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United States General Accounting Office
Washington, DC 20548

February 13, 2002

The Honorable Jeff Sessions
United States Senate

Subject: The Drug Enforcement Administration's Reporting of Arrests

Dear Senator Sessions:

The mission of the Drug Enforcement Administration (DEA) is to enforce U.S. laws and regulations regarding controlled substances and to help bring to justice those involved in growing, manufacturing, or distributing controlled substances destined for illicit traffic in the United States. To accomplish its mission, DEA has 21 domestic divisional offices as well as 57 foreign country offices. Furthermore, DEA often works with other federal, state, local, and foreign law enforcement agencies to accomplish its mission.

Over the past year, allegations have been made that, in an attempt to obtain more resources, DEA's Caribbean Division had taken credit for arrests that had no connection to drug violations or in which DEA played no role. DEA's Office of Inspections confirmed the allegations of over-reporting of arrests in late 1999 during its on-site inspections at DEA offices within the Caribbean Division. You asked us to assess whether this problem was more than an isolated incident. This letter covers our review of DEA's (1) policies for counting drug-related arrests; (2) process for counting drug-related arrests when there is joint participation involving other federal, state, local, or foreign law enforcement agencies; (3) use of drug-related arrest data in developing its budget; (4) internal control procedures for ensuring the validity of its reported drug-related arrest data; and (5) reports for on-site compliance inspections performed during fiscal years 2000 and 2001, as well as the inspection report of the Caribbean Division from late 1999.

Results in Brief

According to DEA's policies and procedures, to claim credit for drug-related arrests, DEA agents must have direct involvement in domestic arrests and provide "substantial assistance" to host-country law enforcement officials in foreign arrests. DEA's *Agents Manual* defines

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Abstract The mission of the Drug Enforcement Administration (DEA) is to enforce U.S. laws and regulations regarding controlled substances and to help bring to justice those involved in growing, manufacturing, or distributing controlled substances destined for illicit traffic in the United States. To accomplish its mission, DEA has 21 domestic divisional offices as well as 57 foreign country offices. Furthermore, DEA often works with other federal, state, local, and foreign law enforcement agencies to accomplish its mission.		
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substantial assistance as active participation or furnishing of information or funds that lead to an arrest.

DEA's process for counting and recording arrests requires agents to complete a "Personal History Report" documenting personal information on each person arrested and to complete a "Report of Investigation" documenting the investigative activities leading to the arrest. The Personal History Report is used by DEA as a means of tracking the number of arrests. The arrest counting and recording process also requires a supervisory agent to review and sign each Personal History Form documenting an arrest, as well as each accompanying Report of Investigation form that an agent submits. DEA officials said that by signing these forms, the supervisory agent attests that DEA participated in the arrest or, in the case of a foreign arrest, provided substantial assistance.

DEA officials told us that arrest data do not serve as a basis for requesting additional resources in the budget development process. In our review of sections of the Department of Justice's budget justifications pertaining to DEA for fiscal years 1996 through 2002, and of the Caribbean Division's budget and staffing requests to DEA headquarters for fiscal years 1996 through 2001, we found no mention of arrest data used as support for requests. However, arrest data have been included in DEA's budget justifications as part of its performance reporting. In addition, according to DEA officials, arrest data, although not used to justify DEA's budget requests, are used to some degree by DEA to make management decisions.

DEA's internal control procedures call for inspection programs that include (1) DEA headquarters Office of Inspections' on-site inspections—which are performed about every 2 years for its domestic offices and about every 3 years for its foreign country offices—and (2) DEA's divisional offices' self-inspections—referred to as the "Division Inspection Program"—which are to be conducted annually. To ensure the validity of its arrest data, in August 2001, the then acting administrator issued a memorandum that instituted changes to DEA's inspection programs, from a review of a random sample of arrests to a more comprehensive review of all arrests. As stated in the memorandum, the inspections are to include a "careful examination of the investigative file to ensure arrests are being appropriately claimed by DEA." The acting administrator also stated that establishing the validity of claimed arrests is essential to maintaining DEA's credibility.

Our review of DEA inspection reports indicated that significant over-reporting of arrests may have been a one-time occurrence. A 1999

inspection of the Caribbean Division by the Office of Inspections found that 331 out of 2,058 arrests (or 16.1 percent) should not have been claimed by DEA. However, subsequent on-site inspections covering 40 DEA foreign country offices and domestic divisions found relatively few arrest-reporting problems.

