



DEPARTMENT OF JUSTICE | OFFICE OF THE INSPECTOR GENERAL

MANAGEMENT ADVISORY MEMORANDUM

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SEPTEMBER 2024

Notification of Concerns Relating to the DEA's
Untimely Reporting of Potential Human Rights
Violations by Foreign Law Enforcement

AUDIT DIVISION



DEPARTMENT OF JUSTICE | OFFICE OF THE INSPECTOR GENERAL

September 30, 2024

Management Advisory Memorandum

To: Anne Milgram
Administrator
Drug Enforcement Administration

From: Michael E. Horowitz
Inspector General

Subject: Management Advisory Memorandum – Notification of Concerns Relating to the DEA's
Untimely Reporting of Potential Human Rights Violations by Foreign Law Enforcement

The purpose of this memorandum is to advise you of concerns that the Department of Justice (DOJ) Office of the Inspector General (OIG) has identified during our ongoing audit of the Drug Enforcement Administration's (DEA) use of polygraph examinations. Our audit is assessing the DEA's policies and procedures for conducting polygraph examinations and whether the DEA's adjudication of polygraph results is timely, thorough, and objective. The review includes the DEA's use of polygraph examinations as part of the vetting process for foreign law enforcement officials who operate on DEA Sensitive Investigative Units (SIU) and Vetted Units (VU). The Leahy Law refers to statutory provisions that prohibit the U.S. government from providing assistance to a unit of a foreign security force where there is credible information that such unit has committed a gross violation of human rights (GVHR).¹ The U.S. Department of State (State Department), and other federal agencies operating in the foreign arena under the auspices of the State Department, are prohibited by the Leahy Law from providing training, equipment, or other forms of assistance to a foreign security force unit or personnel if there is credible information that the unit or personnel has committed a GVHR.² The intent of the Leahy Law is to prevent U.S. government funding from being provided to foreign security force units or individuals who are credibly implicated in GVHRs. Therefore, the reporting of a potential GVHR to the State Department needs to occur as soon as possible. While conducting our audit, we identified a significant concern arising from the Leahy Law that we believe warrants the DEA's immediate attention. Specifically, we identified five instances where the DEA did not notify, within a reasonable period of time, the proper authorities at the State Department and respective

¹ Section 620M of the Foreign Assistance Act of 1961 (22 U.S.C. § 2378d).

Under the Foreign Assistance Act, 22 U.S.C. § 2304 (d) and 22 U.S.C. § 2151n(a), the U.S. government considers torture, extrajudicial killing, enforced disappearance, and rape under color of law as examples of GVHR.

² The State Department reviews the evidence of a potential GVHR and determines if an incident meets the criteria of a GVHR.

U.S. Embassies of evidence of potential GVHR admitted to by foreign law enforcement officials during DEA-conducted polygraph examinations.³

Federal Leahy Law

Under the Leahy Law, incidents of GVHR must be examined on a fact-specific basis. When a foreign unit or individual is found to have committed a GVHR, that unit or individual is no longer eligible to receive assistance from the U.S. government and will be entered into a system that tracks this information.⁴ The State Department is required to routinely request and obtain information regarding any GVHR from U.S. government sources, such as the DEA. Such information must be evaluated, preserved, and to the maximum extent practicable, made publicly available by the State Department.

Foreign Vetted Units

Through DEA-supported foreign law enforcement units, the DEA may participate in bilateral operations, coordinate judicial wire intercept programs, and gather intelligence on illicit drug smuggling into the United States.⁵ Prior to joining a DEA-vetted unit, including any operational involvement with that unit, all foreign candidates, which may include foreign law enforcement, military, or government personnel, must successfully complete a background check, drug screening, Leahy Vetting, and a polygraph examination. Once in the unit, all SIU and VU members must undergo annual Leahy Vetting and must successfully complete an annual drug screening and polygraph exam every 3 years. SIU or VU members may also be asked to submit to periodic drug screening or polygraph examinations.

The DEA enters into Memoranda of Understanding (MOU) with the State Department's Bureau of International Narcotics and Law Enforcement Affairs (INL) to establish the terms and conditions regarding the use of the DEA's appropriated funds, reimbursed to the State Department under the U.S. Economy Act, for costs incurred by the U.S. government to support DEA SIU and VU programs. Funds provided by the DEA enable vetted units to collect evidence related to the activities of drug trafficking operations through legal means aimed at investigating and dismantling major drug trafficking organizations affecting the countries and regions in which these units operate, as well as the United States. The State Department's INL utilizes DEA funds reimbursed under the MOU to pay for SIU and VU members' salary supplements.

