



Office of the Inspector General
United States Department of Justice

Statement of Michael E. Horowitz
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before the

U.S. Senate Committee on the Judiciary

concerning

"Oversight of the Drug Enforcement Administration"

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Mr. Chairman, Senator Leahy, and Members of the Committee:

Thank you for inviting me to testify today about the Office of the Inspector General's (OIG) oversight of the Drug Enforcement Administration (DEA). In order to help make the Department more effective and efficient, the OIG strives to identify waste, fraud, abuse, and mismanagement in Department programs and to hold its employees accountable. Independent oversight of the Department's law enforcement components is particularly important given that we entrust our law enforcement agencies with significant authorities and power in order to conduct investigations in the public interest, sometimes using sophisticated techniques and equipment. These agencies must have appropriate controls to prevent misuse of these authorities and to ensure that civil liberties and civil rights are safeguarded. Independent oversight is crucial for ensuring that these controls are effective and enforced.

The OIG has conducted numerous reviews of the DEA's programs and operations and, since 2001, when Attorney General Ashcroft extended the OIG's authority to include oversight of misconduct allegations involving the DEA and the Federal Bureau of Investigation (which oversight authority Congress codified in 2002), the OIG also has conducted many criminal and administrative investigations. During my 4 years as Inspector General, we have performed reviews of, among other things, the DEA's management of its confidential sources; handling of allegations of sexual harassment and misconduct; discipline of its personnel; use of cold consent encounters at mass transportation facilities; controls over seized and collected drugs; aviation operations in Afghanistan; adjudication of registrant actions; policies and training governing off-duty conduct; and participation in and work on the Organized Crime Drug Enforcement Task Forces Fusion Center. These and other OIG reviews include recommendations to improve the efficiency and effectiveness of the DEA and its programs.

Additionally, over the past 15 years, OIG investigations into alleged waste, fraud, abuse, or misconduct by DEA employees have resulted in over 50 criminal convictions and nearly 150 administrative actions. Among the investigations during my tenure as Inspector General are those involving wrongdoing by DEA agents in Cartagena, Colombia during the President's visit there in 2012; misconduct by DEA agents in San Diego connected to the lengthy detention of a local college student; the DEA's improper use of Transportation Security Administration (TSA) security screeners and Amtrak employees as paid confidential sources; and large-scale fraud and theft by a DEA agent involving Bitcoins.

In order for the OIG to conduct impactful and comprehensive oversight over any Department component, including the DEA, the OIG needs to have access to the documents and records in the components' possession. While the limits on access that my Office has experienced were first raised in 2010 by the FBI, we encountered significant resistance at the DEA while attempting to obtain documents in a number of our reviews until May 2015. The refusal by the DEA to provide timely access to records in its possession impacted and delayed our work. For example, the DEA objected to providing documents requested by the OIG during

our reviews of: the handling of sexual harassment and misconduct allegations by the Department's law enforcement components; DEA's confidential source policies and oversight of higher-risk confidential informants; DEA's response to certain deadly force incidents in Honduras; criminal misconduct by a former DEA special agent; and the DEA's use of administrative subpoenas. In many of those instances, the OIG only received the documents we needed after I elevated the issue to the then-Administrator and she arranged to have the material provided to us. Indeed, in our work on the DEA confidential sources review, the DEA even refused at first to provide the OIG with an unredacted version of an organizational chart that we had requested, requiring me to personally raise the issue with the then-Administrator.

I can report, however, that over the past year, we have experienced significant improvement in our ability to obtain timely access to information from the DEA, and that the DEA is now providing us with materials within a reasonable timeframe and without interposing the kind of frivolous objections that we had previously heard.

We appreciate the strong bipartisan support of this Committee and the Congress for Inspector General access to records within their agency's possession. As I describe later in my statement, in the wake of the opinion by the Department's Office of Legal Counsel in July 2015, the Inspector General community needs a statutory fix to make it clear that, absent an express prohibition on Inspector General access to agency records, agencies must provide timely access to Inspectors General so that they can perform their oversight work on behalf of the American people.

