

United States Senate

WASHINGTON, DC 20510

November 16, 2021

VIA ELECTRONIC TRANSMISSION

Hon. Anne Milgram
Administrator
Drug Enforcement Administration

Dear Administrator Milgram:

Recent reports issued by the U.S. Office of Special Counsel (OSC) and the Department of Justice Office of Inspector General (DOJ OIG) raise important questions about the Drug Enforcement Administration (DEA) and its oversight of its operations abroad, including DEA-supported foreign law enforcement units.¹ On August 26, 2021, the same date that the DOJ OIG released its report, the DEA announced in a press release that you “recommended a top to bottom review of foreign operations that will be overseen by an independent team.”² We write to ask for additional information about the review you are conducting and the steps you are taking to address the issues raised in these reports.

As you know, the DOJ OIG’s audit report addresses concerns raised by multiple congressional offices, including two Senate Judiciary Committee members.³ In a February 27, 2018, letter to Inspectors General Horowitz and Linick, Senators Leahy, Feinstein, and others raised concerns about a variety of issues relating to the DEA’s oversight of foreign law enforcement units, including an information leak by foreign law enforcement from a DEA-supported sensitive investigative unit in Mexico that reportedly resulted in a 2011 massacre of between 60 and 300 civilians in Allende, Mexico.⁴ During the course of the audit, OIG found that during a 2018 examination of its case files, the DEA was not able to identify evidence that its

¹Letter from Henry J. Kerner, U.S. Special Counsel, to the President (July 30, 2021), available at <https://osc.gov/Documents/Public%20Files/FY21/DI-16-1098%2c%2018-1075/Redacted%20OSC%20Letter%20to%20President%20DI-16-1098%2c%20DI-18-1075.pdf>; Department of Justice Office of the Inspector General, “Audit of the Drug Enforcement Administration’s Headquarters-Based Oversight of its Supported Foreign Law Enforcement Units” (August 2021), available at <https://oig.justice.gov/sites/default/files/reports/21-109.pdf>. While the audit report primarily examines the DEA’s activities during fiscal years 2017 through 2019, it raises concerns about DEA processes that have developed during the previous three presidential administrations.

² Press Release, Drug Enforcement Administration, DEA Announces Review of International Operations (August 26, 2021), available at <https://www.dea.gov/press-releases/2021/08/26/dea-announces-review-international-operations>.

³ Department of Justice Office of the Inspector General, “Audit of the Drug Enforcement Administration’s Headquarters-Based Oversight of its Supported Foreign Law Enforcement Units” (August 2021), available at <https://oig.justice.gov/sites/default/files/reports/21-109.pdf> at 8; Press Release, U.S. House of Representatives, Committee on Foreign Affairs, Engel, Nadler, Leahy, Feinstein call for Inspectors General Investigation of DEA Role in Mexico Operations (February 27, 2018), available at <https://foreignaffairs.house.gov/2018/2/engel-nadler-leahy-feinstein-call-inspectors-general-investigation-dea-role>.

⁴ Press Release, U.S. House of Representatives, Committee on Foreign Affairs, Engel, Nadler, Leahy, Feinstein call for Inspectors General Investigation of DEA Role in Mexico Operations (February 27, 2018), available at <https://foreignaffairs.house.gov/2018/2/engel-nadler-leahy-feinstein-call-inspectors-general-investigation-dea-role>.

country office in Mexico even notified its headquarters about this incident.⁵ The OIG also reviewed the DEA's responses to historic instances of malfeasance involving foreign law enforcement and DEA personnel, such as a case in Columbia in which seven DEA agents admitted to attending parties with prostitutes that also involved two members of a DEA-supported Colombian law enforcement unit.⁶ In another case, a DEA Special Agent based in Colombia pleaded guilty to corruption charges in connection with allegations relating to activities involving a DEA-supported foreign unit.⁷

According to the OIG, despite a variety of serious incidents involving DEA-supported foreign law enforcement units, the OIG found that the DEA had not, at the time the OIG completed its review, "performed *any* program-level reviews or assessed its oversight structure to determine what systematic improvements may have been needed to mitigate the risk of similar incidents occurring in the future" (emphasis added).⁸ Furthermore, the OIG report appears to suggest that, in general, the DEA conducts limited oversight of "so-called 'vetted units' established and used by Country Offices that reside outside of the formal structure of the [DEA's Sensitive Investigative Units] SIU Program."⁹ According to the OIG report, DEA headquarters does not even maintain a complete representation of all such units that have been established.¹⁰

The OIG report also raises concerns about the DEA's management of law enforcement units in Haiti.¹¹ Arrangements in Haiti bear particularly close scrutiny in light of recent events. One individual already arrested in association with the recent assassination of President Jovanel Moïse reportedly served as a former informant for the DEA.¹² In addition, a former DEA confidential source who previously participated in a joint operation with DEA agents and Haitian police officers from Haiti's anti-narcotics unit is now wanted in connection with the assassination.¹³

According to the OIG report, after several members of a DEA-supported unit in Haiti failed polygraph examinations, the country office there disbanded its sensitive investigative units in 2009, but continued to work with Haitian law enforcement using other arrangements.¹⁴ This included signing an Interagency Agreement (IAA) with the Department of State, Bureau of International Narcotics and Law Enforcement Affairs (DOS-INL) for a Haitian law enforcement unit commanded by one of the very Haitian officials who had failed a polygraph examination.¹⁵

⁵ Department of Justice Office of the Inspector General, "Audit of the Drug Enforcement Administration's Headquarters-Based Oversight of its Supported Foreign Law Enforcement Units" (August 2021), available at <https://oig.justice.gov/sites/default/files/reports/21-109.pdf> at 14.

