



Office of the Inspector General
U.S. Department of Justice



Review of the Drug Enforcement Administration's Use of Cold Consent Encounters at Mass Transportation Facilities

EXECUTIVE SUMMARY

INTRODUCTION

Consent encounters are one of the means of interdiction used by the Drug Enforcement Administration (DEA) to carry out its mission. This report focuses on what are sometimes referred to as “cold” consent encounters. These can occur in one of two ways: (1) when an agent approaches an individual based on no particular behavior; or (2) when an agent approaches an individual based on the officer’s perception that the person is exhibiting characteristics indicative of drug trafficking without the officer having any independent predicated information. The encounter typically entails the officer asking for consent to speak with the individual and, if the agent thinks it warranted, to seek consent to search their belongings. These encounters are considered voluntary because the officer does not seek to require the person to participate in the encounter or submit to a search based on prior information about the person or their connection to drug trafficking. Within DEA operations, cold consent encounters are primarily used by DEA interdiction Task Force Groups (TFGs) that work to interdict drug trafficking at transportation facilities.

Such cold consent encounters can raise civil rights concerns. The Office of the Inspector General (OIG) initiated this review after receiving complaints from two African American women resulting from separate DEA-initiated cold consent encounters at an airport. Although neither of these complaints was substantiated, the incidents raised concerns because the Department of Justice (Department) has noted that cold consent encounters are more often associated with racial profiling than contacts based on previously acquired information.¹ From 2009 to 2013, DEA interdiction TFGs seized \$163 million in 4,138 individual cash seizures.² Twenty-one percent of these seizures were contested, and all or a portion of the seized cash in 41 percent of those contested cases was returned — a total of \$8.3 million.³ The OIG determined that it was appropriate to conduct a more systemic review of the potential issues raised by the use of this technique.

¹ U.S. Department of Justice, *Race or Ethnicity as a Factor in Law Enforcement Operations: A Survey of Federal Agencies*, (June 2003), 3.

² These totals include cash seized from all seizure methods, including cold consent encounters. As discussed later in the report, we could not distinguish cash seized resulting from cold consent encounters from other investigative techniques because the DEA does not track which seizures resulted from cold consent encounters or other interdiction methods.

³ Individuals from whom cash is seized may contest the seizure and litigate in federal court or may request remission or mitigation through the administrative process at the DEA.

In this review, the OIG examined the policies, practices, documentation, and oversight of DEA-initiated cold consent encounters in mass transportation facilities, specifically airports, bus stations, and train stations, from 2009 through 2013. A detailed description of the methodology of our review is in Appendix I.

RESULTS IN BRIEF

Because of the potential sensitivity of cold consent encounters and searches, effective oversight of their use is needed to ensure they are conducted appropriately. However, we found that the DEA does not collect sufficient data on cold consent encounters to assess whether they are being conducted impartially or effectively, and that the DEA's management of TFGs does not ensure that training and operational requirements are clearly established, communicated to TFG members, or followed.

The DEA does not collect sufficient data on cold consent encounters to enable it or the OIG to assess whether the encounters are conducted in an unbiased or effective manner.

We found that TFGs do not collect demographic information about each cold consent encounter they conduct and that without this information the DEA cannot assess whether they are conducted in an unbiased manner. Similarly, the OIG was unable to independently assess whether the DEA is conducting cold consent encounters in an unbiased manner because recent data was not available to make such an assessment. Between 2000 and 2003, following an order by President Clinton, the DEA collected data on every encounter in certain mass transportation facilities as part of a Department pilot project to examine the use of race in law enforcement operations. However, in July 2003, the DEA terminated the pilot project and ceased collecting demographic data about each encounter. Neither the DEA nor the Department drew any conclusions from the information the DEA collected between 2000 and 2002 to determine whether cold encounters were being conducted in an unbiased manner.

We believe collecting such data would enhance oversight of DEA's interdiction activities and assist the DEA in responding to allegations that its Special Agents or task force officers inappropriately considered race as a basis for encounters, even though the data would not be conclusive with regard to racial profiling absent a valid baseline of the demographic characteristics of the relevant population.

We also were unable to assess whether cold consent encounters are an effective means of interdiction, because the DEA does not require TFGs to document encounters unless they result in a seizure or arrest, and it also does not track which seizures came from cold consent encounters as opposed to other interdiction methods. Without this information, there is no way to assess the effectiveness of this tactic. However, DEA analysis of the data

relating to cold consent encounters conducted at airports, bus stations, and train stations between 2000 and 2002 showed that they had a substantially lower success rate than encounters based on previously acquired information. While the DEA has not conducted a more recent analysis of the effectiveness of cold consent encounters, supervisors and managers of TFGs with whom we spoke questioned the effectiveness of these encounters and several have begun spending more time directing other types of interdiction efforts that they believe are more likely to result in seizures or arrests. Without being able to compare the results of cold consent encounters to other interdiction or investigative activities, the DEA has no way to assess whether cold consent encounters are an effective use of its resources.

DEA management of interdiction task force groups does not ensure that training and operational requirements are clearly established, communicated to TFG members, or followed.

We found that the DEA does not centrally manage or coordinate training, policy, and operational requirements of TFGs. We were told that the DEA considers interdiction to be a “tool in the toolbox,” rather than a stand-alone program that DEA field division managers can use to combat drug trafficking at transportation facilities.

The DEA relies on training that is known as “Operation Jetway” to teach TFG members to effectively and appropriately conduct interdiction activities, and looks to field division managers to ensure that divisions are comporting with DEA policy and accepted interdiction practices. However, we found that this decentralized management of TFG operations has contributed to confusion regarding training requirements and the procedures for conducting cold consent encounters and searches. For example, although most TFG members, supervisors, and managers believe interdiction training is important and that Operation Jetway training is mandatory, we found that it is actually not required and that 29 percent of TFG members and 47 percent of supervisors had not attended Jetway training.

In addition, we identified two policies in the DEA Agents Manual applicable to interdiction activities that most TFG members we interviewed were either unaware of or incorrectly assumed did not apply to consent searches at transportation facilities. The first policy requires that consent searches be reported on a DEA Report of Investigation (DEA-6) form within five working days of the search. However, several TFG members told us they only prepared a DEA-6 if a consent search resulted in a seizure or arrest. A second policy states that when agents seek to conduct a consent search they should request that the person giving consent read and sign a DEA Consent to Search (DEA-88) form. When we asked TFG supervisors whether their groups used DEA-88s to obtain consent, none of them were aware that this policy applied to conducting consent searches as part of interdiction activities at transportation facilities.

In two TFGs we visited, we also identified practices in which TFG members conducting cold consent encounters may misrepresent either themselves or the ability of the traveler from whom they seize cash to contest the seizure.⁴ One such practice that we were told about in one TFG involved approaching a passenger at the gate area (after they passed through Transportation Security Administration (TSA) security) and informing them that the TFG was conducting a “secondary inspection.” We believe that using such terminology creates a risk that travelers will interpret the statement to mean they are required to consent to the encounter, similar to their obligations at a TSA checkpoint. Another practice of concern involves TFGs’ use of a form whereby travelers are asked at the time of the encounter to disclaim ownership of any seized cash. However, while such forms may be used in the field, the Senior Attorney in the DEA’s Asset Forfeiture Section told us that she did not consider the forms legally binding in subsequent proceedings, and we found there is no consistent policy or practice regarding the use of such forms.

RECOMMENDATIONS

In this report we make five recommendations to improve DEA’s policies and practices and to strengthen its oversight of cold consent encounters and searches of travelers at transportation facilities in order to ensure the efficiency of its operations and protect the rights of the public.

⁴ Seized cash that is not returned is forfeited to the U.S. government. Thereafter, it may be dispersed among the agencies participating in the interdiction TFG in accordance with the requirements of the Department’s equitable sharing program. 21 U.S.C. § 881 (2011).

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BACKGROUND

Introduction

One interdiction tactic Drug Enforcement Administration (DEA) Special Agents and task force officers use in carrying out the DEA's mission to enforce the controlled substances laws and regulations of the United States is consent encounters. Consent encounters are law enforcement encounters with members of the public that are considered voluntary, because the officer does not seek to compel the person to participate in the encounter or submit to a search based on prior information about the person encountered or their connection to drug trafficking. This report focuses on what are sometimes referred to as "cold" consent encounters. These can occur in one of two ways: (1) when an agent approaches an individual based on no particular behavior; or (2) when an agent approaches an individual based on the officer's perception that the person is exhibiting characteristics indicative of drug trafficking without any independent predicated information. The encounter typically entails the officer asking for consent to speak with the individual and, if the agent thinks it warranted, to seek consent to search their belongings.⁵

Such cold consent encounters can raise civil rights concerns. The Office of the Inspector General (OIG) initiated this review after receiving separate complaints from two African American women resulting from cold consent encounters by DEA task force members at an airport. One complainant alleged that, as she was on the jetway preparing to board her flight, DEA agents approached her, treated her unprofessionally, and improperly seized \$8,000 from her. When the OIG Office of Investigations interviewed the task force members who conducted the encounter with the complainant, the members stated that they acted professionally, that the complainant consented to answering questions when approached on the jetway, that the complainant allowed her purse and luggage to be searched, and that the complainant was offered an opportunity to sign a disclaimer of ownership form abandoning her money, but she declined to do so. The DEA task force members also indicated that the complainant was stopped because she was pacing nervously and exhibited other characteristics raising their suspicions that she might be engaged in narcotics trafficking or acting as a money courier and that, after receiving her consent, they recovered \$8,000

⁵ Cold consent encounters are also referred to by such terms as "non-suspect specific encounters" and "non-investigative based encounters."

in bundled \$20 bills to which a narcotics K-9 subsequently alerted positively.⁶ The OIG investigators did not substantiate or develop additional information to support the claimant's allegation.

With regard to the second allegation, a lawyer for the Department of Defense who was traveling on government business complained to the OIG that, as she was on the jetway preparing to board her flight, she was approached by DEA agents, told that she was being stopped for "secondary screening," and was then subjected to aggressive and humiliating questioning by the agents. No funds were found or seized during the incident. When the OIG investigators sought information from the DEA regarding the incident, they were told that no documentation of the event was prepared by anyone on the DEA task force because documentation is only completed for contacts that result in "positive" results, namely where drugs are found or funds are seized. The DEA task force members further advised that the officers were unable to document every contact they had because there were too many in a day. Additionally, the OIG investigators were told that the complainant did not refuse to speak with the agents, and that she had stepped out of line and spoken with them, and that the task force officer had reported the encounter to his supervisor, who had tried without success to reach the complainant.

In the absence of any records that would document what occurred, the OIG referred the matter to the DEA's Office of Professional Responsibility (DEA OPR) to review as a management matter. DEA OPR interviewed the complainant and the task force officers, the latter of whom indicated in substance that they had initiated contact with the complainant because she was pacing nervously and otherwise acting suspiciously, that she thereafter became belligerent, and that they stopped a number of persons of various ethnic backgrounds and races that day. In the absence of any contemporaneous documentation to assist in resolving the conflicting accounts, DEA OPR concluded that the complaint was unsubstantiated and the matter was administratively closed.

These incidents raised concerns because the Department of Justice (Department) has noted that cold consent encounters are more often associated with racial profiling than law enforcement contacts based on previously acquired information.⁷ Accordingly, while the complaints in these

⁶ The claimant subsequently retained counsel and filed a claim seeking the money back. The matter was settled with the Department returning \$3,600 to the claimant and the claimant forfeiting the remaining \$4,400.

⁷ U.S. Department of Justice, *Race or Ethnicity as a Factor in Law Enforcement Operations: A Survey of Federal Agencies* (June 2003), 3.

two instances were not substantiated, the OIG determined that it was important to conduct a more systemic review of the potential issues raised by the use of this technique.

In this review, the OIG examined the policies, practices, documentation, and oversight of DEA-initiated cold consent encounters and searches of travelers in airports and other mass transportation facilities from 2009 through 2013. Our review entailed review of documents; interviews with DEA and other officials regarding interdiction operations and training, cold consent encounters, and asset seizure; analysis of DEA cash seizures; and telephone and in-person interviews with DEA Special Agents and state and local task force officers who conduct DEA-led interdiction operations and with their managers and supervisors.⁸

In this background section, we provide a description of the DEA's use of cold consent encounters, an overview of the DEA's interdiction training, an overview of the DEA's interdiction activities at transportation facilities, and a summary of the Department's ongoing concern about racial profiling with regard to cold consent encounters.

The DEA's Use of Cold Consent Encounters

The DEA Interdiction Manual — which provides guidance on legal issues relating to drug interdiction, including consent encounters — defines consent encounters as “contacts wherein a law enforcement officer approaches an individual who voluntarily responds to questions, is not a seizure, and does not implicate the fourth amendment.”⁹

A consent encounter can lead to a consent search, whereby the individual encountered voluntarily grants the law enforcement officer permission to search their belongings. The person has the right to refuse consent and may revoke consent at any point during the search. Although officers conducting consent searches are not legally required to warn people of their right to withhold consent, the DEA Interdiction Manual states that agents “should advise the suspects that they have a right to refuse to consent to a search.”¹⁰

⁸ See Appendix I for the Scope and Methodology of the OIG Review.

⁹ The DEA Interdiction Manual was originally published in 1980 as the DEA Airport Interdiction Manual. The DEA updated the manual in 1993, 2000, and 2010.

¹⁰ In *Schneckloth v. Bustamonte*, 412 U.S. 218, 248-49 (1973), the Supreme Court stated that “while the subject's knowledge of a right to refuse is a factor to be taken into account, the prosecution is not required to demonstrate such knowledge as a prerequisite to establishing voluntary consent.”

The DEA Agents Manual also contains policies applicable to conducting interdiction activities, including consent searches. One policy requires that Special Agents report consent searches on a “DEA-6 Report of Investigation form within five working days of the search.” A second states that Special Agents “should request that the person who is giving consent read and sign a ‘DEA-88 Consent to Search’ form.” These policies, however, do not require DEA agents to document or report encounters where a person is approached and questioned, does not give consent to search, and a search therefore does not occur.

Conducting cold consent encounters is a tactic that any DEA Special Agent or task force member can employ; however, within DEA operations it is primarily used by DEA interdiction Task Force Groups (TFGs) that interdict drug trafficking at airports and other mass transportation facilities, such as bus stations and train stations.¹¹ Some TFGs also conduct interdiction activities at locations such as hotels, motels, truck stops, highways, and parcel facilities.¹² Our review focused on interdiction at mass transportation facilities because, as discussed above, the complaints that were the impetus for this review occurred at an airport and we found that the use of this tactic at these other locations raised common issues and concerns.

The DEA’s Interdiction Activities at Transportation Facilities

In 1975, the DEA established an “airport interdiction task force” in Detroit, Michigan because the DEA had identified Detroit as a prime distribution center for narcotics. As a result of arrests and seizures made by Detroit airport task force agents, the DEA learned about the characteristics of drug couriers and how they conducted their operations. Agents began furthering their investigations by matching their observations of travelers exhibiting various combinations of suspicious characteristics with tips received and additional information such as the nature of a subject's travel itinerary and method of ticket purchase. DEA agents also initiated contact with travelers based only upon observing them exhibit characteristics that they believed to be associated with drug trafficking, such as arriving or departing from a city that is known to be a source for illegal drugs, carrying

¹¹ TFGs are teams of DEA Special Agents and state and local police officers who have been deputized to serve as DEA Special Agents. TFGs are under the operational control of the DEA. The DEA told us that interdiction TFGs are the DEA entities most likely to conduct consent encounters at transportation facilities and that it operated 17 interdiction TFGs at the time of our review. Throughout this report “TFG” refers to DEA interdiction TFG.

¹² Parcel interdiction is another interdiction method, but does not entail cold consent encounters.

little or no luggage, or displaying unusual nervousness beyond that ordinarily exhibited by travelers.

The DEA's Interdiction Manual states that "one of the most successful DEA efforts to stem the flow of narcotics through...transportation centers has been DEA's domestic airport interdiction program."¹³ According to the manual, the goals of this program are to (1) effectively prosecute individuals involved in the transportation of illegal drugs, (2) effectuate seizures of illegal drugs and drug proceeds, (3) deter the use of domestic airport facilities for the movement of illegal drugs, and (4) determine trafficking patterns and trends in narcotics distribution and develop strategies to disrupt these activities.

Since the initial success of its airport interdiction operations, the DEA has formalized mass transportation interdiction operations by establishing training and guidance; applying similar techniques to other facilities and modes of transportation, including bus stations and train stations; and increasing the number of airport interdiction units.

DEA Interdiction Task Force Groups

At the time of our review, the DEA identified 17 TFGs that field division managers had designated as interdiction TFGs.¹⁴ Sixteen of the 17 TFGs are led by a Group Supervisor (supervisor) who is a DEA Special Agent, and one TFG is led by a lieutenant from a local police department that participates in the TFG. There are approximately 170 TFG members, not including supervisors. Approximately 40 percent of the total are DEA Special Agents and the remaining are task force officers from approximately 65 different state, local, and federal law enforcement agencies.¹⁵

Each of the 17 TFGs that the DEA identified and that we included in our fieldwork uses a variety of methods to interdict the transportation of

¹³ The DEA sometimes refers to its airport interdiction activities as "Operation Jetway." Operation Jetway is also the name of the DEA's transportation interdiction training course.

¹⁴ The geographic locations of the TFGs were omitted from this report due to DEA's concerns that the information was law enforcement sensitive.

¹⁵ The majority of TFG members are police officers from state or local law enforcement agencies. Five TFGs included officials from the National Guard, a state Attorney General's Office, or a prosecutor's office.

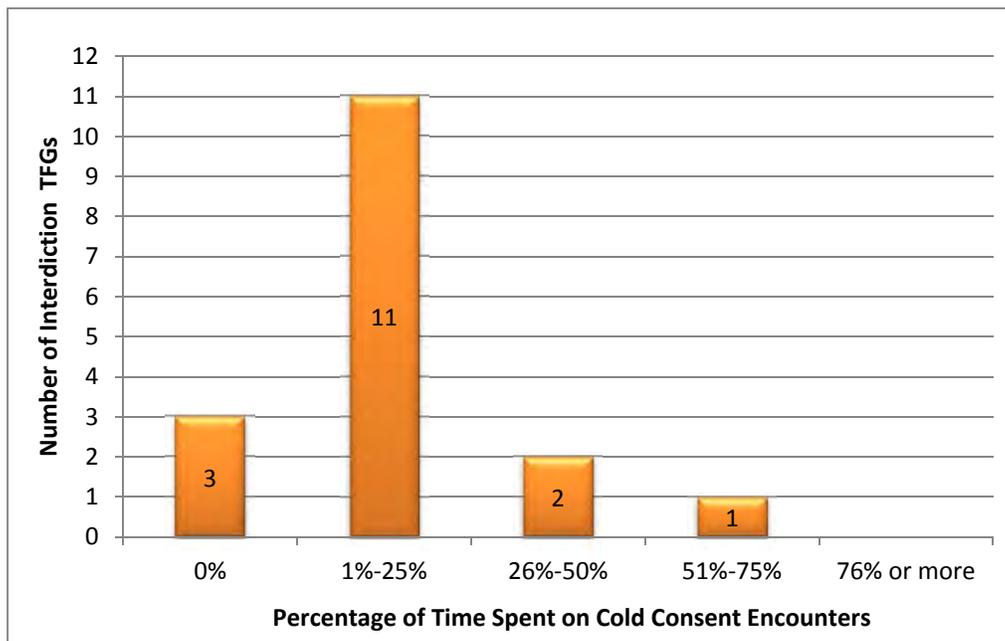
drugs and their proceeds.¹⁶ In addition to conducting cold consent encounters, TFGs cultivate and pursue tips and leads from informants or other agencies and initiate and support investigations. Some TFGs also conduct parcel interdiction, which means working with commercial shipping and delivery companies to interdict drugs or drug proceeds that have been packed and shipped via these companies. TFGs operate at a variety of facilities, including airports, bus stations, train stations, highways, hotels and motels, truck stops, and parcel facilities.¹⁷

We were unable to locate records that would enable us to determine the amount of time interdiction TFGs spent conducting different types of interdiction or investigative tactics because the TFGs do not document this information. Instead, we asked each of the supervisors to estimate the amount of time their TFGs spent conducting investigation and interdiction activities, including cold consent encounters, with the understanding that these estimates are imprecise. Figure 1 shows the amount of time supervisors estimated that their TFGs spent conducting cold consent encounters at airports, bus stations, and train stations.

¹⁶ We only included DEA-led interdiction groups or task forces in our review. We did not include task forces led by another law enforcement agency to which DEA Special Agents have been assigned.

¹⁷ TFGs sometimes operate on buses and trains as well as in bus and train stations. We do not distinguish between operations at the facility or on the vehicle.

Figure 1: Estimated Time Interdiction TFGs Spent Conducting Cold Consent Encounters at Airports, Bus Stations, and Train Stations



Source: OIG telephone interviews with interdiction TFG supervisors.

Interdiction Task Force Group Operations

The management of TFG operations is decentralized. The DEA's Operations Management Section and the Office of Inspections at headquarters have certain specific administrative roles vis-a-vis TFGs, and the Policy and Source Management Section also issues operational policy pertaining to activities conducted in interdiction, such as consent searches. DEA field division managers are responsible for the operations of interdiction TFGs that are based in their field division.

DEA headquarters' role in interdiction task force group operations

The DEA's 17 interdiction TFGs are a subset of the DEA's State and Local Task Force Program, which is administered by the DEA's Operations Management Section.¹⁸ This section handles administrative requirements for the DEA's TFGs, such as ensuring that all state and local officers assigned to DEA TFGs are deputized and that all required agreements between the DEA and agencies with officers assigned to TFGs are current and accurate. DEA

¹⁸ At the time of our review the DEA operated 270 task force groups, 17 of which were designated as interdiction TFGs.

state and local task force policy states that “[a]ssigned officers will be under the direct daily supervision of DEA personnel and will follow DEA policies, procedures, and guidelines.”

