

# DRUG ENFORCEMENT ADMINISTRATION

---

---

## HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM,  
HOMELAND SECURITY, AND INVESTIGATIONS

OF THE

COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

—————  
SEPTEMBER 18, 2014  
—————

**Serial No. 113-109**

—————

Printed for the use of the Committee on the Judiciary



Available via the World Wide Web: <http://judiciary.house.gov>

—————  
U.S. GOVERNMENT PRINTING OFFICE

89-809 PDF

WASHINGTON : 2014

---

For sale by the Superintendent of Documents, U.S. Government Printing Office  
Internet: [bookstore.gpo.gov](http://bookstore.gpo.gov) Phone: toll free (866) 512-1800; DC area (202) 512-1800  
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

COMMITTEE ON THE JUDICIARY

BOB GOODLATTE, Virginia, *Chairman*

F. JAMES SENSENBRENNER, Jr., Wisconsin	JOHN CONYERS, JR., Michigan
HOWARD COBLE, North Carolina	JERROLD NADLER, New York
LAMAR SMITH, Texas	ROBERT C. "BOBBY" SCOTT, Virginia
STEVE CHABOT, Ohio	ZOE LOFGREN, California
SPENCER BACHUS, Alabama	SHEILA JACKSON LEE, Texas
DARRELL E. ISSA, California	STEVE COHEN, Tennessee
J. RANDY FORBES, Virginia	HENRY C. "HANK" JOHNSON, JR., Georgia
STEVE KING, Iowa	PEDRO R. PIERLUISI, Puerto Rico
TRENT FRANKS, Arizona	JUDY CHU, California
LOUIE GOHMERT, Texas	TED DEUTCH, Florida
JIM JORDAN, Ohio	LUIS V. GUTIERREZ, Illinois
TED POE, Texas	KAREN BASS, California
JASON CHAFFETZ, Utah	CEDRIC RICHMOND, Louisiana
TOM MARINO, Pennsylvania	SUZAN DELBENE, Washington
TREY GOWDY, South Carolina	JOE GARCIA, Florida
RAÚL LABRADOR, Idaho	HAKEEM JEFFRIES, New York
BLAKE FARENTHOLD, Texas	DAVID N. CICILLINE, Rhode Island
GEORGE HOLDING, North Carolina	
DOUG COLLINS, Georgia	
RON DeSANTIS, Florida	
JASON T. SMITH, Missouri	
[Vacant]	

SHELLEY HUSBAND, *Chief of Staff & General Counsel*  
PERRY APELBAUM, *Minority Staff Director & Chief Counsel*

---

SUBCOMMITTEE ON CRIME, TERRORISM, HOMELAND SECURITY, AND INVESTIGATIONS

F. JAMES SENSENBRENNER, Jr., Wisconsin, *Chairman*  
LOUIE GOHMERT, Texas, *Vice-Chairman*

HOWARD COBLE, North Carolina	ROBERT C. "BOBBY" SCOTT, Virginia
SPENCER BACHUS, Alabama	PEDRO R. PIERLUISI, Puerto Rico
J. RANDY FORBES, Virginia	JUDY CHU, California
TRENT FRANKS, Arizona	LUIS V. GUTIERREZ, Illinois
JASON CHAFFETZ, Utah	KAREN BASS, California
TREY GOWDY, South Carolina	CEDRIC RICHMOND, Louisiana
RAÚL LABRADOR, Idaho	

