

The Scandal-Ridden DEA: Everything You Need to Know



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Introduction

There is a growing bipartisan consensus that the United States is in need of major criminal justice reform.¹ In the words of U.S. Attorney General Eric Holder, "too many Americans go to too many prisons for far too long, and for no truly good law enforcement reason."²

The U.S. has less than 5 percent of the world's population, but nearly 25 percent of the world's prison population.³ Half of all people in federal prison, and nearly 20 percent of those in local or state prison, are incarcerated for nothing more than a drug law violation.⁴ Tens of millions of more people have a drug conviction that makes finding employment and housing more difficult, reduces access to school loans and other public benefits, and in some states bars them from voting.⁵

The federal Drug Enforcement Administration (DEA) has existed for more than 40 years, but little attention has been given to the role the agency has played in fueling mass incarceration, racial disparities and other drug war problems. Congress has rarely scrutinized the agency, its actions or its budget, instead deferring to DEA Administrators on how best to deal with drug-related issues.

Treating drug use as a criminal justice issue instead of a health issue, while failing to exercise oversight over one of the most powerful enforcement agencies in the world, has led to disaster:

- Questionable enforcement practices; numerous scandals and human rights abuses; and failure to follow statutory requirements that decisions be based on scientific evidence.
- The Department of Justice's Office of Inspector General currently has at least six open investigations on DEA practices.⁶
- The DEA is implicated in several major efforts to spy on millions of innocent U.S. citizens.⁷

Congress should consider significant reforms, including changing the agency's performance measurements and merging its functions with other agencies.

Three presidential administrations (Carter, Reagan, and Clinton) have conducted reviews of whether it would be more efficient and better for public safety to merge the DEA with the FBI,⁸ but Congress has never seriously explored the issue.

The Facts

Agency Expansion and Taxpayer Burden

- The DEA began in 1973 with nearly 1,500 Special Agents taken from existing federal drug war bureaucracies. The agency now employs roughly 5,000 Special Agents.⁹
- For every DEA Special Agent, there is roughly one other DEA employee. In 2015, the agency counted more than 9,200 employees, including Special Agents, diversion investigators, intelligence research specialists, chemists, and support staff.¹⁰
- The DEA has 221 domestic offices in 21 divisions. It also operates 86 foreign offices in 67 countries.¹¹

- The DEA's annual operating budget has increased more than 30-fold in four decades, from \$75 million in 1973 to \$2.03 billion for FY 2015.¹²

Wasted Law Enforcement Resources

- Between 1986 and 2013, the DEA made 817,518 arrests within the United States.¹³ The nature of these arrests are not entirely transparent, but most people incarcerated in federal prisons are convicted of low- or medium-level offenses – the type local and state governments could handle. A 2007 report to Congress found that only 7.6 percent of federal powder cocaine prosecutions and 1.8 percent of federal crack cocaine prosecutions are against high-level traffickers.¹⁴ A 2011 report to Congress produced similar findings: more than two-thirds of people convicted of federal drug law violations were low or mid-level offenders, and only 10 percent were “high-level” suppliers.¹⁵
- The Federal Bureau of Prisons is so packed with drug offenders that it is operating at more than 140 percent of capacity,¹⁶ costing taxpayers approximately \$7 billion a year.¹⁷
- Ever since the first state legalized marijuana for medical use in 1996 the DEA has tried to undermine state efforts to try new approaches by raiding dispensaries, seizing resources, and arresting caregivers. Dozens of people have been incarcerated for nothing more than growing or providing marijuana to patients who need it, many more have been branded with an arrest record but never charged. One estimate by Americans for Safe Access found that the DEA spent four percent of its budget (more than \$100 million) in 2012 alone on medical marijuana enforcement, including costs for pretrial supervision, criminal and civil investigations, raids, arrests, asset forfeiture, prosecution, incarceration, and probation.¹⁸

Racial Disparities and the New Jim Crow

- An evaluation of DEA arrests in 2009 found that half of all suspects arrested by the DEA were age 31 or younger. Hispanic suspects constituted 46% of arrestees, followed by white and black suspects (26 percent each).¹⁹
- In the 1980s, the DEA was responsible for pioneering a problematic profile of possible drug couriers that included race as a characteristic.²⁰ While the profile was initially developed for use in airports, in 1986, the agency launched Operation Pipeline, a drug interdiction program that has trained more than 25,000 police officers in 48 states. The training methods used in Pipeline and similar programs are at the heart of the racial profiling debate, and some of the materials used and produced in conjunction with these programs have encouraged the targeting of minority motorists.²¹
- DEA racial profilers taught local and state enforcement well. Even though blacks and Latinos use and sell drugs at similar rates to whites,²² they are disproportionately targeted for arrest, and punished more harshly at every step of the criminal justice system.²³ A U.S. Department of Justice study found that blacks and Latinos are more likely than whites to be searched in traffic stops.²⁴ People of color are disproportionately stopped, questioned and searched even though the average person of color is no more likely to be in possession of drugs than the average white individual.²⁵
- Once convicted people of color can be legally discriminated against in employment, education and housing; denied access to food stamps, student loans and other forms of public assistance; and even prohibited from voting for life.²⁶

