



U.S. Department of Justice
Drug Enforcement Administration

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Office of the Administrator

Springfield, VA 22152

April 5, 2019

MEMORANDUM FOR THE ATTORNEY GENERAL

THROUGH: THE DEPUTY ATTORNEY GENERAL

FROM: Uttam Dhillon 
Acting Administrator

C7E for DJR
4/18/19

SUBJECT: Delegation of Authority

PURPOSE: To obtain a delegation of authority pursuant to 5 U.S.C. §1213 in order provide response to request for investigation by the Office of Special Counsel

TIMETABLE: Immediately

DISCUSSION: By letter dated May 15, 2018, the Office of Special Counsel (OSC) has requested the Attorney General to investigate allegations from two Drug Enforcement Administration (DEA) employees that DEA failed to assist Haitian law enforcement with implementing basic seaport security measures and failed to properly conduct its investigation into what was alleged to be the only significant drug seizure in Port-au-Prince in the past 10 years.

Under 5 U.S.C. §1213(c) and (g), upon the receipt of such a referral, the agency head is required to conduct an investigation and prepare a report. Under 28 U.S.C. §510, and consistent with agency practice implementing 5 U.S.C. §1213, as recognized by the OSC, you may delegate the responsibilities under section 1213 to conduct an investigation and prepare the related report. This includes delegation of the authority to take actions as a result of the investigation pursuant to 5 U.S.C. §1213(d) (5).

On May 22, 2018, the Department of Justice Executive Secretariat (ES) sent the OSC letter to DEA under ES Workflow ID number 4033252 "for appropriate handling." Based on the ES tasking, the DEA conducted the investigation and, on September 6, 2018, I signed a cover letter addressed to SA Counsel Henry J. Kerner forwarding the results of the requested investigation. A copy was provided to the ES on September 7, 2018, as well.

On February 26, 2019, the OSC advised the DEA that the ES documentation was insufficient to reflect the Attorney General's delegation of authority to conduct this investigation. In order to respond to the OSC request for an investigation and report, I must receive specific delegation of

Memorandum for the Attorney General
Subject: Delegation of Authority
Page 2

authority from the Attorney General to conduct an investigation of the alleged misconduct and prepare a report of its investigation. Your signature of approval below will effect this delegation.

RECOMMENDATION: Written approval of delegation of authority.

APPROVE: 

DATE: 4/30/2014

DISAPPROVE: _____

OTHER: _____

Attachments



U.S. Department of Justice
Drug Enforcement Administration

Office of the Administrator

Springfield, VA 22152

September 6, 2018

The Honorable Henry J. Kerner
Special Counsel
U.S. Office of Special Counsel
1730 M Street, NW, Suite 300
Washington, D.C. 20036-4647

RE: OSC File Nos. DI-06-1098, DI-18-1075

Dear Mr. Kerner:

I am responding to a letter that your office sent to Attorney General Sessions, dated May 15, 2018, in which the U.S. Office of Special Counsel (OSC) informed the Department of Justice of whistleblower disclosures made by two Drug Enforcement Administration (DEA) Special Agents. The whistleblowers have worked in Port-au-Prince, Haiti, and allege that DEA has failed to assist Haitian Law Enforcement with implementing basic seaport security measures and failed to properly conduct its investigation into what is alleged to be the only significant drug seizure in Port-au-Prince in the past 10 years. Pursuant to an OSC referral regarding OSC File Numbers DI-06-1098 and DI-18-1075, DEA was requested to conduct an investigation into two whistleblower disclosures detailing two separate allegations that:

- The DEA has failed to provide appropriate support and resources to Haitian law enforcement to implement effective seaport security in Port-au-Prince; and
- The DEA has failed to properly conduct its investigation of a 2015 drug seizure aboard a Merchant Vessel in Haiti.

The enclosed report from the DEA responds to the aforementioned allegations.

Thank you for the opportunity to respond.

Sincerely,

Uttam Dhillon
Acting Administrator

Enclosure

REPORT OF INVESTIGATION

I. Summary

In a letter to the Attorney General dated May 15, 2018, the Office of Special Counsel (OSC) informed the Department of Justice of whistleblower disclosures made by two Drug Enforcement Administration (DEA) Special Agents. The whistleblowers, hereafter referred to as Whistleblower #1 and Whistleblower #2, have worked in Port-au-Prince, Haiti, and allege that DEA has failed to assist Haitian Law Enforcement with implementing basic seaport security measures and that DEA failed to properly conduct an investigation into what is alleged to be the only significant drug seizure in Port-au-Prince in the past 10 years. Pursuant to an OSC referral regarding OSC File Numbers DI-06-1098 and DI-18-1075, DEA was requested to conduct an investigation into two whistleblower disclosures detailing two separate allegations that:

- 1) DEA has failed to provide appropriate support and resources to Haitian law enforcement to implement effective seaport security in Port-au-Prince; and
- 2) DEA has failed to properly conduct an investigation of a 2015 drug seizure aboard a Merchant Vessel in Haiti.

DEA's Office of Global Enforcement, in coordination with assistance from the Office of Chief Counsel and Inspections Division, conducted a fact finding inquiry that included interviews of individuals with information bearing on the allegations as well as a review of relevant documents and reports of investigation. Each of the allegations was investigated separately as it related to the appropriate whistleblower.¹ In support of the investigation, the following individuals were interviewed:

- Whistleblower #1 (Interviewed on July 12, 2018)
- Whistleblower #2 (Interviewed on July 12, 2018)
- Former Country Attaché #1 (Interviewed on July 19, 2018)
- Former Country Attaché #2 (Interviewed on July 19, 2018)
- Current Country Attaché (Telephonic Interview on July 30, 2018)
- United States Coast Guard Official #1 (Interviewed on July 31, 2018)
- United States Coast Guard Official #2 (Telephonic Interview on August 3, 2018)
- Federal Bureau of Investigation Special Agent #1 (Telephonic Interview on August 15, 2018)
- Federal Bureau of Investigation Special Agent #2 (Telephonic Interview on August 15, 2018)
- DEA Confidential Source of Information #1 (Telephonic Interview on August 14, 2018)
- DEA Confidential Source of Information #2 (Telephonic Interview on August 15, 2018)

¹ OSC's referral combined both allegations, making it appear that both whistleblowers had raised the same issues. However, after beginning its investigation, DEA learned that, while both whistleblowers had asserted that DEA failed to provide adequate support and resources in relation to port security, only Whistleblower #1 had made allegations about the 2015 drug seizure aboard a Merchant Vessel.