In addition, the DEA requires that every law enforcement agency that assigns a police officer to a DEA TFG enter into a memorandum of understanding with the DEA. The memoranda memorialize the agreement between the agency and the DEA to federally deputize the officer(s) assigned to the TFG and the requirement for the officer(s) to adhere to DEA policies and procedures and to Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin, in activities receiving federal financial assistance.¹⁹ The memoranda also include a broad summary of the TFG’s purpose and of the activities the assigned officer(s) will conduct. These memoranda frequently include an equitable sharing provision that establishes how the proceeds of the TFGs’ seizures will be divided among the agencies participating in the TFG.²⁰

The DEA’s Office of Inspections also plays a role in managing the TFGs. The Office of Inspections is required to conduct periodic on-site inspections of each field division, including gathering performance data for each TFG the field division operates. As a part of the divisions’ self-inspection program, field divisions are also required to provide general information to the Office of Inspections about TFG performance and compliance with policy. In addition, an office within the Office of Inspections investigates complaints made against DEA Special Agents and task force officers.

DEA field divisions’ role in interdiction task force group operations

DEA field divisions oversee and direct TFG operations. The Special Agent in Charge of each field division determines whether the division will maintain an interdiction TFG at any given time. The Special Agent in Charge and the Assistant Special Agent in Charge direct the TFG’s mission, focus, and activities, depending on the field division’s priorities and on the type of drug trafficking occurring within the field division’s territory. In practice, each supervisor, in conjunction with the group’s members, determines the TFG’s day-to-day activities.

¹⁹ Title VI, 42 U.S.C. § 2000d et seq., was enacted as part of the Civil Rights Act of 1964.

²⁰ Equitable sharing is the process by which the Department of Justice is authorized to share with state and local law enforcement agencies property and proceeds seized and forfeited under federal law. The proceeds shared with the state or local law enforcement agency must have a reasonable relationship to the degree of participation the agency had in the law enforcement effort that led to the seizure.

DEA Interdiction Task Force Groups' Cash Seizures

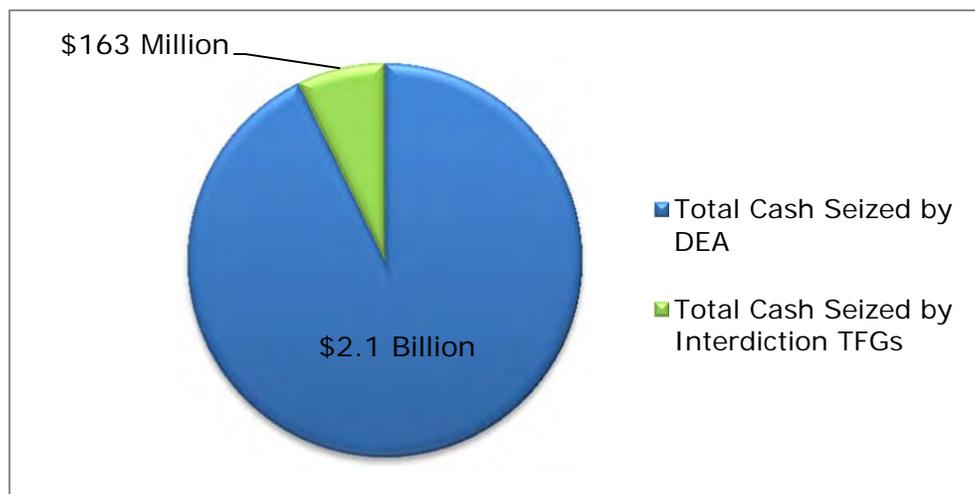
According to the DEA Interdiction Manual, one of the goals of the DEA's airport interdiction program (which was expanded to include other transportation methods) is to "effectuate seizures of illegal drugs and illegal drug proceeds." Federal law authorizes law enforcement agencies to seize property, including money, alleged to have facilitated illegal drug transactions or to be the proceeds of such transactions.²¹ The Department distributes the majority of the proceeds of assets seized to the state and local law enforcement agencies that directly participated in the investigation or prosecution that resulted in the federal forfeiture, through the equitable sharing program.²²

Figure 2 below shows the total amount of cash interdiction TFGs seized as a share of the amount of cash the DEA seized from 2009 through 2013. These totals include cash seized from all seizure methods, including cold consent encounters. We could not distinguish cash seized resulting from cold consent encounters from other investigative techniques because the DEA does not track which seizures resulted from cold consent encounters or other interdiction methods.

²¹ 21 U.S.C. § 881(a)(6).

²² Under 21 U.S.C. § 881 (2011), the Attorney General is directed to determine the value of an agency's participation in the effort that led to the forfeiture. The Attorney General Guidelines on Seized and Forfeited Property, July 1990, Amended 2005, require that at least 20 percent of the net proceeds be allocated to the United States. Based on this requirement, state and local agencies may be eligible for up to 80 percent of the total net proceeds realized from the disposition of forfeited property.

Figure 2: The Amount of Cash Interdiction TFGs Seized as a Share of All Cash the DEA Seized from 2009 through 2013



Source: The Department of Justice Consolidated Asset Tracking System

The \$163 million that interdiction TFGs seized during this five year period represents 4,138 individual cash seizures. Twenty-one percent (887 of 4,138) of these seizures were contested, and all or a portion of the seized cash in 41 percent (364 of 887) of those contested cases was returned—a total of \$8.3 million.²³

DEA Training for Conducting Interdiction and Consent Encounters

The DEA's El Paso Intelligence Center (EPIC) provides a three-day interdiction training course called "Operation Jetway" (Jetway).²⁴ This course is geared toward federal, state, and local law enforcement personnel assigned to DEA, state, or local airport, train, bus, parcel, or hotel/motel interdiction units and covers the fundamental principles, methods, and techniques of various types of interdiction.²⁵

²³ Individuals from whom cash is seized may contest the seizure and litigate the seizure in federal court or may request remission or mitigation through the administrative process at the DEA.

²⁴ EPIC is a DEA-led facility based in El Paso, Texas that provides federal, state, and local law enforcement agencies information and training they can use in investigations and operations that target smuggling and other criminal activities. The DEA considers EPIC to be a DEA headquarters division.

²⁵ At the time of our review, the DEA called its training program for instructing Special Agents and task force officers on how to conduct interdiction activities, including cold
(Cont'd.)

Jetway courses include instruction on legal issues relevant to interdiction, such as search and seizure law, and emphasize instruction on conducting consent encounters in different transportation settings. For example, the instructional objectives for the airport, bus, and train interdiction modules include enabling the students to: (1) identify characteristics of couriers, (2) identify the counter-surveillance characteristics of couriers, (3) learn consensual encounter and interview techniques, (4) recognize suspicious contents of luggage, (5) learn elements of investigatory detention, and (6) identify and recognize the different methods of concealing narcotics and U.S. currency. Additionally, every course instructs attendees that “racial profiling,” the term used to describe law enforcement’s targeting or stopping of an individual based primarily on the person’s race, rather than on individualized suspicion, is illegal and that investigators should be guided by behavioral characteristics that Jetway provides rather than demographic characteristics such as race and gender to select travelers to encounter.

EPIC provides Jetway courses throughout the United States based on regional demand. From fiscal years (FY) 2009 through 2013, the DEA held 39 Jetway courses in 36 locations throughout the United States. A total of 2,485 federal, state, and local officers attended the training. A Jetway manager estimated that approximately 10 percent of Jetway attendees are DEA or other federal agents and approximately 90 percent are state and local police officers.

The Department’s concern about racial profiling with cold consent encounters

The Department has long been concerned about the potential for racial profiling to occur in connection with cold consent encounters. In 2003, the Department noted that racial profiling is more often associated with such encounters than with encounters based on previously acquired information.²⁶ In the same report, the Department also noted that the DEA has been accused of encouraging racial profiling by state and local police in its training for “Operation Pipeline,” a highway drug interdiction program. Further, this report noted that the Department’s Civil Rights Division reviewed Operation

consent encounters in transportation facilities, Operation Jetway. We found that in some Department and DEA documents Operation Jetway is also used to mean conducting interdiction in airports or transportation facilities and the term “Operation Jetway sites” has been used to refer to transportation facilities where DEA interdiction units conduct interdiction operations, including cold consent encounters.

²⁶ U.S. Department of Justice, *Race or Ethnicity as a Factor in Law Enforcement Operations: A Survey of Federal Agencies* (June 2003), 3.

Pipeline training in 1998 and determined that “the seminars did not teach officers to use race in determining whether to conduct vehicle stops, but nonetheless recommended strengthening the civil rights aspects of the training.”²⁷

To address concerns about possible racial profiling by federal law enforcement agencies, on June 9, 1999, President Clinton issued an Executive Memorandum on “Fairness in Law Enforcement” directing federal agencies to, among other things, begin collecting and reporting data on the race, ethnicity, and gender of the individuals they stop and search to better understand whether, and how, federal agents use race, ethnicity, or gender in making law enforcement decisions (See Appendix II). As the memorandum noted, “[t]he systematic collection of statistics and information regarding Federal law enforcement activities can increase the fairness of our law enforcement practices.”

In response to President Clinton’s memorandum, Attorney General Reno selected the DEA and the Immigration and Naturalization Service to collect data for pilot field tests because they were the two components “that routinely engage in non-suspect specific public encounters, that is, law enforcement activities seeking to detect unlawful behavior in public places among the public at large.”²⁸ Within the DEA, the Department selected Operation Jetway to implement the pilot data collection program because drug interdiction efforts at transportation facilities routinely involved cold consent encounters (referred to as “non-suspect specific public encounters” in the memorandum).

Initially, the DEA selected six Operation Jetway sites to participate in the data collection pilot, which it launched on January 4, 2000. The DEA expanded its data collection field tests on June 1, 2000, from the six original sites to all DEA Operation Jetway sites (approximately 60 airports) nationwide. The DEA’s Acting Administrator directed the selected sites to collect data on a field encounter form for all encounters, whether or not the encounter resulted in a seizure or an arrest.²⁹

²⁷ U.S. Department of Justice, *Race or Ethnicity as a Factor in Law Enforcement Operations: A Survey of Federal Agencies* (June 2003), 5.

²⁸ The Immigration and Naturalization Service is no longer a component of the Department of Justice.

²⁹ The field encounter form included the following elements: (1) date of encounter, (2) time of contact start, (3) gender, (4) race, (5) ethnicity, (6) location, (7) reason, (8) law enforcement action taken, (9) reason for action, (10) seizure (yes or no), (11) description of seizure (items and amounts), and (12) time contact ended.

On January 17, 2001, Attorney General Reno submitted to President Clinton an interim report on the Department's response to the President's June 1999 memorandum. The 2001 report noted that, as of December 31, 2000, DEA field tests resulted in the collection of more than 7,607 records showing the race, ethnicity, and gender of persons encountered (See Appendix III). The report further stated that "[g]enerally, the data collection process had not been overly burdensome on law enforcement nor had it impeded law enforcement activities," and that the impact of the data collection effort on the public had "also been minimal." The report went on to note, however, that in order for the Department to determine whether race, ethnicity, or gender were being used by DEA agents as criteria for initiating contacts, an independent study of the "baseline" demographic characteristics of persons using those transportation terminals was needed.³⁰ According to the report, the DEA maintained that it lacked the funding and personnel necessary to conduct such baseline studies.

The Attorney General's report concluded by stating that the DEA planned to continue collecting the field encounter data from Operation Jetway and would provide the President with a final report in May 2001 summarizing the first year of data collection. The report further indicated that, on the assumption that the baseline issue was resolved, the Department would also provide the President with an analysis of the data collected in the field tests. When we asked the DEA and the Department for a copy of this final report to the President, no one could confirm that such a report had ever been prepared.

We learned that on August 30, 2002, in a briefing to DEA management, the DEA's Statistical Services Division reported in substance that because it was unable to obtain a demographic baseline of the populations in the pilot locations, it could not draw any conclusions about racial profiling. On July 18, 2003, the DEA's Chief of Operations directed all field divisions to terminate completion of the field encounter forms, and the DEA has not collected any such data regarding cold consent encounters since that date. The DEA directive in 2003 noted that the Operation Jetway data collection pilot program was being terminated in light of the Department policy guidance issued by Attorney General Ashcroft on June 7, 2003, which

³⁰ While the Attorney General stated that, "[o]verall, we believe that the field tests are proceeding successfully," she also discussed a number of challenges that needed to be addressed before data collection efforts were expanded, including three categories of human error: (1) inaccurate data, (2) incomplete data, and (3) non-standardized entries. See Appendix III for additional details about this data collection effort.

prohibited racial profiling by federal law enforcement agencies.³¹ In December 2014, the Department issued updated guidance for federal law enforcement agencies regarding the Department's racial profiling policy.³²

We found that the DEA has taken steps to inform Special Agents about the limited circumstances in which race may be considered in law enforcement activities. On March 14, 2000, the DEA's Acting Administrator issued a memorandum to all DEA employees stating that the DEA's policy is that "a law enforcement officer may not rely on race or ethnicity as the sole basis for law enforcement action, such as traffic or pedestrian stops or requests for consent to search." In 2005, the DEA produced a training video that instructs law enforcement agents on the justification for the use of race or ethnicity to make domestic law enforcement decisions. The video instructs that race can be used in making law enforcement decisions when all four of the following conditions are met: (1) there is prior information; (2) the information is trustworthy; (3) the information links that person to race neutral identifiers (i.e., height, weight, gender, age), and links that person with either a particular prior crime, a particular criminal group, particular ongoing criminal activity, or a specific investigation of a particular future criminal scheme; and (4) it is limited to a specific place and time. The video includes scenarios depicting circumstances when a person's race is relevant to law enforcement at airports and bus stations. When the video was first released, the DEA mandated that all "field investigators" view the video. We found that the video is currently included as part of Jetway training.³³

³¹ U.S. Department of Justice, Civil Rights Division, *Guidance Regarding Use of Race by Federal Law Enforcement Agencies* (June 2003).

³² U.S. Department of Justice, *Guidance For Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity* (December 2014).

³³ The DEA told us that core employees view this video during basic training coursework.

RESULTS OF THE REVIEW

The DEA does not collect sufficient data on cold consent encounters to enable it or the OIG to assess whether the encounters are being conducted in an unbiased or effective manner.

We found that, since the DEA terminated its collection of data in 2003, Task Force Groups (TFGs) have not collected information about each of the encounters they conduct. TFGs are not required to collect data on each encounter unless the encounter results in a seizure or arrest. Moreover, even when they do document the encounter, TFGs do not systematically collect demographic information. Without this information the DEA cannot assess whether cold consent encounters are conducted in an unbiased manner or are effective. Similarly, the OIG was not able to independently assess whether the DEA is conducting cold consent encounters in an unbiased manner or whether they are effective because there was no recent data to use to make such an assessment.

As detailed below, the Civil Rights Division has sometimes required state and local law enforcement agencies to collect demographic data to both detect and prevent racially-biased policing. Further, some state and local law enforcement agencies have established policies that require contacts with citizens to be documented to help them evaluate the fairness of their agency's activities. Even though collecting demographic data on cold consent encounters would not be conclusive with regard to racial profiling without a valid baseline of the demographic characteristics of the relevant population, we believe this data would assist the DEA in evaluating whether its agents or task force officers are inappropriately considering race and would also enhance its overall oversight of its interdiction activities.

Moreover, without the requisite data, the DEA is not able to assess whether cold consent encounters are an effective means of interdiction, and the OIG cannot independently evaluate this issue. Since the end of the pilot project in 2003, the DEA has not required TFGs to collect data on each cold consent encounter or whether the encounter resulted in a seizure or arrest, which would be necessary for it, or us, to conduct such an assessment. However, DEA analysis of the data it collected between 2000 and 2002 at all Operation Jetway sites pursuant to the "Fairness in Law Enforcement" pilot project showed that cold consent encounters had a substantially lower success rate compared to investigatory-based encounters.

Although the DEA has not analyzed the effectiveness of cold consent encounters since 2002, supervisors and managers of the DEA's interdiction TFGs told us during interviews that they have questioned the effectiveness of

conducting cold consent encounters—especially at airports—and some TFGs are focusing more on other forms of interdiction that they believe are more likely to result in seizures or arrests. Without conducting an analysis comparing the results of cold consent encounters to those of other interdiction and investigative activities, the DEA has no way to assess whether conducting cold consent encounters is an effective way to use its law enforcement resources.

TFGs do not collect demographic data on cold consent encounters.

We found that DEA interdiction TFGs do not collect demographic information about each of the cold consent encounters they conduct, and without this information the DEA cannot assess the impartiality with which they are conducted. In our telephone interviews with the Group Supervisors (supervisors) of the 14 interdiction TFGs that conduct some cold consent encounters, we found that none of them recorded race or other demographic information about each of the travelers that they encountered.

Although the interdiction TFG members we interviewed told us that they complete DEA-6 forms if the encounter results in a seizure or an arrest, this does not necessarily entail recording demographic information. The DEA-6 includes a narrative section for stating the probable cause for the seizure or arrest. While we did not review DEA-6s as part of this review, TFG members told us that they may note demographic information about the subject in the narrative section where relevant, but the form does not include demographic data fields that would require that the race of the person be recorded.

As discussed above, we found that the DEA had not required collection of demographic data about each cold consent encounter and investigative-based encounter since July 2003, when the Operation Jetway data collection pilot was terminated. DEA managers with whom we spoke could not provide a definitive reason why the pilot was terminated, and we were told that neither the Chief of Operations nor other DEA employees involved in directing this project are still at the DEA. However, the former Section Chief of the DEA's Statistical Services Division who analyzed the data from the field encounter forms at the time told us that he believed the pilot was terminated because the DEA was unable to obtain a demographic baseline of the population in the pilot locations. We were not able to obtain documentation to conclusively show why the project was terminated. The documents we reviewed showed that the DEA, the Department's Bureau of Justice Statistics, and the Department of Transportation discussed ways at the time to establish a baseline because they agreed that one was necessary to

determine if the sample of travelers encountered accurately reflected the total population. However, it appears that this was never completed.³⁴

The Department's Civil Rights Division encourages oversight of cold consent encounters and searches.

The Special Litigation Section of the Department's Civil Rights Division (CRT) investigates cases of alleged misconduct by state and local law enforcement agencies, including allegations of racial discrimination. The impetus for these investigations often includes allegations that law enforcement is using race as the basis for stopping and searching motorists or pedestrians. As part of these investigations, the CRT sometimes enters into settlement agreements or consent decrees that are designed to both detect and prevent racial profiling.

Although the details of these agreements vary, one frequent requirement is the development of a data collection system that records the race of individuals who are being stopped and searched by officers in the jurisdiction. For example, a June 2001 CRT consent decree required that Los Angeles Police Department officers complete a written or electronic report that included the race of the person stopped each time an officer conducted a pedestrian stop. Similarly, a July 2013 CRT consent decree required that the Puerto Rico Police Department develop a system to collect demographic data on all investigatory searches, whether or not they resulted in an arrest or issuance of a citation.

In a third case, a CRT consent decree required that in addition to collecting demographic data on all consent encounters, New Orleans Police Department officers must immediately notify a supervisor when considering a search based on consent, and the supervisor must approve the search before it is conducted.

We believe these requirements demonstrate recognition that cold consent encounters and searches are tactics that may require additional oversight.

³⁴ We could not locate a completed baseline, and DEA and Bureau of Justice Statistics personnel we interviewed who were involved in the Fairness in Law Enforcement initiative were under the impression that it had not been completed.

Law enforcement agencies have collected demographic data to assist in determining whether racially-biased policing is a problem in their jurisdictions.

Law enforcement agencies around the country have implemented a variety of practices to respond to issues related to potential racial profiling. Data collection is one of the means employed by a number of law enforcement agencies to measure, track, and address the inappropriate use of race as a factor in decision making.³⁵ According to a 2004 report by the Police Executive Research Forum, as early as 2003, approximately half of the states had adopted legislation related to racial profiling, and most of these laws included data collection.³⁶ In our interview with the Executive Director of the Major Cities Chiefs Association, himself a former police chief, he confirmed that collecting demographic data on citizen encounters has been considered a “best practice” since the late 1990s. Further, the Chief of the CRT’s Special Litigation Section advised that it has been standard procedure in most large municipal police departments to require officers to document encounters.

According to a report by the Police Executive Research Forum, collecting data on citizen encounters allows law enforcement agencies to rely on data-driven rather than anecdotal evidence to implement targeted responses to allegations of racial profiling.³⁷ Departments can use this data to enhance inquiries into whether a particular officer’s behavior is biased, and also to evaluate the department’s progress in reducing racially-biased policing over time. According to the report, collecting information on the race of citizens who are encountered also conveys an important message to the community—that biased policing will not be tolerated and that through use of the data, officers will be held accountable to the public for improperly motivated conduct.

³⁵ U.S. Department of Justice, Office of Justice Programs, *National Center for Building Community Trust and Justice Solicitation* (April 2014).

³⁶ Police Executive Research Forum, *By the Numbers: A Guide for Analyzing Race Data from Vehicle Stops*, (2004), 2.

³⁷ Police Executive Research Forum, *Racially Biased Policing: A Principled Response*, (2001) 116. See also Police Executive Research Forum, *Racially Biased Policing: Guidance for Analyzing Race Data from Vehicle Stops*, (2005). (Police agencies throughout the country have implemented reforms to respond to the issues related to racially biased policing, including collecting and analyzing information to help administrators determine whether police decisions to stop drivers are influenced by race.); *Ridgeway, Greg and MacDonald, John*, *Methods for Assessing Racially Biased Policing, originally published in Race, Ethnicity, and Policing: New and Essential Readings* (2010). (As part of the response to allegations of racially biased police practices, many police agencies have collected data during routine traffic or pedestrian stops).