I would like to highlight for the Committee some examples of significant recent OIG reports demonstrating the nature and extent of our oversight of the DEA.

DEA's Handling of Confidential Sources

Monitoring the use of confidential informants poses a challenge for law enforcement agencies, including the DEA. While agents rely on their sources to provide valuable information, they also need to make sure the sources do not take advantage of their role. The level of secrecy necessary for confidential source programs to be successful adds to the challenge of closely monitoring their use. As a result, the need for components to follow Department guidelines is critical.

In July 2015, we released an interim report on the DEA's Confidential Source program focusing on the DEA's confidential source policies and their consistency with Department-wide standards for law enforcement components. We also reviewed the DEA's oversight of certain high-level confidential sources and high-risk activities involving confidential sources, and evaluated an issue we discovered related to the DEA's administration of death and disability benefits to confidential sources. The Attorney General's Guidelines Regarding the Use of Confidential Informants (AG Guidelines) provides guidance to all Justice Law Enforcement Agencies (JLEA), including the DEA, regarding the establishment, approval,

utilization, and evaluation of confidential sources. Compliance with the AG Guidelines is important if JLEAs are to manage confidential sources appropriately and mitigate the risks involved with using confidential sources in federal investigations. However, we found that instead of implementing the AG Guidelines verbatim as a separate policy, the DEA chose to incorporate provisions of the AG Guidelines into its preexisting policy – the DEA Special Agents Manual. The DEA maintained that changes it made to this manual successfully captured the essence of the AG Guidelines.

But our review found that the Criminal Division's 2004 approval of the DEA policy allowed the DEA to have a policy that differed in several significant respects from the AG Guidelines. This resulted in areas in which the DEA's policy did not fully address the concerns underlying the AG Guidelines and, as a result, the DEA's Confidential Source Program lacked sufficient oversight and consistency with the rules governing other DOJ law enforcement components. For example, we found that the DEA's differing policies have resulted in DEA personnel being able to use high-risk individuals, such as the leadership of drug trafficking organizations, lawyers, doctors, and journalists, as confidential sources without the level of review that would otherwise be required by the AG Guidelines for these kinds of sources. DEA policies were also not in line with the AG Guidelines' requirements for reviewing, approving, and revoking a confidential source's authorization to conduct otherwise illegal activity, conduct that involves significant risks and requires commensurate oversight. The DEA also was not adhering to its policy to conduct timely reviews of the appropriateness of continued and long term use of confidential sources who were active for 6 or more consecutive years. Failure to establish and adhere to strict controls for maintaining confidential sources can have negative impacts on DEA operations, compromise sensitive information, and result in other unforeseen circumstances.

During this audit, we also learned that the DEA was providing certain confidential sources with benefits under the Federal Employees' Compensation Act (FECA), which generally provides federal and U.S. Postal Service workers with workers' compensation coverage for injuries or death sustained while in performance of duty. We estimated that, in just the 1-year period from July 1, 2013, through June 30, 2014, the DEA paid 17 confidential sources, or their dependents, FECA benefits totaling more than \$1 million. The DEA lacked a process for thoroughly reviewing FECA claims for confidential sources or determining eligibility, and had not established any procedures or controls regarding the awarding of these potentially substantial benefits. In addition, the DEA did not oversee and ensure that the established pay rate for these sources was proper, and it inappropriately continued using and paying confidential sources who were also receiving full disability payments through FECA. We also found that the DEA had not adequately considered the implications of awarding such benefits on the disclosure obligations of federal prosecutors, and had not consulted with the Department about this issue.