Failure of Supply Side Approach

- Drug control strategies that seek to interrupt the supply at its source have failed over and over again for cocaine, heroin, marijuana and virtually every drug to which they have been applied—including alcohol during alcohol Prohibition.²⁷ Fundamental economic principles demonstrate why: as long as a strong demand for a drug exists, a supply will be made available at some price to meet it.²⁸ Worse than simply being ineffective, supply-side strategies drive immutable market forces to expand cultivation and trafficking, generate unintended consequences, and in many instances, ultimately worsen the problem.
- Despite the incarceration of tens of millions of Americans and more than a trillion dollars of spending, illegal drugs remain cheap²⁹, potent³⁰ and widely available.³¹ The harms associated with them – addiction,³² overdose³³ and the spread of HIV/AIDS³⁴ and hepatitis B and C³⁵ – continue to persist in every community.
- A systematic review of more than 300 international studies found that when police crack down on people who use or sell drugs, the result is almost always an increase in violence.³⁶ Two studies conducted in 1991 and 1999 found that when there has been a major increase in the homicide rate in the U.S., it could be positively associated with intensified enforcement of alcohol Prohibition or drug prohibition.³⁷
- In recent years, the escalation of the war on drugs in Mexico and other Latin American countries has led to the deaths of hundreds of thousands of people in those countries.³⁸ Hundreds, if not thousands, of Americans die on U.S. streets in drug prohibition-related violence every year, although it goes largely untracked.³⁹

Scandals and Human Rights Abuses

Office of Inspector General

- In May 2014 the Department of Justice's Office of the Inspector General launched investigations into numerous DEA scandals, including the massacre of civilians in Honduras, the use of NSA data to both spy on virtually all Americans and to systematically fabricate evidence, controversial uses of confidential informants, and airline passenger searches.⁴⁰

Parallel Construction / NSA Spying Scandals

- On April 8, 2015 USA Today published an article entitled *U.S. secretly tracked phone calls for decades*.⁴¹ The piece reported that the DEA and Justice Department have been keeping secret records of billions of international phone calls made by Americans for decades. The program was the first known U.S. effort to gather bulk data on U.S. citizens, regardless of whether or not they were suspected of committing a crime. It formed the basis of post-9/11 spying programs; thus the DEA built the modern surveillance state. Human Rights Watch has filed a lawsuit against the DEA for violating the constitutional rights of millions of Americans by spying on them without suspicion.⁴²
- On August 5, 2013, Reuters published an article by John Shiffman and Kristina Cooke entitled *U.S. directs agents to cover up program used to investigate Americans*.⁴³ The piece reported that the DEA has been collaborating with the NSA, CIA, and other agencies to spy on American citizens in the name of the War on Drugs. The journalists also revealed that DEA agents are actively creating and encouraging other agencies to create fake investigative trails to disguise where the information originated, known as "parallel construction", a scheme that prosecutors, defense attorneys, judges and others are arguing has robbed defendants of their right to a fair trial. Hundreds or thousands of cases could be affected.
- On September 2, 2013, the *New York Times*

published an article by Scott Shane and Colin Moynihan entitled *Drug Agents Use Vast Phone Trove, Eclipsing N.S.A.'s*. The article states that the DEA has regularly accessed a vast AT&T database to obtain the call records of U.S. citizens and pursue drug convictions. In response to both stories, the Department of Justice merely said that it was "looking into the issues raised by this story."

- On May 19th, 2014 *The Intercept* published an article by Ryan Devereaux, Glenn Greenwald and Laura Poitras on a secret NSA program, codenamed SOMALGET that records all cell phone calls in the Bahamas, including those of American citizens.⁴⁴ The DEA provides the cover by opening investigations into certain individuals and when independent contractors install the taps the NSA uses the access to secretly mine the country's entire phone system, gathering personal data on millions of people including the nearly five million Americans who visit the Bahamas each year. As the reporters note, "if the NSA is using the Drug Enforcement Administration's relationship to the Bahamas as a cover for secretly recording the entire country's mobile phone calls, it could imperil the longstanding tradition of international law enforcement cooperation that the United States enjoys with its allies."