We recognize that the data collection policies and practices of the DEA's interdiction TFGs are best compared to law enforcement agencies with similar interdiction groups that conduct traveler cold consent encounters and searches. We contacted several different levels of law enforcement agencies to determine whether they had an interdiction unit that conducts such cold consent encounters and searches, and identified only one that did. The supervisor of this unit told us that the unit did not collect data on cold consent encounters conducted at transportation facilities, but did require the collection of data (including the race of people stopped, whether a consent search was requested, whether consent was granted, and the results) for all consent searches emanating from highway stops made for traffic violations, though he did not offer an explanation for the distinction. Further, he told us that the agency makes the data available to him as the supervisor of the unit so that he can ensure that officers are complying with the agency's highway interdiction policies.

These issues continue to be topics of discussion at the Department, as the Department recently launched an initiative to study implicit racial bias in local law enforcement that will collect data on stops, searches, and arrests in five cities.³⁸ Because of the Department's interest in using data to understand this issue, we believe that the DEA, as a federal law enforcement agency actively engaged in a large number of encounters with the public, similarly should consider collecting data to understand and manage its use of sensitive tactics such as cold consent encounters and searches.

Collecting data on race can be helpful in responding to allegations and conducting oversight of its activities.

We believe that even though collecting data on cold consent encounters may not be conclusive without a baseline for comparison, it still can be of assistance to the DEA in overseeing its interdiction activities and responding to allegations of profiling. As noted earlier, we were not able to assess the interdiction TFG's consideration of race in their operations because there was no data that could be used to evaluate this question.

³⁸ Department of Justice Press Release, *Justice Department Announces National Effort to Build Trust Between Law Enforcement and the Communities They Serve*, 14-997, (September 18, 2014). The Department announced that it intends to work with local law enforcement in five pilot sites to collect data about stops and searches, arrests, and case outcomes "in order to help assess the impact of possible bias" and "with the goal of reducing the role of bias and building confidence in the justice system among young people of color." See also Center of Policing Equity, University of California Los Angeles Press Release, *Nation's First Police Profiling Database Awarded Grant by NSF*, (November 7, 2013) (The National Science Foundation announced funding for "The Justice Database" that will standardize and develop a database on police profiling and use of force across many of the country's police departments).

We were also unable to determine whether any lawsuits alleging racial profiling had been brought against the DEA. The DEA's Assistant Deputy Chief Counsel told us that the DEA's litigation tracking system cannot identify cases by the basis of the lawsuit. However, we were able to review complaints maintained by the DEA that it received from citizens who claimed that DEA Special Agents or task force officers racially profiled them. We examined the complaints with offense codes that could pertain to racial profiling that the DEA's Office of Inspections received between 2000 and 2013.³⁹ We found that six of the nine complaints with the "racial profiling" offense code involved interdiction at either an airport or a train station, and five of these six appear to have involved cold consent encounters.

Our review of the DEA's files for these six cases demonstrates how collecting racial data on cold consent encounters can assist in determining whether the encounters have been conducted fairly even in the absence of comprehensive baseline data. For example, one of the six complaints was submitted in 2007 by two African American women alleging racial profiling by two interdiction TFG members who boarded an Amtrak train in Dearborn, Michigan and conducted cold consent encounters. The complainants alleged that although the train contained a total of 64 passengers, the agents only "interrogated" and searched the luggage of the nine black passengers, and they did not question any of the white passengers. The agents, however, reported that they spoke with every passenger on the train, consensually searched the luggage of fewer than five passengers, and made no arrests or seizures. In this case, the DEA cleared the task force officers of the racial profiling allegations.

Another case stemming from a racial profiling complaint further demonstrated that racial data from cold consent encounters can be used to identify possible racial profiling even in the absence of a complete demographic baseline of the relevant population. In *Berg v. United States* the plaintiff alleged that in February 2001, upon her arrival at the Minneapolis-St. Paul International Airport, a Special Agent assigned to the mass transportation interdiction task force stopped and searched her as a result of racial profiling. The plaintiff cited data that the DEA collected during the Operation Jetway pilot program showing that during the first 12 months of data collection, 88 percent of the passengers this Special Agent "cold-stopped" at the Minneapolis-St. Paul Airport were African American individuals, none of the travelers she "cold-stopped" were white males, and none of the African American travelers she encountered were carrying drugs

³⁹ We reviewed the complaints the Office of Inspections received from 2000 through 2013 that had the offense codes "racial profiling," "allegation of bias," and "civil rights." Neither the "allegation of bias" nor "civil rights" offense codes included complaints relevant to this review.

or drug-related money. In denying the Department's motion for summary judgment, the judge found that the agent did not have reasonable articulable suspicion to stop and search the plaintiff, and that the agent's "cold stops were overwhelmingly minority persons."⁴⁰ The Department settled the case in 2007 without admitting liability.

These examples show that collecting and reviewing racial information of travelers who are stopped by interdiction TFGs in cold encounters can assist the DEA in effectively overseeing its interdiction efforts by identifying agents who are not properly following DEA policies for conducting cold consent encounters. Collecting this data would also enable the DEA to document that agents acted appropriately should allegations arise as to whether a cold consent encounter was conducted fairly. As the Acting Deputy Administrator noted during the Operation Jetway pilot in August 2001, it was important for the agency to collect complete and accurate data on all encounters "[i]n order for DEA to demonstrate that Operation Jetway does not encourage racial profiling." Moreover, as Attorney General Reno noted in her report to President Clinton, the data collection process was not overly burdensome nor had it impeded law enforcement activities, and the impact of the data collection effort on the public had "also been minimal."

The DEA does not currently have data to assess whether cold consent encounters are an effective means of interdiction.

The DEA neither requires interdiction TFGs to collect data on the cold consent encounters they conduct, nor does it systematically collect this information. As noted above, the DEA does not require their agents to document encounters that do not result in an arrest or seizure, and it does not keep data on the time spent on cold consent encounters as opposed to other means of interdiction or the amounts seized through the different methods. Thus, the DEA is unable to assess the effectiveness of this interdiction tactic.

Despite the fact that such data collection is not required, we found one interdiction TFG that did collect the data necessary to assess effectiveness. This TFG completes a DEA-6 for every consent encounter regardless of whether it results in a seizure or arrest. According to the TFG supervisor, the group uses the information collected on the DEA-6 for intelligence purposes rather than to assess effectiveness. He stated that, although his group could use the information to assess effectiveness, gathering the information would be time consuming because the narrative section of each form would have to be reviewed to determine if the encounter was initiated as a cold consent

⁴⁰ See *Berg v. United States*, No. 03-cv-4642 (D. Minn. Feb. 2, 2007) (order denying motion for summary judgment).

encounter. Further, an assessment of the effectiveness of this TFG's cold consent encounters would not be representative of the overall effectiveness of the tactic because this TFG conducts very few cold consent encounters.

An Assistant Special Agent in Charge (ASAC) of one interdiction TFG that focused on highway and bus interdiction recognized that having TFG members maintain a tracking sheet of their activities could be a useful management tool. He informed us that as a result of our visit he implemented a "trip sheet" that each TFG member is required to fill out after each shift. The trip sheet tracks all encounters with members of the public regardless of the result. The ASAC stated that this is an accountability tool for oversight purposes that can be used to evaluate the TFG's effectiveness.

Prior DEA data analyses showed that cold consent encounters had a substantially lower success rate than investigative-based encounters.

Although we found that the DEA does not currently conduct any analysis on the effectiveness of cold consent encounters, we learned that it had conducted such an analysis using the data collected between 2000 and 2002 on the field encounter forms in the Operation Jetway pilot. The DEA Statistical Services Division analyzed the data from the field encounter forms, compared the results of cold consent encounters to investigative-based encounters, and summarized the findings in EPIC presentations entitled "Operation Jetway, Selected Findings" on August 16, 2001 and August 30, 2002.⁴¹ The 2002 presentation updated the data from the 2001 presentation and summarized the rates at which cold consent encounters and investigative-based encounters resulted in a seizure. The data in the 2002 presentation was based on 17,760 field encounter forms collected between January 2000 and August 2002. Sixty-three percent of the 17,760 were cold consent encounters, 24 percent were investigative-based encounters, and 13 percent were not included due to missing data.

The data showed that 11 percent of cold consent encounters and 21 percent of investigative-based encounters resulted in a seizure. The 2001 presentation contained a recommendation to "[c]ease 'Non-investigative-based' encounters." After this recommendation was not accepted, the 2002 presentation recommended that the DEA "[c]onsider a cost/benefit policy analysis of continuing to make 'Non-Investigative-based' encounters."

We asked the DEA whether the cost-benefit analysis recommended in 2002 was ever conducted, but managers were unable to provide a definitive answer because the officials who were involved with the project are no longer

⁴¹ An "investigative-based encounter" is an encounter that resulted from a tip or some other intelligence.

at the DEA. The former Chief of the Statistical Services Section, who is no longer at the DEA, advised us that he was not aware of any cost-benefit or other relevant analysis conducted after the 2002 presentation. He told us that DEA leadership at the time discounted his findings and recommendations because they felt that the data showing the low success rate of cold consent encounters did not reflect their potential to deter couriers from using transportation facilities to transport drugs and drug proceeds. Although an analysis of the effectiveness of cold consent encounters might not fully capture their deterrent effects, we were told by members of several TFGs that they believe a decrease in drug couriers' use of airports to transport drugs and cash is attributable to Transportation Security Administrations' screening of all travelers and their belongings beginning in 2002.

The data from the 2002 analysis shows that there was only an 11 percent success rate for cold consent encounters. Conducting a more current analysis of cold consent encounters would allow the DEA to determine how to effectively allocate its interdiction resources, whether on cold consent encounters, perhaps at certain times or locations, or on other interdiction or investigative tactics altogether. Further, collecting and analyzing data similar to what was collected during the Operation Jetway pilot for all encounters could help determine trafficking patterns and trends in narcotics distribution, which could be of additional assistance to the DEA in achieving its interdiction goals.

The DEA does not leverage its current limited data collection and compilation efforts to assess the effectiveness of cold consent encounters.

The DEA does not use the Consolidated Asset Tracking System (CATS) data or the Office of Inspections' on-site inspections to evaluate the effectiveness of conducting cold consent encounters. TFGs are required to record certain information about every asset seized (including currency) so that it can be entered into the CATS database. We reviewed TFG's seizures recorded in the CATS database and found that the database contained a field for seizure method that was frequently populated with several different terms, including "consent." However, the Section Chief of the Asset Forfeiture Section told us that we could not rely on this field to compare seizures resulting from cold consent encounters to others because DEA personnel may not use this data field consistently. He told us that the DEA does not analyze CATS data by the seizure method and has not defined or described the possible types of seizure method. The only guidance for populating the CATS database that he said he was aware of was the data dictionary that refers to a drop down menu with choices from which to

select.⁴² Because the seizure method field cannot be used to separate seizures that result from cold consent encounters from others, the DEA cannot use the CATS data as a tool to assess the effectiveness of such encounters.

We found that the DEA also cannot use its inspection programs to evaluate the effectiveness of cold consent encounters because of the way TFGs keep records on arrests and seizures. The DEA's Office of Inspections is required to conduct periodic on-site reviews of each TFG's operations. We reviewed the on-site inspection report excerpts from 2009 to 2014 for 16 of the 17 TFGs.⁴³ The "mission effectiveness" section includes detailed information on the TFGs' activities such as the number of investigations opened, the number of arrests made, the amount of drugs and cash seized, and even the number of work hours spent on investigations the DEA considers high priority. However, it does not currently have a way to compare the TFGs' seizures and arrests resulting from cold consent encounters and searches to investigative-based encounters and searches, or to assess the perceived utility of cold consent encounters compared to other interdiction activities. Information about the effectiveness of cold consent encounters and searches would be available if the TFGs kept records that drilled down to the specific method that led to the arrest or seizure.

TFGs question the effectiveness of conducting cold consent encounters.

Because the DEA has not collected data on cold consent encounters since 2003, and does not track how much time is spent conducting them, we were unable to assess their effectiveness. However, we learned from our interviews that the TFGs themselves have concerns about the effectiveness of conducting cold consent encounters, especially at airports. In the four interdiction groups where we conducted in-person interviews, either the ASAC or the supervisor told us that they believed such encounters at airports are much less effective since the Transportation Security Administration implemented screening at airports by the end of 2002. One TFG member told us that since September 11, 2001, the only cold consent encounters the TFG conducts are at bus stations. Several TFG members told us that their groups are focusing more on other forms of interdiction that they believe are more productive than cold consent encounters. Of the 14 TFGs that spent any time conducting cold consent encounters, only 3 estimated that they spent more than 25 percent of their time on this tactic. Several TFG

⁴² The CATS Data Dictionary lists the examples of seizure method as adoption, indictment, and search warrant.

⁴³ The DEA was unable to locate the latest Office of Inspections report for one TFG.

members told us that their TFG only conducts cold consent encounters on slow days or when they have nothing else to do.

Previous data collection on cold consent encounters did not impede interdiction.

Some TFG members and managers expressed concern about collecting information about every encounter. Two supervisors stated that they did not think it would be practical to collect information because when they conduct cold consent encounters they may speak to 20 to 30 people in a short amount of time. In addition, one TFG member stated that people encountered are often not comfortable with seeing officers make notes during cold consent encounters and will challenge them.

However, as noted previously, the Department found that collecting data for all consent encounters with the field encounter forms during the Operation Jetway pilot did not impede the DEA's interdiction activities. In a January 2001 Interim Report to the President on the progress of the Operation Jetway pilot, the Department reported that "the data collection process has not been overly burdensome on law enforcement nor has it impeded law enforcement activities." In that regard, the DEA Acting Deputy Administrator noted in her memorandum to Special Agents in Charge (SACs) expanding data collection to all major airports with active Operation Jetway sites that the one-page form "takes no more than a minute to complete." The fact that the DEA expanded data collection to 77 airports, 38 train stations, and 41 bus stations after initially limiting the pilot to 6 locations indicates that it did not believe that data collection impeded its interdiction operations. Further, the Section Chief of the Department's CRT Special Litigation Section told us that the argument that documenting race data is prohibitively time consuming has been shown to be invalid. He noted that some police departments have used hand-held devices with pull-down menus to make data collection more efficient.

The DEA's management of interdiction task force groups does not ensure that training and operational requirements are clearly established, communicated to TFG members, or followed.

We found that the DEA does not centrally manage or coordinate its TFG operations that we reviewed and that this has contributed to confusion regarding training for and conducting of cold consent encounters as part of interdiction operations at mass transportation facilities. DEA managers advised us that the DEA does not consider interdiction to be a stand-alone DEA program and instead considers it a "tool in the toolbox" that DEA field division managers can use to combat drug trafficking at transportation facilities. We believe that this decentralized approach has contributed to not all TFG members receiving DEA interdiction training, to a lack of clarity

regarding training and policy requirements, and to TFGs conducting cold consent encounters and searches in potentially misleading manners as described below.

In lieu of a centralized interdiction program manager, the DEA relies on its Jetway training to teach TFG members to appropriately and effectively conduct interdiction activities, including cold consent encounters and searches, and on field division managers to ensure that their division comports with DEA policy and accepted interdiction practices. However, we found that DEA interdiction training was not mandatory, although many personnel involved with training for and conducting transportation interdiction believed that it was; that not all TFG members had received DEA-approved interdiction training; and that Jetway training did not instruct attendees on certain DEA consent search policies discussed below that are applicable to interdiction at transportation facilities. Further, we found that field division oversight did not identify deviations from certain policies or accepted interdiction practices. Without establishing better coordination among DEA officials who promulgate DEA policy, those who provide interdiction training, and those who conduct interdiction operations, the DEA cannot ensure that its TFGs are conducting cold consent encounters and searches appropriately.

DEA's decentralized management of interdiction operations does not ensure that there is sufficient oversight of cold consent encounters and searches.

In 1998, the DEA recognized the importance of a more centralized approach to Jetway training and oversight, and it issued a directive for these responsibilities to be transferred from EPIC to the State and Local Programs Section of the Domestic Operations Division.⁴⁴ The 1998 directive further stated that the Domestic Operations Division had undertaken a review of the Jetway program, and had “identified additional training needs, accountability and reporting issues and responsibilities...important to the continued success of the Jetway program.” The 1998 directive and a subsequent 2001 directive from EPIC to all SACs entitled “Operation Jetway Mission, Training, and Accountability” laid out the specific responsibilities for TFG managers in the field as follows:

- systematically review case files and evaluate all of the operational aspects of the interdiction units under their command for adherence to program objectives, methodologies, current interdiction laws, and accepted interdiction procedures;

⁴⁴ DEA communication with field divisions is often referred to as DEA “cables.” For the purposes of this report, we use the term “directive” instead of the term cable.

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- monitor and evaluate the effectiveness of the units to ensure that the interdiction members have received the proper training and are adhering to DEA policies and procedures;
 - ensure that managers receive this training as well, so they can effectively evaluate these units; and
 - ensure that agents and task force officers newly assigned to an interdiction unit receive interdiction training prior to taking the lead role in any interdiction investigations.

However, we could not find any documentation that showed the DEA completed the review of training and accountability called for in the 1998 directive. In addition, the DEA has not provided guidance regarding the training and oversight responsibilities for TFGs since issuing these directives more than a dozen years ago.

During our interviews with the supervisors and ASACs of the four TFGs that we visited, we asked them to describe their oversight of the TFGs. One or both from each group told us that they regularly review case files, DEA-6 forms, operational plans, and also that they prepare activity reports. All of the supervisors told us that they review case files and DEA-6 forms. Two of the four supervisors stressed that another form of oversight they performed was frequent participation in the TFG's interdiction activities, while two other supervisors told us that they participated in interdiction activities occasionally. In each of the four groups, the oversight the ASACs performed was removed from operations and focused on administrative requirements. Overall, we found that the nature of the ASACs' and supervisors' oversight of their TFGs was inconsistent and did not include all the requirements set forth in EPIC's 1998 and 2001 directives.

Not all interdiction task force group members attended DEA interdiction training, and training requirements are unclear and inconsistently understood.

We learned from our telephone interviews with TFG supervisors that 29 percent of TFG members and 47 percent of supervisors had not attended Jetway training. Additionally, none of the ASACs from the four sites we visited had attended the training.

Proper interdiction training is important when conducting cold consent encounters.

The DEA Agents Manual describes search and seizure as "one of the most dynamic and potentially confusing areas of law today," which we believe makes interdiction training for TFG members of the utmost importance. In addition, TFG management and members made statements to us during interviews that reinforced the importance of interdiction training.

For example, one ASAC told us that training helps TFG members gain confidence, in addition to giving them the opportunity to build relationships with law enforcement officers from different agencies. Another TFG member told us that training for officers who are new to interdiction is helpful because it gives them a foundation for doing interdiction work. He added that interdiction classes give TFG members an opportunity to learn what is required by case law and get instruction on cold consent encounters. Further, one ASAC told us that training is important for TFG supervisors so that they can effectively evaluate whether the TFGs they are supervising are adhering to the DEA's policies and procedures.

We found that in addition to Jetway training, some TFG members also receive training through private providers and state and local agencies. For example, task force officers from one TFG told us that they attended interdiction training sponsored by the state district attorney's office. Several other TFG members told us about a training they refer to as "SKYNARC" that allows attendees to focus on specific types of interdiction they conduct by offering small, in-depth seminars on specific interdiction topics that attendees can choose from, such as bus interdiction.⁴⁵ Although we were told that SKYNARC and certain other non-DEA training may be of high quality, the Jetway manager that the DEA referred us to told us that he was unaware of any interdiction training that the DEA authorized, other than Jetway. Only by requiring that TFG members attend a DEA-approved training, whether provided by Jetway or another source outside the DEA, can the DEA ensure that TFG members receive training that is consistent with prevailing seizure and forfeiture law and DEA standards.⁴⁶

Interdiction training is not mandatory and training requirements are unclear.

Despite its importance, there is a lack of clarity as to whether Jetway training is mandatory for TFG members, supervisors, and managers. We found that there was no DEA document that is considered policy that made Jetway training mandatory. However, we found several other DEA documents that stated Jetway training was mandatory. Further, many of the

⁴⁵ "SKYNARC" started with an airport interdiction training conference in 1991, and incorporated under the name "International Narcotics Interdiction Association" in 1997. See www.inia.org.

⁴⁶ In a September 2014 investigative series on asset seizures as a result of highway interdiction by state and local law enforcement, the *Washington Post* reported that highway interdiction training programs are non-centralized, and perhaps inappropriately emphasize instruction on seizing assets. Michael Sallah, Robert O'Harrow Jr., and Steven Rich, "Stop and Seize," *The Washington Post*, September 6, 2014, <http://www.washingtonpost.com/sf/investigative/2014/09/06/stop-and-seize/> (Accessed November 13, 2014).

people we interviewed assumed that Jetway training was required for TFG members, supervisors, and managers.

For example, DEA-wide directives that EPIC issued in January 1998 and March 2001 state that the appropriate ASACs, Resident Agents in Charge (RACs), and Group Supervisors “must receive this Operation Jetway training...so they can effectively evaluate these units,” and “agents and task force officers newly assigned to an interdiction unit must receive interdiction training prior to taking the lead role in any interdiction investigations.” Further, a page on the DEA website about Jetway training states, “DEA policy states that this is a mandated training program for all DEA Special Agents and task force officers assigned to [airport, train, bus, parcel, or hotel/motel interdiction units].” Another Jetway document states that, “Upon completion of Operation Jetway, attendees are certified Operation Jetway Interdiction officers, as per DEA regulations;” however, the material does not refer to specific regulations.

In addition, a Jetway manager stated that he uses the January 1998 directive as validation that Jetway training is mandatory when TFG and state and local interdiction unit supervisors question the use of their travel funds to send a TFG member to Jetway. He said that he used the 1998 directive because he believed that there was nothing more current that specified that Jetway training was mandatory. He was unaware of the 2001 directive until we brought it to his attention.