CAROLINE LYNCH, *Chief Counsel*

# CONTENTS

SEPTEMBER 18, 2014

	Page
OPENING STATEMENTS	
The Honorable Bob Goodlatte, a Representative in Congress from the State of Virginia, and Chairman, Committee on the Judiciary .....	1
The Honorable Tom Marino, a Representative in Congress from the State of Pennsylvania, and Member, Committee on the Judiciary .....	3
The Honorable Robert C. "Bobby" Scott, a Representative in Congress from the State of Virginia, and Ranking Member, Subcommittee on Crime, Terrorism, Homeland Security, and Investigations .....	4
The Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, and Ranking Member, Committee on the Judiciary .....	6
WITNESS	
The Honorable Michele M. Leonhart, Administrator, Drug Enforcement Administration	
Oral Testimony .....	9
Prepared Statement .....	12
LETTERS, STATEMENTS, ETC., SUBMITTED FOR THE HEARING	
Material submitted by the Honorable Robert C. "Bobby" Scott, a Representative in Congress from the State of Virginia, and Ranking Member, Subcommittee on Crime, Terrorism, Homeland Security, and Investigations .....	25
Additional Material submitted by the Honorable Robert C. "Bobby" Scott, a Representative in Congress from the State of Virginia, and Ranking Member, Subcommittee on Crime, Terrorism, Homeland Security, and Investigations .....	39
APPENDIX	
MATERIAL SUBMITTED FOR THE HEARING RECORD	
Questions for the Record submitted to the Honorable Michele M. Leonhart, Administrator, Drug Enforcement Administration .....	46



# DRUG ENFORCEMENT ADMINISTRATION

---

THURSDAY, SEPTEMBER 18, 2014

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON CRIME, TERRORISM,  
HOMELAND SECURITY, AND INVESTIGATIONS

COMMITTEE ON THE JUDICIARY

*Washington, DC.*

The Subcommittee met, pursuant to call, at 11:13 a.m., in room 2141, Rayburn House Office Building, the Honorable Bob Goodlatte (acting Chairman of the Subcommittee) presiding.

Present: Representatives Goodlatte, Chaffetz, Gowdy, Scott, Conyers, Pierluisi, and Chu.

Also Present: Representative Marino.

Staff Present: (Majority) Caroline Lynch, Chief Counsel; Robert Parmiter, Counsel; Allison Halataei, Parliamentarian & General Counsel; Brian Northcutt, Counsel; Alicia Church, Clerk; (Majority) Ron LeGrand, Counsel; Vanessa Chen, Counsel; Danielle Brown, Parliamentarian; and Veronica Eligan, Professional Staff Member.

Mr. GOODLATTE. Good morning. The Crime, Terrorism, Homeland Security, and Investigations Subcommittee will come to order. Without objection, the Chair is authorized to declare recesses of the Subcommittee at any time, and we welcome our witnesses today.

I will begin by recognizing myself for an opening statement. Welcome, Administrator Leonhart, to your first appearance before the House Judiciary Committee since June of 2012. We thank you for your service, and are happy to have you here with us today.

Just last week, this Committee reported two bills that directly affect DEA operations. H.R. 4299 addresses concerns that I and other Members have with the increasing length of time DEA has expended in recent years to schedule new controlled substances, thus delaying patient access to new therapies.

Reducing these scheduling time frames is important, but it should not be achieved by eliminating the Drug Enforcement Administration's critical role in the scheduling process. The substitute amendment I offered in markup codified a reasonable shorter scheduling time frame while preserving its vital role in the scheduling process.

H.R. 4771 adds 25 new substances to the list of anabolic steroids in the Controlled Substances Act. In cooperation with our Democratic colleagues, the Judiciary Committee unanimously approved a substitute amendment to remove an unnecessary and largely re-

dundant criminal penalty and streamline the civil penalties for the illicit manufacture, distribution, and dispensation of these substances.

Earlier this year, this Committee collaborated with our Energy and Commerce Committee colleagues on another piece of legislation, H.R. 4709, which streamlines the process for the revocation or suspension of a registration to manufacture, distribute, or dispense controlled substances.

It is indisputable that our Nation is facing a public health crisis due to prescription drug abuse, and we know that much of the illicit activity that diverts prescription drugs from the legitimate supply chain happens in the United States. However, we cannot solve that problem by simply cutting off legitimate access to prescription drugs.

While H.R. 4709 is not a perfect bill, and I invite DEA's additional comments to improve the bill, we must ensure that Federal law punishes the bad actors who illicitly divert drugs from the supply chain while protecting legitimate, law abiding businesses.

Under my leadership, this Committee will continue to conduct robust oversight of the DEA to ensure that vigorous enforcement of our Federal drug laws does not compromise responsible regulation of prescription drugs and patient access to life improving or even life saving medications.