Arrest-Reporting Policies

According to DEA's *Agents Manual*, agents are to claim (i.e., count) domestic drug-related arrests only when DEA is directly involved in the arrest. With respect to the reporting of foreign drug-related arrests, in contrast, DEA's policies require agents to count such arrests when DEA provides "substantial assistance" to host-country law enforcement officials. The manual defines substantial assistance as active participation or furnishing of information or funds that lead to an arrest. Since non-drug-related arrests are not to be counted, the manual states that joint arrests for non-drug-related offenses are to be reported in a memorandum rather than with the form that DEA uses to count arrests. Until recently, an anomaly to the counting of foreign arrests has been that, although arrests in the Bahamas and the other foreign countries in the Caribbean are subject to DEA's foreign arrest standards, the arrests had been counted as domestic arrests because offices in these foreign countries report to domestic divisional offices in Miami, Florida, and in San Juan, Puerto Rico, respectively. DEA officials told us that this policy has been revised. According to the officials, beginning October 1, 2001, arrests in foreign countries in the Caribbean were to be counted as foreign rather than domestic arrests. The officials added, though, that DEA offices in these foreign Caribbean countries will continue to report to their respective domestic divisions because of their close proximity to the domestic divisions and because they receive training, staffing, and administrative support from these divisions.

Process for Counting Arrests

DEA's process for counting and recording its involvement in an arrest includes documentation in its arrest files. For both domestic and foreign arrests, DEA agents are to complete DEA Form 202, the Personal History Report, to document personal information on each person arrested¹ and DEA Form 6, the Report of Investigation, to document the investigative activities leading to the arrest. Domestic arrests may be additionally

¹ DEA Form 202, although used by DEA as a means of tracking the number of arrests, is not used solely for counting arrests.

substantiated by the inclusion of each arrestee's fingerprint card and photograph in the arrest file. DEA's process for counting and recording arrests also includes having a supervisory agent review and sign each Personal History Report documenting an arrest along with the accompanying Report of Investigation form(s) submitted by an agent. DEA officials said that by signing these forms, the supervisory agent attests that DEA participated in the arrest or, in the case of a foreign arrest, provided substantial assistance.

A significant portion of DEA's domestic arrests involves joint participation with other federal, state, or local law enforcement agencies. DEA has signed memorandums of understanding with other federal law enforcement agencies to promote cooperation, communication, and coordination and to prevent duplicative law-enforcement efforts related to drug enforcement. A DEA official said that for joint investigations with state or local law enforcement agencies, DEA's involvement could vary depending on the situation. The official also said that DEA's decision whether to count an arrest is contingent on several factors—such as whether DEA will take possession of drug evidence and whether the person arrested is to be prosecuted in a federal court.

According to DEA officials, fingerprint cards and photographs of those arrested are not likely to be included in the arrest files for foreign arrests, since DEA is generally precluded from directly effecting an arrest in a foreign country.² Thus, as indicated earlier, the standard for counting foreign arrests is substantial assistance rather than direct involvement in effecting an arrest. DEA officials also said that the host country's law enforcement agency dictates the level of DEA involvement in drug investigations and arrests in a foreign country. For example, according to the DEA officials, DEA agents can be invited by the host country's local police force to observe, rather than participate in, an arrest. DEA officials also said that arrest documentation, such as fingerprints, would generally be maintained by the host country's law enforcement agency. According to

²According to 22 U.S.C. Sec. 2291(c)(1), referred to as the Mansfield Amendment, "No officer or employee of the United States may directly effect an arrest in any foreign country as part of any foreign police action with respect to narcotics control efforts, notwithstanding any other provision of law." Such officers or employees may, however, with the approval of the U.S. chief of mission, be present when foreign officers are effecting an arrest or assist foreign officers who are effecting an arrest (22 U.S.C. Sec. 2291(c)(2)). In addition, such officers or employees of the United States may take direct actions to protect life or safety in certain exigent circumstances (22 U.S.C. Sec. 2291(c)(3)).

DEA officials, DEA's foreign arrest files are likely to contain only relevant copies of the Personal History Report and Report of Investigation forms.