In contrast, the Director of EPIC told us that neither the 1998 nor the 2001 directives are policy.⁴⁷ Further, he was unaware of any mandatory interdiction training, and that he would have to check the policy to see if Jetway training was mandatory. He later confirmed that the DEA does not have a policy that requires Jetway training.

Not surprisingly against this backdrop, the interviews we conducted with TFG members, supervisors, and managers showed an inconsistent understanding of the training requirements for TFGs. For example, of the four supervisors whose TFGs we visited, three believed that Jetway training was required for being the lead investigator when conducting a cold consent encounter and one supervisor said he was not aware of Jetway training until our interview. No member of the latter TFG had attended Jetway training, though many of the state and local members told us that they had attended interdiction training through their own agencies. Following our site visit, the RAC overseeing this TFG informed us that as a result of our review, he had

⁴⁷ According to an ASAC in the Office of Training, since 2011, only the Attorney General, the DEA Administrator, and the Special Agent in Charge of the Office of Training are authorized to establish mandatory training requirements.

arranged for all of the TFG members to enroll in a Jetway class scheduled for January 2015, as well as another interdiction training course sponsored by the Department of Transportation. Further, we asked one supervisor with whom we conducted a telephone interview why some of his TFG members had not attended Jetway training. He told us that because his TFG mainly conducts hotel, motel, and truck stop interdiction rather than airport interdiction, he mistakenly believed that the training would not be applicable. However, Jetway training includes relevant modules, such as interdiction at hotels and motels.

Budget constraints have limited the availability of Operation Jetway training.

Interviewees told us that another reason some TFG members had not attended Jetway training is federal budget constraints, including the federal budget sequestration, which reduced EPIC's budget and DEA field divisions' training budgets.⁴⁸ For example, the EPIC Director told us that sequestration required EPIC to cancel nine Jetway classes that had already been scheduled for 2013, resulting in a lengthy waiting list. In addition, TFG supervisors told us that budget limitations resulted in TFG members not being sent to Jetway training.

Interdiction task force group members do not adhere to certain DEA policies pertinent to cold consent encounters and searches at transportation facilities.

Another result of the DEA's decentralized management of interdiction operations is the lack of coordination between what is taught in Jetway training and certain operational policies in the DEA Agents Manual that apply to conducting cold consent encounters and searches at transportation facilities. We found that there are two specific policies in the DEA Agents Manual that most of the TFG members we interviewed were either unaware of or incorrectly assumed did not apply to cold consent searches at transportation facilities. As a result, we found that most TFGs do not follow these policies.

The "Consent Searches" section of the DEA Agents Manual includes a requirement that "consent searches must be reported on a DEA-6 form, Report of Investigation, within five working days of the search." However, several TFG members we interviewed told us that they only prepare a DEA-6 if a consent search results in a seizure or arrest and were either unaware of the policy to document all consent searches without regard to whether they resulted in a seizure or arrest, or did not think that the policy applied to consent searches conducted as part of transportation interdiction. By

⁴⁸ Sequestration refers to automatic cuts to federal government spending that were authorized with the Budget Control Act of 2011, and went into effect March 1, 2013.

contrast, another TFG supervisor told us that his TFG documented every cold consent encounter and search on a DEA-6 form, because it is “just the right thing to do.” He stated that his group uses the information for intelligence purposes to determine if the TFG has previously encountered the same suspicious passenger.

When we asked TFG members about this policy, several expressed concerns because completing a DEA-6 form without having found drugs or making an arrest could result in information about an innocent person being entered into a criminal database. One supervisor concurred that he had reservations about putting names of travelers into a criminal database if the search did not produce results and there was no perceived criminal activity.

A second policy states that “the agents who are requesting to conduct a consent search should request that the person who is giving consent read and sign a DEA-88, Consent to Search form.” The DEA Interdiction Manual notes that “obtaining an individual’s consent to search in writing provides substantial evidence that an individual voluntarily consented to a search,” which can be important if the voluntariness of the search is later challenged. When we asked TFG supervisors whether their groups used DEA-88s to obtain consent, none of them were aware that this policy applied to conducting consent searches as part of interdiction activities at transportation facilities. One TFG member explained that he would use this form to obtain a homeowner’s consent to search a residence or vehicles parked on the property, but not to obtain consent to search at a transportation facility. One ASAC stated that generally when TFG members are conducting consent searches at airports, they obtain consent verbally because the searches are often done quickly and there is insufficient time to have a traveler sign a form. In addition, TFG members told us that they felt travelers encountered at transportation facilities would be more willing to give a verbal consent to search than they would be to sign a document.

We found that Jetway training does not include information about these policies or instruct students to follow them when conducting consent searches as part of interdiction operations at transportation facilities. In fact, a Jetway manager at EPIC who manages training told us that these policies do not apply to interdiction operations in transportation facilities. However, the DEA Section Chief responsible for developing operational policy told us that these two policies do apply to consent searches at transportation facilities. This shows that additional coordination is needed between DEA personnel who manage Jetway training and those who develop policy applicable to interdiction operations.

The TFG members who conduct cold consent searches at transportation facilities and the managers who provide training articulated reasons why these policies may not be practicable for interdiction operations.

However, unless the DEA officials respectively responsible for writing policy, training, managing, and conducting interdiction operations coordinate to determine what policies should apply to interdiction at transportation facilities and ensure that TFG members know and understand those policies, TFGs will continue to interpret policy inconsistently and the DEA will not be able to rely on such policy as an effective management or oversight tool for its operations.

Some TFG members conduct cold consent encounters and searches in a manner that may be misleading.

Without clear guidance and centralized management, oversight of TFGs varies and cannot ensure that TFGs conduct cold consent encounters appropriately. Indicative of this, our review identified two practices in which TFG members conduct cold consent encounters and searches in ways that may either misrepresent themselves or the ability of the traveler from whom cash is seized to contest the seizure.

In our interview with a member of a TFG, he described how he conducted cold consent encounters at airports, stating that he approached passengers in the gate area (after they had passed through Transportation Security Administration security) and said that the TFG was conducting “secondary inspections.” When we asked the supervisor about the use of the term “secondary inspection,” he stated that he thought it was acceptable.

We find this troubling because the traveler encountered may reasonably interpret this to mean that they are required to consent to the encounter and/or a search when that is not the case. A Jetway manager told us that using the term “secondary inspection” sounded like something the Transportation Security Administration might say to a traveler that could cause them to believe they were being “detained.” He also told us that claiming to be conducting a “secondary inspection” was not taught in the Jetway curriculum, which by contrast instructs attendees to display their credentials and accurately identify themselves by stating, for example, “I am a police officer with the X police department and am working as part of a DEA narcotics interdiction group.” Clearly and properly identifying themselves and stating the purpose of the interview is one way that Jetway teaches attendees to keep a cold consent encounter from becoming an investigative detention, for which reasonable suspicion is required.

In addition, statements that can be interpreted to mean that the encounter is not voluntary could jeopardize the voluntariness of the consent and, therefore, any resulting seizure and or arrest. When we reported these concerns to DEA managers, they stated that future Jetway training courses would specifically teach that the term “secondary inspection” should not be used when conducting cold consent encounters, though we believe the

practice still reflects the lack of clear guidance and coordination in the Jetway program.

Another practice that may be misleading involves the use of a form that disclaims the ownership of seized cash. We found that at least two of the TFGs sometimes ask travelers whose cash is seized and who deny ownership of the cash to sign a disclaimer of ownership form. If signed, this form could potentially be used against the claimant if the seizure is later contested or becomes part of a court case.

We found that one TFG uses a form with the DEA seal and a second TFG uses a different form that does not indicate any agency affiliation. Both forms advise the traveler that, by signing the disclaimer form, they are stating that they have no claim to the currency and are waiving their rights—in one case “to file a petition or claim for the return of the currency” and in the other that “judgment can be entered without further notice” to them. This language notwithstanding, the Senior Attorney in the DEA’s Asset Forfeiture Section told us that, although she was unaware of whether there was any official DEA disclaimer of ownership form, she was aware that some TFGs used various disclaimer of ownership forms; that she did not consider them legally binding in subsequent proceedings; and, that the DEA still notified the travelers who signed them about their rights to contest the seizure.

The Jetway manager responsible for the Jetway training told us that he knew that some TFGs used these forms, but he was unaware of a standard DEA disclaimer of ownership form, and he noted that Jetway does not instruct participants to use this type of form. Because of the questionable nature of such forms, we believe that, at the very least, if DEA TFGs are going to use such a form, it should be a standard DEA-issued form that is prepared after thorough consideration, and that it should be incorporated in the Jetway training to be used uniformly by all TFGs.

CONCLUSION AND RECOMMENDATIONS

Cold consent encounters and searches can raise civil rights concerns. Because of the sensitivity of cold consent encounters as a law enforcement tactic, effective management, training, and oversight of their use is necessary to ensure that they are conducted appropriately. However, we found that the DEA does not collect sufficient data on cold consent encounters to assess whether they are being conducted impartially or effectively, and that the DEA's management of Special Agents and task force officers assigned to interdiction Task Force Groups (TFGs) does not ensure that training and operational requirements are clearly established, communicated to investigators, or followed.

The DEA has not collected demographic information about each of the encounters it conducts in transportation facilities since July 2003, when it terminated a Department of Justice data collection pilot project that was intended to examine the DEA's use of race in interdiction operations. Even though collecting demographic data on cold consent encounters cannot be conclusive with regard to racial profiling without a valid baseline of the demographic characteristics of the relevant population, we believe this data would provide a basis for additional oversight of the DEA's interdiction activities and assist in responding to allegations that its agents or task force officers inappropriately considered race in encountering travelers or making seizures. Without this information, the DEA cannot assess the impartiality with which cold consent encounters and searches are conducted.

Additionally, because the DEA does not document all cold consent encounters with travelers whether or not the contact resulted in an arrest or seizure, and also does not keep track of the time spent on these encounters or the nature of the encounter resulting in seizures, the DEA cannot assess whether cold consent encounters are an effective means of interdiction. We believe an analysis of the effectiveness of cold consent encounters is warranted for at least three reasons. First, the DEA's analysis of the results of cold consent encounters conducted in transportation facilities between 2000 and 2002 showed that they had only an 11 percent success rate resulting in seizures — a rate that could be even lower in airports now because of the Transportation Security Administration's mandatory screening of all travelers. Second, supervisors and managers of the TFGs questioned the effectiveness of cold consent encounters, and several have begun spending more time on other forms of interdiction that they believe are more productive. Finally, without conducting an analysis comparing the results of cold consent encounters to other interdiction or investigative activities, the DEA cannot assess whether this tactic is an effective use of its resources.

Further, we found that the DEA does not centrally manage or coordinate its interdiction operations, and that this has contributed to confusion regarding training for and conducting of cold consent encounters and searches as part of their operations at mass transportation facilities. The DEA's decentralized management of the TFGs relies on its Operation Jetway training to convey to Special Agents and task force officers how to effectively and appropriately conduct interdiction, and on field division managers to ensure that their division's TFG conducts activities, including cold consent encounters and searches, according to DEA policies and accepted interdiction practices.

We identified several examples where this lack of coordination resulted in unclear standards for interdiction training and policy and in cold consent encounters and searches being conducted in a potentially misleading manner. Despite the fact that most TFG members, supervisors, and managers believe that interdiction training is important and operate under the assumption that the DEA's Jetway training is mandatory for TFG members, we found that it is actually not required by DEA policy and, in fact, that 29 percent of TFG members and 47 percent of their supervisors had not attended a Jetway training course. We identified two policies in the DEA Agents Manual applicable to conducting interdiction activities, including consent searches, that most of the TFG members we interviewed were unaware of or incorrectly assumed did not apply to cold consent searches at transportation facilities. We also identified two practices in which TFG members conducting cold consent encounters and searches may misrepresent either themselves or the ability of the traveler from whom they seize cash to contest the seizure.

Without establishing better coordination among DEA officials who promulgate DEA policy, those who provide interdiction training, and those who supervise and conduct interdiction operations, the DEA cannot ensure that its traveler interdiction activities at mass transportation facilities are being conducted appropriately.

Recommendations

We make the following five recommendations to improve the DEA's policies and practices and strengthen management and oversight of cold consent encounters in mass transportation facilities and protect the rights of the public. We recommend that the DEA:

1. Consider how to determine if cold consent encounters are being conducted in an impartial manner, including reinstating the collection of racial and other demographic data and how it could be used to make that assessment.

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2. Develop a way to track cold consent encounters and their results and use the information collected to gain a better understanding of whether and under what circumstances they are an effective use of law enforcement resources.
 3. Require all interdiction TFG members and supervisors to attend either Jetway or alternative DEA-approved interdiction training.
 4. Ensure appropriate coordination of training, policies, and operations for conducting cold consent encounters and searches, including assessing which policies should apply to cold consent searches at transportation facilities and ensuring that interdiction TFG members know when and how to apply them.
 5. Examine whether disclaimer of ownership of cash forms should be used in cold consent encounters and, if so, establish a consistent practice and training regarding their use.

APPENDIX I: SCOPE AND METHODOLOGY OF THE OIG REVIEW

In this review the OIG examined the policies, practices, documentation, and oversight of DEA-initiated cold consent encounters and searches of travelers in mass transportation facilities from 2009 through 2013. Our fieldwork, conducted from December 2013 through July 2014, included interviewing DEA and other officials regarding interdiction training and operations, cold consent encounters, and asset seizure; telephone interviews with the Group Supervisors of the DEA's 17 interdiction Task Force Groups (TFGs); in-person interviews with managers, Group Supervisors, and members of four interdiction TFGs; analysis of DEA cash seizures; and reviewing documents. We focused on the interdiction TFGs because DEA officials told us that within DEA operations, these are the entities most likely to conduct cold consent encounters at transportation facilities. At the time of our review, DEA field division managers identified 17 TFGs that were designated as interdiction TFGs. The following sections provide additional information about our methodology.

Interviews

We interviewed current and former DEA officials regarding their roles pertaining to training, legal counsel, administrative management, policy, oversight, statistical analysis, and asset forfeiture of DEA interdiction activities. We interviewed managers of the El Paso Intelligence Center and its Operation Jetway interdiction training program and managers from the Office of the Chief Counsel, the Operations Management Section, the Policy and Source Management Section, the Office of Professional Responsibility, the Statistical Service Section, and the Asset Forfeiture Section.

We also interviewed officials from the Department of Justice's Civil Rights Division and the Justice Management Division's Asset Forfeiture Management Section. To understand policing practices for collecting race and other demographic data we spoke to a former director of the Office of Community Oriented Policing Services, the Executive Director of the Major Cities Chiefs Police Association, a Coordinator for the High Intensity Drug Trafficking Area's Domestic Highway Enforcement Initiative, and officials from seven law enforcement agencies.

We conducted telephone interviews with the Group Supervisors of the 17 interdiction TFGs to determine how much time they spent conducting cold consent encounters, under what circumstances they collect information from these encounters, and whether they had attended Operation Jetway training.

Site Visits

We visited four DEA interdiction TFGs. We visited two groups to increase our understanding of interdiction TFG operations and two because our telephone interviews with TFG Group Supervisors indicated that one group conducted the most cold consent encounters at airports and the other conducted the most bus interdiction. During our visits we interviewed four Assistant Special Agents in Charge, one Resident Agent in Charge, four Group Supervisors, eight DEA Special Agents, and 12 state and local task force members. Our interviews pertained to training, oversight, and documentation of cold consent encounters and searches, and how TFG members conduct cold consent encounters and searches of travelers in airports, bus stations, and train stations.

Data Analysis

With data from the Justice Management Division's Consolidated Asset Tracking System, we analyzed cash seized by the 17 interdiction TFGs and the DEA from calendar years 2009 through 2013. We also analyzed interdiction TFG seizures that were contested to determine how many seizures resulted in some cash being returned.

Document Review

We reviewed a variety of DEA, Department of Justice, and publically available documents pertaining to interdiction, cold consent encounters, and asset seizure. We reviewed DEA policy and guidance pertaining to interdiction, the use of consent encounters, and to DEA TFGs generally. We also reviewed complaints the DEA received pertaining to racial profiling and information pertaining to a lawsuit brought against the DEA alleging that one specific Special Agent had engaged in racial profiling when conducting cold consent encounters. We also examined training material and attendance information from the Operation Jetway interdiction training program. Finally, we reviewed three consent decrees that the Department of Justice's Civil Rights Division entered into with state and local law enforcement agencies that required oversight of cold consent encounters and searches.

APPENDIX II : FAIRNESS IN LAW ENFORCEMENT EXECUTIVE MEMORANDUM

Memorandum on Fairness in Law Enforcement

[Weekly Compilation of Presidential Documents]

From the 1999 Presidential Documents Online via GPO Access
[frwais.access.gpo.gov]
[DOCID:pd14jn99_txt-14]

[Page 1067]

Monday, June 14, 1999

Volume 35--Number 23
Pages 1049-1083

Week Ending Friday, June 11, 1999

Memorandum on Fairness in Law Enforcement

June 9, 1999

Memorandum for the Secretary of the Treasury, the Attorney General, the
Secretary of the Interior

Subject: Fairness in Law Enforcement: Collection of Data

We must work together to build the trust of all Americans in law enforcement. We have great confidence in our Federal law enforcement officers and know that they strive to uphold the best principles of law enforcement in our democratic society. We cannot tolerate, however, officers who cross the line and abuse their position by mistreating law-abiding individuals or who bring their own racial bias to the job. No person should be subject to excessive force, and no person should be targeted by law enforcement because of the color of his or her skin. Stopping or searching individuals on the basis of race is not effective law enforcement policy, and is not consistent with our democratic ideals, especially our commitment to equal protection under the law for all persons. It is neither legitimate nor defensible as a strategy for public protection. It is simply wrong.

To begin addressing the problem of racial profiling, Federal agencies should collect more data at all levels of law enforcement to better define the scope of the problem. The systematic collection of statistics and information regarding Federal law enforcement activities can increase the fairness of our law enforcement practices. Tracking the race, ethnicity, and gender of those who are stopped or searched by law enforcement will help to determine where problems exist, and guide the development of solutions.

I therefore direct you to design and implement a system to collect and report statistics relating to race, ethnicity, and gender for law enforcement activities in your department. Specifically, you shall:

(1) develop a proposal within 120 days, in consultation with the Attorney General, for a system of data collection and an implementation plan for a field test of that system, including the law enforcement agency components, sites, data sets, training, and other methods and procedures to be included in the field testing. You shall implement field tests within 60 days of finalizing their proposals;

(2) to the extent practicable, collect data that is sufficiently detailed to permit an analysis of actions relevant to the activities of the included law enforcement agencies by race, ethnicity, or gender. Such actions may include traffic stops, pedestrian stops, a more extensive inspection or interview than that customarily conducted with entrants to the United States, requests for consent to search, or warrantless searches. Data acquired pursuant to this memorandum may not contain any information that may reveal the identity of any individual; and

(3) provide to the Attorney General a summary of the information collected during the first year of your field test, including civilian complaints received alleging bias based on the race, ethnicity, or gender of the complainant in law enforcement activities; your process for investigating and resolving such complaints; and the outcomes of any such investigations. The Attorney General shall report to me, in consultation with relevant agency heads, on the results of the field tests with: (i) an evaluation of the first year of the field test; (ii) an implementation plan to expand the data collection and reporting system to other components and locations within the agency and to make such system permanent; and (iii) recommendations to improve the fair administration of law enforcement activities.

In addition, within 120 days of the date of this directive, you shall provide a report to me on your training programs, policies, and practices regarding the use of race, ethnicity, and gender in your law enforcement activities, along with recommendations for improving those programs, policies, and practices.

William J. Clinton

**APPENDIX III: 2001 COLLECTION OF DATA TO ENSURE FAIRNESS IN
LAW ENFORCEMENT INTERIM REPORT**



Office of the Attorney General
Washington, D.C. 20530

January 17, 2001

The President
The White House
Washington, DC 20500

Dear Mr. President:

With this letter I am transmitting an interim report on the work of the Department of Justice in response to your Executive Memorandum of June 9, 1999, addressing fairness in federal law enforcement.

Your Memorandum directed the Department to examine the use of race, ethnicity and gender in federal law enforcement. The Department strongly believes that race-, ethnic- and gender-neutral policies in the administration of justice are essential to sound and credible law enforcement, and strives to ensure that our policies are both fair and effective.

This interim report was prepared by the Department at the request of the White House. It describes the data collection field tests undertaken to date, as well as the challenges the Department has encountered while collecting this data. The Executive Memorandum requires the Department to prepare a final report for the President summarizing the data collected during the first year, including evaluation of the field tests and development of a plan for expanded data collection. That report will be submitted by May 31, 2001.

Our goal is professional law enforcement that treats persons fairly, equally and with respect. I believe our federal data collection efforts are helping to achieve that goal.

Respectfully,

A handwritten signature in cursive script, appearing to read "Janet Reno".

Janet Reno

Enclosure

The Collection of Data to Ensure
Fairness in Law Enforcement



*Interim Report to the President
of the United States*

January 12, 2001

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U.S. Department of Justice
January 12, 2001

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I. BACKGROUND

On June 9, 1999, President Clinton issued an Executive Memorandum to the Secretary of the Interior, the Attorney General and the Secretary of the Treasury on "Fairness in Law Enforcement." The Memorandum directs the examination of the use of race, ethnicity and gender in federal law enforcement. The Memorandum also seeks to ensure that, where possible, race-, ethnic- and gender-neutral policies are used in the administration of justice. To achieve these goals, the agencies were required to create field tests to collect data on the race, ethnicity and gender of persons stopped or searched by law enforcement and to provide a report and recommendations on training programs, policies and practices regarding the use of race, ethnicity and gender in federal law enforcement activities. The Department will submit a final report in May 2001.