The OIG made seven recommendations to the DEA, including that it coordinate with the Criminal Division to revisit the Special Agents Manual to ensure

compliance and consistency with the AG Guidelines; ensure that its confidential source policies are updated to reflect the current practice of documenting written operations plans, including identifying the required content and approval level for those plans; develop specific policies related to the conduct of the DEA's Sensitive Activity Review Committee and its review of long-term confidential sources, including ensuring appropriate attendance, sufficient review procedures, and minimum file content; ensure that DEA confidential source policies are updated to ensure that long-term confidential sources are reviewed in a consistent and timely manner; ensure that its Special Agents Manual is updated to include requirements for a 9-year interim review of long-term confidential sources, in accordance with the AG Guidelines and the DEA's current practice; ensure that the DEA develops and implements appropriate policies and procedures related to establishing DEA registrants as confidential sources; and in consultation with the Department, analyze and come to a conclusion about whether there is a legal basis for, and, if so, whether it is appropriate to extend eligibility for FECA benefits to confidential sources. The interim report can be found on the OIG's website here: <https://oig.justice.gov/reports/2015/a1528.pdf>. We are continuing our audit to more fully assess the DEA's management and oversight of its confidential sources.

As described in our interim report, we faced significant impediments to receiving timely access to documents relevant to our review. A necessary component of our audit was a data file review of DEA confidential sources and other related information. However, numerous instances of uncooperativeness from the DEA, namely their attempts to prohibit the OIG's observation of confidential source file reviews and delays providing the OIG with requested confidential source information and documents, seriously hindered our review and ultimately resulted in our release of a limited review of the program a year after the review began. In each instance, the disputes were resolved in favor of granting the OIG access to the requisite information only after I elevated them to the then-DEA Administrator, resulting in significant and unnecessary delays.

Our audit of the DEA confidential source program was informed by separate OIG investigations. In one investigation, the OIG determined that the DEA registered and paid as confidential sources two Amtrak employees in return for the employees' providing the DEA with information they obtained in connection with their work. In another investigation, the OIG found that the DEA had registered a security screener for the TSA as a confidential source in violation of DEA policy, which precludes signing up as a confidential source "employees of U.S. law enforcement agencies who are working solely in their official capacity with the DEA." In addition, the TSA screener was required, without being compensated as a confidential source, to provide certain relevant information to the DEA. While the DEA never paid any money to the TSA screener, we determined that over a period of twenty years ending in January 2014, the DEA paid one of the Amtrak employees \$854,460. An investigative summary of our report on the Amtrak matter can be found on the OIG's website here: <https://oig.justice.gov/reports/2016/f160107a.pdf>, while an investigative summary of our report on the TSA matter can be found on the OIG's website here: <https://oig.justice.gov/reports/2016/f160107b.pdf>.

Discipline of DEA Personnel

In order for the DEA to maintain effective law enforcement programs, it must also ensure it has a fair and transparent process for disciplining employees who engage in misconduct. Where DEA employees are found to have committed misconduct, the DEA should review and handle such matters expeditiously and in accordance with clear policies. Through its oversight work, the OIG has conducted several reviews regarding DEA's discipline processes, and we have identified several areas in need of improvement.

Following incidents in April 2012 involving alleged misconduct by U.S. Government personnel, including three Special Agents with the DEA, during the President's trip to Cartagena, Colombia, the OIG substantiated misconduct by those DEA agents. In order to evaluate the systemic issues potentially reflected in these allegations, we conducted two program reviews: (i) relating to the handling of allegations of sexual harassment and misconduct by the Department's law enforcement components; and (ii) relating to the Department's policies and training involving off-duty conduct by Department employees working in foreign countries. Both reviews involved examining systemic issues of Department policies, programs, and procedures, and how they were applied in practice within different components of the Department. These reviews followed our previous work relating to DEA discipline in a report issued in January 2004, where we found several problems with its processes.