Unfortunately, vigorous enforcement of our Federal drug laws has been repeatedly compromised by this Administration. President Obama and Attorney General Holder have repeatedly demonstrated their disregard for the Constitution and the founding principle of separation of powers.

They have circumvented the legislative process, ignored the will of Congress and the American people, and usurped the constitutional role of the legislative branch by unilaterally changing or ignoring Federal laws with which we disagree.

These policies have touched many areas and taken many forms, not the least of which is the frontal assault on Federal drug enforcement and sentencing.

Since 2009, and at the specific direction of Attorney General Eric Holder, the Justice Department has issued directives and memos with the goal of softening its enforcement of Federal drug laws to a level not seen in the 40 year history of the Drug Enforcement Administration.

Specifically, the Attorney General and Deputy Attorney General have directed Federal prosecutors to not pursue cases against certain offenders, even though they violated Federal law.

Directed Federal prosecutors to selectively enforce Federal financial crimes against institutions handling marijuana proceeds, directed Federal prosecutors not to allege drug quantities in cases where the quantity could potentially trigger mandatory minimum sentences.

Directed Federal prosecutors not to object to motions by defense counsel to apply lower proposed sentencing guidelines, and initiated a campaign to solicit clemency petitions from an entire class of Federal drug offenders.

Whether we agree on the policy is beside the point. The President has a constitutional duty to take care that the laws be faith-

fully executed. The “take care” clause requires the President to enforce all constitutionally valid acts of Congress regardless of his own Administration’s view of their wisdom or policy.

These unilateral executive actions have put the DEA, and especially its line agents, in an impossible position. They must now choose between doing their job and obeying their boss.

As an example of this Hobson’s choice, we need look no further than the testimony of the witness that appears before us today.

In testimony before the Senate Judiciary Committee on April 30, 2014, Administrator Leonhart refused to support legislation to slash mandatory minimum sentences for drug trafficking offenses when she remarked “Having been in law enforcement for 33 years and a Baltimore City police officer before that, I can tell you that for me and for the agents that work for DEA, mandatory minimums have been very important to our investigations.”

Following her testimony, it has been well documented that Ms. Leonhart was “called in” by the Attorney General for an “one on one chat about her recent insubordination.” Apparently, in this Administration, a dedication to enforcing the law amounts to “insubordination.”

The selective enforcement of Federal law and lack of respect for the constitutional separation of powers has become a hallmark of the Obama administration. It is a source of profound concern for me and the Members of this Committee.

Again, it is Congress’ responsibility to make policy decisions about whether to address mandatory minimums and other hot button items. It is the Administration’s responsibility to enforce the laws.

Administrator Leonhart, I look forward to your testimony regarding the challenges facing the DEA today.

In consultation with the Ranking Member of the Subcommittee, I ask unanimous consent to allow me to yield briefly to the gentleman from Pennsylvania, who is not a Member of this Subcommittee but is a Member of the full Committee, and is keenly interested in the issues before us today, and who also needs to slip away to another Committee.

So, without objection, I now recognize the gentleman from Pennsylvania, Mr. Marino, for his comments.

Mr. MARINO. Thank you, Chairman. Thank you, Ranking Member. I truly appreciate this. Administrator, thank you for being here. Thank you for what the professionals at DEA do to fight the illegal distribution of narcotics.

There are heroes in your agency, and I have worked with them directly. I cannot overstate my respect for the DEA and its mission.

My congressional colleagues, Chu, Blackburn, Welch, and I authored a bill that will clarify the responsibilities of the legitimate prescription supply industry and facilitate collaboration. Our bill passed the House unanimously - unanimously. Today, companion legislation will be introduced in the Senate by Senators Hatch and Whitehouse.

Let me say this with the utmost respect. Congress is sending the DEA a message. You should take a serious look at your regulatory culture and seek collaboration with legitimate companies that want to do the right thing, legitimate companies.

Big fines make headlines, but that is all they do. Press releases do not save lives.

It is my understanding that Joe Rannazzisi, a senior DEA official, has publicly accused we sponsors of the bill of “supporting criminals.” This offends me immensely. You know before coming to Congress I was a prosecutor and an United States Attorney. I worked to put away violent felons and drug dealers.