This is an interim report, as requested by the White House, on the Department of Justice's data collection field tests on persons stopped or encountered in certain settings by law enforcement officers of the Immigration and Naturalization Service (INS) and the Drug Enforcement Administration (DEA), the two Department components that were selected to implement the field tests.¹ This interim report also suggests essential next steps to ensure the success of these data collection efforts. Although this report is focused on the work of INS and DEA, the Department of Justice strongly believes that race-, ethnic- and gender-neutral policies in the administration of justice are essential to sound, effective and credible law enforcement by all of the Department's components, as well as by other federal agencies and state and local law enforcement authorities. The Department also recognizes that there are some appropriate uses of race, ethnicity and gender that are essential to effective law enforcement. For example, where a law enforcement officer has information linking specific unlawful activity to an individual whose race, ethnicity or other identifying characteristic is known, that information may appropriately be used to identify that individual. Therefore, the challenges facing the Department have been and are: (1) to develop policies and training programs enabling law enforcement officers to determine when information relating to the race, ethnicity or gender of persons suspected of unlawful activities may be used in law enforcement operations; (2) to monitor activities to ensure that these policies are followed; and (3) to identify and remedy those situations where race, ethnicity or gender is inappropriately used.

¹ Although this report focuses on the field tests performed by INS and DEA, the Department is also collecting data on arrests made, suspects prosecuted and defendants sentenced and incarcerated within the federal system, as described in more detail in our initial proposal responding to the Executive Memorandum. See Appendix A. The Department reports these statistics annually in the *Compendium of Federal Justice Statistics*. The most recent version of this report can be found at the Bureau of Justice Statistics' website <<http://www.ojp.usdoj.gov/bjs/>>. Analysis of these data may help to identify any racial, ethnic or gender disparities in these law enforcement activities. The Department is also engaged in other efforts beyond data collection to ensure fairness in law enforcement. See Appendix B (federal); Appendix C (state and local).

U.S. Department of Justice
January 12, 2001

To help accomplish these objectives, the Executive Memorandum required four tasks of the Department:

- (1) To develop, within 120 days, a proposal for a system of data collection and an implementation plan;
- (2) To collect, to the extent practicable, data sufficiently detailed to permit further analysis of the activities of the Department's law enforcement agencies;
- (3) To prepare a report summarizing the information collected during the first year including (a) evaluations of the field tests, (b) an implementation plan for expanded data collection and (c) recommendations for improving the fair administration of federal law enforcement activities; and
- (4) To prepare a report, within 120 days, describing training programs, policies and practices regarding the use of race, ethnicity and gender in law enforcement activities and providing recommendations for improvement.

On October 16, 1999, the Department submitted a report to the President detailing our proposals for data collection field tests and our implementation plans. See Appendix A. The Department also submitted a report on November 15, 1999, that described our training programs, policies and practices regarding the use of race, ethnicity and gender in law enforcement activities and providing recommendations for improvement. The Department's field tests began in early 2000.² During the course of these field tests, the Department has identified some problems with the data collection instruments that must be remedied in order to provide data that are useful for accurate analysis. This document is an interim report on those field tests and the challenges that the Department has encountered. The Executive Memorandum requires the Department to prepare a report for the President summarizing the information collected during the first year, including evaluation of the field tests and development of a plan for expanded data collection. That report will be submitted by May 31, 2001.

² DEA began its field tests in January 2000 and expanded to a total of 60 sites by June. INS began its land port of entry field test in March 2000, its airport field tests in April 2000, and its Border Patrol field tests in June 2000. Not all sites will have completed one full year of data collection by the time the next report is expected under the current timetable.

II. THE FIELD TESTS

The purpose of the Department's data collection effort is to understand whether, and how, federal agents or officers use race, ethnicity or gender in making law enforcement decisions. The Executive Memorandum called for the Department to design field tests to determine whether its proposed data collection methods would serve this objective. Our efforts to design and implement our field tests are described below.

A. Selection of Department of Justice Components to Conduct Field Tests

The first step the Department took in developing the field tests was to decide which components would participate. The Department determined that DEA and INS were the two Department agencies that routinely engage in non-suspect specific public encounters, that is, law enforcement activities seeking to detect unlawful behavior in public places among the public at large. To understand the field tests these agencies have conducted, it is important first to understand the general mission and procedures of these agencies.

1. INS

The mission of INS includes ensuring that all persons entering or residing in the United States are lawfully entitled to do so. By statute, INS has "the power and duty to control and guard the boundaries and borders of the United States against the illegal entry of aliens," to question all individuals seeking entry to the United States to determine whether they are admissible and to investigate violations of immigration laws, such as lack of authorization to work in the United States. 8 U.S.C. §§ 1103, 1225, 1324a. These law enforcement responsibilities are carried out by Border Patrol agents, INS inspectors and investigators.

INS inspection officers interview persons seeking admission to the United States at ports of entry, such as land ports and airports. During "primary inspection," the INS inspector interviews the applicant to verify the applicant's identity and also reviews the travel documents. Under the Immigration and Nationality Act, all applicants for admission are presumed to be aliens unless they can establish United States citizenship. All persons seeking admission must present to the inspector valid entry documents, such as a United States passport or a valid immigrant or non-immigrant visa, and otherwise establish eligibility to enter the United States, such as the intention to return to their countries of citizenship or to abide by the requirements of their visas.

During primary inspection at airports, the inspector may check the applicant's name against an interagency "lookout" database, the Interagency Border Inspection System (IBIS), which was created

in 1989 by INS, the United States Customs Service, the Department of State and the Department of Agriculture, and which provides information that flags individuals who may be inadmissible (e.g., for criminal activity or unlawful immigration activity). Due to the volume of pedestrian and vehicle traffic at land ports of entry (which are distinct from airports), inspectors have discretion to query applicant's names against the IBIS database. Additionally, if entry is sought by an individual in a motor vehicle, the primary inspector may also check the license plate number of the vehicle.

At ports of entry, if the inspector has any doubts about admissibility, or if the documents presented do not immediately establish admissibility, the applicant is referred to "secondary inspection" for further interviews and examinations of entry documents. An applicant for admission may be referred to secondary inspection for reasons such as suspicion of counterfeit documents, concerns about likelihood of overstaying a visa, concerns about evasive behavior during questioning or suspicions about the validity of the visa status based on clothing, language or knowledge, for example. If the applicant overcomes the doubts about admissibility, INS may allow the applicant to enter the United States.

Additionally, some 9,000 Border Patrol agents routinely patrol areas near our international land borders for persons who have unlawfully entered the United States without inspection at a port of entry. During this Administration, the Department has launched several intensive Border Patrol operations to help close traditional corridors for illegal immigration along the Southwest Border. In general, the Border Patrol conducts two types of traffic-checking operations in border areas: checkpoints and "roving patrols." At checkpoints, which may be permanent or temporary, Border Patrol agents stop all motor vehicles entering a checkpoint to determine the citizenship of the vehicle's occupants. In roving patrols, the Border Patrol agents stop vehicles at locations other than checkpoints or ports of entry based on the agents' reasonable suspicion that the vehicle's occupants are in violation of immigration law or other federal law.

INS also routinely investigates employers to determine whether they employ aliens who are not authorized to work in the United States. In work-site investigations, investigators typically check employment records regarding work authorization (known as the "I-9" form) and question employees to determine their immigration status.

As part of its standard operating procedures, INS collects some information on all persons seeking admission to the United States at ports of entry and all persons apprehended for entering without inspection or overstaying visas, as well as information on aliens placed in removal proceedings. During FY 2000, INS conducted nearly 534 million primary inspections and 8.6 million secondary inspections. Over 1.8 million arrests were made, nearly 1.7 million by the Border Patrol alone. Investigators successfully completed almost 48,000 criminal alien, employer, fraud and anti-smuggling cases. Prior to the data collection effort, INS did not track these encounters by race, ethnicity or

gender, although the agency did track country of origin of certain individuals, in part to fulfill statutory obligations:

2. DEA

The mission of DEA is to enforce the controlled substances laws and regulations of the United States and to bring to justice those individuals and organizations involved in the growth, manufacture or distribution of controlled substances in, or destined for, illegal traffic in the United States, as well as to recommend programs to reduce the availability of illicit controlled substances in domestic and international markets. DEA's primary responsibilities include the investigation and preparation for prosecution of major violators of controlled substance laws, including violent drug gangs and coordination with federal, state and local law enforcement on interstate and international investigations, such as special enforcement operations at airports and other transportation ports.

One such special enforcement operation is "Operation Jetway." This operation was established in 1993, with DEA as the lead agency, to provide standardized training and to collect and analyze arrest and seizure data from federal, state and local drug interdiction units working at airports, bus stations, train stations and parcel facilities. The primary goals of Operation Jetway are to increase the effectiveness of interdiction efforts on both a national and an international scale and to ensure that interdiction units receive training in accepted interdiction techniques in accordance with current law.

In Operation Jetway, and in other drug interdiction efforts, DEA agents routinely encounter individuals in public places, such as airports, train stations, bus stations and parcel facilities. DEA agents rely on a number of indicators when considering whether to approach an individual suspected of transporting controlled substances. These indicators are an informal compilation of characteristics, gained from DEA's drug intelligence program as well from experience, believed to be typical of persons involved in drug trafficking. In addition to these consensual encounters, DEA agents may detain an individual based on reasonable suspicion and arrest a suspect based on probable cause.

Prior to the data collection effort, DEA did not track its encounters by race, ethnicity or gender. The agency has routinely analyzed the investigative data obtained as a result of Operation Jetway arrests and seizures in order to develop intelligence reports describing current drug trafficking trends.

B. Designing the Field Tests

Designing the field tests presented many challenges to the Department, including how to determine which categories of racial and ethnic data to collect. The Office of Management and Budget (OMB), which is responsible for such issues generally, revised its standards on this issue in 1997. See

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62 Fed. Reg. 58782 (1997) (providing that federal agencies are required to comply with these revised standards by January 1, 2003). Under these standards, federal agencies collecting such data are required to classify data on race according to the following five categories:

- American Indian or Alaska Native;
- Asian;
- Black or African American;
- Native Hawaiian or Other Pacific Islander; and
- White.

In addition, in collecting data on ethnicity, the agencies are directed to indicate whether the individual in question is either:

- Hispanic or Latino; or
- Not Hispanic or Latino.

OMB encourages agencies to follow a two-question, or two-field, format—with observations about race and ethnicity indicated separately on the forms—which both INS and DEA chose to follow. OMB also allows multiple responses or entries regarding race but, for purposes of the INS and DEA field tests, only one race and one ethnicity (or lack of Hispanic or Latino ethnicity) are tracked.

A related challenge was selecting the set of data to be collected. For example, INS developed different forms for each of its operational areas participating in the data collection, due to differences in procedures at inspections, checkpoints and roving stops. See, e.g., Appendix D. In these INS forms, the core data elements collected are: (1) date of encounter; (2) time of contact start; (3) gender; (4) race; (5) ethnicity; (6) nationality (or, for Border Patrol, whether the person is a U.S. citizen); (7) location of contact; (8) reason for contact; and (9) law enforcement action taken.

Similarly, the common data elements collected by DEA are: (1) date of encounter; (2) time of contact start; (3) gender; (4) race; (5) ethnicity; (6) location of contact; (7) reason for contact; (8) law enforcement action taken; (9) reason for action taken; (10) seizure, if any; (11) description of seizure; and (12) time contact ended. See Appendix E.

Another critical question was deciding whether to ascertain the race, ethnicity and gender of the individuals stopped or encountered through the officer's observations or by asking the subject his or her race, ethnicity and gender. BJS helped to articulate a standard approach to the collection of the race, ethnicity and gender information for the field tests. This approach complies with existing federal

regulations, namely the standards of OMB, regarding the collection of data from the American public.³ The approach chosen by BJS uses “observational data collection” (tracking the officer’s observation of the race, ethnicity and gender of the subject), unless some other practice was already in place.

This aspect of the design of the field tests was also informed by the Department’s conference on “Strengthening Police-Community Relationships,” at which the President issued the Executive Memorandum on fairness in law enforcement. Participants suggested that observational data collection is preferable to “individual self reporting” (in which individuals state their race, ethnicity and gender) for a number of reasons. First, with regard to potential racial or ethnic profiling, the critical issue is how the law enforcement officer perceives the race or ethnicity of the subject, not what the subject reports his or her race and ethnicity to be. Second, participants suggested that inquiries about race and ethnicity in law enforcement encounters could be both disruptive and inflammatory. Some participants also suggested that verbal inquiries about race or ethnicity would unduly lengthen what are typically brief encounters. Therefore, the Department created field tests in which the law enforcement officers would determine race, ethnicity and gender through observation. Additionally, the field tests designed by INS and DEA comport with the Executive Memorandum’s directive that the participating law enforcement agents not be identified by name.⁴

C. Site Selection for the Field Tests

INS and DEA independently identified a number of sites at which to conduct field tests. In selecting these sites, each agency sought to ensure a diversity of geographic locations, size and mode of transportation.

I. INS

The site selection by INS reflected a number of considerations. First, INS sought to involve all of its enforcement components (Inspections, Border Patrol and Investigations) and each of its three Regions. Second, it wanted to look at a mix of geographic locations, demographic groups and operation sizes. The agency also considered it essential to include sites located at the Southwest

³ The Bureau of Justice Statistics communicated this approach for approval to OMB’s Chief Statistician on September 14, 1999. This approach was not rejected by OMB.

⁴ The Executive Memorandum specifies that: “Data acquired pursuant to this memorandum may not contain any information that may reveal the identity of any individual[.]”

Border with Mexico, in part for the considerations above and in part because there were concerns about racial profiling in that region. INS began its field tests in March 2000.⁵

For Border Patrol operations, INS chose two vehicle checkpoint sites, San Clemente, California and Ysleta, Texas. INS also selected two Border Patrol stations that use roving stops, Yuma, Arizona and Blythe, California, for field tests. INS chose this region for all of its Border Patrol field tests because more than 90% of Border Patrol apprehensions occur at the Southwest Border and more than 90% of Border Patrol resources are deployed there.

For airports, INS chose sites that reflected geographic diversity, different sized facilities and flight arrivals from different parts of the world. The sites chosen were JFK International Airport in New York,⁶ Seattle-Tacoma International Airport in Washington and Houston Intercontinental Airport in Texas. INS also chose one small land port of entry, Del Rio, Texas.

INS also explored choosing sites that would allow data collection on encounters during worksite investigations of employers to determine whether they employ aliens without work authorization. INS determined that, for the purposes of the field tests, it would not be feasible to collect data on agents' observations of race or ethnicity during investigations due, in part, to concerns that were raised about the speed with which investigators encounter a large number of people at an often unfamiliar location that may not be easily secured. INS did, however, review 451 case files from closed worksite investigations to determine at which point in the investigation race or ethnicity became known to investigators.

⁵ INS began collecting data in March because resources that would otherwise have been available for data collection were already committed to responding to policy and training curricula reviews. Additionally, the timing of the requests to Customs for necessary changes to the IBIS system coincided with its need to address pending Y2K issues. Subsequently, an unfair labor practices grievance was filed by the Border Patrol union to prevent the checkpoint and roving patrol field tests. The grievance alleged that INS could not collect data beyond those categories specified in the Executive Memorandum, namely race, ethnicity and gender. The Department supported the determination made by INS that the collection of additional categories of data, such as "citizenship" and "law enforcement action taken," should be collected. The data collection by INS has not been circumscribed as sought by the union, although the grievance has not yet been resolved.

⁶ The field test at JFK also fulfills a Congressional requirement under the Fiscal Year 2000 Omnibus Consolidated Appropriations Act Conference Report that INS collect and report on the use of race, ethnicity and nationality in inspections at JFK. *See* H. REP. NO. 106-283, Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Bill, Fiscal Year 2000, (August 2, 1999) (accompanying H.R. 2670, 1999 WL 566233).

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2. DEA

In January 2000, DEA selected six Operation Jetway sites for the field test: Newark International Airport; Chicago-O'Hare International Airport; Houston Intercontinental Airport; Miami International Airport; Albuquerque, New Mexico train station; and Sacramento, California bus station. The goal in the initial selection of these sites was to provide an understanding of DEA's law enforcement activities in the types of enforcement locations where DEA has contact with the public at large. Recognizing the importance of this issue to the general public and government officials, on June 1, 2000, DEA expanded its field encounter data collection to all airports where Operation Jetway is active. Field test data is now being collected at approximately 60 airports nationwide.

D. Mechanics of Implementing the Field Tests

The mechanisms for collecting data vary at each of the types of field test sites described above (INS airports, land ports and Border Patrol sites, as well as DEA Operation Jetway airports). For example, participating INS Border Patrol agents on roving patrols use preprinted sheets to manually record information on race, ethnicity, nationality and gender as well as the reason for the stop. The data are later coded and entered into a database. At the Ysleta checkpoint, data on all referrals to secondary inspection are collected, but at the San Clemente checkpoint, due to the heavy volume of traffic, sampling is used to collect the data. In the field tests at airports, the data are input into IBIS when an individual is referred to secondary inspection.⁷ The primary inspectors also enter the reason for each referral using free text and a defined set of codes. See Appendix D (listing data extraction codes). When secondary inspection is complete, the secondary inspector closes the entry in IBIS with a textual description and a defined code for the disposition of the subject's application for admission, such as the type of visa under which the person was admitted, or whether the person was referred for an interview with an asylum officer or removed from the country. The United States Customs Service (Customs), which manages IBIS, later transfers the data files to INS.

At all DEA sites, agents complete a "field encounter form" for every encounter involving either DEA special agents or local task force officers. The form is completed at the field test sites whether or not the encounter results in a seizure or an arrest. All DEA data are then entered electronically into a database.

⁷ These field tests at airports have been complicated by three main factors: (1) the data systems used by INS are developed and maintained by Customs; (2) INS is required to process passengers arriving into the United States by plane within forty-five minutes of arrival; and (3) the volume of applicants for admission processed by INS—more than 500 million primary inspections conducted annually.

E. Interim Results of the Field Tests

As of October 31, 2000, INS field tests on fairness in law enforcement data collection have resulted in 137,249 records collected about the race, ethnicity and gender of individuals referred to secondary inspection or stopped at checkpoints or by roving patrols. Specifically, Border Patrol collected 2,611 reports; 125,644 reports⁸ were collected at airports by October 15; and 8,944 reports were collected from the land port. As of December 31, 2000, the DEA field tests have resulted in the collection of more than 7,607 records showing the race, ethnicity and gender of individuals encountered.

Additionally, both INS and DEA have undertaken some preliminary analyses of this data. For example, INS initiated data analysis of the JFK records in order to complete a report requested by Congress.⁹ Prior to discovering that the transmitted data was incomplete (see section III.B. below) and that the analyses were therefore flawed, the following comparisons were completed:

- Total referrals by race (compared to the baseline);
- Total referrals by ethnicity (compared to the baseline);
- Common reasons for referral (by race and ethnicity);
- Reasons for referral and associated dispositions (for each race and ethnicity); and
- Referrals resulting in adverse action.

When the problem with the data transmissions has been resolved, INS will analyze the new data.

DEA has also tabulated its field encounter data by the following categories:

- Race;
- Ethnicity;
- Gender;
- Airport location/encounters; and
- Arrests and/or seizures.

To determine whether race, ethnicity and gender are used by DEA agents as criteria for initiating contacts, however, an independent study of the "baseline" demographic characteristics of persons using those transportation terminals is needed. (See discussion at section IV.A. below.)

⁸ This number reflects partial data for Houston and Seattle.

⁹ See *supra*, at n.6.

III. INTERIM EVALUATION OF THE FIELD TESTS

Overall, we believe that the field tests are proceeding successfully and will provide a foundation for the type of data collection and analysis requested by the Executive Memorandum. Our interim evaluation of the field tests, however, has revealed a number of challenges that should be addressed before our data collection efforts are expanded. Remedying these problems will also help to ensure that the data that are collected can be evaluated in a meaningful way.

A. Burden on Law Enforcement and the Public

Generally, the data collection process has not been overly burdensome on law enforcement nor has it impeded law enforcement activities. The impact of this data collection effort on the public has also been minimal. For example, INS found that the data collection process caused only minor increases in processing time for individuals seeking admission at ports of entry.

B. Technology Issues

One of the major issues that has surfaced during the field tests is the need to reconfigure the databases used by DEA and INS to ensure proper data collection. For example, the databases must be configured so that the fields properly reflect the categories specified by the OMB standards. Consequently, DEA was required to alter its "defendant statistical system" and "division enforcement activity log" and did so. INS has not yet secured the resources necessary to change the IBIS system to resolve problems identified during field test implementation. Modification of this system is also difficult because it is maintained by Customs.

Other computer "glitches" also caused data collection problems. For example, Customs and INS experienced faulty data transmission between the agencies, which resulted in significant discrepancies between the number of secondary inspections recorded for field test purposes and the number reflected in other INS reports. The transmission problem has been identified and is being corrected. Other technological problems, including locking up, double entries and inaccurate machine reader scans, have also been reported and resolved.

C. Human Error

The most consistent difficulty encountered in the field tests resulted from human error. These errors generally fell into three categories.

1. Inaccurate Data

A preliminary review of a number of the records suggests that some agents and inspectors collecting the data have miscoded race and ethnicity information. For example, some INS inspectors recorded nationals from the Indian sub-continent as White rather than Asian. This can lead to inconsistency in data and a wrong picture of the "average" impression of an INS inspector's assessment of race or ethnicity. Similarly, a number of inspectors at JFK coded several hundred individuals with passports from India as American Indians. Additionally, the inordinate number of secondary inspection referrals that were coded as American Indians or Pacific Islanders, and improbable combinations of race, nationality and ethnicity, also suggest coding errors.

2. Incomplete Data

Missing or incomplete data elements also caused problems in the data collection process. Both agencies noted that the failure of agents to complete all of the necessary data fields for both manual and computerized forms is a problem. One common error reported by INS occurs when an officer or agent only records information about the person's ethnicity (by checking either "Hispanic or Latino" or "Not Hispanic or Latino") and fails to record information about the person's race. While INS may be able to partially rectify this issue by combining the two fields into one, this omission is likely to skew the data analysis by causing the race of people identified solely by their ethnicity to be under-reported.