In our March 2015 report on the handling of allegations of sexual misconduct and harassment, we reviewed the nature, frequency, reporting, investigation, and adjudication of such allegations, including the transmission of sexually explicit texts and images, in the Department's four primary law enforcement components, including the DEA. In this report, we found significant systemic issues that required corrective action. For example, we found instances in which some DEA employees engaged in a pattern of high-risk sexual behavior, yet security personnel were not informed about the incidents until well after they occurred or were never informed, potentially exposing employees to coercion, extortion, and blackmail and creating security risks for these components. We also found that DEA policies permitted supervisors in the field to exercise the discretion not to inform DEA headquarters about agent misconduct, even when its offense table characterized the conduct as something that should be reported to headquarters. Moreover, as a result of this failure to report such allegations to DEA headquarters, the OIG -- which is supposed to receive all allegations of misconduct to ensure they are investigated -- was not made aware of the allegations when they first occurred. We also found instances where the DEA Office of Professional Responsibility failed to fully investigate allegations of serious sexual misconduct and sexual harassment. Additionally, DEA offense tables contain specific offense categories to address allegations of sexual misconduct and sexual harassment and provide guidance on the appropriate range of penalties. But we found that the DEA often applied more general offense categories to misconduct that also fell within the more specific offense categories. For example, a component might charge an employee under

the *Poor Judgment and/or Conduct Unbecoming* offense category instead of *Sexual Harassment or Sexual Misconduct – Non-Consensual*, which carried a potentially more serious penalty. Further, we determined that all the law enforcement components did not have adequate technology to archive and preserve text messages sent and received by their employees and were unable to fully monitor the transmission of sexually explicit text messages and images. Therefore, we could not determine the actual number of instances involving this type of misconduct. These same limitations affect the ability of the components to make this important information available to misconduct investigators and may risk hampering the components' ability to satisfy their discovery obligations.

Our report made eight recommendations to improve the law enforcement components' disciplinary and security processes relating to allegations of sexual misconduct and harassment, including that supervisors and managers report all allegations of sexual misconduct and sexual harassment to headquarters and include this requirement in performance standards; ensure that all non-frivolous sexual harassment and sexual misconduct allegations are referred to their respective security personnel to determine if it should impair an employee's continued eligibility to hold a security clearance; follow clear and consistent criteria for determining whether an allegation should be investigated at headquarters or should be referred back to the originating office to be handled as a management matter; use the offense categories specifically designed to address sexual misconduct and sexual harassment, and revise their tables if they are inadequate; acquire and implement technology and establish procedures to effectively preserve text messages for a reasonable period of time, and components should make this information available to misconduct investigators; and take concrete steps to acquire and implement technology to be able to, as appropriate in the circumstances, proactively monitor text messages for potential misconduct. DOJ and the four components, including the DEA, concurred with all of the recommendations. The report can be found on the OIG's website at the following link: <http://www.justice.gov/oig/reports/2015/e1504.pdf>.

During the course of this review, the DEA raised baseless objections to providing the OIG with certain information related to our review despite the clear language of the Inspector General Act and only relented when I raised the issue with agency leadership. These delays created an unnecessary waste of time and resources, both on the part of the OIG personnel and DEA personnel, and delayed us in completing our report addressing the significant systemic concerns outlined above.

In addition, we were not completely confident that the DEA provided us with all information relevant to this review. When the OIG finally received from the DEA the requested information without extensive redactions, we found that it still was incomplete. In addition, after we completed our review and a draft of the report, we learned that the DEA used only a small fraction of the terms we had provided to search its database for the information needed for our review.

In April 2015, during a hearing before the House of Representatives Committee on Oversight and Government Reform on our report, the Chairman asked the OIG to determine whether any promotions, bonuses, awards, or new job assignments were given to the DEA personnel involved in the incidents described in our report. In response to this request, in a report released in October 2015, we found that DEA policy generally prohibited employees from receiving such awards for 3 years after being subject to discipline for significant misconduct or while a misconduct investigation is pending, absent a specifically approved basis for approval. We found that 8 of the 14 employees referenced in the incidents discussed in our prior report had received bonuses or awards contrary to DEA policy.

