

June 24, 2020

Rep. Jerrold Nadler  
Chairman, House Committee on the Judiciary  
2132 Rayburn House Office Building  
Washington, DC 20515



Rep. Karen Bass  
Chair, Subcommittee on Crime, Terrorism, and Homeland Security  
2059 Rayburn House Office Building  
Washington, DC 20515

Re: DEA Oversight

Dear Chairman Nadler and Subcommittee Chairwoman Bass,

On behalf of the Drug Policy Alliance (DPA) and undersigned partner organizations, we write to join your call<sup>1</sup> to halt the Trump administration's use of Drug Enforcement Administration (DEA) resources to enforce laws that bear no relationship to drugs, particularly its plan to investigate events surrounding the nationwide protests of police misconduct that have taken place in recent weeks. We urge you to convene a comprehensive oversight hearing that will examine the DEA's pattern and practice of misusing appropriated funds.

The mission of the DEA is, as its name clearly suggests, to enforce drug laws.<sup>2</sup> With over 10,000 employees and a budget totaling more than \$3.1 billion, it is the largest drug enforcement agency in the world. The DEA maintains 23 Field Divisions, 47 District Offices, 111 Resident Offices, 58 Posts of Duty, and operates 90 foreign offices in 67 countries.<sup>3</sup> In February, Attorney General Barr requested increased funding for the DEA, ostensibly to "combat" the opioid crisis.<sup>4</sup> Included in the DEA's FY 2021 request was over \$30 million in new funding for staff positions in "Cyber Investigations" and "Data Exploitation."<sup>5</sup> The DEA's FY 2021 budget justification claims that increased funding is needed as it "prioritize(s) its resources to disrupt and dismantle the 'most wanted' drug trafficking and money laundering organizations believed to be primarily responsible for the Nation's illicit drug supply."<sup>6</sup>

The recent actions taken by the DEA have nothing to do with its stated mission, its current operations or functions, or its projected future priorities. Instead, the administration is unilaterally diverting funds to conduct surveillance of protests that have nothing to do with drug enforcement.

While we fundamentally oppose the continuation of failed drug war policies and the administration's "drug control" strategy to continue expanding the DEA, we also oppose law enforcement's unjustified use of federal resources to surveil and impede the Constitutional

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<sup>1</sup> [https://judiciary.house.gov/uploadedfiles/2020-06-05\\_letter\\_to\\_doj\\_and\\_dea\\_condemning\\_expansion\\_of\\_authority.pdf?utm\\_campaign=2901-519](https://judiciary.house.gov/uploadedfiles/2020-06-05_letter_to_doj_and_dea_condemning_expansion_of_authority.pdf?utm_campaign=2901-519)

<sup>2</sup> See <https://www.dea.gov/mission>

<sup>3</sup> Drug Enforcement Administration FY2021 Budget justification, Available at <https://www.justice.gov/doj/page/file/1246676/download>

<sup>4</sup> Department of Justice FY 2021 Budget Request, Press Release, February 10, 2020. Available at <https://www.justice.gov/opa/pr/department-justice-fy-2021-budget-request-0>

<sup>5</sup> Drug Enforcement Administration FY2021 Budget justification, *Supra* n. 2.

<sup>6</sup> *Id.*

rights of Americans by law enforcement agencies – especially during this pivotal moment of awakening and public expression of frustration over the long history of police misconduct in the United States. The protests that have arisen throughout the country have been largely peaceful and do not justify the aggressive overreaction, militarization, and attempts to suppress protected speech and assembly. Incidents of dissociated violence that have occurred do not justify using DEA personnel and equipment for any purpose.

Such uses are not only unjustified, but the legal authority used to support the sharing is questionable. The Attorney General does not have unfettered discretion to use DEA resources for general investigations unrelated to drugs, the purpose for which Congress appropriated funds. The statute relied upon in the Memorandum issued by Administrator Shea dated May 31, 2020<sup>7</sup>, 21 U.S.C. 878(a)(5), does not give the Attorney General unlimited discretion to use the DEA for general policing activities unrelated to drugs.<sup>8</sup> The rule permitting the Department to delegate DEA authority to enforce the Controlled Substances Act, 28 C.F.R. 0 (2003), made clear that the “delegation of authority” permitted by 21 U.S.C. 878(a)(5) is only applicable to “matters relating to, arising from, or supplementing investigations of matters concerning drugs.”<sup>9</sup> Notably, the Acting Administrator’s memorandum suggests that the request for authorization originated from the DEA rather than arising from any lack of available resources within the federal agency principally empowered to investigate general federal crimes, the Federal Bureau of Investigation.