I ask that you commit to me today that you will look into this and get back to me on whether you think that statement is acceptable behavior. Such conduct is not acceptable and it is unbecoming of the DEA, an agency that I have the utmost respect for. I would like to hear from you on this in writing after this hearing.

Finally, at our April 8 Judiciary Committee oversight hearing, the Attorney General suggested he should meet with industry representatives and asked me to facilitate that. I have attempted to do that but to date, no such meeting has taken place. I am disappointed that DOJ staff has not made this a priority, and I will be following up with a letter reminding the Attorney General of our exchange and his personal commitment.

Chairman Goodlatte, Ranking Member Scott, thank you so much, and I yield back.

Mr. GOODLATTE. I thank the gentleman, and it is now my pleasure to recognize the Ranking Member of the Subcommittee, the gentleman from Virginia, Mr. Scott, for his opening statement.

Mr. SCOTT. Thank you, Mr. Chairman. First, I want to thank you for cooperatively working with the Minority last week to develop bills on drug scheduling that we could all support. The original versions had several problematic provisions which you addressed without diluting the effectiveness of the legislation.

I am pleased to join you this morning in convening this oversight hearing on the Drug Enforcement Administration, and I would like to thank Administrator Leonhart for her years of dedicated service and for appearing before us today. I must also thank the thousands of dedicated DEA employees who enforce our laws every day, many of whom are putting their lives on the line to do so.

The DEA is involved in drug enforcement activities all over the world. However, it is not clear that all of these activities are as effective or as important as others in stopping or reducing the scourge of drug use.

In general, there are supply side strategies and demand side strategies to reduce drug use. Research indicates that demand reductions through prevention, education, and treatment can be much more effective than supply side reduction through interdiction and law enforcement efforts.

I am hoping the Administrator will be able to shed some light on DEA’s strategy with respect to prevention and intervention strategies and what works and what does not work.

One of the big problems we have in this country with illegal drugs as well as illegal use of prescription drugs is that there is a huge demand for them. The history of the war on drugs shows us two things. First, if there is a demand for the product, suppliers will find a way to provide it, no matter what cost or no matter what the sanctions.



Second, the large amounts of drugs interdicted or captured annually represents only a small fraction of the drugs being trafficked. In fact, evidence suggests that the street price for some of the most dangerous drugs has actually gone down while purity has gone up, and drug use has increased or stayed about the same.

Therefore, the so-called “war on drugs” has had negligible effect on the drug trade at the highest levels but it has imprisoned legions of street level dealers and users. Given that we have already spent billions of dollars without a significant impact, the question remains how much more would we have to spend in order to achieve significant results.

While drug use in all major categories, among White Americans, is as high or higher than the drug abuse among Black and Hispanic Americans, the vast majority of those imprisoned for drug violations are Black and Hispanic.

The war on drugs has been waged almost exclusively in poor communities of color, even though the data shows that minorities are no more likely to use illegal drugs or commit crimes. Black Americans make up 12 percent of the U.S. population, but almost 50 percent of those are incarcerated for drug violations.

Drug convictions alone make up about two-thirds of the increase in the Federal population that has exploded over the last few years. The excessive and discriminatory sentencing penalties from drug convictions are driven mainly by mandatory minimums and also by consecutive counts and enhancements that are so Draconian that many are serving life sentences or the equivalent in years, even for first time, low level offenders.

In fiscal year 2012, 16 percent of convicted drug defendants were convicted of offenses carrying a mandatory minimum penalty. These harsh penalties were intended to be used against kingpins and leaders and criminal syndicates.

In reality, data from the U.S. Sentencing Commission shows they are used against couriers, street level dealers, and addicts. More than half of these defendants had the lowest criminal history category at the time of their convictions.

Mandatory minimums are sound bytes masquerading as crime policy. They sentence people before they are even charged or convicted based solely on the name of the crime. No consideration is given to how minor the role may be that one played or whether or not they are a first offender, a minor, or an abused woman under the control of a violent boyfriend.