- DEA Confidential Source of Information #3 (Telephonic Interview on August 14, 2018)
- DEA Confidential Source of Information #4 (Telephonic Interview on August 23, 2018)

At the outset, an understanding of DEA's authority to operate in a foreign environment is critical. Pursuant to Reorganization Plan #2 of 1973 and certain portions of Title 21 of the United States Code §§ 959 and 960a, DEA has the authority to enforce U.S. drug laws extraterritorially. Moreover, DEA's legal operating ability in foreign countries is much different than in its domestic offices because DEA agents operating overseas do not have law enforcement jurisdiction and operate in foreign countries only with the permission of the host nation government. DEA special agents assigned overseas utilize investigative authority only to the extent permitted by the host nation. DEA special agents stationed overseas, in conjunction with other U.S. entities such as the U.S. Coast Guard, act as the liaison with host nation drug law enforcement officials to coordinate bilateral investigations, offer training and mentoring to host nation law enforcement officers, and keep the U.S. Chief of Mission informed of drug law enforcement issues in the host nation.

II. Summary of Findings

A. Training of Haitian Law Enforcement.

Both whistleblowers allege that the DEA Port-au-Prince office does not provide or assist with training for Haitian law enforcement on such basic functions as properly boarding and searching vessels, maritime law, or conducting enforcement and intelligence gathering functions.

An internal review was conducted relating to International Training Seminars conducted by the DEA's Office of International Training. During the past five years (July 2013 thru May 2018), twenty training seminars were conducted, with nine of those seminars actually being held in Port-au-Prince, Haiti. Additionally, 291 of the participants attending the twenty aforementioned training seminars were from Haitian Law Enforcement.

Whistleblower #1 and Whistleblower #2 were asked throughout their interviews what specific training, support, and resources they felt were deficient. Whistleblower #1 was able to recall that, on one occasion, he had requested to send members of Haitian Law Enforcement to formalized Jetway Training that was scheduled to be held in St. Thomas sometime in June of 2016. Although the original request was denied, the training was subsequently authorized shortly thereafter. Throughout the interviews, investigators asked both Whistleblower #1 and Whistleblower #2 if there were ever any formal memoranda, e-mails, or documented requests for formalized training for Haitian Law Enforcement. Whistleblower #1 responded that there were some e-mails and verbal communication that had occurred but could not elaborate further. Investigators asked Whistleblower #1 to identify additional examples of training, resources, and support that he felt were deficient, and Whistleblower #1 simply responded that management did not support his requests for training and resources and was otherwise non-specific in his response. As a result, no specific examples, beyond the Jetway training referenced above, were provided to the investigators. Whistleblower #2 was also asked about the request for any formalized training for Haitian Law Enforcement, to which he responded that he did not draft any proposals or send e-mails specific to training requests.

Contrary to the allegations of Whistleblower #1 and #2 that DEA did not provide sufficient training to Haitian law enforcement, the investigation revealed that, although Whistleblower #1 and #2 may not have been aware of it, hands-on or ad-hoc training was in fact provided and conducted when it was available.

CA1 stated the Department of State - Bureau of International Narcotics and Law Enforcement (INL) had a pre-established rebuilding plan for Haiti and that INL had set-up a comprehensive training plan to support the anti-narcotics mission in Haiti. This training consisted of tactical training provided by the Metro-Dade Police Department in Miami, Florida. Additionally, CA1 stated that INL established seaport training that was conducted at the Port of Miami, Florida. CA1 further reported that DEA's Office of International Training traveled to Haiti during the summer of 2014 to provide formal Jetway Training to several members of the Haitian National Police Antinarcotics Unit (Brigade de Lutte Contre le Trafic de Stupefiants (BLTS)).

In addition, two former DEA Country Attaches (hereafter referred to as CA1 and CA2) assigned to the United States Embassy in Port-au-Prince, Haiti, were interviewed with respect to the allegations concerning training and provided testimony explaining the scope of the available training. CA1 stated that during his tenure in Haiti, there was at least one hands-on training that was conducted with the United States Coast Guard at the port in Cap Haitien. This training consisted of port and at-sea boardings. CA1 further reported that the United States Coast Guard worked with BLTS on a continual basis. CA1 further explained that, in Cap Haitien, there was only one functioning Haitian Coast Guard vessel. CA1 also stated that BLTS had a response group and members were sent to Colombia to learn jungle tactics and related training. Additionally, bus interdiction training was also provided to the Haitian National Police, in addition to other training sometimes provided by United Nations Forces working in Haiti. CA2 also facilitated training that was being coordinated with BLTS and a U.S. based airline carrier at the airport in Haiti.

Two United States Coast Guard Officials (hereafter referred to as USCG #1 and USCG #2) were also interviewed concerning training and port security. USCG #1 stated that he was the former USCG Defense Attaché assigned to the American Embassy in Port-au-Prince, Haiti, from July 2014 thru July 2017. USCG #1 stated his foreign counterpart in Haiti was the Haitian Coast Guard, but that part of the United States Coast Guard's mission in Haiti was to provide training to the Haitian Coast Guard and not BLTS. USCG #1 stated that the training that was provided consisted of leadership training, how to operate a boat, repair engines, and conduct tactical operations to include the interception of smaller boats. When asked if DEA ever requested any formalized training from the USCG for the BLTS, USCG #1 stated no. However, USCG #1 further explained that there was some ad-hoc, hands-on training provided for BLTS; but he could not provide or recall specific examples. USCG #1 further stated the topic of Haitian Migration was also worked jointly between the Haitian Coast Guard and the USCG. USCG #2 stated that semi-annual training was conducted where the DEA, BLTS, Haitian Coast Guard, and USCG all participated.