⁶ *Id.* at 12-13

⁷ *Id.* at 13.

⁸ *Id.* at 10-13.

⁹ *Id.* at 10.

¹⁰ *Id.*

¹¹ *Id.* at 12, 19.

¹² Mark Hosenball, "U.S. probes ties of Colombian suspects in Haiti president's assassination – source *Reuters* (July 14, 2021), available at <https://www.reuters.com/world/americas/us-probes-ties-colombian-suspects-haiti-presidents-assassination-source-2021-07-14/>.

¹³ *Id.*; Brief of Appellee at 5, *United States v. Thelemaque*, No. 16-10348 (11th Cir. October 19, 2016).

¹⁴ Department of Justice Office of the Inspector General, "Audit of the Drug Enforcement Administration's Headquarters-Based Oversight of its Supported Foreign Law Enforcement Units" (August 2021), available at <https://oig.justice.gov/sites/default/files/reports/21-109.pdf> at 12, 19.

¹⁵ *Id.* at 12.

Though it is unclear how much, if any, federal funding the unit received, DOS-INL provides funding for certain units that reside outside of the DEA's formal SIU Program.¹⁶

Whistleblowers have also raised questions about the effectiveness of the DEA's work in Haiti, as well as the way the DEA has historically managed its relationship with Haitian law enforcement officials.¹⁷ Whistleblower disclosures made to OSC were recently the subject of an investigation by the DEA and a review by U.S. Special Counsel Henry Kerner. According to OSC, whistleblowers:

[D]isclosed to OSC that the DEA Port-au-Prince, Haiti Country Office failed to take appropriate measures to implement an effective seaport security program to appropriately assist Haiti with strengthening its counter-narcotics law enforcement program. They also disclosed that DEA failed to properly conduct its investigation of the 2015 M.V. *Manzanares* drug seizure. Specifically, the whistleblowers raised concerns regarding (1) inadequate training of Haitian law enforcement; (2) inadequate office space and equipment, such as surveillance cameras, at Haitian seaports; (3) insufficient vetting of Haitian law enforcement partners; and (4) inadequate support for the *Manzanares* investigation.¹⁸

The *Manzanares* investigation refers to the DEA's investigation of a 2015 drug shipment that, when discovered by port authorities, resulted in looting and subsequent drug recovery efforts by Haitian authorities, the DEA, and the U.S. Coast Guard.¹⁹

In their correspondence with OSC, whistleblowers also alleged that "DEA's response to corruption concerns about [a] Haitian law enforcement commander" were "slow" and alleged that the DEA "ignor[ed] evidence about a manager conspiring with a Haitian law enforcement commander to destroy evidence, not permitting pursuit of appropriate leads, and inappropriately deactivating confidential sources."²⁰

In a July 30, 2021, letter to President Biden, Special Counsel Kerner noted that the DEA did not substantiate the whistleblowers' allegations and that the agency also pushed back against whistleblower claims in a supplemental report that it prepared at the request of OSC.²¹

In his letter to President Biden, while Special Counsel Kerner did not weigh in directly on each of the whistleblower allegations, he did state his determination that "DEA's findings and report are unreasonable."²² He also raised a number of specific issues relating to the reports that

¹⁶ *Id* at 30.

¹⁷ Letter from Henry J. Kerner, U.S. Special Counsel, to the President (July 30, 2021), available at <https://osc.gov/Documents/Public%20Files/FY21/DI-16-1098%2c%2018-1075/Redacted%20OSC%20Letter%20to%20President%20DI-16-1098%2c%20DI-18-1075.pdf> at 1, 3.

¹⁸ *Id* at 1.

¹⁹ Maria Abi-Habib, "He Guarded Haiti's Slain President. And He Was a Suspect in a Drug Inquiry" *The New York Times* (August 21, 2021), available at <https://www.nytimes.com/2021/08/21/world/americas/haiti-president-assassination-drugs.html>.

²⁰ Letter from Henry J. Kerner, U.S. Special Counsel, to the President (July 30, 2021), available at <https://osc.gov/Documents/Public%20Files/FY21/DI-16-1098%2c%2018-1075/Redacted%20OSC%20Letter%20to%20President%20DI-16-1098%2c%20DI-18-1075.pdf> at 2.

²¹ *Id* at 2-3.