Even if the prosecutor, the judge, the defense counsel, and probation officer all agree that a mandatory minimum is too severe for a particular offender in a specific case, there is no choice. The judge’s hands are tied and the judge must impose the mandatory minimum as a matter of law.

All the research we have shows that mandatory minimums waste money, disrupt rational sentencing considerations, discriminates against minorities, and often require judges to impose sentences that simply violate common sense when compared to traditional proportional sentencing.

As a result of the emotional appeal of the “tough on crime” policies, the United States has the dubious distinction of being the world’s leader in incarceration, jailing 700 people for every 100,000

population. Most countries incarcerate about 100. The closest competitor is Russia at about 600, China locks up about 116 per 100,000, India, about 36.

Research on the states estimates that any ratio over 350 per 100,000, for any ratio above that, the crime reduction value begins to diminish. Anything over 500 per 100,000 becomes counter-productive, messing up so many families, wasting so much money, having so many people with felony conviction records that you are actually adding to crime, not reducing crime. That is at 500 per 100,000. The United States' average is over 700.

When we look at the lock up rate in the minority community, it is even worse. Ten states lock up African Americans at the rate of approximately 4,000 per 100,000. The rates of incarceration we have in this country and looking at crime and simply suggesting that the main problem we have is we are not locking up enough people just does not meet with science, experience or common sense.

So, one is left to wonder about the motivation to continue what amounts to a failed system in reducing drug trafficking and abuse when we consider how ineffective and costly the punitive supply reduction strategy has been.

Reliance on incarceration is not free. When a drug dealer gets sentenced to 50 years at \$30,000 a year, that amounts to over approximately \$1.5 million. The day after the drug dealer is sent away, his territory is taken over, so you really have not done anything in reducing crime.

That same \$1.5 million, if it had gone to the Boys and Girls Clubs, who held their annual congressional breakfast yesterday, could have been put to much better use. Maybe if we had just spent \$500,000 locking up the guy and had \$1 million for the Boys and Girls Clubs, we could put hundreds of young people on the right track and kept them on the right track rather than the excessive incarceration for just one person.

Those are some of the things that I hope we discuss today, Mr. Chairman, and I yield back the balance of my time.

Mr. GOODLATTE. I very much thank the gentleman for his comments, and I am now pleased to recognize the Ranking Member of the full Committee, the gentleman from Michigan, the former Chairman of the Committee, Mr. Conyers, for his opening statement.

Mr. CONYERS. Thank you, Chairman Goodlatte and Ranking Member Scott. Welcome, Administrator Leonhart. Pleasure to have you here.

The Drug Enforcement Administration is tasked with enforcing the most critical failing, in my mind, of our Nation's criminal justice system, namely the war on drugs.

I want to discuss two things. First and foremost, the war on drugs has disproportionately impacted communities of color, and second, federalizing street crime undermines constitutional principles of limiting government prosecution to charges that cannot or should not be brought in state courts.

To begin with, the collateral damage of the war on drugs has disproportionately harmed minorities, obviously. Admittedly, discrimination has permeated our Nation's history since its founding. The

Constitution itself devalued slaves, former slaves, as three-fifths of a man. Through the Civil War and although the Civil War was fought to abolish slavery, Jim Crow in its wake codified disparate treatment as the supreme law of the land.

So, we have been wrestling with this for quite a while historically. While it has been 60 years since *Brown v. Board of Education* struck down the abhorrent doctrine of separate but equal, and 50 years since the march on Washington and the passage of the Civil Rights Act, the casualties of our war on drugs continues to be separate and unequal.

The malignant vestiges of racism, unconscious or not, lurk within our Federal criminal justice system. Criminal justice and drug enforcement are weeded out by human beings with real human failings, including bias and self interest. Not all of them but some of them.

The statistics tell the story of the racially disproportionate impact of our Federal drug laws and policies. Our country has spent over \$2.5 trillion on the war on drugs. Our Federal prison system is currently at 132 percent over capacity. Half of all Federal prisoners are drug offenders.

In 2013, Blacks and Hispanics comprised almost 75 percent of all Federal drug offenders. Currently, almost 40 percent of all Federal prisoners are Black and 35 percent are Hispanic. Blacks are arrested for drug offenses at rates two to five times higher than Whites.