B. Haitian Law Enforcement Presence at the Seaport and Resources at Haitian Seaports

Both whistleblowers allege that DEA does not provide appropriate support, training, and resources to Haitian law enforcement to ensure effective security for the Port-au-Prince seaport. The Whistleblowers further allege that Haitian law enforcement officers do not: 1) regularly conduct enforcement activity; 2) track vessels entering/leaving the port each day; or 3) conduct regular inspections on vessels. Lastly, Whistleblower #2 alleges that Haitian law enforcement officers assigned to the seaport are only on duty five and a half days per week.

During the interview of Whistleblower #2, he stated that, prior to working for the DEA, he was employed as an Inspector with the United States Customs Service. Whistleblower #2 further explained that he had also served on the Contraband Enforcement Team while employed with Customs and, therefore, had a lot of experience in port operations. Whistleblower #2 stated that he arrived at the DEA Port au-Prince, Haiti, Country Office in late January or early February of 2014. Whistleblower #2 stated that at the time of his arrival, he was tasked with working maritime investigations to include working with BLTS. Whistleblower #2 stated that both CAs asked Whistleblower #2 to assist with the port initiative that was going to be established. Whistleblower #2 indicated that it became immediately apparent to him that the seaport operations at the port were severely deficient. When asked to provide examples of the deficiencies, Whistleblower #2 stated that BLTS did not know where the Port Master's Office was located, did not have a true enforcement program, lacked training as to how to conduct proper ship and container inspections, and did not maintain any suspect shipping company lists, records or investigative files. Whistleblower #2 stated that he had briefed both CA #1 and CA #2 verbally about the aforementioned deficiencies.

Whistleblower #2 further stated that he had traveled with CA #2 to the port and pointed out specific deficiencies at the port to include lack of barriers and damaged or lack of cameras. Whistleblower #2 stated that on occasion he would provide "ad-hoc training" to members of BLTS with regard to the inspection of ships and containers. Whistleblower #2 further stated that when he would request funds to pay Confidential Sources (CSs), those requests were denied due to the lack of availability of funds. Whistleblower #2 further stated that he had two CSs he handled; however, they did not relate to port operations or port investigations. When asked if Whistleblower #2 ever asked for the assistance of any other US law enforcement partners working in Haiti, Whistleblower #2 responded that he did not. Whistleblower #2 further stated that there was not a United States Customs and Border Protection official assigned to the Embassy in Haiti but that there was possibly one assigned to the American Embassy in the Dominican Republic. Whistleblower #2 was asked if he ever contacted or requested assistance from the Embassy in the Dominican Republic; Whistleblower #2 responded that he did not.

Whistleblower #2 stated that the resources of the BLTS were very limited. When asked to provide examples, Whistleblower #2 stated the BLTS office at the port was a twenty-foot air-conditioned Conex box (shipping container), provided by INL. Additionally, Whistleblower #2 stated that the unit did not have simple items such as surveillance cameras and monitors to monitor the port's activities. Whistleblower #2 stated that he had attempted to ask for surveillance equipment or pole cameras, and his requests were denied by both CAs due to lack of funding and budget constraints. Whistleblower #2 stated that BLTS was working with DEA in other areas to include jungle operations and setting up check points at the border of Haiti and the Dominican Republic.

Whistleblower #2 further stated that BLTS worked a five-day work week and that the port did not operate twenty-four hours a day, seven days a week. Whistleblower #2 was asked if he felt that DEA had any control over the port operations operating hours, to which he stated “no” but felt that certain recommendations could have been made to the Government of Haiti. When asked if he understood that Haiti was an independent nation and did not fall under the authority or direction of the United States, Whistleblower #2 replied that he understood. Whistleblower #2 stated nothing changed as a result of his verbal recommendations made to DEA. Whistleblower #2 further stated that after his request and recommendations were made to CA #2, he was subsequently removed from working with the port and reassigned to work with BLTS at the airport in Cap Haitien. This was a new initiative that was being started between BLTS and DEA. Whistleblower #2 reported that he was instrumental in establishing a BLTS office at the American Airlines section at the airport in Cap Haitien. This unit was to focus on security at the airport and also assist with the screening of passengers for American Airlines flights departing Haiti destined for the United States. Whistleblower #2 stated that he had received more support from CA #2 with respect to the BLTS group operating at the airport in Cap Haitien. When asked to explain further, Whistleblower #2 stated that CA #2 assisted with getting the airport unit kennel masters to assist with K-9 support at the airport.

USCG #1 stated it was the USCG Defense Attaché’s responsibility, not DEA’s, to assess the port security measures at the port of Haiti since commercial ships departed the Haitian port destined for the United States. USCG #1 stated that there were weaknesses and vulnerabilities identified with the ingress and egress from the port. However, the Haitian port security responsible for the port was more concerned with theft and items being removed from the port without clearance or permission. USCG #1 added that the assessment of the port is always a two-part process. The first part consists of the formalized assessment to define weaknesses and vulnerabilities and the second part is to see how the needs relate to the Embassy’s overall Country Plan to determine if funding exists to support the execution of the assessment. USCG #2 stated he was the USCG Liaison Officer – Assistant Attaché assigned to the United States Embassy in Port-au-Prince, Haiti, from September 2014 thru April 2016. During his tenure in Haiti, USCG #2 stated it was his mission to work on more programmatic areas in support of the Haitian Coast Guard. This, at times, included some training and assessing the port security in Haiti via the International Ship and Port Security (ISPS) Code which prescribes responsibilities to governments, shipping companies, shipboard personnel, and port/facility personnel to detect security threats and take preventive measures against security incidents affecting ships or port facilities used in international trade. USCG #2 further explained that, in conjunction with other Embassy resources and using the “whole of government” approach, the USCG’s mission was to work to improve Haiti’s ports protocols and standards to meet international requirements as outlined in the ISPS. USCG #2 further stated that while the USCG monitors and assess Haiti’s progress on port security, the overall responsibility for meeting the requirements outlined by the ISPS is that of the Haitian Government. USCG #2 stated that, although Haiti continues to struggle with meeting its security requirements, such as maintaining working security cameras at the ports, Haiti’s port security is improving. However USCG #2 further explained that if a government does not meet the standards set forth in the ISPS, certain repercussions could follow, ranging from a demarche to the refusal of ships departing Haitian ports from