²² *Id* at 1.

the DEA prepared in response to whistleblower allegations.²³ For instance, Kerner took issue with what he characterized as “DEA’s apparent position that, because of its limited role [in promoting seaport security], it is not accountable for the effectiveness of its work in Haiti”, a stance that he characterized as “not reasonable.”²⁴ He also stated that in its reports concerning the whistleblower allegations, the DEA “does not adequately explain why it did not provide additional training and resources for seaport security and does not clarify whether the DEA ever received...screening equipment it requested.”²⁵ Further, according to Kerner, the DEA did not “adequately explain DEA’s payment for the destruction of drugs in the *Manzanares* investigation, which it claims is still open” and “failed to explain why there was a significant delay in severing ties with a corrupt Haitian official.”²⁶ At the end of his letter, Kerner “urge[s] DEA to more closely review its operations in Haiti and implement measures to improve its effectiveness.”²⁷

Equally as troubling, the DOJ OIG’s audit report raises serious concerns that implicate U.S. national security interests and foreign policy on a more global scale. The report raises questions about the DEA’s internal controls for the Judicial Wire Intercept Programs (JWIP) and points to significant risks.²⁸ It also raises questions about internal controls related to the DEA’s interactions with foreign law enforcement units and indicates that the DEA may be at risk of taking actions “that could have significant consequences for U.S. foreign relations and diplomacy.”²⁹ Additionally, the report raises questions about whether the DEA is currently in full compliance with the Foreign Assistance Act.³⁰

It is important to ensure that the matters of concern identified by the OSC and the DOJ OIG are fully addressed. Accordingly, we ask that you contact our staff to schedule a briefing and respond to the following questions no later than November 30, 2021.

1. Please describe the scope, progress, and anticipated timeline for the completion of the DEA’s review of its foreign operations, as described in the DEA’s August 26, 2021, press release.
2. Does the DEA plan to prepare a written report at the end of its review? If so, please provide a copy to our offices upon completion.
3. We understand that the review is being performed by an outside law firm. Can you please confirm that and provide details regarding the process for awarding the contract and estimated costs, as well as the size, composition, and skills of the team conducting the review?
4. Will the review examine the DEA’s past handling of critical incidents, including but not limited to events referenced in the DOJ OIG’s August 26, 2021, report? If so, will the

²³ *Id* at 3.

²⁴ *Id* at 3.

²⁵ *Id* at 3.

²⁶ *Id* at 3-4.

²⁷ *Id* at 4.

²⁸ Department of Justice Office of the Inspector General, “Audit of the Drug Enforcement Administration’s Headquarters-Based Oversight of its Supported Foreign Law Enforcement Units” (August 2021), available at <https://oig.justice.gov/sites/default/files/reports/21-109.pdf> at 29.

²⁹ *Id* at 21.

³⁰ *Id* at 18, 33-34, 41.

review also include an evaluation of any potential need for disciplinary action in connection with those incidents? If not, why not?

5. During the past ten years, has the DEA received any internal disclosures of alleged wrongdoing or mismanagement at its overseas field offices, including but not limited to disclosures relating to relationships with foreign law enforcement, apart from those specifically addressed in Special Counsel Kerner's July 30, 2021, letter to President Biden and DOJ OIG's August 26, 2021, report? If yes, please provide a detailed list, including the country office(s) involved, the dates the disclosures were made, and the steps the DEA took to address the concerns that were raised.
6. Is the DEA aware of any allegations of waste, fraud, abuse, mismanagement, and/or corruption associated with the DEA's field office in Haiti, aside from those specifically mentioned in Special Counsel Kerner's July 30, 2021, letter to President Biden, the DOJ OIG's August 26, 2021, report, and in the DEA's response to question 5 (above)? If yes, please describe the allegations, the steps the DEA has taken to investigate them, and any disciplinary actions taken as a result.
7. According to OSC, the DEA has stated that the M.V. *Manzanares* investigation is still ongoing. Please provide an update on the current status of the investigation.
8. Has the DEA received the screening equipment referenced in Special Counsel Kerner's July 30, 2021, letter to President Biden?
9. Other than the two previously referenced individuals, is the DEA aware of anyone else connected to its operations in Haiti who was allegedly involved in the assassination of former Haitian President Jovanel Moïse? If yes, please provide the names of the individuals and describe the nature, extent, and dates of their association with the DEA.
10. Does the DEA plan to "closely review its operations in Haiti and implement measures to improve its effectiveness," as Special Counsel Kerner recommended in his July 30, 2021, letter to President Biden? Please describe all measures the DEA is currently taking to assess its operations in Haiti.
11. Following the release of DOJ OIG's report, has the DEA taken steps to strengthen internal controls associated with JWIPs?
12. Following the release of the DOJ OIG's report, has the DEA taken steps to strengthen internal controls relating to host country consent for DEA operations?
13. Is the DEA currently undertaking a review to determine whether it is in full compliance with the provisions of the Foreign Assistance Act, pursuant to the concerns raised in the DOJ OIG's August 26, 2021, report? Please describe all related efforts.

Thank you for your attention to this important matter. Should you have questions, please contact Daniel Parker of Ranking Member Grassley's staff at 202-224-5225 and Nicole Walton of Chair Durbin's staff at 202-384-4634.

Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Judiciary



Richard J. Durbin
Chair
Committee on the Judiciary