This is despite the fact that national data shows that people of all races use and traffic drugs at about the same rate. People of all races use and traffic drugs at about the same rate, yet African American and Hispanic men and women are sentenced and imprisoned for Federal drug offenses at disproportionately higher rates for virtually every kind of drug.

While only 4 percent of Federal crimes carry mandatory minimum sentences, 34 percent of those in Federal prison are serving mandatory sentences with Blacks and Hispanics, of course, receiving sentences that are often years longer than Whites in similar cases.

Before we identify solutions, we must recognize how our laws and policies along with systemic problems writ large in our Federal system interact with the Drug Enforcement Administration's practices in the war on drugs to contribute to this disparate impact.

No longer does Jim Crow and overt racism move the day, but rather euphemisms such as "those who fit the profile," "who raise reasonable suspicion," "who reside in high crime areas," where stop and frisk policies are the norm.

Now, to be fair, bias creeps in at every branch of our Federal Government, from the initial decision of where and whom to monitor, which cases are accepted for prosecution, which defendants to charge with mandatory enhancements, and ultimately which defendants receive upward or downward variant sentences.

Particularly troubling to me from a civil liberties' perspective are the DEA's civil asset forfeiture practices. The Drug Enforcement Administration in conjunction with state authorities can seize cash and property from men and women who are not convicted, much less charged with a crime. This incentivizes state and local law en-

forcement agencies to engage in these seizures so as to apply the fruits of that bounty to their own budgets.

The burden rests on the property owner to prove his innocence in a civil suit that costs frequently thousands of dollars in legal fees and months' imprisonment.

Much like we saw in the DEA's Operation Pipeline in the 1990's, the overwhelming majority of those targeted for those traffic stops are Black or Hispanic. Private contractors, such as Black Asphalt and Desert Snow, working with state and local authorities, have made it so driving while Black or Hispanic means that one is presumed guilty absent any evidence other than an officer's hunch based on someone's appearance.

Our reforms need to eliminate this bounty hunting incentive and disparate impact that it causes.

To declare success on the war on drugs, rather than continue policies that actually cause more harm than good, we must learn from the recent successes from our states and others around the globe.

Our founding fathers recognized the value of delegating the general police power to the states and the important function that states serve as laboratories of innovation. We should permit these federalism principles to guide us in ensuring that Federal jurisdiction is limited, complimenting, but not supplanting state jurisdiction.

I conclude by pointing out that many states and countries have examined similar troubling disparities in their conviction and sentencing data. In response, they eliminated or reduced mandatory minimums for drug offenses or diverted those cases to specialized drug courts and emphasized treatment and re-entry over incarceration.

Their rewards have been not only billions in savings but also reductions in their crime, recidivism, and addiction rates.

While these reforms may sound counterintuitive, they offer common sense, proportional, and evidence based responses to our current Federal programs and penalties that are discriminatory, destructive, and ultimately counterproductive.

Thus, we should cooperate with the states to develop policies to determine whether offenses should be prosecuted in the state or Federal systems.

So, accordingly, I look forward to Administrator Leonhart's testimony about how the DEA and Congress can best address the concerns that I have identified.

I thank you, Mr. Chairman, and return any unused time.

Mr. GOODLATTE. The Chair thanks the Ranking Member and assures him that there was not any unused time. [Laughter.]

And thanks him for an overly thorough exposition of the issues. I know the issue is important to him, so I wanted to let him finish his opening.

Mr. CONYERS. Thank you.

Mr. GOODLATTE. It is now my pleasure to introduce today's witness. Michele Leonhart was unanimously confirmed as the Administrator of the Drug Enforcement Administration in December of 2012, and she had been Acting Administrator since November of 2007, and served as the DEA's Deputy Administrator since 2004.

Prior to that, she held several positions with the DEA's Senior Executive Service. She served as special-agent-in-charge of the DEA's Los Angeles Field Division from 1998 through 2003, and special-agent-in-charge of the DEA's San Francisco Field Division in 1997 and 1998.