The Consolidated Appropriations Act of Fiscal Year 2016 withheld funds from the Department, the DEA, and other Department law enforcement components until the Attorney General demonstrated that all recommendations issued in the OIG's March 2015 report had been implemented or were in the process of being implemented. The provision further required the OIG to report to Congress on the status of the Department's implementation of recommendations. To fulfill this requirement, as of March 2016, the OIG determined that the DEA provided information to the OIG demonstrating that they had fully implemented corrective actions for all of the recommendations directed to them in our March 2015 report. For example, the DEA modified, clarified, or re-emphasized their sexual misconduct and sexual harassment reporting policies and reported that it has disseminated them to all personnel. In addition, the DEA changed its sexual harassment and misconduct allegation reporting procedures to ensure consistency with our recommendations. The DEA has also implemented processes designed to ensure that misconduct allegations are appropriately referred to headquarters and to security personnel. The DEA also provided information showing that they have implemented and are applying appropriate offense categories for sexual harassment and sexual misconduct allegations. Based on the information provided, the OIG closed the recommendations directed to the DEA in this report.

With respect to the second review referenced above, we examined DOJ policy and training addressing off-duty conduct abroad, and issued our report in January 2015. The OIG found that DOJ lacks Department-wide policies and training requirements that address off-duty conduct, whether in the United States or foreign countries. As a result, individual Department components were responsible for developing their own policies and training. Specifically, we found that among the DOJ law enforcement components, the DEA provided its employees with the least information about off-duty conduct while abroad and that its policies and training had significant gaps. The DEA was also the only DOJ law enforcement component that did not formally remind its employees after the Cartagena incident of the need to adhere to professional standards of behavior, even though DEA agents were involved. The report made three recommendations to the DEA, including that it disseminate clear, complementary, and comprehensive policy to all personnel regarding off-duty conduct, including provisions for employees representing the government in other countries; raise awareness of that policy and how it applies to a variety of situations through existing basic law enforcement training, new

employee orientation, and periodic training throughout employees' careers; and reinforce the policy and how to apply it through pre-deployment training for employees being sent abroad. The report can be found on the OIG's website here: <https://oig.justice.gov/reports/2015/e152.pdf>.

DEA Aviation Operations

Effective oversight of the DEA's management of its contracting is another important OIG responsibility in order to ensure that taxpayer dollars are efficiently and effectively used. Recently, we conducted a review of the DEA aviation operations with the Department of Defense (DOD) in Afghanistan. In this review, we determined that, collectively, the DEA and DOD spent more than \$86 million to purchase and modify a DEA aircraft with advanced surveillance equipment for operations in the combat environment of Afghanistan. However, we found that more than 7 years after the aircraft was purchased for the program, it remained inoperable, resting on jacks in Delaware, and has never flown in Afghanistan. We also found that the DEA did not fully comply with the Federal Acquisition Regulations and its own solicitation when it purchased the aircraft in September 2008, and that the DEA failed to ensure that the memoranda of understanding (MOU) it entered into with the DOD identified clear objectives and deliverables and did not establish an accurate method to track and report performance.

The OIG made 13 recommendations to the DEA to improve oversight of its MOUs for aviation operations and address more than \$11 million in questioned costs. Specifically, the OIG recommended that the DEA ensure that major agreements involving the transfer or modification of high-dollar assets, such as aircraft, be sufficiently documented to provide a record of the transfer; establish procedures to ensure the Aviation Division adheres to its policy requiring that training records be maintained in sufficient detail for both the DEA and contract personnel; strengthen its internal controls by establishing oversight and verification procedures regarding the Aviation Division's contractor performance; ensure MOUs it enters into with the DOD have suitable dates for all required financial reporting; work with DOD to establish clear objectives and deliverables, and a method for tracking deliverables to ascertain whether these efforts are achieving the desired objectives; and establish procedures to ensure programmatic data provided to the DOD is accurate. The report can be found on the OIG's website here: <https://oig.justice.gov/reports/2016/a1616.pdf>.