Even prior to the recent protests, the DEA has repeatedly stretched its mandate or misused its authority.<sup>10</sup> The DEA has a history of questionable enforcement practices, alleged human rights abuses, payments of millions of dollars to informants, and repeated failures to follow statutory requirements that its decisions be based on scientific evidence. Since the 1990’s, the DEA has secretly conducted untargeted and suspicionless surveillance of Americans, collecting vast amounts of telephone call records without individualized suspicion. In 2019, the Inspector General identified three programs in which the DEA used its administrative subpoena authority “to collect or exploit bulk data” without sufficient legal analysis, and failed to consider caselaw that suggested potential challenges to the broad use of their subpoena authority.<sup>11</sup>

Events of the past several weeks have opened the eyes of the general public to police abuses of power, misuse of authority, improper uses of force, and overcriminalization, especially of Black and Brown communities. Much of that injustice – including the militarization of police and

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<sup>7</sup> Memorandum of Acting Administrator Timothy Shea regarding “Drug Enforcement Administration (DEA) Request for a Temporary Designation of Non-Title-21 Authority Pursuant to 21 U.S.C. 878(a)(5)”, signed by Gerard Weinsheimer May 31, 2020.

<sup>8</sup> The legal interpretation of Acting Administrator Shea, citing a 2003 opinion by the Office of Legal Counsel, reflects the reversal of a legal opinion issued in 1988. Memorandum for George W. Calhoun, Senior Counsel, Office of the Associate Attorney General, from Douglas W. Kmiec, Deputy Assistant Attorney General, Office of Legal Counsel, Re: Authority of State and Local Law Enforcement Officers Under 21 U.S.C. 878 (June 29, 1988) (“1988 Opinion”).

<sup>9</sup> 68 FR 14899 (March 27, 2003). The summary of the Final Rule expresses the purpose of the amendment: “This rule amends the delegation to the Drug Enforcement Administration (DEA) of the Attorney General’s authority under the Comprehensive Drug Abuse and Prevention Act of 1970, as amended. The amendment would make clear that the delegation of the Attorney General’s authority to the DEA to assign law enforcement duties to itself and to state and local law enforcement officers extends only to matters relating to, arising from, or supplementing investigations of matters concerning drugs. Available at <https://www.federalregister.gov/d/03-7355>; *United States ex rel. Accardi v. Shaughnessy*,

347 U.S. 260 (1954) (an agency must comply with its own regulations even if the action is discretionary by statute.)

<sup>10</sup> See “The Scandal-Ridden DEA: Everything You Need to Know,” Drug Police Alliance Fact Sheet (April 2015).

<sup>11</sup> A Review of the Drug Enforcement Administration’s Use of Administrative Subpoenas to Collect or Exploit Bulk Data, Office of the Inspector General, Department of Justice (March 2019). While the Inspector General did Available at <https://oig.justice.gov/reports/2019/o1901.pdf>

illegal surveillance of Americans – has arisen from the excesses of the drug war. In its ineffectual efforts to stop the importation of narcotics, the DEA's budget has become bloated and its actions unchecked.

We whole-heartedly support your swift action demanding the DOJ rescind the DEA's expanded authority. We further urge your committee to hold an oversight hearing to examine, at a minimum: (1) the misuse of DEA funds for law enforcement beyond its congressionally authorized activities, including the use of DEA personnel and equipment for conducting surveillance, investigative, and law enforcement activities related to the protests around the death of George Floyd, (2) the ineffectiveness of the DEA in achieving its stated enforcement objectives, and (3) the misuse of federal resources, including those identified in the Inspector General's 2019 report.

A critical look at the DEA and the nation's law-enforcement priorities is long overdue. For over 45 years, the DEA has stretched its mandate, fueling mass incarceration and racial inequity with insufficient scrutiny. Congress must act to reign in the DEA and law enforcement agencies at every level, prevent the misappropriation of federal tax dollars, and decommission the drug war. We look forward to working with you to continue these reforms.

Sincerely,

American Civil Liberties Union  
Breaking the Chains of Your Mind  
CAN-DO Foundation  
Center for Disability Rights  
Competitive Enterprise Institute  
Harm Reduction Coalition  
Health in Justice Action Lab, Northeastern University School of Law  
Higher Ground Harm Reduction  
Hour Children  
Justice Roundtable  
Justice Strategies  
Law Enforcement Action Partnership  
life for pot  
MISSION [GREEN]  
National Action Network  
National Association of Criminal Defense Lawyers  
NORML  
Parent Watch Inc  
Students for Sensible Drug Policy  
The Daniel Initiative  
The Justice Collaborative  
The Sentencing Project  
VOCAL NY  
Washington Office on Latin America (WOLA)