's disagreement with DOJ OPR's report. However, prosecutors and investigators need to have the flexibility to choose the operational approaches they have concluded are the most effective in combatting drug trafficking throughout the country. To that end, as noted by agency leadership and other USAO and DOJ employees, stopping a low-level suspect may cause more harm on balance because it may put senior members of a trafficking organization on notice of vulnerabilities to their operations or of law enforcement activities or surveillance. Given the agency's analysis, the discretion afforded the agency in the guidance, and the above considerations, I have concluded that the agency's approach to these matters is correct. Finally, I have determined that agency report includes the information required and the findings appear reasonable.

As required by 5 U.S.C. § 1213(e)(3), I have sent a copy of this letter, the agency report, and whistleblower comments to the Chairs and Ranking Members of the Senate and House Committees on the Judiciary. OSC has also filed redacted copies of these documents and the redacted referral letter in our public file, which is available online at osc.gov. This matter is now closed.

Respectfully,



Charles N. Baldis
*Senior Counsel and Designee
of Acting Special Counsel Jamieson Greer*

Enclosures