entry into the ports of the United States. USCG #2 stated often times it is just putting more pressure on the government to raise the level of security.

Despite being outside DEA's responsibility to improve security at the Haitian seaports, efforts have been made by DEA to improve Haitian port security as it relates to the investigation of drug related matters. CA #1 stated that in 2012, the DEA, in conjunction with INL, worked on a plan to improve seaport and airport security in Haiti. This included establishing BLTS groups, consisting of at least ten officers, working at the ports in Port-au-Prince, Cap Haitien, and Les Cayes. CA #1 further added that, sometime in late 2012 or early 2013, there was a graduating class of 200 new BLTS recruits that would be spread throughout different locations in Haiti. CA #1 explained that the Haitian Government was against establishing a BLTS group at the ports, many of which were privately owned. Moreover, BLTS often clashed with private security at the seaports. In addition, it was explained that BLTS and Haitian Customs did not work well together, which complicated security measures at the seaports, and that Haitian Customs served more as an administrative function for collecting duties and tariffs as they were not a proactive law enforcement element of the Haitian government.

Despite these difficulties, CA #1 explained that, since his arrival, a group of 8 to 12 BLTS officers were approved to work at the Port-Au-Prince seaport, and a location within the Port-Au-Prince seaport was approved to keep a permanent Conex box to act as a headquarters for the BLTS officers assigned to the seaport. CA #2 and the Current CA explained that, since their arrival, BLTS has a presence at the Port-Au-Prince seaport 24 hours a day and 7 days a week. Further, CA #2 stated that while he was in Haiti, he verbally requested INL to provide additional resources for scanning and x-ray machines for use at the seaport, which are currently not present at the seaports. However, as explained by the Current CA, while BLTS may access the privately-owned ports, it does not have a permanent presence at the privately-owned ports, and Haitian Customs rarely cooperates or shares information with BLTS.

Proper Vetting of Haitian Law Enforcement

Whistleblower #1 and Whistleblower #2 also alleged that the DEA has not ensured that its Haitian law enforcement partners are properly vetted and that DEA has not taken sufficient action to investigate and combat corruption. They further alleged that the DEA has allowed Haitian officers in senior command to remain working with the DEA even after failing polygraph examinations and that the DEA has failed to follow-up on investigative leads related to corruption, resulting in continued smuggling through the Port-au-Prince seaport.

A review of internal DEA files has revealed that, in 2006, an Inter-Agency Agreement (IAA) between DEA and INL created an initiative that established an Anti-Corruption Unit in Cap Haitien. This unit would be comprised of members from the Haitian National Police, BLTS, and the Haitian Coast Guard. The intent was that the unit would focus on cases involving drug trafficking, with the specific objective of investigating and prosecuting those Haitian government employees who use their position and influence to facilitate illegal activities. In 2007, a Sensitive Investigative Unit (SIU) was initiated with the Haitian National Police, BLTS. However, due to the host nation not complying with SIU requirements and guidelines, the program ended in July 2009. In 2016, an IAA between the DEA and INL was signed

for a unit that has been identified as a “trusted police unit.” This agreement remains in effect until 2021 and is not considered an SIU or a formal Vetted Unit.

Although it is true that the former Commander of BLTS failed a polygraph examination on two separate occasions, once in 1998 and again in 2008, the only requirement at that time for a host-nation member to pass a polygraph examination and continue to work with the DEA was if they were assigned to an SIU. Since 2017, new standard operating procedures have been implemented and guidelines continue to be enforced. At the time the Haitian commander failed both polygraphs, the unit was not an established SIU. Although the DEA can make recommendations to the host-nation with respect to the reassignment of host-nation personnel, there is no evidence in this case that such a request occurred in either 1998 or 2008. As a result, the BLTS commander remained in the unit working with the DEA until 2018, when he was removed from that position on the recommendation of the current CA.

The current CA was asked why he sent a letter to the Haitian National Police requesting that the BLTS commander be removed from the unit working with DEA. The CA stated that, upon his arrival to Haiti, he was warned about the trustworthiness of the commander. The CA stated these warnings came from other agencies within the Embassy as well as from confidential sources and other sources of information. The CA stated that when he first advised other commanding officers of BLTS about his concerns for the commander, those commanding officers advised him that there were internal investigations of the commander concerning corruption allegations. These allegations included accepting money for information regarding targeted drug investigations and for protecting drug shipments. The CA suspected that the commander impeded drug investigations, but the CA was unable to prove or show any concrete evidence of such.

Throughout this investigation, several witnesses, to include four confidential sources and two USCG officials, expressed their concern for the commander as well. All six stated that they had heard of several corruption allegations surrounding the commander, however they did not have direct evidence of such. The CS's alleged that they reported their allegations to Whistleblower # 1, who alleged that he reported them to CA #1. In addition, it was reported that on one occasion, one of the USCG officials reported to Whistleblower # 1 that he saw the BLTS commander at a restaurant with the recently released crew members from the subject maritime vessel under DEA investigation. In keeping with the requirements for Leahy Vetting,² the CA presented the information to INL. The CA stated that Leahy Vetting is done every year and that no one informed INL in 2014 and 2015 about the allegations. The CA stated that, following his written request, the BLTS commander was removed from his command of BLTS and is currently assigned to Haiti's National Police Headquarters in an administrative capacity.