³ Throughout this memorandum, we use the term "untimely" to reflect what we deemed to be a longer than reasonable period of time for the DEA to report to the State Department a potential GVHR.

⁴ Federal agencies, such as the DEA, will request the State Department to perform a human rights check, known as "Leahy Vetting," to ensure a foreign candidate, and the foreign security force unit they work for, is not listed in the State Department's tracking system as committing a GVHR prior to entry in a DEA-vetted unit.

⁵ This section is not intended to represent a comprehensive summary of the DEA's foreign vetted unit programs and activities. The OIG previously issued a report on the management of DEA-supported foreign law enforcement units [Audit of the Drug Enforcement Administration's Headquarters-Based Oversight of its Supported Foreign Law Enforcement Units](#), Audit Report 21-109 (August 2021), oig.justice.gov/reports/audit-drug-enforcement-administrations-headquarters-based-oversight-its-supported-foreign.

Untimely Reporting of Potential Gross Violations of Human Rights Admitted during Polygraph Examinations

In five instances, the OIG found that the DEA did not report in a timely manner evidence of potential GVHR violations obtained during polygraph exams conducted to vet foreign candidates for a DEA SIU or VU.⁶ Specifically, we found:

- In January 2023, a foreign law enforcement officer from a Central American country was polygraphed as part of the vetting process to join a DEA VU. During the examination, the individual admitted to being a witness or participating in approximately 40 potential GVHR between 2015 and 2018 while serving on a foreign police unit. The foreign law enforcement officer's admissions included hitting, kicking, and beating detained suspects with a rifle and witnessing other foreign law enforcement officers torturing suspects by placing plastic bags over their heads to suffocate them and shocking them with tasers until the suspects passed out or vomited. Based on the admissions made, the foreign law enforcement officer was not allowed to participate on the DEA's VU. The DEA's Polygraph Unit formally notified the Country Office in January 2023 of the admitted potential GVHR incidents. However, we determined that official notification of the evidence of potential GVHR violations by a foreign law enforcement official was not reported by the DEA's Country Office to the State Department until October 2023, 266 days later. A DEA official stated that in addition to making the proper notifications in October 2023 to officials at the State Department and the U.S. Embassy, the DEA checked to ensure that no other members on its VU were from the same foreign police unit. According to a State Department official, in April 2023, 6 months prior to the DEA reporting the incident, this individual was Leahy vetted and approved to receive training from another U.S. agency.
- In March 2023, three foreign law enforcement officers from a Central American country were polygraphed as part of the vetting process to join a DEA VU. During the examinations, the individuals made admissions to water boarding and suffocating arrestees by placing plastic bags over their heads to obtain information, kicking suspects in custody, and beating suspects with batons while they were held at the police station. Based on their admissions, the foreign law enforcement officers were not allowed to participate on the DEA's VU. The DEA's Polygraph Unit formally notified the Country Office in April 2023 of the admissions made by these three individuals. However, we determined that official notification of the evidence of potential GVHR violations by the foreign law enforcement officials was not reported by the DEA's Country Office to the State Department until October 2023, more than 212 days later. A DEA official stated that in addition to making the proper notifications to officials at the State Department and the U.S. Embassy, the DEA checked to ensure that no other members on its VU were from any of the same units as the three foreign law enforcement officials.
- On August 16, 2023, a foreign law enforcement official who was a member of a South American DEA SIU was polygraphed as part of the DEA's re-certification vetting process to remain on the SIU. During the examination, the foreign law enforcement officer admitted to beating a detained suspect handcuffed to a chair to obtain information while executing a search warrant with the SIU. The day after the polygraph examination, the DEA notified the SIU Commander about the admissions and the individual was removed from the DEA's SIU. However, we determined that the DEA did not make notification of the incident to officials at the State Department and U.S. Embassy until October 6, 2023, 51 days later.

⁶ The scope of our review for this Management Advisory Memorandum focused on the DEA's actions relating to the untimely reporting of potential GVHR to the State Department, we did not review and do not make any assertions about State Department policies or processes.

In each of these cases, internal DEA email communications make it clear that notifications were being made as a result of the OIG's audit. In view of the State Department's leading role in evaluating and reporting Leahy violations, we asked DEA officials for the reasons notifications to officials at the State Department and respective U.S. embassies were not timelier. A DEA headquarters official stated that at the time the polygraph examinations were conducted, the DEA did not have a policy or formalized procedures for reporting to the State Department admissions of potential GVHR obtained during DEA-conducted polygraph exams of foreign candidates. As the foregoing five cases demonstrate, without such policies and procedures, the U.S. government could be actively supporting foreign individuals and units after having learned that they engaged in potential violations of human rights.