Other omissions were also common. INS indicated that a number of forms insufficiently articulate the reason for the referral to secondary inspection. "Close-out times" are another area where omissions are common. Both DEA and INS chose to record the length of each encounter with law enforcement. However, both agencies indicate that agents often fail to record the close-out time, or record the time when the shift ended instead of the time that the encounter ended, in the close-out field. If the proper close-out time is not recorded, it is impossible to reconstruct this information. Also, if the start and end times are incomplete or recorded improperly, analysts can form the wrong impression about how long an inspection or other encounter lasted. Additionally, the manual data collection system at INS land ports of entry permits agents to leave certain fields blank, yielding a number of incomplete records.

Such errors can skew the data that is collected and can result in the exclusion of entire records. For example, DEA omits the entire form from the data tally if that form is missing a race, ethnicity or gender descriptor. Approximately 8% of DEA's 7,607 field test records have been classified as "incomplete data."

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3. Non-Standardized Entries

The use of informal codes or non-standardized entries has also complicated the data collection process. While the initial intent was to collect richer and more detailed information through the use of free text fields, it became apparent that officers needed quicker and more accurate ways to record the data. INS reported a number of such problems. For example, some officers use informal, non-standard or cryptic codes that cannot be understood by those reviewing the data. Another example is that in stops of vehicles, some INS agents record one referral and disposition for the driver while using asterisks for the passengers. This is a problem when the data is sorted and the records with asterisks (passengers) are disassociated from the driver's record.

D. Remedial Steps

All of these data problems—incomplete entries, incorrect data and non-standard entries—are exacerbated by the fact that the Executive Memorandum specified agent anonymity in the field test planning process. As a result, supervisors cannot easily identify and correct individuals who are recording data improperly.

Both INS and DEA have taken steps to remedy these problems. First, standardized codes were adopted to eliminate variances between law enforcement officers. Second, the inspectors and agents collecting the data were provided with training as necessary to ensure proper use of the codes and to reinforce the importance of recording the information accurately and completely. Third, selective counseling of individual data collectors or units was performed on an as-needed basis.

IV. NEXT STEPS IN DATA COLLECTION

A. Determine Statistical Baselines for Comparing Law Enforcement Encounters with the Demographics of the Associated Population

For the Department of Justice to be able to accurately analyze the data collected in its field tests, the Department must also collect underlying "baseline" or "denominator" data. Unique challenges in identifying and gathering information about the appropriate denominators are presented by the field test sites. A baseline is necessary to determine whether an agency is stopping a disproportionate number of people from a specific racial, ethnic or gender category. In order to determine whether such disparate treatment exists, there must be a clear definition of the relevant population and estimates of its demographic characteristics. However, there are currently no available estimates of the demographic characteristics of the relevant population using different modes of transportation or entering the United States through various ports of entry. The only method of obtaining such estimates is through direct field observation.

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Since April 2000, BJS has been working to determine baseline data that will enable meaningful analysis of the 7,607 field encounter data that DEA has collected. BJS, in conjunction with the Bureau of Transportation Statistics (BTS), proposed two sampling methodologies: (1) a method that would result in a "snap shot" of airport users during a given time frame, *e.g.*, several days a week, or a month;¹⁰ or (2) a method that would result in an estimate of the demographic characteristics of airport users over the course of a year. Both methods would require an intensive on-site effort and would therefore need an infusion of resources. In September 2000, BTS proposed that, in order to develop reliable baseline population estimates, sample data would need to be gathered at airports on at least 58 days, taking into account holiday fluctuations, each year. This process would then have to be repeated for each of the 60 airports at which DEA is currently collecting data. DEA maintains that it lacks the funding and personnel necessary to conduct such baseline studies.¹¹

INS has established pilot programs to capture baseline data at airports. As of October 2000, INS had conducted two, week-long surveys where primary inspectors collected race and ethnicity data on every individual entering through the port. Initially, the individual sites were allowed to select the weeks for baseline data collection to avoid potential negative impact on processing times. INS has now determined that their baseline data collection approach has marginal impact on operations and the INS Office of Statistics will select weeks on a random basis for the baseline data collection. To accomplish the baseline data collection at the airports, Customs modified the IBIS primary inspections screen to require entry of an ethnicity and race code for persons subject to primary inspection, regardless of whether the traveler is admitted or referred for secondary inspection. This has resulted in the collection of 340,539 records in two weeks at JFK alone. The information gathered about the demographics of the individuals who pass through the primary inspection may help INS to determine whether inspectors are referring people to secondary inspection in a racially neutral manner.

INS must navigate a separate set of challenges in creating baseline data for use in analyzing Border Patrol data. Analysis of the data collected at checkpoints would require information about the demographics of the population that uses that checkpoint, which would be generally comprised of everyone approaching the checkpoint from the road as measured on either a per-vehicle or individual basis. However, the baseline for roving stops near the border would need to include data on both the local baseline population and the population traveling through the area. It will be challenging to identify and collect information on the appropriate denominator population for comparison purposes.

¹⁰ DEA does not believe that this would be sufficient to measure a baseline population.

¹¹ DEA also believes that the law enforcement agency collecting data on race, ethnicity and gender should not be directly involved in developing the baseline. INS has taken a different approach and has developed a pilot program to establish the needed baseline for its airport field tests.

In addition to collecting "external" baseline information, the Department will examine whether there are "internal" benchmarks that agencies might use to evaluate the data. INS is considering how to best use the data it has collected and has conducted some internal analysis for operational purposes. Other internal comparisons that DEA and INS might consider include: comparing data for individual units over time; comparing data for different units or sub-units that operate in the same area (or otherwise are similarly situated); or comparing, by race and ethnic origin, the percentage of searches that result in a seizure of contraband or the percentage of encounters that result in an arrest.

B. Identify the Department's Increased Staffing Needs

INS has indicated that it will need additional resources to complete and expand its efforts. DEA does not believe that it needs additional resources to complete its efforts. However, if it is determined that DEA is responsible for establishing a baseline and analyzing the data collected, DEA will need sufficient funding to contract with experts to establish the relevant baseline for each airport and to analyze the data.

As noted earlier, a baseline data collection system must be designed and implemented for the field test. Placing observers, for instance, in airports to monitor the population of people that uses airports will require additional personnel and resources. Both INS and DEA have dedicated a great deal of time and effort to design and implement the data collection field tests. Moreover, BJS devoted considerable staff time to assist in the development of the field tests but will not be able to do a complete analysis of the field test data with baseline data unless its budget and staff are increased. Neither INS nor DEA has made projections of the staff hours and resources necessary to analyze the data collected during the field tests, let alone to undertake an expanded data collection effort.

C. Refine Categories of Data Collected

The Department is continuing to consider how its agents and officers should make racial and ethnic determinations for purposes of these field tests. OMB has agreed that the Department may, in addition to the two-question format, collect observations using a "combined" format that has six categories—five race categories and the ethnic category "Hispanic or Latino." The Department is considering whether it should adopt the combined format to minimize the risk of receiving incomplete responses in the current two-question format from officers who identify only the ethnicity, particularly those who check "Not Hispanic or Latino," and do not specify race, thus under-reporting race. The Department is also considering other ways to ensure that the necessary data on both race and ethnicity are collected.

The Department is also exploring whether to collect information on ethnic groups beyond those identified in the OMB standards. Additional categories might include Arabic/Middle Eastern and Southeast Asian ethnicities. It is important to note that OMB has not promulgated standards for identifying ethnic groups beyond Hispanic or Latino. The Department would need to define criteria for these additional ethnic groups prior to expansion of its data collection categories.

D. Expand Data Collection

As noted above, in June 2000, DEA expanded its data collection field tests from the six original sites to all DEA Operation Jetway sites (approximately 60 airports) nationwide. In DEA's view, it is not advisable to expand the collection of field encounter data to train and bus stations until valid baseline data are developed for the Operation Jetway airports.

Further expansion of data collection efforts by INS—particularly at land ports of entry—will require the development and implementation of a fully automated data collection system. Ideally, this system will permit the officer to enter data at the time of the initial encounter and include standardized data entry fields and mandatory text description fields that will minimize user error and ensure the integrity of the data. INS has also requested that the IBIS database be modified to include a mandatory field for recording nationality during the data collection process. Again, such improvements will require additional staff and resources.

V. CONCLUSION

DEA plans to continue collecting the field encounter data from Operation Jetway until DOJ has prepared its first-year progress report for the President in May 2001. INS will conclude its field tests with the Border Patrol and at selected ports of entry by March 2001. The Department will provide the President with analysis of the field tests by May 31, 2001. On the assumption that the baseline issue is resolved, the Department will also provide an analysis of the data collected in the field tests. The Department will further provide the President with an analysis of its other federal data collection efforts. At this interim stage in its work on the important tasks in the President's Executive Memorandum, the Department has learned that the most critical remaining task is collecting baseline data to analyze the use of race, ethnicity and gender in federal law enforcement. Notwithstanding the challenges it faces, the Department remains steadfast in its commitment to collecting this data and ensuring that our law enforcement efforts are race-, ethnic- and gender-neutral.

DEPARTMENT OF JUSTICE PROPOSAL
RESPONDING TO THE EXECUTIVE MEMORANDUM ON FAIRNESS IN LAW ENFORCEMENT

I. Purpose

To respond to the Executive Memorandum on Fairness in Law Enforcement.

II. Background

On June 9, 1999, President Clinton issued an executive memorandum to the Secretary of the Interior, the Attorney General, and the Secretary of the Treasury directing them "to design and implement a system to collect and report statistics relating to race, ethnicity, and gender for law enforcement activities in each department." The Departments were required to submit their data collection proposals by October 9, 1999.

The executive memorandum requires each of the agencies within the respective Departments to improve data collection at all levels of law enforcement to address the problem of racial profiling. Department of Justice representatives have worked with Interior, Treasury, and Office of Management and Budget officials to ensure the use of standard race and ethnicity definitions and collection methods.

The executive memorandum explicitly requires the collection and reporting of data describing persons who are stopped or searched by Federal law enforcement. Data describing persons arrested by Federal law enforcement and prosecuted by U.S. attorneys will also be collected and analyzed.

Pursuant to the executive memorandum, four tasks are required of the Departments:

- (1) within 120 days of the memorandum, a proposal for a system of a data collection and implementation plan will be developed;
- (2) to the extent practicable, data sufficiently detailed to permit further analysis, will be collected on the activities of each Department's law enforcement agencies; and
- (3) prepare a report summarizing the information collected during the first year including (a) an evaluation of the field test, (b) an implementation plan for expanded data collection, and (c) recommendations for improving the fair administration of Federal law enforcement activities.
- (4) within 120 days of the memorandum, prepare a report describing training programs, policies, and practices regarding the use of race, ethnicity, and gender in law enforcement practices and recommendations for improvement.

Within 60 days of the submission of this proposal the agencies are required to begin the field test of the data collection systems. Following the first year of the field test, the Attorney General will prepare a report for the President summarizing the information collected during the first year including (a) an evaluation of the field test and (b) an implementation plan for expanded data collection. This report will be prepared by May 31, 2001. Interim reports will be prepared by the Department describing its recommendations for improving the fair administration of Federal law enforcement activities.

This document describes the proposed data collection plans for the participating Department of Justice law enforcement agencies. Within the Department of Justice, the Drug Enforcement Administration and the Immigration and Naturalization Service were determined to be the agencies that routinely engage in nonsuspect specific public encounters on a regular basis. The Federal Bureau of Investigations, U.S. Marshals Service, and the Bureau of Prisons do not engage in nonsuspect specific public encounters.

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While only the Drug Enforcement Administration and the Immigration and Naturalization Service were selected for the field test of a data collection system for nonsuspect-specific public encounters, all agencies will provide data collected on arrests made, or in the case of the U.S. Attorneys, suspects prosecuted. The analysis of these data will assist in the identifying racial or ethnic disparities in Federal law enforcement agencies' activities related to arrests, prosecutorial decisions, and issues relating to the sentencing of Federal offenders under the provenance of the U.S. Attorneys, e.g., motions for downward departures for substantial assistance to the government.

III. Issues relating to the collection of race and ethnicity

On October 30, 1997, the Office of Management and Budget (OMB) revised the *Standards for the Classification of Federal Data on Race and Ethnicity*.¹ As part of the revised OMB standards, Federal agencies are required to collect a minimum of five categories for data describing race:

- American Indian or Alaska Native,
- Asian,
- Black or African American,
- Native Hawaiian or Other Pacific Islander, and
- White.

Additionally, two categories are required for data collected describing ethnicity:

- Hispanic or Latino, and
- Not Hispanic or Latino.

OMB encourages agencies to collect data concerning race and ethnicity by self-report using the two-question format and allowing multiple responses to the race question. For purposes of implementing the Executive Memorandum on Fairness in Law Enforcement, Federal agencies will be permitted to record a single race category by observation.

A "combined format" may be used for observer-collected data on race and ethnicity. The combined format has six categories – the five categories of race plus "Hispanic or Latino." OMB standards encourage the collection of greater detail as long as additional categories can be aggregated into the minimum categories for race and ethnicity. However, if additional ethnic categories are collected beyond Hispanic, *infra*, the two question format is most practical.

Federal programs collecting data for use in household surveys, administrative forms and records, and other data collections must be consistent with the OMB standards as soon as possible but not later than January 1, 2003.

To ensure consistency and comparability of data across its agencies, the Department of Justice will require that agencies collect race and ethnicity data using the categories prescribed by OMB. Currently, only the Bureau of Prisons and the Drug Enforcement Administration collect race and ethnicity data using the two-question format.

A. Determining race and ethnicity: *self-report vs. observation*

At the Attorney General's June 1999 conference on *Strengthening Police-Community Relationships*, participants generally agreed that race and ethnicity data collected during a public encounter by law enforcement should be based on the observation of law enforcement officers rather than self-reports by the person contacted. Conference attendees generally agreed it would be improper for law enforcement officers to ask questions about a person's race and ethnicity

¹ 62 Fed. Reg. 58782 (1997)

during a public encounter. Such questioning may, in fact, aggravate extant perceptions of racial discrimination by law enforcement officers.

OMB standards permit the collection of data on race and ethnicity through observation in instances where it is deemed impractical to collect such data through self-reports, e.g., by a medical examiner when completing a death certificate. Following the recommendation of conference participants, the Bureau of Justice Statistics (BJS) in the Department of Justice has informed OMB that the collection of data on race and ethnicity will be through observation when making nonsuspect-specific public encounters.

B. Issues relating to ethnicity

Currently, the minimum designation for ethnicity as part of the OMB *Standards for the Classification of Federal Data on Race and Ethnicity* is "Hispanic or Latino." With regard to implementing the Executive Memorandum on Fairness in Law Enforcement, additional ethnic groups should be recognized, as the agencies deem appropriate, so as to permit the monitoring of encounters involving other ethnic groups that are of particular interest or concern to specific Federal law enforcement agencies. Additional categories may include Arabic/Middle Eastern or Southeast Asian.²

IV. Agency data collection proposals

For a complete picture of Federal law enforcement activities and processing of defendants, data describing Federal law enforcement activities will be collected and analyzed describing (1) nonsuspect-specific public encounters, (2) suspects arrested by Federal law enforcement agencies, (3) defendants prosecuted in Federal courts, and (4) defendants sentenced in Federal courts. Several Federal agencies — including the US Marshals Service, the Executive Office for the US Attorneys, the Federal Judiciary, the US Sentencing Commission, and the Bureau of Prisons — currently provide data on the processing of Federal defendants to the Bureau of Justice Statistics as part of its Federal Justice Statistics Program.

A. Nonsuspect-specific public encounters

The executive memorandum requires that a field test of the proposed data collection system begin within 60 days of finalizing the proposal, or December 7, 1999. While many of the activities can begin on or around that date, it is unlikely that a completely automated data entry system could be designed and implemented by that date. As a result of competing Y2K issues, the DOJ agencies (and in the case of the Immigration and Naturalization Service, the U.S. Customs Service) are not expected to have automated systems in place until March 31, 2000. Until automated systems are in place, data collection will be conducted manually.³

1. Drug Enforcement Administration

Despite intervening Y2K priorities, the Drug Enforcement Administration has proposed to implement interim procedures to collect information on nonsuspect-specific public encounters. As with its current procedures relating to arrest data, data will be collected by special agents in hard copy. Data collection forms will be forwarded by each participating field office to DEA Headquarters in Arlington, VA on a regular basis and keypunched by DEA data entry staff. Following the design and implementation of modifications to its Divisional Enforcement Activity Log system, data entry will be completed in each

² OMB has not promulgated standards for identifying ethnic groups beyond Hispanic. Some of the agencies have expressed concern regarding the absence of defining criteria for other ethnic groups and, therefore, are reluctant to expand the collection of ethnic categories.

³ The U.S. Customs Service maintains the Interagency Border Inspection System used by INS. According to INS, any changes to this system will need to be accomplished by the U.S. Customs Service.

participating field office. Hard copies of the data collection forms will continue to be forwarded to Arlington for archiving and quality control.

As part of its *Operation Jetway* drug interdiction program, DEA special agents routinely make pedestrian stops in airports, train and bus stations, and parcel facilities. The Drug Enforcement Administration has identified a set of factors it considers when approaching an individual suspected of transporting controlled substances. Searches – both consent and warrantless – of persons encountered may be conducted of those stopped.

The Drug Enforcement Administration is proposing at least six and up to nine *Operation Jetway* sites for the field test: Detroit Metropolitan Airport, Newark International Airport, Chicago-O'Hare International Airport, George Bush Intercontinental Airport (Houston), Miami International Airport, Charleston, SC bus station, Cleveland, OH train station, Albuquerque, NM train station, and Sacramento, CA bus station. The selection of such varied sites will provide for the monitoring of people using different modes of transportation under the observation of DEA special agents. BJS will analyze the data collected by DEA.

To determine whether race and ethnicity are used by DEA agents as criteria for initiating contact, an independent study of the demographic characteristics of persons using those transportation terminals will eventually be needed. Certain modes of transportation and transportation terminals in certain areas may be used more frequently by persons of particular racial or ethnic groups. Therefore, it is important to determine the demographic composition of the population observed by DEA special agents as part of *Operation Jetway*.

BJS is pursuing a variety of research and monitoring techniques available to help estimate the demographic composition of the total population under consideration. This is necessary to determine whether law enforcement disproportionately encounters a particular race or ethnic group in non-suspect stops.

2. Immigration and Naturalization Service

The field test by the Immigration and Naturalization Service is complicated by three factors: (1) the data systems used by INS are developed and maintained by the U.S. Customs Service; (2) INS is statutorily required to process passengers arriving into the United States by plane within 45 minutes of arrival;⁴ and (3) the volume of entrants processed by INS – more than 450 million primary inspections are conducted annually – would make any data collection involving the population of those entering impractical.

According to the Department of Treasury, it is unlikely that the Interagency Border Inspection System (IBIS) can be modified to incorporate changes required of this effort before the end of the calendar year. Customs Service resources are committed to resolving Y2K issues before any new applications can be developed or existing applications modified.

All persons entering the United States are interviewed by INS inspections officers at land border crossings, seaports, and airports. (At some land borders, INS and Customs inspectors share duties.) The Immigration and Naturalization Service has identified a set of factors its agents consider when making secondary referrals. Additionally, INS Border Patrol agents routinely patrol areas near land borders for persons illegally crossing into the United States and INS investigators routinely investigate employers to determine whether they employ illegal aliens. Investigations of employers will be excluded from the

⁴ 8 U.S.C. § 1356(g)

field test because these investigations are initiated following a review of employment and tax records rather than onsite inspections.

To determine the demographic characteristics of those entering the United States, the collection of race and ethnicity data on a statistical sample of those entering the United States would be most practical. Samples could be drawn from the INS's Advance Passenger Information System. Full data collection would be conducted on those persons referred for secondary inspection.

The Immigration and Naturalization Service is proposing ports of entry for the field test including John F. Kennedy International Airport, George Bush Intercontinental Airport (Houston), and Seattle/Tacoma Airport. In addition, Border Patrol agents conducting "roving patrols" stationed at the El Cajon Station (near San Diego, CA), Yuma Station (near Yuma, AZ), and El Paso Station (near El Paso, TX) will also participate in the field test. A fixed check-point in the Southwest United States and a land-border crossing along the U.S.-Mexican border (Del Rio, Texas) will also be included.

It is anticipated that the U.S. Customs Service will also propose John F. Kennedy Airport as a site for its field test. Accordingly, the collection of data on the enforcement activities of the Drug Enforcement Administration, the Immigration and Naturalization Service, and the U.S. Customs Service at the same airports (e.g., JFK Airport: INS and Customs; Houston: DEA and INS) will permit comprehensive monitoring of the law enforcement activities relating to persons using a selected ports of entry.

The Immigration and Naturalization Service submitted a proposal describing the scope of its activities relating to the Executive Memorandum (See, Attachment 1)

3. Data elements to be collected

A core set of data elements is proposed for the participating law enforcement agencies to collect on each nonsuspect-specific public encounter or, in the case of the Immigration and Naturalization Service, on each referral for secondary inspection. Information describing demographic characteristics such as gender, race, ethnicity, national origin, and date of birth will be based on the agents' observation of the person encountered or official documents, e.g., drivers' license and passports, where available. The minimum data elements that will be collected are:

- **Date of the encounter:** Month, day, and year of the encounter.
- **Time of the contact (start):** Time of day the contact was initiated.
- **Gender:** The person's observed gender – Male or Female.
- **Race and Ethnicity:** Race and ethnicity will be collected in accordance with the OMB Standards for the Classification of Federal data on Race and Ethnicity (See, attachment 2).
- **National origin:** National origin will be collected for all encounters at land border crossings, sea ports, international airports, and roving patrols by INS Border Patrol Agents. National origin will be based on the agents' review of travel documents including passports and visas. The collection of data on national origin will serve as a supplement to data collected on the ethnicity.
- **Location of contact:** General information describing the location of the encounter such as the name of the border crossing, seaport, airport, train or bus station, or street address. For encounters in airports, information identifying the terminal (domestic, international (arrivals or departures)) will also be collected.
- **Suspected criminal activity:** The illegal activity for which the person is suspected. NCIC codes describing criminal activity will be used (See, attachment 3).