Ongoing DEA Oversight

The OIG will remain vigilant in its oversight of the DEA and is currently conducting reviews of several DEA programs. For example, the OIG has the following ongoing work pertaining to the DEA:

- **Post-Incident Responses to Missions in Honduras Involving the Use of Deadly Force.** The DOJ and Department of State (State) OIGs are conducting a joint review of the post-incident responses by the State Department and the DEA to three drug interdiction missions in Honduras in

2012 that involved the use of deadly force. The missions were conducted jointly by the Government of Honduras, the DEA, and State pursuant to an aerial interdiction program known as Operation Anvil. The joint review will address, among other things, pertinent pre-incident planning and the rules of engagement governing the use of deadly force, the post-incident investigative and review efforts by State and the DEA, the cooperation by State and DEA personnel with the post-shooting reviews, and the information provided to Congress and the public by DOJ and State regarding the incidents.

- **Use of administrative subpoenas.** The OIG is examining the DEA's use of administrative subpoenas to obtain broad collections of data or information. The review will address the legal authority for the acquisition or use of these data collections; the existence and effectiveness of any policies and procedural safeguards established with respect to the collection, use, and retention of the data; the creation, dissemination, and uses of products generated from the data; and the use of "parallel construction" or other techniques to protect the confidentiality of these programs.
- **The Department's oversight of asset seizure activities.** The OIG is examining the Department's asset seizure and forfeiture activities from FY 2007 to FY 2014, with particular attention paid to the forfeiture of seized cash. Our work includes data analysis of overall Department seizure activity as well as an assessment of its seizure policies and practices. Additionally, the OIG is reviewing the effects of recent DOJ policy limiting the ability of DOJ agencies to adopt assets seized under state law.
- **The DEA's El Paso Intelligence Center.** The OIG is reviewing the DEA's El Paso Intelligence Center (EPIC). The review, following a 2010 report, will focus on how EPIC contributes to DEA field divisions and the law enforcement community.
- **Gender equity in the Department's law enforcement components.** The OIG is examining gender equity in the Department's law enforcement components, specifically ATF, DEA, FBI, and USMS. The review will include an assessment of component demographics, gender discrimination complaints, and the complaint process. The OIG will also assess staff perceptions related to gender equity and the reasons why staff have those perceptions.

A brief description of these and other ongoing reviews can be found on our OIG website at: <https://oig.justice.gov/ongoing/>.

Conclusion

The OIG's independent oversight of the DEA over the past 15 years has helped to make the DEA more effective and efficient. However, as described above, several of our DEA audits, reviews, and investigations were impeded because of refusals by the DEA to provide us with the timely access to the records we needed

to complete our oversight work. Those objections delayed our work, wasted OIG staff time, and required a substantial amount of my time and effort before we gained access to the records we needed. I can, however, report to you that since last May, the DEA's cooperation with the OIG regarding access to documents has improved significantly, and we have not had recent issues in that regard.

However, as I testified before this Committee last August requesting Congress's assistance for a permanent solution to the challenge that I and other Inspectors General have had obtaining full and independent access to agency records, an Inspector General's access to information should not depend on who leads an agency and whether they are willing to cooperate with OIG oversight. Instead, our authority must come from the Inspector General Act and, in light of last year's OLC opinion, that will require an amendment to the Inspector General Act. Currently, the bipartisan IG Empowerment Act (S. 579) in the Senate, which has been incorporated into the Bolster Accountability to Drive Government Efficiency and Reform Washington Act (S. 3011), and the bipartisan IG Empowerment Act (H.R. 2395) in the House of Representatives, would grant Inspectors General authority to access all agency documents unless a provision of law expressly restricts our access, as well as provide other important tools to Inspectors General. The entire Inspector General community strongly supports these measures because they provide a permanent solution to the question of an OIG's right of access, so that Inspectors General can conduct their important oversight work on behalf of the American public effectively and without disruption.

Thank you again for your record of strong bipartisan support for the work of my Office and the entire Inspector General community. This concludes my prepared statement, and I will be pleased to answer any questions the Committee may have.