Lack of Support for Merchant Vessel (MV) Investigation

Whistleblower #1 alleges that the DEA has failed to properly conduct its investigation of the 2015 MV drug seizure such that the case, while still officially opened, has not led to significant results. Whistleblower #1 further alleges that the DEA has failed to devote sufficient resources to its

² Leahy amendments are U.S. human rights laws that prohibit the U.S. Department of State and Department of Defense from providing military assistance to foreign security force units that violate human rights with impunity.

investigation of the case; improperly deactivated confidential sources; did not pursue appropriate leads about corruption contributing to drug smuggling through Port-au-Prince; and failed to appropriately protect confidential sources.

At the outset, it is important to note that the facts of this case indicate that the DEA did not have prior information or intelligence that a merchant vessel was going to arrive at the Terminal Varreaux port in Cite Soleil, Haiti, contaminated with cocaine and heroin. The investigation was initiated by the Haitian National Police subsequent to the ship's arrival at the port when there was a discovery of drugs during the removal of legitimate cargo, imported sugar. Whistleblower #1 stated that he was contacted by the BLTS after the initial seizure of some cocaine and heroin and after an individual at the port was shot and killed. As a result, Whistleblower #1 sought the assistance of the USCG in searching the merchant vessel.

This investigation remains in an open and active status, with investigative leads being pursued as appropriate. Investigative findings may be presented to the United States Attorney's Office for the Southern District of Florida in the near future. A review of the Investigative File does not support the allegation that the DEA denied resources for the investigation.

Whistleblower #1 alleges that three of his confidential sources, which provided information on the 2015 MV investigation, were deactivated by CA #2 in an attempt to thwart the investigation. This was in fact not the case. CA #2 requested that the confidential sources be deactivated since they were not providing actionable information. It is DEA policy that a confidential source will be deactivated when it is determined that the confidential source no longer has the potential to furnish information or services that could lead to significant prosecution or interdiction of drugs. While three confidential sources that were interviewed in relation to the 2015 MV investigation were deactivated by CA #2, a review of the investigative reports pertaining to that investigation reveal that, at the time of their deactivation, the information being provided was minimal. Regardless, the mere fact that DEA confidential sources were deactivated would not preclude those same individuals from continuing to provide actionable information and intelligence to the DEA. If sufficient information or reasons existed to re-activate them, then steps could be taken to do so. Moreover, four confidential sources were each interviewed during the investigation and, although they had all admitted to being previously deactivated, not one of them stated that they were denied access to or denied the ability to communicate with the DEA in Haiti as stated by Whistleblower #1. Since his arrival in Haiti as the CA, the Current CA has reviewed new information being provided by the deactivated confidential sources and has reactivated one, while maintaining a second as a source of information.

Two of the confidential sources of information stated that they felt threatened as a result of providing information to the DEA and assisting in an operation with the BLTS. These investigations were unrelated to the MV investigation. However, one confidential source stated that although he/she felt people suspected that he/she was working with law enforcement, he/she never was actually directly threatened. Another did state that he/she felt they were in danger due to the manner in which the BLTS conducted an operation.

Conclusion

DEA remains committed to support and work with the Government of Haiti and to enhance the operational capabilities of the BLTS and the Haitian National Police, including providing training to BLTS when feasible. While the Government of Haiti and the Haitian National Police continue to make strides to become a more formal drug enforcement organization, there is still much work that needs to be done. Despite the fact that DEA cannot unilaterally improve or change security measures at the Haitian ports, DEA has and continues to make efforts to improve its ability to effectively investigate drug related crimes at the Haitian ports of entry. These efforts include working with the Haitian National Police to add new recruits and increase their presence at the ports. However, ultimately, the responsibility to improve security at the Haitian ports remains with the government of Haiti. Moreover, as provided by the USCG, Haiti has made improvements in the area of port security and is being monitored by the USCG.

In addition, DEA has ceased its relationship with the former BLTS commander accused of corruption. Finally, there are plans to present the MV Investigation to the United States Attorney's Office to review for a potential prosecution.



U.S. Department of Justice
Drug Enforcement Administration

Office of the Administrator

Springfield, VA 22152

The Honorable Henry J. Kerner
Special Counsel
U.S. Office of Special Counsel
1730 M Street, NW, Suite #300
Washington, D.C. 20036-4647

RE: OSC File Nos. D1-06-1098, D1-18-1075

Dear Mr. Kerner:

In a letter to the Attorney General dated May 15, 2018, the Office of Special Counsel (OSC) informed the Department of Justice (DOJ) of whistleblower disclosures made by two former Drug Enforcement Administration (DEA) Special Agents. The whistleblowers, hereafter referred to as Whistleblower #1 (WB #1) and Whistleblower #2 (WB #2), worked in Port-au-Prince, Haiti, and alleged that DEA failed to provide appropriate support and resources to Haitian law enforcement to implement effective seaport security in Port-au-Prince; and failed to properly conduct its investigation of the 2015 *MV Manzanares* drug seizure.

Pursuant to an OSC referral regarding OSC File Numbers DI-06-1098 and DI-18-1075, DEA was directed to investigate the whistleblowers' allegations. On September 6, 2018, then DEA Acting Administrator Uttam Dhillon provided DEA's written response to the Office of Special Counsel. OSC informed DEA on or about September 2020 that the whistleblowers had expressed dissatisfaction with the initial response that DEA provided to OSC. Consequently, OSC requested that DEA provide an additional report providing clarification of the following items:

1. The whistleblowers' complaint that the DEA report is insufficient in length and detail, requesting that additional information and evidence from the investigation be included.
2. The whistleblowers' allegation that DEA permitted the destruction of evidence.
3. The whistleblowers' allegation that DEA created delays, allowing the statute of limitations to expire in the *MV Manzanares* investigation. The whistleblowers have requested information on the status of this investigation.
4. The whistleblowers' allegation that there was a conflict of interest given Chief Counsel's role in the investigation.