Use of Arrest Data in the Budget Process

According to DEA officials, arrest data do not play a role in the budget development process as a basis for requesting additional resources. Rather, according to the Chief of DEA's Executive Policy and Strategic Planning staff, DEA relies more on intelligence information, drug seizures, and trends in drug flow than it does on arrest data to determine budget and staff needs. Furthermore, DEA officials said budget initiatives have tended to address emerging or resurgent drug trafficking threats. However, because its performance measures relate to arrest activity, DEA includes arrest data in its budget justifications as part of its performance reporting.

In our review of sections of the Department of Justice's budget justifications pertaining to DEA for fiscal years 1996 through 2002 and of the Caribbean Division's budget and staffing requests to DEA headquarters for fiscal years 1996 through 2001, we found no mention of arrest data used as support for the request. Our review of DEA's budget justifications showed that prior years' arrest data have been used as output information within performance indicator tables but not as performance goals or outcome measures. As an explanation for including arrest data in its budget justifications, DEA officials said that data on arrests have been, and are currently, included in its budget justifications because of the requirements by the Department of Justice and the Office of Management and Budget for presenting output information in DEA's performance reports.

According to DEA officials, arrest data, although not used to justify DEA's budget requests, are used to some degree by DEA in making management decisions. The officials said that statistics on arrests provide information to DEA management to consider in conjunction with other information about disruption and dismantling of priority target organizations—one of DEA's performance goals. The DEA officials further said that the number of arrests of drug law violators constitutes just one of many statistical measures, including amount of drugs seized, disposition of cases, number of case-specific work hours, number of asset seizures, and other case information. In addition, the officials said that some of these measures, including number of arrests, are also provided to other interested individuals or agencies, such as the Bureau of Justice Statistics, the U.S. Sentencing Commission, and Congress, upon request.

Internal Control Procedures

DEA's inspection programs include DEA headquarters Office of Inspections' on-site inspections—which are performed about every 2 years for its domestic offices and about every 3 years for its office in foreign countries—and the self-inspections—the Division Inspection Program—which are to be conducted annually by DEA's divisional offices. The purpose of these inspections is to provide DEA management with an independent and thorough assessment of operations, including a validation of claimed arrests. In response to concerns raised regarding over-reporting of arrests, and to ensure the validity of arrest data, DEA revised its inspection program to require a more comprehensive review of all arrests.

As a result of a memorandum issued on August 2, 2001, by the then acting administrator, the Division Inspection Program must now include a “thorough and comprehensive” review of DEA arrests that were claimed in investigations opened in fiscal years 1999, 2000, and 2001. The memorandum also stated that the Office of Inspections is to routinely conduct a review of all claimed arrests as part of its on-site inspections. The memorandum stated that the reviews are to include a “careful examination of the investigative file to ensure arrests are being appropriately claimed by DEA.” The acting administrator also stated that establishing the validity of claimed arrests is essential to maintaining DEA's credibility.

Prior to the changes brought about by the August 2, 2001, memorandum, DEA inspectors reviewed a random sample of about 10 arrest files from each group within an office when performing on-site inspections. For example, an on-site inspection of the Dallas Division would include not only a review of 10 arrest files from each group within the Dallas Division but also a review of 10 arrest files for each group within each of the offices that report to the Dallas Division—such as the Fort Worth, Texas, Resident Office and the Oklahoma City, Oklahoma, District Office. According to DEA officials, files were to be selected from the date of the review going back 2 years. If problems were found, the sample size could be expanded at the discretion of the inspectors.

Inspection Reports

A 1999 inspection of the Caribbean Division by the Office of Inspections found a significant number of arrests that should not have been claimed by DEA. During fiscal years 2000 and 2001, however, on-site inspections covering 40 DEA foreign country offices and domestic divisions found relatively few arrest-reporting problems.

As part of its scheduled inspection program, DEA's Office of Inspections conducted an on-site inspection of the Caribbean Division from November 29 to December 10, 1999, to review, among other items, compliance with DEA policies and procedures for reporting arrests. As part of the on-site inspection, the inspection teams determined that of the 2,058 arrests that the Caribbean Division reported in fiscal year 1999, 331 (or 16.1 percent) should not have been claimed by DEA. Specifically, the inspection teams determined that 213 of the arrests involved immigration violations with no connection to drug offenses and that DEA was not involved in 118 additional arrests. The number of arrests claimed by the Caribbean Division for fiscal year 1999 has since been reduced as a result of the findings from the on-site inspection. Furthermore, in February 2001, DEA initiated an internal management review of the factors that led to the over-reporting of arrests in fiscal year 1999 within the Caribbean Division. The review has been completed, but it will not be available for public release until DEA management determines whether disciplinary actions are warranted. The Caribbean Division is scheduled for another on-site inspection by the Office of Inspections in May 2002.