A DEA official explained that the DEA takes the reporting of potential human rights violations seriously and is in the process of establishing both policies and procedures to ensure evidence of potential GVHR are being reported to the appropriate State Department and U.S. embassy officials in a timely manner. Furthermore, a DEA official noted that it is in the process of establishing policy to ensure the timely removal of SIU and VU members who make admissions of GVHR. Lastly, a DEA official acknowledged that DEA personnel serving in the foreign arena should receive training on Leahy Law requirements, particularly on how to report evidence of potential GVHR to the appropriate State Department and U.S. Embassy officials.

Recommendations

We believe these concerns require the immediate attention of DEA management to ensure that DEA is in strict compliance with the Leahy Law and the human rights interests the law protects. Therefore, we recommend that the DEA:

1. Implement policies and procedures to ensure that DEA Country Offices are making appropriate and timely notifications to the State Department and the relevant U.S. Embassy when DEA receives evidence of potential GVHR by a foreign official operating in a DEA SIU or VU or applying to such a unit.
2. Ensure all appropriate DEA personnel serving in the foreign arena receive training on the Leahy Law to help ensure the timely reporting of potential GVHR evidence to the State Department and appropriate U.S. Embassy.
3. Implement policy to require the immediate removal of any SIU or VU member when there is credible information of the individual being involved in a potential GVHR.

Please advise the OIG within 90 days of the date of this memorandum on what actions the DEA has taken or intends to take with regard to these issues. If you have any questions regarding the information in this memorandum, please contact me at (202) 514-3435, or Jason R. Malmstrom, Assistant Inspector General for Audit, at (202) 616-4633.

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Appendix 1: The Drug Enforcement Administration's Response to the Draft Management Advisory Memorandum



U.S. Department of Justice
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MEMORANDUM

TO: Jason R. Malmstorm
Assistant Inspector General for Audit
Department of Justice
Office of the Inspector General

FROM: Edward J. Kovacs **EDWARD**
Acting Chief of Compliance **KOVACS**
Office of Compliance

Digitally signed by
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Date: 2024.09.13
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SUBJECT: DEA Response to OIG's Management Advisory Memorandum - Notification of Concerns Relating to the DEA's Untimely Reporting of Potential Human Rights Violations by Foreign Law Enforcement

The Drug Enforcement Administration (DEA) has received the Department of Justice (DOJ), Office of the Inspector General (OIG), Audit Division Management Advisory Memorandum (MAM) titled, "Notification of Concerns Relating to the DEA's Untimely Reporting of Potential Human Rights Violations by Foreign Law Enforcement." DEA acknowledges and is appreciative of the role OIG played in identifying areas of concern in the reporting of potential gross violations of human rights (GVHR).

The concerns identified under this MAM focused on the DEA's Sensitive Investigative Unit/Vetted Unit's (SIU/VU) vetting process which is responsible for reporting potential human rights violations where there is credible information from a SIU/VU candidate or member. DEA is not responsible for "vetting" members under the Leahy Law statutory provisions.

In the MAM, OIG has identified 5 instances where the DEA did not "timely" notify the proper authorities at the Department of State (DoS) of evidence of GVHR. It should be noted that the DoS does not have guidance or policy that defines the timeframe in which the reporting of GVHR must be done. OIG also could not provide support documentation that defined the word "timely" as no criteria or guidance had been established. Lastly, the DEA was already aware of the violations of this MAM through its own process of internal controls review and had reported the results noted in this report to OIG.

OIG made 3 Recommendations to DEA in this report. DEA provides the below response:

Recommendation 1. Implement policies and procedures to ensure that DEA Country Offices are making appropriate and timely notifications to the State Department and the relevant U.S. Embassy when DEA receives evidence of GVHR by a foreign law enforcement officer operating in a DEA-mentored unit or applying to such a unit.

DEA Response

DEA Concur with this recommendation. DEA Policy regarding Foreign Operations DEA Sensitive Investigative Unit and Vetted Unit Program has been updated to incorporate policies and procedures to ensure that DEA Country Offices timely notify the State Department when DEA receives evidence of GVHR by a foreign law enforcement officer or candidate operating in a DEA mentored unit. The updates were provided to DEA personnel in an agency-wide broadcast message. This information was also provided to OIG under separate cover for closure of this recommendation.

Recommendation 2. Ensure the appropriate DEA personnel serving in the foreign arena receive training on the Leahy Law to help ensure the timely reporting of GVHR evidence to the State Department and appropriate U.S. Embassy.

DEA Response

DEA Concur with this recommendation. DEA has incorporated a training provision within DEA policy that will require all relevant personnel to receive training on the Leahy Law to ensure timely reporting of GVHR. Training slides have been updated to reflect the policy and have been provided to OIG under separate cover for closure of this recommendation.