DEA's Operations Division conducted a review of the previously submitted OSC report, supporting documentation, and current investigative documentation in DEA's IMPACT reports database and on February 26, 2021, at the request of OSC, DEA Official #2 and DEA Official #3 telephonically interviewed WB #1 based on his claim to be in possession of new information that may impact DEA's investigation of the *MV Manzanares*. Notwithstanding WB#1's representation, the information WB #1 reported during his interview was not new; it had previously been reported to DEA, and, therefore, was already assessed as part of the *MV Manzanares* investigation and in DEA's May 18, 2018 response to OSC.

To avoid any perceived conflicts, DEA Official #1, who had supervised both of the whistleblowers, did not participate in the Operations Division's supplemental review.

1. The whistleblowers' complaint that the DEA report is insufficient in length and detail, requesting that additional information and evidence from the investigation be included.

After receiving the May 15, 2018 letter from OSC, DEA conducted an investigation into the whistleblowers' allegations. At the outset of this investigation, DEA interviewed the two whistleblowers. Subsequently, DEA conducted eleven in-person or telephonic interviews with witnesses, including witnesses identified by the whistleblowers. DEA then prepared a report addressing the whistleblowers' allegations regarding the training of Haitian law enforcement, the presence of Haitian law enforcement at the seaport and resources provided at the Haitian seaports, the vetting of Haitian law enforcement, and the allegations regarding the lack of support for Colombian cargo-vessel investigations. Following the receipt of DEA's report, the whistleblowers alleged that the report lacked detail and was insufficient in length. While DEA disagrees with this assessment and suggests that the length of a report is not an indicator of the thoroughness or factual basis of a report, the following supplemental information is provided.

As noted, the whistleblowers alleged that DEA failed to provide appropriate support and resources to Haitian law enforcement to implement effective seaport security at Port-au-Prince. As outlined in DEA's initial report, DEA's foreign role was outlined by the Reorganization Plan #2 of 1973 and certain portions of Title 21 of the United States Code, Sections 959 and 960a. Although DEA has the authority to enforce United States drug laws extraterritorially, DEA agents do not have law enforcement jurisdiction overseas and operate in foreign countries with the consent and bilateral coordination of the host-nation government.

DEA's *Foreign Orientation Handbook* states the following: "DEA's primary role overseas is to work bilaterally with host-nation and regional counterparts to develop counternarcotics investigations and dismantle drug trafficking organizations." Section 6514.1 of the DEA Agents Manual also states that, "DEA representatives will not participate or solicit others to participate in investigative activities outside the scope of formal or informal agreements developed between host country authorities and the United States mission."

As a result of the 1976 Mansfield Amendment, formal rules were implemented that clearly defined DEA Special Agents' duties and activities while working abroad. According to

section 6512.2B of the DEA Agents Manual, in countries where the Chief of Mission has not approved DEA's participation in direct foreign police action, DEA Special Agents are prohibited from active involvement in such activities. Agents must operate strictly within these guidelines and are authorized to participate in five different law enforcement functions while working abroad: bilateral investigations, foreign liaison, capacity building, intelligence gathering, and international training. The implementation of security programs or protocols for host-nation law enforcement is not listed among the Special Agents' responsibilities, nor is port security one of DEA's lawfully designated missions.

Among the U.S. Embassy-Haiti Country Team, the diagnosis and implementation of port security measures rests solely with the United States Coast Guard (USCG), through their Defense Attaché. This responsibility was affirmed during the July 31, 2018 interview of the USCG Defense Attaché (USCG#1). This official stated that it was the responsibility of his office, not DEA, to assess port security measures at the Haitian ports. Additionally, the USCG Assistant Attaché (USCG#2) assigned to the U.S. Embassy in Port-au-Prince from September 2014 through April 2016, stated that his mission was to work on areas including training and assessing port security in Haïti via the International Ship and Port Security Code (ISPS). This document is an amendment to the Safety of Life at Sea Convention on Maritime Security and includes minimum security requirements for ships, ports, and government agencies. The lead agency tasked with enforcing the ISPS code is the USCG.

Despite USCG holding primary responsibility within the U.S. Embassy Country Team for monitoring Haitian port security, the July 12, 2018 interview of Whistleblower #2 (WB #2) does not document any effort to contact USCG#1 or USCG#2 to relay concerns regarding port security. WB #2 stated that he verbally briefed Country Attaché #1 (CA #1) and Country Attaché #2 (CA #2) about these perceived deficiencies. The interviews and reports do not document whether WB #2 believed his observations were communicated to relevant parties on the Embassy Country Team or whether CA #1 or CA #2 notified the country team relative to WB #2's perceived concerns. However, the interviews of USCG #1 and USCG #2 do document a comprehensive awareness of the security situation at Haitian ports and their efforts to mitigate identified deficiencies.

The interviews with USCG#1 and USCG #2 highlight that their organization assumed responsibility for providing support and resources to Haitian law enforcement to implement effective seaport security at Port-au-Prince. DEA's initial review of the events contained available information, with this report documenting relevant facts that transpired since the initial review's completion.