Cartel Collusion/Collaboration

- In 2011, as part of the Department of Justice's "Fast and Furious" scandal, it was revealed that DEA agents had smuggled or laundered millions of dollars in drug profits for Mexican drug cartels as part of an on-going sting operation that appears to have been perilously close to facilitating crime instead of preventing it.⁴⁵
- In January 2014, an investigation by Mexican newspaper *El Universal* revealed that from 2000-2012, the DEA made a pact with the Sinaloa cartel that enabled it to smuggle billions of dollars of drugs, in exchange for information on rival drug cartels.⁴⁶
- According to a Justice Department report, several DEA agents (some with top secret clearances)

allegedly participated in multiple orgies with hired sex workers "funded by the local drug cartels."⁴⁷ Some also received money, gifts and weapons from these traffickers. The parties occurred at the agents' "government-leased quarters", where laptops and other equipment were accessible -- raising "the possibility that DEA equipment and information also may have been compromised as a result of the agents' conduct."

Misuse of Informants

- Like many law enforcement agency, the DEA uses confidential informants to get information necessary to make cases; unfortunately, the agency has demonstrated a continuing inability to accurately assess the reliability of their informants, resulting in false testimony and innocent people being convicted. "Supersnitch" Andrew Chambers is reportedly the highest-paid informant in DEA history, having earned \$2.2 million from the agency. He was also found to have given false testimony under oath in at least 16 criminal prosecutions. Although Chambers was deactivated as an informant in 2000 due to perjury, the DEA reactivated him in 2013, when he reportedly worked undercover with DEA agents in an Arizona case.⁴⁸
- A Cleveland DEA agent and paid informant Jarrell Bray worked together on a drug investigation that resulted in nearly two dozen indictments. But nearly all the charges ended up being dropped and wrongfully convicted people walked out of prison after Bray admitted he had framed them.⁴⁹

Deaths and Abuse

- In 2003, DEA agents shot and fatally injured 14-year-old Ashley Villarreal. During a stakeout, plainclothes agents in unmarked vehicles boxed in a car Villarreal was driving to arrest her passenger; the agents later claimed that Villarreal continued to drive the boxed-in car toward them, causing them to open fire on the teenage girl. Villarreal died of her injuries three days later.⁵⁰
- In 2010, Alberto Arriaga was arrested by DEA agents after allegedly participating in a drug

selling; while in custody, he complained of abdominal pain and said that the arresting agents had beaten him up. He died 16 hours later. The coroner found that Arriaga's ribs had been broken in 21 places, classifying his death as a homicide; however, the DEA has stymied efforts to investigate Arriaga's death, refusing to allow the agents involved in Arriaga's arrest to cooperate with investigators.⁵¹

- In May 2012, the DEA participated in a drug war operation in Ahuas, Honduras, that led to the massacre of four indigenous civilians. Members of the House and Senate, as well as human rights groups continue to call on the DEA to answer questions about its role in the incident, to no avail.⁵² A 2012, Office of Inspector General memo revealed that, "to date DEA has not cooperated with DS and the investigation cannot proceed further".⁵³
- In 2013 the DEA made headlines when 23 year-old Daniel Chong was detained following a raid on a friend's house. Although Chong was cleared of any criminal involvement, DEA staff forgot that he was still locked in a windowless cell with no food or water. Five days later, Chong was finally found by staff, suffering from acute renal failure and dehydration.⁵⁴

Ignoring Science

- The DEA's obstruction of petitions to reschedule drugs with medical value is as long as the agency's history. While the first petition to reschedule marijuana was submitted to the DEA in 1972, it took 16 years (and several lawsuits) for the agency to finally make a ruling. Following two years of hearings, DEA Chief Administrative Law Judge (ALJ) Francis Young ruled that marijuana should be rescheduled because it did not meet the legal criteria for a Schedule I drug. However, Young's finding was overruled by former DEA Administrator John Lawn.⁵⁵
- In 1986, Administrator Lawn similarly overruled the findings of an ALJ in the case of MDMA – while the ALJ had recommended the drug be placed at Schedule III, Lawn overruled him and placed MDMA at Schedule I.⁵⁶
- Despite growing scientific evidence in support of marijuana's medical benefits, and the support of the American Medical Association and the American Academy of Physicians for further clinical trials on medical marijuana, the DEA again rejected a petition to reschedule marijuana in 2011. There is currently another petition under review – this time submitted by Washington Gov. Christine Gregoire, Rhode Island Gov. Lincoln Chafee, and Colorado Governor John Hickenlooper.⁵⁷
- The National Institute on Drug Abuse (NIDA) maintains a monopoly on the production of marijuana for research purposes. The federal government does not maintain a monopoly on the production of any other drug. As a result it is difficult to obtain marijuana if the goal is to develop the marijuana plant in smoked form into an FDA-approved prescription medicine. The DEA compounds the problem by protecting NIDA's monopoly. The experience of Professor Lyle Craker, director of the University of Massachusetts-Amherst's Medicinal Plant Program, is a case in point.
- Dr. Craker had sought permission to cultivate marijuana to research its medical benefits. After

years of legal wrangling, DEA Administrative Law Judge Ellen Bittner issued a ruling that it was in the public interest to end the decades-long NIDA monopoly on marijuana production for research purposes.⁵⁸ Once again, the DEA Administrator overruled the ALJ's decision and denied Dr. Craker's petition, protecting the federal monopoly over marijuana for research.⁵⁹