Recommendation 3. Implement policy to require the immediate removal of any SIU or VU foreign law enforcement member when there is credible information of the individual being involved in a GVHR.

DEA Response

DEA Concur with this recommendation. DEA Policy regarding Foreign Operations DEA Sensitive Investigative Unit and Vetted Unit Program has been updated to require the immediate removal of any SIU or VU foreign law enforcement member when there is credible information of the individual being involved in a GVHR. The reflected updates were provided to DEA personnel in an agency-wide broadcast message. This information was also provided to OIG under separate cover for closure of this recommendation.

If you have any questions or concerns regarding DEA's response, please contact Janice Swygert, Program Manager, External Audit Liaison Section, at (571) 776-3119.

Appendix 2: Office of the Inspector General Analysis and Summary of Actions Necessary to Close the Memorandum

The OIG provided a draft of this memorandum to the Drug Enforcement Administration (DEA). The DEA's response is incorporated in Appendix 1 of this final Management Advisory Memorandum. The DEA concurred with each of the recommendations and as a result, the recommendations are resolved. The following discussion provides the OIG analysis of the response and summary of actions necessary to close the recommendations.

Recommendations for DEA:

- 1. Implement policies and procedures to ensure that DEA Country Offices are making appropriate and timely notifications to the U.S. Department of State (State Department) and the relevant U.S. Embassy when DEA receives evidence of potential gross violations of human rights (GVHR) by a foreign official operating in a DEA Sensitive Investigative Unit (SIU) or Vetted Unit (VU) or applying to such a unit.**

Closed. In its response, the DEA concurred with our recommendation. The DEA stated that it has updated its Foreign Operations DEA SIU and VU Program policy to incorporate policies and procedures to ensure DEA Country Offices make timely notification to the U.S. Department of State (State Department) when DEA receives evidence of GVHR by a foreign law enforcement officer or candidate operating in a DEA mentored unit.

The DEA provided us with its revised policy, and we confirmed that it now requires a timeframe by which the DEA's Country Coordinator is required to report a GVHR to the DEA's International Impact Section and the State Department within 10 business days. Additionally, the Country Coordinator is required to communicate to DEA's International Impact Section, in writing, any findings or recommendations made by the State Department. The policy directs the DEA's Country Coordinator and/or DEA's vetted unit Commander to deny the foreign candidate's application when there is credible information of a GVHR. Moreover, the policy states that any relevant information pertaining to a candidate's GVHR is required to be entered into DEA's SIUNet. On August 15, 2024, these updates were provided to DEA personnel in an agency-wide broadcast message. Based on the evidence provided, we consider this recommendation closed.

- 2. Ensure all appropriate DEA personnel serving in the foreign arena receive training on the Leahy Law to help ensure the timely reporting of potential GVHR evidence to the State Department and appropriate U.S. Embassy.**

Resolved. In its response, the DEA concurred with our recommendation. The DEA stated that it has incorporated a training provision within DEA policy that will require all relevant personnel to receive training on the Leahy Law to ensure timely reporting of GVHR.

Based on our review of the documentation provided, we determined that the DEA's training slides included the definition of a GVHR, the requirement for foreign personnel working with the DEA to be Leahy vetted, and the procedures for reporting a GVHR. The DEA has not yet provided its policy that requires DEA personnel to receive Leahy training and has not provided evidence that relevant personnel have received its updated Leahy training. This recommendation can be closed when we receive evidence that DEA personnel serving in the foreign arena received training on the Leahy Law to help ensure the timely reporting of potential GVHR evidence to the State Department and appropriate U.S. Embassy.

3. Implement policy to require the immediate removal of any SIU or VU member when there is credible information of the individual being involved in a potential GVHR.

Closed. The DEA concurred with our recommendation. The DEA stated that it has updated its Foreign Operations DEA SIU and VU Program policy to require the removal of any SIU or VU member when there is credible information of the individual being involved in a GVHR.

The DEA provided the OIG with its revised policy, which now requires that, if the State Department's Leahy Section determines that there is credible information of a GVHR made by an SIU or VU member, the Country Coordinator and/or vetted unit Commander must remove the SIU or VU member from the unit. The revised policy further states that the Country Coordinator will discuss the findings with the appropriate officials at the State Department and respective U.S. Embassy to determine whether other SIU or VU members should be re-vetted, and whether the vetted unit should continue to operate. Moreover, any relevant information pertaining to a member's GVHR is required to be entered into DEA's SIUNet. On August 15, 2024, these updates were provided to DEA personnel in an agency-wide broadcast message. Based on the evidence provided, we consider this recommendation closed.