Although port security at Port-au-Prince, Haiti, was not within the mission or assigned responsibility of DEA, efforts were undertaken by the DEA Port-au-Prince Country Office (PAPCO) to improve port security relative to narcotics investigations. The previous report to OSC documented the efforts of CA #1 and CA #2 to provide support to Haitian counterparts in the Haitian National Police Antinarcotics Unit (BLTS). BLTS had limited access to and authority over the private security operations within most of Haiti's ports. CA #1 identified inter-agency friction between the BLTS and the Haitian Customs Authority as a secondary

obstacle to providing direct support. CA #1 ultimately supported the establishment of a counter-narcotics unit (8-12 Haitian officers) at the Port-Au-Prince Seaport. CA #2 stated that this unit was staffed 24/7 during his tenure. CA #2 also made a verbal (undocumented) request to the Department of State, International Narcotics and Law Enforcement section, at the embassy for additional scanning and x-ray equipment. The status and fulfillment of this request was not recorded.

2. The whistleblowers' allegation that DEA permitted the destruction of evidence.

On September 18, 2018, CA #3 initiated an inquiry into the destruction of *MV Manzanares* Exhibits 1 and 2. A report was prepared on January 7, 2019, by WB #1 and titled, "Summary of [PAPCO CA #3] inquiry into the Destruction of *MV Manzanares*. Drug Exhibits 1 and 2." The report documents the efforts to ascertain the whereabouts of the drugs seized and maintained by the BLTS. According to the report, BLTS Commander Charles advised WB #1 that the drugs had been destroyed in May 2017 as part of a bulk drug evidence destruction operation. As documented on April 30, 2015, PAPCO reported Drug Exhibits 1 and 2 as "Information Only," since Haitian law enforcement seized and maintained custody of the evidence.

When asked who authorized the destruction of the drug evidence in the *MV Manzanares* case, BLTS Commander Charles stated former BLTS Commander Joris Mergulus sanctioned the destruction. Former Commander Mergulus had received authorization from former Haitian Judicial Police Central Directorate (DCPJ) Chief Rameau Normil, Minister of Justice Heidi Fortune, Haitian National Police Commissioner Michel Ange-Gedeon, and CA #2. CA #2 could not confirm whether future use of the drug evidence in Haitian custody was needed for U.S. judicial proceedings and did not request that DEA be provided representative samples of the drug evidence for use in possible U.S. prosecution. Regardless, the sole authority to destroy evidence in foreign custody rests with host country authorities.

On September 17, 2018, BLTS Commander Charles provided WB #1 with documentation of the destruction of the bulk drugs maintained by BLTS. According to the documents received from BLTS Commander Charles, on May 11 and 12, 2017, members of the Haitian National Police/BLTS, Haitian government officials, the UN Police Force and PAPCO (SA #1 and CA #2) witnessed the destruction of BLTS' bulk drug exhibits in Guanthier, Haiti. According to BLTS Commander Charles, *MV Manzanares* drug Exhibits #1 and #2 were destroyed.

On September 18, 2018, CA #3, SA #2, and WB# 1 met with two BLTS agents who stated that they had participated in the removal and destruction of the bulk drugs from the BLTS drug vault. The BLTS agents were adamant that the drugs seized from the *MV Manzanares* were not destroyed during the drug destruction operation conducted in Guanthier, Haiti. According to both BLTS agents, on the date of the inventory, former BLTS Commander Mergulus directed BLTS Inspector Bernard Miffy to place the drugs seized from the *MV Manzanares* investigation in his (former BLTS Commander Mergulus) office. This was the last time they saw the drugs seized from the *MV Manzanares* investigation (Exhibits 1 and 2).

On September 19, 2018, CA #3 met with then BLTS Commander Charles regarding the destruction of the drug evidence in the *MV Manzanares* investigation. According to CA #3, BLTS Commander Charles informed him that, in May of 2017, former BLTS Commanding Officer Mergulus sanctioned the destruction of the bulk drug evidence stored at the BLTS drug vault. According to BLTS Commander Charles, the drugs seized in the *MV Manzanares* investigation were destroyed during a BLTS drug destruction operation conducted on May 11 and 12, 2018. BLTS Commander Charles stated that, prior to conducting the destruction of bulk drugs, former BLTS Commander Mergulus had received approval from former CA #2 to destroy the *MV Manzanares* drug evidence.

On September 21, 2018, CA #3, SA #2, and FBI Contractor #1 interviewed Judge Wilner Jean regarding the destruction of the drugs in the *MV Manzanares* investigation. During the aforementioned interview, Judge Jean stated that he was assigned by former BLTS Commander Mergulus to oversee the destruction of the bulk drugs held at the BLTS drug vault. Judge Jean was unable to confirm if the drugs seized from *MV Manzanares* investigation were destroyed during the aforementioned bulk destruction operation. Judge Jean further stated that, according to Haitian law, seized drug evidence in ongoing judicial cases should not be destroyed until the completion of the judicial process.

On September 24, 2018, CA #3 contacted HNP Police Commissioner Michel Ange-Gedeon regarding the destruction of the drug evidence in the *MV Manzanares* investigation. According to HNP Police Commissioner Ange-Gedeon, as per Haitian Law Article 81, 82, and 83, former BLTS Commander Mergulus should not have not ordered the destruction of drug evidence in an ongoing judicial case.

CA #3 subsequently convened an office meeting with members of PAPCO (SA #1, SA #2 and WB #1). During the meeting, CA #3 stated that the drug evidence seized in the *MV Manzanares* case was destroyed as per the directive of former BLTS Commander Mergulus. CA #3 further stated that the drug evidence should not have been destroyed while the U.S Attorney's Office was considering prosecution relating to the investigation. SA #1 stated that, in May of 2017, she and CA #2 witnessed the BLTS drug destruction operation conducted in Guanthier, Haiti. SA #1 stated that CA #2 approved a \$1,500 cash payment to BLTS to reimburse them for expenses related to the drug destruction operation.

As part of the ongoing investigation into the *MV Manzanares* seizure, on May 29, 2019, former BLTS Commander Mergulus was stopped at the Miami International Airport attempting to enter the United States and was met at the airport by members of DOJ/Office of the Inspector General (OIG), Customs and Border Protection (CPB) and DEA West Palm District Office (WPDO). Mergulus was subsequently searched and was found to be in possession of sensitive BLTS *MV Manzanares* investigation documents related to the destruction of the drug evidence in May of 2017. Mergulus immediately requested asylum in the U.S. and was subsequently detained by CPB officials, pending deportation proceedings.