To determine whether there were incidences of over-reporting of arrests apart from those found during the 1999 Caribbean Division on-site inspection, we reviewed 40 inspection reports that, at the time of our review, represented all inspection reports issued since the 1999 inspection. Specifically, we reviewed reports from fiscal years 2000 and 2001 for on-site inspections of 29 foreign country offices and 9 domestic divisions that were conducted using DEA's former inspection procedures and for on-site inspections of 2 domestic divisions that were conducted using DEA's revised inspection procedures. Our review of the reports of the 38 inspections using the former inspection procedures showed that, generally, the inspections teams identified no major issues regarding arrest reporting, although 2 of the 38 inspection reports noted that in some arrest files, documentation to support claimed DEA arrests was insufficient. Similarly, the two recent inspections using DEA's revised inspection procedures found relatively few arrest-reporting problems. For example, during the July 2001 on-site inspection of the Seattle Division, the DEA inspection teams reviewed the files for the 2,665 arrests that the Seattle Division reported from October 1998 through June 2001 and found 25 (or 0.9 percent) that did not contain documentation indicating that DEA was involved in the arrest. Furthermore, according to DEA's deputy chief inspector, the on-site inspection of the New York Division in October 2001 identified only 1 arrest, out of the approximately 4,000 arrests that the inspection teams reviewed, for which DEA erroneously claimed credit.

Scope and Methodology

To identify the policies and process that DEA uses for counting arrests—particularly those involving joint participation with other federal, state, local, or foreign law enforcement agencies—we reviewed sections of DEA’s *Agents Manual* to identify criteria for counting and reporting arrests. According to DEA officials, none of its offices have issued any policy orders regarding the counting and reporting of arrests to supplement the *Agents Manual*. Consequently, the manual represents DEA’s official policy for counting and documenting arrests. In addition to reviewing the manual, we interviewed staff within the Office of International Operations, the Office of Inspections, and the Office of Administration at DEA headquarters. To obtain the perspective of field staff regarding policies and procedures for collecting and reporting arrest data, we spoke with key DEA staff at the Dallas, Texas, Division and the Fort Worth, Texas, Resident Office.

To learn how DEA uses arrest data in developing and requesting its budget, we reviewed sections of the Department of Justice’s budget justifications pertaining to DEA for fiscal years 1996 through 2002. We also reviewed the Field Management Plans covering fiscal years 1996 through 2001 that were submitted by the Caribbean Division to DEA headquarters operations staff. In addition, we interviewed staff from DEA’s Office of Resource Management.

To determine how DEA ensures the validity of its reported arrest data as part of its compliance inspections, we obtained and reviewed DEA guidance on procedures for conducting arrest file reviews, including DEA’s August 2, 2001, memorandum that revised inspection policies and procedures.

To assess (1) the scope of DEA’s on-site inspections, (2) the extent to which arrest data were found to be problematic, and (3) whether there were incidences of over-reporting of arrests apart from those found during the 1999 Caribbean Division on-site inspection, we reviewed the reports of inspections of 29 foreign country offices and 9 domestic divisions that were conducted since the 1999 Caribbean Division on-site inspection using DEA’s former inspection procedures, as well as reports of more recent inspections of 2 domestic divisions that were conducted using the revised inspection procedures.

We conducted our work at DEA’s headquarters in Washington, D.C., and at DEA’s Dallas, Texas, Division and Fort Worth, Texas, Resident Office between August 2001 and December 2001 in accordance with generally accepted government auditing standards.

Agency Comments

We requested comments on a draft of this report from DEA. DEA officials provided technical comments, which have been incorporated into the report where appropriate. Aside from the technical comments, DEA concurred with the facts and findings of this report.

We are providing copies of this letter to the attorney general and the administrator of DEA. We will also make copies available to others upon request. If you have any questions about this report, please contact Linda Watson or me at (202) 512-8777. Other key contributors to this report were Christopher Conrad and Mary K. Muse.

Sincerely yours,

A handwritten signature in black ink that reads "Laurie Ekstrand". The signature is written in a cursive style with a long, sweeping tail on the letter "A".

Laurie E. Ekstrand
Director, Justice Issues

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