Major Reform is Necessary

In light of decades of scandal and failure, it is clear that major reforms to the Drug Enforcement Administration are necessary.

The traditional U.S. drug policy goal of using undercover work, arrests, prosecutions, incarceration, interdiction and source-country eradication to try to make America "drug-free" has failed to substantially reduce drug use or drug-related harms. It instead has created problems of its own – broken families, increased poverty, racial disparities, wasted tax dollars, prison overcrowding and eroded civil liberties.

To the extent the federal government continues to take a criminal justice approach to dealing with drugs it should focus on dealing with Al Capone types that drug prohibition creates - but in a way that is strategic. This means focusing on the most dangerous traffickers and crime syndicates and the ones that only the federal government has the resources to go after, and doing it in a way that minimizes as much as possible the collateral damage of enforcement.

A case has been made for eliminating the DEA with its regulatory and scheduling functions shifted to a health agency and its agents and other resources shifted to various Justice Department organized crime task forces. Three presidential administrations have conducted reviews of whether it would be more efficient and better for public safety to merge the DEA with the FBI (Carter, Reagan, and Clinton),⁶⁰ but Congress has never seriously explored the issue.

If the DEA's functions are not merged with those of other agencies, then its mandate and metrics should change to reflect the goal of violence reduction. Its enforcement strategy should be decided by the Attorney General in consultation with others.

Undercover drug buys, drug arrests and prosecutions, and infiltration of drug rings should be put into the service of top U.S. security goals.

This might be narrowly limited to national security (arresting cartel leaders that threaten to destabilize Mexico and create a crisis at our southern border, cutting off drug money that is going to the Taliban) or more broadly crime control (bringing the most dangerous domestic organized crime leaders to justice).

Federal drug enforcement should focus on large cases that cross international and state boundaries, with a priority toward violent traffickers and major crime syndicates. All other cases should be left to the states. Operational metrics should shift from measuring seizures and arrests to more specific and calculated outcomes like the capture of specific individuals.

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² Eric Holder, "Remarks at the Annual Meeting of the American Bar Association's House of Delegates, San Francisco, August 12, 2013," (Office of the Attorney General, United States Department of Justice, 2013).

³ Roy Walmsley, *World Population List, 10th Ed.* (London: International Centre for Prison Studies, 2013); National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (Washington, D.C.: The National Academies Press, 2014).

⁴ E. Ann Carson, "Prisoners in 2013," (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, 2014), Tables 13 & 14.

⁵ Meda Chesney-Lind and Marc Mauer, *Invisible Punishment: The Collateral Consequences of Mass Imprisonment* (The New Press, 2011); American Bar Association, "National Inventory of Collateral Consequences of Conviction," <http://www.abacollateralconsequences.org/map/>.

⁶ Department of Justice, Office of the Inspector General, "Ongoing Work: Drug Enforcement Administration," accessed 15 April 2015, <http://www.justice.gov/oig/ongoing/dea.htm>.

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¹⁰ Drug Enforcement Administration, "DEA Fact Sheet," <http://www.dea.gov/docs/factsheet.pdf>, accessed 15 April, 2015.

¹¹ Drug Enforcement Administration, "Office Locations,"

¹² Drug Enforcement Administration, "DEA Fact Sheet," <http://www.dea.gov/docs/factsheet.pdf>, accessed 15 April, 2015.

¹³ Drug Enforcement Administration, "Statistics and Facts," [Justice.gov](http://www.justice.gov/dea/resource-center/statistics.shtml#arrests), accessed 15 April, 2015, <http://www.justice.gov/dea/resource-center/statistics.shtml#arrests>.

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¹⁵ United States Sentencing Commission, Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System (Washington, D.C.: October 2011): 167, D-61, Figure D-2,

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³⁶ International Centre for Science in Drug Policy, Effects of Drug Law Enforcement on Drug-Related Violence: Evidence from a Scientific Review (2010), 22, available at http://www.icsdp.org/docs/ICSDP-1_percent20_percent20FINAL.pdf

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