On May 29, 2019, DEA, OIG, and CBP investigators interviewed former BLTS Commander Mergulus. He stated that he did not ask permission from any PAPCO Special Agents or CA #2 to destroy the narcotics seized from the *MV Manzanares*. Former BLTS Commander Mergulus stated that he informed CA #2 about the narcotics destruction as a courtesy and invited CA #2 as an observer. He stated the narcotics were seized and secured by BLTS personnel and processed per agency guidelines and that Agents from PAPCO never took possession of the narcotics because, at the time of the seizure, a United States nexus was not established. He also stated that two samples of the drugs were taken for court purposes and that it is a requirement of Haitian law that the rest of the drugs be destroyed. Former BLTS Commander Mergulus further stated that a Haitian Judge (whose name he could not recall) was present during the destruction of the narcotics and that CA #2 and SA #1 were present on the first day of the destruction as well.

On July 16, 2019, CBP repatriated former BLTS Commander Mergulus to Haiti after his request for asylum was denied. Upon his arrival back into Haiti, former BLTS Commander Mergulus was met by members of the Haitian National Police, who took him and his possessions into custody and transported him to the DCPJ Commissariat for processing. CA #3 and SA #3 witnessed the processing and were informed that former BLTS Commander Mergulus was fired from the HNP because he left the country while under investigation.

While there is disparate perception or opinion as to whether the drug evidence seized from the *MV Manzanares* should have been destroyed, the process was approved by Haitian authorities and coordinated with PAPCO personnel. In addition, the review establishes that the authority to destroy evidence related to the *MV Manzanares* investigation rested solely with the Government of Haiti.

3. The whistleblowers' allegation that DEA created delays, allowing the statute of limitations to expire in the *MV Manzanares* investigation. The whistleblowers have requested information on the status of this investigation.

DEA was not involved in the *MV Manzanares* investigation prior to Haitian law enforcement officials contacting the PAPCO after the April 2015 seizure occurred. Haitian authorities, under their protocols and policies, conducted the enforcement operation that resulted in the seizure of narcotics and other evidence from the vessel. Haitian authorities maintained all evidence in this investigation.

After DEA became involved in the investigation, DEA records indicate that DEA continued to investigate the seizure and coordinate with the United States Attorney's Office. For example, a DEA Report of Investigation, written on May 1, 2020, by SA #3 and approved by CA #3 stated the following, "all efforts continue to identify and prosecute members of the Haitian Based Trans-National Drug Organization under this (*MV Manzanares*) investigation." This report documents the ongoing discussion between PAPCO and AUSA #1, to continue prosecutorial efforts into the organization.

Ongoing investigative efforts were further documented on November 17, 2020. As evidenced by the November 17, 2020 report, PAPCO SA's and their Haitian National Police Drug Unit (HNP/BLTS) counterparts met with a Source of Information (SOI) regarding the *MV Manzanares*. The report of that meeting documented a conversation between two individuals (UNK #1 and UNK #2) that was overheard by the SOI concerning the *MV Manzanares*. During the overheard conversation, UNK #1 stated the vessel was used to transport cocaine in 2015 and that DEA and USCG are investigating the ship. PAPCO SAs also remain in contact with the United States Attorney's Office over the investigation's progress and feasibility of U.S criminal charges.

Accordingly, contrary to the whistleblowers' allegations, PAPCO continues to investigate the *MV Manzanares* seizure. This investigation remains open and in active status. PAPCO continues to interview potential witnesses, collect evidence and engage with the United States Attorney's Office. A review of the investigative file and DEA's 2018 response to the Office of Special Counsel do not support the allegations made by the whistleblowers that DEA failed to properly investigate the seizure from the *MV Manzanares* and create delays that caused the statute of limitations to expire.

4. The whistleblowers allegation that there was a conflict of interest given Chief Counsel's role in the investigation.

The role of DEA's Office of Chief Counsel (CC) during the initial review of the whistleblowers' accusations was limited. CC coordinated with the counsel for the whistleblowers and conveyed information to DEA's Operations Division about the potential witnesses identified by whistleblowers' counsel. DEA's Operations Division representative made the ultimate decision as to which persons were interviewed during the review, and, while a representative from CC attended the interviews, Operations and Inspections Division representatives posed the majority of questions to the witnesses. DEA's Operations Division also made all substantive findings and prepared the report documenting the review's findings. While CC provided an outline of the issues requested by OSC to review during the investigation and reviewed the final report, the investigation was led by, and all substantive decisions based on the investigation reflected in the report were made by, DEA's Operations Division. CC's limited participation in the initial review did not present a conflict of interest and did not impact the investigation conducted by the Operations and Inspections Divisions or the ultimate conclusion reached by the Investigators.

CC's participation during this supplemental investigation was similarly limited—CC communicated with the Office of Special Counsel on behalf of DEA but did not substantively contribute to the supplemental investigation. OSC informed CC that it could review the report before it was finalized, and CC did so, but did not alter any of the conclusions set forth therein.

Conclusion

As described above, despite USCG primacy, PAPCO personnel did undertake initiatives to build host country law enforcement capacity in support of investigative efforts at the port. In addition to the *MV Manzanares* remaining an open investigation, regular DEA reporting shows PAPCO personnel continuing to interview witnesses and collect evidence for review by the U.S. Attorney's Office for potential prosecution of those individuals involved in this investigation. Finally, this review describes DEA Office of Chief Counsel's limited role in the initial review of this matter and that no conflict of interest existed.

Please contact me if your office has comments regarding the matter or require further clarification.

Sincerely,



D. Christopher Evans
Acting Administrator