- **Reason(s) for contact:** Any information describing the reasons the agent initiated contact with the person. For INS inspections, only the reasons the person was referred to secondary inspection will be recorded, since primary inspection is required of all persons attempting entry into the United States.
- **External sources of information on the person contacted:** Any external sources of information regarding potential illegal activity by the person will be recorded.
- **Law enforcement action taken:** Actions taken by agents in response to the initial encounter will be recorded. Possible actions by agents include: citation, consent searches, warrantless searches, temporary detention, arrest, and voluntary departure (INS only).
- **Time of contact (end):** Time of day the contact was concluded.

The agencies may collect additional data as they deem appropriate. While the Executive Memorandum prohibits the collection of information identifiable to an individual (both the individual encountered and the law enforcement officer making the contact), if this information is currently collected by the agencies for administrative purposes, the agencies are not asked to halt the collection of this information. However, for the purposes of tasks associated with the Executive Memorandum, this information will not be included in any data files forwarded to the Bureau of Justice Statistics for analysis.

B. Arrest data

Currently, each of the DOJ law enforcement agencies collects information describing persons arrested. As part of its tasks related to the executive Memorandum, the Bureau of Justice Statistics reviewed each agency's data collection system to determine the extent to which data describing the arrestee's race, ethnicity, and gender was collected and whether those data elements were collected in a manner consistent with the OMB *Standards for the Classification of Federal data on Race and Ethnicity*.

The Bureau of Justice Statistics plans to incorporate Federal arrest data into its ongoing Federal Justice Statistics Program. Through its Federal Justice Statistics Program, the Bureau of Justice Statistics currently compiles Federal criminal case processing data from the U.S. Marshals Service, the Executive Office for U.S. Attorneys, the Administrative Office of the U.S. Courts, the U.S. Sentencing Commission, and the Bureau of Prisons. By incorporating arrest data into an existing program, BJS can ensure that these data are regularly and systematically analyzed and reported. Arrest data can be used to monitor the racial and ethnic composition of persons at each stage of the Federal criminal justice system.

1. U.S. Marshals Service:

The U.S. Marshals Service is a central repository for information on persons arrested and booked by Federal law enforcement agencies for Federal offenses. During fiscal year 1998, the U.S. Marshals Service processed 106,180 arrestees (See, attachment 4). Of these, the U.S. Marshals arrested 29,024, or 27% of all Federal arrestees.

The U.S. Marshals Service Prisoner Tracking System does not comply with the OMB *Standards for the Classification of Federal data on Race and Ethnicity*. Currently, the only racial or ethnic categories collected by the Marshals Service are: *White, Black, Asian, Indian, and Other*. For the Marshals Service to meet the minimum requirements of the OMB standards, the race/ethnicity data element would need to be expanded to include *Hispanic and Native Hawaiian or Other Pacific Islander*.

2. Drug Enforcement Administration.

The Drug Enforcement Administration (DEA) collects information on all persons arrested by DEA special agents regardless of whether the person is prosecuted in Federal, State, or foreign courts. The court of jurisdiction is identified. During fiscal year 1998, DEA special agents arrested more than 30,000 persons.

The Drug Enforcement Administration Defendant Statistical System and Division Enforcement Activity Log do not comply with the OMB *Standards for the Classification of Federal data on Race and Ethnicity*. The DEA systems currently lacks a separate racial group for *Native Hawaiian or Other Pacific Islander*. These racial groups are collected as part of the *Asian* category. For DEA to comply with the OMB standards, the current category *Asian-Pacific Islander* will need to be disaggregated into *Asian* and *Native Hawaiian or Other Pacific Islander*.

3. Federal Bureau of Investigation.

The Federal Bureau of Investigation (FBI) collects information on all persons arrested by FBI special agents regardless of whether the person is prosecuted in Federal, State, or foreign courts. During fiscal year 1998, FBI special agents arrested approximately 12,000 persons.

As part of its Uniform Crime Reporting and National Incident Based Reporting System programs, the FBI is currently reviewing its compliance with the OMB standards.

4. Bureau of Prisons.

The Bureau of Prisons collects information on all persons under its jurisdiction, *i.e.*, pretrial detainees in selected metropolitan areas, sentenced offenders, and certain other long-term detainees. Bureau of Prisons correctional officers make few arrests. As of December 31, 1998, 123,041 persons – about 90% of whom had been convicted – were under the jurisdiction of the Bureau of Prisons.

The Bureau of Prisons SENTRY data system does not comply with the OMB Standards for the Classification of Federal data on Race and Ethnicity. The BOP system currently lacks a separate racial group for *Native Hawaiian or Other Pacific Islander*. These racial groups are collected as part of the *Asian-Pacific Islander* category. For BOP to comply with the OMB standards, the current category *Asian-Pacific Islander* will need to be disaggregated into *Asian* and *Native Hawaiian or Other Pacific Islander*.

5. Immigration and Naturalization Service.

The Immigration and Naturalization Service collects information on all persons entering the United States, all persons apprehended by INS law enforcement for illegally entering or remaining in the United States, and all persons subject to removal from the United States. INS annually makes approximately 450 million primary inspections; 8 million secondary inspections and 1.2 million arrests.

Some of the data systems maintained by INS, *e.g.*, IBIS, RIPS, INTEX, currently do not collect information describing the race and ethnicity of the individual encountered. While the ENFORCE data system does include this information, ENFORCE does not comply with the OMB Standards for the Classification of Federal data on Race and Ethnicity. The ENFORCE system currently lacks a separate racial group for *Native Hawaiian or Other Pacific Islander*. These racial groups are collected as part of the *Asian-Pacific Islander* category. For ENFORCE to comply with the OMB standards, the current category *Asian-*

Pacific Islander will need to be disaggregated into *Asian and Native Hawaiian or Other Pacific Islander*.

C. Prosecutions in Federal court

Currently the Executive Office for U.S. Attorneys does not collect demographic information on persons investigated or prosecuted by U.S. Attorneys. Demographic information on persons arraigned on Federal charges is available from the Federal judiciary.⁵

To facilitate a more comprehensive analysis of prosecutorial decisions – particularly U.S. Attorney declinations – the Executive Office for U.S. Attorneys will incorporate into their existing data collection system – LIONS – information on the race, ethnicity, and gender of persons investigated.

D. Sentencing of convicted Federal defendants

The Executive Office for U.S. Attorneys does not collect demographic information on persons convicted and sentenced in the Federal courts. Demographic information on persons sentenced in the Federal courts is available from the U.S. Sentencing Commission.⁵

V. Coordination with the Departments of the Interior and the Treasury

A. Department of the Interior

The Department of the Interior has submitted a data collection proposal. (See, Attachment 5)

The Department of the Interior employs sworn law enforcement officers in five different agencies: Bureau of Indian Affairs, Bureau of Land Management, Bureau of Reclamation, National Park Service, and the U.S. Fish and Wildlife Service. Officers in many of these agencies do not have general law enforcement authority, seldom have regular contact with the public, and make few arrests. The National Park Service – both U.S. Park Police and Park Rangers – was the only agency identified by the Department of Interior as having regular contact with the public and making a substantial number of arrests.

The Department of the Interior has agreed to collect data in the manner prescribed by the Department of Justice. The data collection system will be field tested in 10 sites:

- Lake Mead National Recreation Area (Nevada and Arizona)
- Yosemite National Park (California)
- Grand Canyon National Park (Arizona)
- Glen Canyon National Recreation Area (Arizona and Utah)
- National Expansion Memorial (Missouri)
- Indiana Dunes National Lake Shore (Indiana)
- Natchez Trace Parkway (Mississippi and Tennessee)
- Blue Ridge Parkway (Virginia and North Carolina)
- Valley Forge National Historical Park (Pennsylvania)
- Delaware Water Gap National Recreation Area (Pennsylvania and New Jersey)
- Baltimore Washington Parkway (Washington DC and Maryland)

Data collected by the Department of the Interior will be analyzed by the Bureau of Justice Statistics and included in the report to the President prepared by the Attorney General.

⁵ These data are routinely obtained by the Bureau of Justice Statistics as part of its Federal Justice Statistics Program

B. Department of the Treasury

The Department of the Treasury is submitting a data collection proposal under separate cover.

The Department of the Treasury employs law enforcement officers within the Bureau of Alcohol, Tobacco and Firearms, Internal Revenue Service, U.S. Customs Service, and U.S. Secret Service. The uniformed division of the Secret Service and the U.S. Customs Service were the two agencies identified by the Department of the Treasury as having regular contact with the public and making a substantial number of arrests resulting from that contact.

The Department of the Treasury has agreed to follow the general data collection standards identified by the Department of Justice -- particularly as they relate to the collection of data on race and ethnicity. Treasury will field test their data collection system in Washington DC (for the uniformed division of Secret Service) and at Chicago O'Hare International, JFK International, Newark International, Miami International, and Los Angeles International airports (for the U.S. Customs Service).

The Department of the Treasury will separately analyze and report on data collected as part of the field test. This analysis will be included in the report from the Attorney General to the President.

Appendix B:

**Other Departmental Efforts to Ensure the Fair Administration of
Federal Law Enforcement**

The Department has a number of activities, beyond data collection, to ensure the fair administration of federal law enforcement.

A. The Criminal Division's Asset Forfeiture and Money Laundering Section

The Asset Forfeiture and Money Laundering Section of the Criminal Division (AFMLS) has engaged in pioneering work to ensure that race and ethnicity are not improperly considered in asset forfeiture decisions. In June 2000, a Department-wide Asset Forfeiture and Money Laundering Working Group was formed to address this issue.¹

The working group has focused on three curricula to train law enforcement on the proper bases for forfeiture actions.

- The *Basic Asset Forfeiture Curriculum* targets line officers, mid-level supervisors, and commanders at the federal, state and local levels. Two modules address racial profiling:
 - The *Targets of Forfeiture* module emphasizes that racial targeting is prohibited and does not accomplish the law enforcement objective of dismantling the criminal enterprise. A scenario involving racial profiling reinforces this discussion.
 - Another module, devoted to ethics, emphasizes the concerns about corruption, fairness and accountability in asset forfeiture. The topic of racial profiling is addressed as an issue under the fairness component.
- The working group is developing another training module on racial profiling based on the ethical approach used in the *Curriculum*. To increase awareness of the ethical concerns raised by the use of characteristics such as race and ethnicity, this module will use slides, video clips, hypothetical scenarios and discussions.
- In conjunction with federal, state and local law enforcement, including the National Organization of Black Law Enforcement Executives (NOBLE), the

¹ The AFMLS is not collecting data on the use of race in their law enforcement activities.

working group is also developing an outline on racial profiling with case scenarios and simulations.

The working group is also reviewing existing policies and procedures to address racial profiling. The Working Group has previously recommended for approval the revised National Code of Professional Conduct for Asset Forfeiture. The working group is also revising the *Model Asset Forfeiture Policies and Procedures Manual* to address racial profiling.

B. The Deputy Attorney General's Working Group on the Use of Race and Ethnicity in Law Enforcement and a Federal Policy on the Use of Race and Ethnicity in Law Enforcement

During the course of developing a response to the Executive Memorandum, the Attorney General asked the Deputy Attorney General to lead a Department of Justice "Working Group on the Use of Race and Ethnicity in Law Enforcement." The working group includes senior-level participants from DEA, INS, the Federal Bureau of Investigation, the United States Marshals Service, the Bureau of Prisons, the Executive Office of United States Attorneys, the Civil Rights Division, the Criminal Division, the Civil Division, the Office of Policy Development and other components within the Department. One of the key objectives of the working group has been to develop a proposed policy on the use of race and ethnicity in federal law enforcement activities.

The component members of the working group have agreed on general language condemning the illegal use of race and condemning any actions based upon stereotypes, attitudes or beliefs that a person's race or ethnicity increases that person's general propensity to act unlawfully. Furthermore, all components have agreed that neither race nor ethnicity should ever be the sole factor motivating law enforcement activity. It has proven quite difficult, however, to articulate the nature of the additional information which, in combination with the racial or ethnic descriptor, would be sufficient to permit the consideration of race or ethnicity. The working group's effort to develop a race policy in federal law enforcement continues.

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Appendix C:

**Department Efforts to Enhance the Fair Administration of
State and Local Law Enforcement**

The President's Executive Memorandum focuses on the use of data to enhance fairness in federal law enforcement. However, federal law enforcement activities represent only a portion of the Department's efforts to promote the fairness and effectiveness of law enforcement nationwide. In particular, the Department provides technical assistance and grants to states and localities through the Community Relations Service, Community Oriented Policing Services and the Office of Justice Programs, and engages in enforcement of civil rights laws as well as outreach to the law enforcement and civil rights communities through the Civil Rights Division. Moreover, the leadership offices within the Department have undertaken a series of efforts with states and localities to promote a dialogue on the issues of police integrity, racial profiling and civil rights enforcement efforts. These efforts are summarized below.

A. State and Local Data Collections Surveyed or Analyzed by BJS

During 1999, BJS surveyed state police agencies on the availability of demographic data describing persons (drivers and/or passengers) stopped for traffic violations. While thirty-one state police agencies reported that they collected data describing the race and ethnicity of drivers stopped for traffic violations, only eighteen agencies reported that this information was stored electronically. The full findings of this BJS survey are presented in the report entitled *Traffic Stop Data Collection Policies for State Police, 1999*. BJS plans to re-survey state police agencies during 2001.

In December 2000, BJS supplemented to the National Crime Victimization Survey, gathering data on interactions with police during traffic stops. BJS will release the results of this survey in 2001. This report will describe the extent to which persons reported having contact with police, the reason for the contact, the extent of the contact and whether force was used by the police as part of the contact.

B. The Department's Efforts to Strengthen Police-Community Relationships

The Department of Justice has undertaken several efforts to strengthen police-community relationships. In June 1999, the President and the Attorney General convened a conference titled *Strengthening Police Community Relationships*. This conference brought together civil rights and community leaders, police chiefs and police labor representatives, experts in police practices and federal officials to discuss ways to build trust between law enforcement and the communities they serve. Follow-up meetings were held on the following topics: Police Accountability Systems; Racial Profiling and Data Collection Systems; Hiring and Recruitment; and Police Use of Force. In addition, the Community Relations Service has worked in countless jurisdictions to

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reduce tensions and to mediate conflicts between law enforcement agencies and community residents.

C. Grants and Technical Assistance

The COPS Office has provided resources to foster development of innovative training for law enforcement agencies and training academies throughout the country and to develop model practices around important integrity issues. These initiatives include: delivering on-site technical assistance to police departments on the most effective use of early warning systems; developing a leadership-training model that includes a strong ethics component; producing training materials and model policies on balancing crime prevention strategies and civil rights; developing a roll call training video tape on Mutual Respect in Policing; developing a training video tape and curriculum on Effective Management of Police Overtime; and publishing *A Report on the Proceedings from a Problem Solving Group on Law Enforcement Stops and Searches*.

In addition:

- The COPS office provided over \$11 million dollars for in car video cameras in Fiscal Year 2000.
- The Bureau of Justice Assistance provided \$3-million dollars in Fiscal Year 2000 for cultural and diversity training for five urban police departments.
- *Police as Problem Solver and Peacemaker*: In September 2000, the COPS Office made grants to five police departments to implement and enhance model practices to build trust. In 2001, the COPS Office plans to expand the program beyond the five original sites by fostering a higher-level of collaboration among the original sites and their neighboring local police departments. With the original sites taking leadership as project "hubs," the objective will be to document, showcase and replicate coordinated "model practices" on a national level.
- *Regional Community Policing Institutes (RCPIs)*: The COPS Office is working with the Community Policing Consortium and teams of subject-matter experts and curriculum development specialists to develop a curriculum on ethics and integrity for police executives to be delivered at fifteen RCPIs. This curricula will incorporate the general concepts of "procedural fairness" and "respectful policing," and include specific instruction in areas such as early warning systems, data collection, use of force policies / practices and citizen leadership.
- In January 2001, the Department will publish a set of principles designed to promote police integrity and combat police misconduct. The principles cover a

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range of topics, including: citizen complaint processes; the investigation and disciplining of police misconduct; use of force policies; use of force reporting; early warning systems for identifying problematic police behavior; training; non-discriminatory policing and data collection; and recruitment, hiring and promotion.

- *Resource Guide on Racial Profiling Data Collection Systems: Promising Practices and Lessons Learned* (November 2000),¹ written by Deborah Ramirez, Jack McDevitt and Amy Farrell of Northeastern University, focuses on traffic stop data collection and outlines ways that several jurisdictions are collecting data, how they have addressed problems that they have encountered and how they analyze the data.

D. Building Greater Trust and Confidence in the Police

In May 1999, the Department of Justice brought together a group of criminal justice practitioners and policy-oriented academics to discuss emerging crime policy challenges and opportunities. One of the major challenges this group identified was the need to build public trust and confidence in the criminal justice system. In March 2000, the Department convened a follow-up meeting, titled "Crime Policy in the 21st Century: Building Trust and Confidence in the Criminal Justice System," to discuss ways of increasing communities' trust in and communication with the criminal justice system. These meetings concluded that

- Public perceptions of police actions and public willingness to accept decisions made by police officers are largely determined by the way in which the police personally treat citizens and the perceived fairness of the procedures used by police.
- Citizens focus on whether they are treated with respect and dignity and whether or not they feel that their rights are acknowledged.
- People react favorably to authorities whom they feel are unbiased, honest and make their decisions based on facts, not personal opinions.
- People who perceive that they have been treated fairly by the police are more likely to believe that the system operates professionally and objectively.
- People care more as much about *procedural fairness* as they do about outcome – they want to believe that the system recognizes their rights and does not discriminate.

¹ Available at <<www.usdoj.gov>>, monograph NCJ 184768.

On October 17, 2000, the approximately 270 police officials in the FBI's 203rd National Academy class were asked to provide their perspectives on the above ideas. Part of the discussion focused on the related issues of civil rights enforcement and racial profiling. The Attorney General returned to the FBI Academy on November 21, 2000 to discuss state and local examples of building trust and confidence in the police.

E. Enforcement and Outreach Efforts of the Civil Rights Division

For the past five years, the Civil Rights Division has implemented an initiative to promote police integrity and combat misconduct among state and local law enforcement agencies through enforcement of federal civil rights laws and through outreach and education efforts. Several of the Division's investigation and enforcement efforts have resulted in settlements between the Department and the following police agencies:

- *New Jersey State Police:* In December 1999, the Division entered into a consent decree with the State of New Jersey to resolve our lawsuit alleging that the New Jersey State Police were engaging in a pattern or practice of discriminatory traffic stops and post-stop actions. The consent decree:
 - prohibits state troopers from relying on race or ethnic origin when selecting vehicles for traffic stops or in deciding on the nature or scope of post-stop actions, except when a trooper is seeking a specific suspect who has been identified in part by his or her race or ethnicity;
 - requires state troopers to document each traffic stop, including recording the race and ethnic origin of the driver and information describing the stop and any post-stop actions taken;
 - requires such documentation to be entered into a computerized management tracking system; and
 - identifies the types of analyses that the State is to conduct using the stop data in order to ensure that state troopers and trooper units are not engaging in discriminatory conduct.
- *Montgomery County Police Department:* The Division entered into a similar agreement with Montgomery County, Maryland, in January 2000 that includes the same basic nondiscrimination policy included in the New Jersey decree, and also requires the County Police Department to document traffic stops by race and ethnic origin and to analyze the data to monitor police conduct.

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- *Los Angeles Police Department:* In November 2000, the Department entered into a proposed consent decree with the City of Los Angeles, which is awaiting approval by the district court. The decree includes a nondiscrimination policy similar to the New Jersey and Montgomery County policies, and requires the collection and analysis of racial, ethnic and national origin data on both traffic and pedestrian stops.
 - *Pittsburgh, Pennsylvania, and Steubenville, Ohio,* both entered into consent decrees with the Department in 1997 that require the collection of stop data by race.

The Civil Rights Division has engaged in extensive outreach and education efforts directed at state and local law enforcement. This has included participation in conferences and meetings regarding racial profiling and other police integrity issues that have been convened by the Department leadership and other Department components, as well as conferences and meetings convened by law enforcement, civil rights, academic, and professional groups. It also has included smaller meetings with law enforcement leaders, law enforcement union leaders, and civil rights groups. In addition, the Division has published a document describing its "pattern or practice" program, entitled "Frequently Asked Questions About Department of Justice Police Misconduct Pattern or Practice Program." This document and the settlements listed above are available on the Division website <<www.usdoj.gov/crt/split/>>.

U.S. Department of Justice
January 9, 2001
Appendix C - Page 5

**Fairness in Law Enforcement
Airport Inspections**

| INS - FAIRNESS IN LAW ENFORCEMENT DATA EXTRACT (All Data fields are fixed format and separated by back slashes "\") | | | |
|---|-----------------------------|------|--|
| SEQ | DATA FIELD | SIZE | FORMAT |
| 1 | Port of Entry (POE) | 3 | ICAO Airport code |
| 2 | Airport Terminal | 4 | Site Code; A301 - SEATTLE, SEA-TAC, PASS PROC A471 - NEW YORK, JFK, IAB EAST A472 - NEW YORK, JFK, BRITISH, BLDG 59 A473 - NEW YORK, JFK, AA, BLDG 57 A474 - NEW YORK, JFK, TWA, BLDG 50 A475 - NEW YORK, JFK, DELTA TERMINAL A476 - NEW YORK, JFK, IAB WEST A477 - NEW YORK, JFK, TERMINAL I A534 - HOUSTON, IAH, IAB, N TERM RD |
| 3 | Airline Code | 3 | Left justified |
| 4 | Flight Number | 7 | Left justified |
| 5 | Last Name | 50 | Passenger's surname |
| 6 | First Name | 20 | Passenger's first name |
| 7 | Date of Birth | 6 | Passenger's DOB (YYMMDD) |
| 8 | Sex | 1 | Passenger's gender 'F' - Female 'M' - Male 'U' - Unknown '*' - Unknown |
| 9 | Race Code | 1 | Passenger's Race entered by Primary Inspector; 'I' - American Indian or Alaska Native 'A' - Asian 'B' - Black or African American 'P' - Native Hawaiian or Pacific Islander 'W' - White |
| 10 | Ethnic Code | 1 | Passenger's Ethnicity entered by Primary Inspector; 'Y' - indicates Hispanic or Latino 'N' - not Hispanic or Latino |
| 11 | Departure Location Code | 3 | ICAO Airport of departure |
| 12 | Document Country of Issue | 2 | Valid country code |
| 13 | Date of INS Primary Query | 6 | YYMMDD |
| 14 | Time of INS Primary Query | 6 | HHMMSS |
| 15 | Query Result Indicator | 1 | Result of INS primary query; 'N' - No Match 'F' - NCIC hit 'T' - TECS hit |
| 16 | Lane/Belt Number | 4 | IBIS's terminal id (i.e. CICS termid) |
| 17 | APIS indicator | 1 | 'I' - APIS passenger 'A' - Non-apis passenger |
| 18 | APIS Confirmation Indicator | 1 | 'C' - Confirmed 'R' - Reported |
| 19 | Referral Indicator | 1 | 'N' - No Referral 'C' - Referred to Customs only (no referral information) 'B' - Referred to INS only 'M' - Referred to INS and Customs |
| 20 | Primary Referral Agency | 1 | Agency that performed that Primary Referral: 'C' - Customs 'B' - INS |

| INS - FAIRNESS IN LAW ENFORCEMENT DATA EXTRACT (All Data fields are fixed format and separated by back slashes "\") | | | |
|---|---------------------------------------|------|--|
| SEQ | DATA FIELD | SIZE | FORMAT |
| 21 | Reason for Referral | 158 | The Primary Inspector's reason for referral of passenger (Free text) |
| 22 | Primary Inspector user id | 9 | Social Security number of Primary Inspector |
| 23 | Positive / Negative results flag | 1 | 'Y' - Positive match 'N' - Negative match |
| 24 | INS Disposition code | 3 | IBIS' IAC table |
| 25 | INS exclusion code | 3 | IBIS' INY table |
| 26 | Nationality code | 2 | IBIS' ISC table |
| 27 | INS deferred to code | 3 | IBIS' INP table |
| 28 | Referral code | 2 | INS secondary referral code: 01 - DOCUMENTARY/IDENTIFICATION DEFICIENCIES 02 - IDENTIFIED TARGET 03 - TRAVEL HISTORY/ROUTING INFORMATION 04 - BELONGING/FITTING IN 05 - BEHAVIOR/CHARACTERISTICS 06 - OTHER INDICATIONS 07 - ADMINISTRATIVE ONLY 08 - DOCUMENTARY REQUIREMENTS 09 - ACCOMPANYING ANOTHER PERSON |
| 29 | INS Secondary Inspections Result text | 316 | Results of Secondary Inspection (free text) |

Fairness in Law Enforcement Data Collection Field Test

Date _____ Time _____ Station _____

| DRIVER | | | |
|---|--|---|--|
| GENDER <input type="checkbox"/> Male <input type="checkbox"/> Female RACE <input type="checkbox"/> American Indian/Alaskan Native <input type="checkbox"/> Asian <input type="checkbox"/> Black or African American <input type="checkbox"/> White <input type="checkbox"/> Native Hawaiian or other Pacific Islander | ETHNICITY <input type="checkbox"/> Hispanic <input type="checkbox"/> Non-Hispanic U.S. CITIZEN <input type="checkbox"/> Yes <input type="checkbox"/> No ARRESTED <input type="checkbox"/> Yes <input type="checkbox"/> No | GENDER <input type="checkbox"/> Male <input type="checkbox"/> Female RACE <input type="checkbox"/> American Indian/Alaskan Native <input type="checkbox"/> Asian <input type="checkbox"/> Black or African American <input type="checkbox"/> White <input type="checkbox"/> Native Hawaiian or other Pacific Islander | ETHNICITY <input type="checkbox"/> Hispanic <input type="checkbox"/> Non-Hispanic U.S. CITIZEN <input type="checkbox"/> Yes <input type="checkbox"/> No ARRESTED <input type="checkbox"/> Yes <input type="checkbox"/> No |

| | | | |
|---|--|---|--|
| GENDER <input type="checkbox"/> Male <input type="checkbox"/> Female RACE <input type="checkbox"/> American Indian/Alaskan Native <input type="checkbox"/> Asian <input type="checkbox"/> Black or African American <input type="checkbox"/> White <input type="checkbox"/> Native Hawaiian or other Pacific Islander | ETHNICITY <input type="checkbox"/> Hispanic <input type="checkbox"/> Non-Hispanic U.S. CITIZEN <input type="checkbox"/> Yes <input type="checkbox"/> No ARRESTED <input type="checkbox"/> Yes <input type="checkbox"/> No | GENDER <input type="checkbox"/> Male <input type="checkbox"/> Female RACE <input type="checkbox"/> American Indian/Alaskan Native <input type="checkbox"/> Asian <input type="checkbox"/> Black or African American <input type="checkbox"/> White <input type="checkbox"/> Native Hawaiian or other Pacific Islander | ETHNICITY <input type="checkbox"/> Hispanic <input type="checkbox"/> Non-Hispanic U.S. CITIZEN <input type="checkbox"/> Yes <input type="checkbox"/> No ARRESTED <input type="checkbox"/> Yes <input type="checkbox"/> No |
|---|--|---|--|

| | | | |
|---|--|---|--|
| GENDER <input type="checkbox"/> Male <input type="checkbox"/> Female RACE <input type="checkbox"/> American Indian/Alaskan Native <input type="checkbox"/> Asian <input type="checkbox"/> Black or African American <input type="checkbox"/> White <input type="checkbox"/> Native Hawaiian or other Pacific Islander | ETHNICITY <input type="checkbox"/> Hispanic <input type="checkbox"/> Non-Hispanic U.S. CITIZEN <input type="checkbox"/> Yes <input type="checkbox"/> No ARRESTED <input type="checkbox"/> Yes <input type="checkbox"/> No | GENDER <input type="checkbox"/> Male <input type="checkbox"/> Female RACE <input type="checkbox"/> American Indian/Alaskan Native <input type="checkbox"/> Asian <input type="checkbox"/> Black or African American <input type="checkbox"/> White <input type="checkbox"/> Native Hawaiian or other Pacific Islander | ETHNICITY <input type="checkbox"/> Hispanic <input type="checkbox"/> Non-Hispanic U.S. CITIZEN <input type="checkbox"/> Yes <input type="checkbox"/> No ARRESTED <input type="checkbox"/> Yes <input type="checkbox"/> No |
|---|--|---|--|

| | | | |
|---|--|---|--|
| GENDER <input type="checkbox"/> Male <input type="checkbox"/> Female RACE <input type="checkbox"/> American Indian/Alaskan Native <input type="checkbox"/> Asian <input type="checkbox"/> Black or African American <input type="checkbox"/> White <input type="checkbox"/> Native Hawaiian or other Pacific Islander | ETHNICITY <input type="checkbox"/> Hispanic <input type="checkbox"/> Non-Hispanic U.S. CITIZEN <input type="checkbox"/> Yes <input type="checkbox"/> No ARRESTED <input type="checkbox"/> Yes <input type="checkbox"/> No | GENDER <input type="checkbox"/> Male <input type="checkbox"/> Female RACE <input type="checkbox"/> American Indian/Alaskan Native <input type="checkbox"/> Asian <input type="checkbox"/> Black or African American <input type="checkbox"/> White <input type="checkbox"/> Native Hawaiian or other Pacific Islander | ETHNICITY <input type="checkbox"/> Hispanic <input type="checkbox"/> Non-Hispanic U.S. CITIZEN <input type="checkbox"/> Yes <input type="checkbox"/> No ARRESTED <input type="checkbox"/> Yes <input type="checkbox"/> No |
|---|--|---|--|

Description of the Stop/Referral

INSTRUCTIONS

Use the Fairness in Law Enforcement Data Collection Form to record each "roving patrol" vehicle stop or referral to secondary inspection. Use additional copies of this form as continuation sheets if not all of the information regarding the stop or referral won't fit on one form.

Purpose of this form: As part of the Department-led effort to assess the incidence of racial profiling, the Border Patrol will collect data relevant to the issue as it applies in two types of enforcement actions: roving patrol and referrals to secondary at a highway traffic checkpoint.

Roving Patrol involves an agent stopping a specific vehicle that he or she believes is carrying persons that are in violation of immigration law or another law the agent is authorized to enforce. Referral to secondary involves agents, during routine operations at a Border Patrol checkpoint, selecting a vehicle for closer inspection. In the "Description of the Stop/Referral" box above list the reason the vehicle was stopped or referred for secondary inspection.

Individual Characteristics:

The agent or agents involved in the roving patrol stop or referral to secondary will record the Race, Ethnicity, Gender and immediate disposition of each visible person involved in the stop or referral (i.e., the passengers and driver of the vehicle(s) stopped or referred to secondary), on the form by checking the appropriate box. The persons stopped or referred should not be questioned regarding their race, ethnicity, or gender solely for the purpose of filling out the form. That information will be collected based on the agents observations.

Gender: Does the person appear to be

- 1) Male
- 2) Female

Race: Does the person appear to be

1) **American Indian or Alaska Native:** A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.

2) **Asian:** A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

3) **Black or African American:** A person having origins in any of the black racial groups of Africa.

4) **Native Hawaiian or Pacific Islander:** A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

5) **White:** A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

Ethnicity: Does the person appear to be

1) **Hispanic or Latino:** A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.

2) **Not Hispanic or Latino:** Other than above.

U.S. Citizen

- 1) Yes
- 2) No

Arrested: Was the person arrested for a violation of law as a result of the stop or referral

- 1) Yes
- 2) No

Fairness in Law Enforcement
Land Port Inspections

Fields Collected

| |
|------------------------|
| Port |
| Date_Begin |
| Time_Begin |
| Ethnicity |
| Race |
| Gender |
| Nationality |
| Referral_Reason |
| Referral_Code |
| Disposition |
| Disposition_Code |
| Date_End |
| Time_End |
| Post_Secondary_Actions |

Codes Used

| Race | |
|------|---|
| I | American Indian or Alaska Native |
| A | Asian |
| B | Black or African American |
| P | Native Hawaiian or other Pacific Islander |
| W | White |

| Referral Code | |
|---------------|--------------------------------------|
| 1 | Document/Identification Deficiencies |
| 2 | Identified Targets |
| 3 | Travel History/Routing Information |
| 4 | Not Fitting In |
| 5 | Behavior/Characteristics |
| 6 | Other/Indications |
| 7 | Administrative Only |
| 8 | Documentary Requirements |
| 9 | Accompanying |

| Disposition Code | |
|------------------|-------------------------------|
| C | Admitted from Secondary |
| D | Alien Refused |
| E | Alien Withdrawn |
| F | Expedited Case Withdrawn |
| G | Expedited Removal Order |
| H | Referred Credible Fear |
| I | Alien Paroled |
| J | Inspection Deferred |
| K | Referred to Immigration Judge |

| Post-Secondary Actions | |
|------------------------|-----------------------------|
| ED | Extended Detention |
| FL | Forensic Document Lab |
| PD | Pat Down for Officer Safety |
| PS | Search of Person |
| SE | Search of Personal Effects |
| VS | Vehicle Search |

Drug Enforcement Administration Field Encounter Form

Date of Encounter (mm-dd-yy)

- -

Encounter Start Time

24 HR

Encounter End Time

24 HR

Race

- American Indian/Alaskan Native
- Asian
- Black/African American
- Native Hawaiian/Other Pacific Islander
- White

Ethnicity

- Hispanic
- Non-Hispanic

Gender

- Male
- Female

Location of Contact

- Airport Arrival Terminal
- Airport Departure Terminal
- Train Station
- Bus Station

Reason/Indicators for Contact Initiation

Action Taken (check all that apply)

- Contacted/Approached and Released
- Contacted/Searched and Released
- Contacted/Searched and Charged
- Other
- No action taken

Reason/Indicators for Action Taken

Seizure

- Yes (description required)
- No

Description of Seizures (items and amounts)

Additional Information

APPENDIX IV: THE DRUG ENFORCEMENT ADMINISTRATION'S RESPONSE TO THE DRAFT REPORT



U. S. Department of Justice
Drug Enforcement Administration

www.dea.gov

Washington, D.C. 20537

JAN 15 2015

MEMORANDUM

TO: Nina S. Pelletier
Assistant Inspector General
Evaluations and Inspections
Office of the Inspector General

FROM: 
Michael A. Dixon
Acting Deputy Chief Inspector
Office of Inspections

SUBJECT: DEA's Response to the OIG Draft Report: "Review of DEA's Use of Cold Consent Encounters at Mass Transportation Facilities, A-2013-007"

The Drug Enforcement Administration (DEA) has reviewed the Department of Justice (DOJ) Office of the Inspector General's (OIG) Draft Report entitled, "Review of DEA's Use of Cold Consent Encounters at Mass Transportation Facilities." DEA acknowledges OIG's efforts in conducting a review to improve policies and practices to strengthen oversight of cold encounters. DEA is committed to being an international organization having a global presence with a single-mission dedicated to drug law enforcement. DEA focuses on the vision to disrupt and dismantle the major drug trafficking supply organizations and their networks, especially the poly-drug trafficking sources of supply who dominate global drug markets.

In the OIG's report, the OIG makes references to how they were unable to assess whether cold consent encounters are an effective means of interdiction because the DEA does not require Task Force Groups (TFGs) to document encounters unless they result in a seizure or arrest. It is important to note that cold encounters is one of many tools that DEA uses in interdiction to achieve DEA's strategic goals to disrupt and dismantle the major drug trafficking supply organizations and their networks – including organizations that use drug trafficking proceeds to fund terror. DEA policy requires investigators to document consensual searches, especially when they result in a seizure or arrest. However, DEA does not have the legal authority to force people to provide demographic information unless they are arrested, nor can DEA verify the information when individuals refuse to engage in conversation or provide information. It would not be in DEA's best interest to use its best guesstimate in determining the race during an encounter, which may not result in an accurate statistic that would most likely be used in a follow-up audit of the same subject.

In another section of the report, the OIG discusses the Department's concern about racial profiling with cold consent encounters. It was noted in a Department of Justice 2003 report, entitled *Race or Ethnicity as a Factor in Law Enforcement Operations: A Survey of Federal Agencies* that the DEA has been accused of encouraging racial profiling by state and local police in its training for "Operation Pipeline" which is a highway drug interdiction program. It is also important to note that the Department's Civil Rights Division reviewed Operation Pipeline training and determined that the seminars did not teach officers to use race in determining whether to conduct vehicle stops.

The OIG makes five recommendations in the report. Below are DEA's responses to the recommendations.

Response to the Recommendations:

1. Consider how to determine if cold consent encounters are being conducted in an impartial manner, including reinstating the collection of racial and other demographic data and how it could be used to make that assessment.

DEA concurs with this recommendation and will explore options to address this recommendation. A working group, comprised of DEA staff from the Office of Operations Management, Office of Enforcement Operations, Office of Resource Management and Office of Chief Counsel, will meet to discuss and consider reinstating the collection of racial and other demographic data and how it could be used to make that assessment.

2. Develop a way to track cold consent encounters and their results and use the information collected to gain a better understanding of whether and under what circumstances they are an effective use of law enforcement resources.

DEA concurs with this recommendation and will convene a working group to discuss ideas and options for tracking consensual encounters and their results at mass transportation facilities to gain a better understanding of how to most effectively deploy DEA's law enforcement resources.

3. Require all interdiction TFG members and supervisors to attend either Jetway or alternative DEA-approved interdiction training.

DEA concurs with this recommendation and will convene a working group in conjunction with EPIC personnel, to identify funding for training and to discuss the development of a process to track the training of TFG members and supervisors at either Jetway or alternative DEA-approved interdiction schools.

4. Ensure appropriate coordination of training, policies, and operations for conducting cold consent encounters and searches, including assessing which policies should apply to cold consent searches at transportation facilities and ensuring that interdiction TFG members know when and how to apply them.

DEA concurs with this recommendation and will review current policies associated with consensual

encounters and searches to determine what updates may be necessary to adequately guide interdiction TFG personnel. Jetway or alternative DEA-approved interdiction schools will include applicable DEA policy as part of the curriculum for personnel assigned to DEA interdiction groups.

5. Examine whether disclaimer of cash forms should be used in cold encounters and if so, establish a consistent practice and training regarding their use.

DEA concurs with this recommendation and will examine whether to develop a DEA-approved disclaimer of cash or property form to be utilized in instances when individuals deny ownership of assets. If, after examination, a DEA disclaimer form is approved, Jetway or alternative DEA-approved interdiction schools will provide proper training to personnel assigned to DEA interdiction groups to ensure consistent practices.

If you have any questions regarding this response, please contact the Audit Liaison Team, on 202-307-8200.

APPENDIX V: OIG ANALYSIS OF THE DRUG ENFORCEMENT ADMINISTRATION'S RESPONSE

The Office of the Inspector General (OIG) provided a draft of this report to the Drug Enforcement Administration (DEA) for its comment. The DEA's response is included in Appendix IV to this report. The OIG analysis of DEA's response and actions necessary to close the recommendations are discussed below.

Recommendation 1: Consider how to determine if cold consent encounters are being conducted in an impartial manner, including reinstating the collection of racial and other demographic data and how it could be used to make that assessment.

Status: Resolved.

DEA Response: The DEA concurred with this recommendation and stated the DEA will convene a working group to discuss and consider reinstating the collection of racial and other demographic data and how it can be used to make that assessment.

OIG Analysis: DEA's planned actions are responsive to this recommendation. By May 29, 2015, please provide the meeting minutes and the results of the working group's discussion. In addition, please provide the methods considered and any planned actions that the DEA will take to reinstitute the collection of racial and other demographic data and how the DEA will use the data to assess whether cold consent encounters are being conducted in an impartial manner.

Recommendation 2: Develop a way to track cold consent encounters and their results and use the information collected to gain a better understanding of whether and under what circumstances they are an effective use of law enforcement resources.

Status: Resolved.

DEA Response: The DEA concurred with this recommendation and stated that the DEA will convene a working group to discuss options for tracking consensual encounters and their results at mass transportation facilities in order to gain a better understanding of how to most effectively deploy DEA's law enforcement resources.

OIG Analysis: The DEA's planned actions are responsive to this recommendation. By May 29, 2015, please provide the meeting minutes and the results of the working group's discussion. Specifically, please provide documentation regarding the actions the DEA will take to develop a process that tracks cold consent encounters to ensure that they are an effective use of law enforcement resources.

Recommendation 3: Require all interdiction TFG members and supervisors to attend either Jetway or alternative DEA-approved interdiction training.

Status: Resolved.

DEA Response: The DEA concurred with this recommendation and stated that the DEA will convene a working group, to include EPIC personnel, to help identify funding for training and to discuss the development of a process to track the training of TFG members and supervisors at either Jetway or alternative DEA-approved interdiction schools.

OIG Analysis: The DEA's planned actions are responsive to this recommendation. By May 29, 2015, please provide documentation showing that interdiction TFG members and supervisors are now required to attend Jetway or alternative DEA-approved interdiction training. In addition, please provide documentation of the process the DEA developed to track the training of TFG members and supervisors at Jetway or alternative DEA-approved interdiction schools. Specifically, this documentation should include which current interdiction TFG members and supervisors have received the training and an expected completion date for those interdiction TFG members who have not yet attended the required training.

Recommendation 4: Ensure appropriate coordination of training, policies, and operations for conducting cold consent encounters and searches, including assessing which policies should apply to cold consent searches at transportation facilities and ensuring that interdiction TFG members know when and how to apply them.

Status: Resolved.

DEA Response: The DEA concurred with this recommendation and stated the DEA will review policies associated with consensual encounters and searches to determine what updates may be necessary to adequately guide interdiction TFG personnel. The DEA also stated that Jetway or alternative DEA-approved interdiction schools will include applicable DEA

policy as part of the curriculum for personnel assigned to DEA interdiction groups.

OIG Analysis: The DEA's planned actions are responsive to this recommendation. By May 29, 2015, please provide documentation that shows which policies related to cold consent encounters and searches were updated and incorporated into the curriculum for Jetway or alternative DEA-approved interdiction schools. In addition, please provide documentation showing that current interdiction TFG members were informed of the policies that apply to cold consent encounters and searches at transportation facilities and any additional changes the DEA made to ensure the coordination of training, policies, and operations for conducting cold consent encounters and searches.

Recommendation 5: Examine whether disclaimer of ownership of cash forms should be used in cold consent encounters and, if so, establish a consistent practice and training regarding their use.

Status: Resolved.

DEA Response: The DEA concurred with this recommendation and stated the DEA will examine whether to develop a DEA-approved disclaimer of cash or property form to be utilized in instances when individuals deny ownership of assets. The DEA also stated that if a DEA disclaimer form is approved, Jetway or alternative DEA-approved interdiction schools will provide proper training to personnel assigned to DEA interdiction groups to ensure consistent practices.

OIG Analysis: The DEA's planned actions are responsive to this recommendation. By May 29, 2015, please provide the result of DEA's review of the disclaimer of ownership of cash form and whether the DEA will continue to use the disclaimer of ownership of cash forms in cold consent encounters. Additionally, please provide documentation of any DEA-approved disclaimer of ownership of cash forms and any training that the DEA established to provide consistency during cold consent encounters.

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