As a career DEA special agent, Ms. Leonhart held several key positions as she moved through the ranks of the DEA. In 1995, she was promoted to the position of assistant special agent in charge of the L.A. Field Division. She has had more than 30 years in law enforcement beginning her career as a Baltimore City police officer after graduation from college in Minnesota, with a Bachelor of Science in Criminal Justice in 1978.

As is the custom of this Committee, we will begin by swearing in the witness, so if you would please rise.

[Witness sworn.]

Mr. GOODLATTE. Thank you very much. Let the record reflect that the witness answered in the affirmative, and your entire written statement will be entered into the record, and we ask that you summarize your testimony in 5 minutes or less. We have a timing light there on the table that will assist you in that information.

Again, welcome to the Committee.

**TESTIMONY OF THE HONORABLE MICHELE M. LEONHART,  
ADMINISTRATOR, DRUG ENFORCEMENT ADMINISTRATION**

Ms. LEONHART. Thank you. Chairman Goodlatte, Ranking Member Conyers, Ranking Member Scott, Members of this Subcommittee, thank you for the opportunity to testify before you this morning.

This Committee's support for the Drug Enforcement Administration has been enormously important to us. I welcome this opportunity to continue working with you and share with you our recent accomplishments and our challenges.

DEA in our unique capacity around the world is responsible for enforcing the provisions of our domestic controlled substance and chemical diversion trafficking laws, and is honored to work closely with our state, local, Federal, and international counterparts.

In recent years, DEA's investigations resulted in the arrest and conviction of major international criminals, including Viktor Bout, Monzer Al Kassar, Haji Bagcho, and even the former President of Guatemala, Alfonso Portillo.

Most notably, DEA also supported the Mexican Government's apprehension earlier this year of "El Chapo" Guzman, the head of the world's largest drug trafficking organization.

These individuals highlight just a few of the successful cases we have aggressively pursued each and every day. Yet, these law enforcement successes are only one part of the comprehensive strategy needed to address illicit drug use. A successful strategy must be comprehensive and include research, prevention, and treatment. There is no magic solution of the complex challenge of illicit drug use.

This comprehensive strategic approach has been successful. According to an analysis by the Substance Abuse and Mental Health Services Administration, illicit drug use rates are lower by approximately one-third compared to 30 years ago, and since 2006, we

have seen significant decreases in the number of past month users of cocaine.

This does not mean that we are not facing real and significant challenges. Years of over prescribing prescription pain killers combined with decreased perceptions of risk have created millions of new addicts.

DEA has responded not just with enforcement actions, but also pushed to reschedule Hydrocodone, a potent and addictive opioid. It is still readily available for legitimate use, but it is now subject to additional tracking, prescribing, and storage restrictions, which will minimize the potential for diversion.

In addition, we have just released the final rule governing drug disposal. This rule expands the public's options to safely and responsibly dispose of their unused and unwanted controlled substance prescription medications, and will make DEA's semi-annual take back days unnecessary.

While we have seen some progress to our counter-prescription drug abuse, we are beginning to see an increase in the trafficking of one of the more traditional drugs of abuse - heroin.

After years of declining use, the availability and abuse of heroin is now increasing, especially among younger Americans. In response, DEA is systematically targeting high level heroin suppliers in partnership with state and local law enforcement authorities, and has seen a steady increase in heroin related enforcement efforts nationwide.

Marijuana abuse is another grave concern for DEA, particularly because of changing public attitudes on its use. As you are aware, the Administration opposes marijuana legalization. Approximately 19.8 million Americans have used marijuana in the past month, more than any other illicit drug, and this includes nearly one out of 15 American high school seniors who are now nearly daily marijuana users.

Consistent with the Administration's comprehensive approach to the issue, DEA also supports scientific research efforts and ensures that there is sufficient marijuana availability for research purposes through a robust process of providing Schedule I research registrations to qualified researchers. In fact, DEA has never denied a registration for a bona fide marijuana related research application.

Looking forward, DEA will continue to build on the progress that we have made, and with our state and local partners, we will continue to target traffickers who operate in or whose drugs enter into our country.

These investigations compliment and support our international partnerships where we target the most violent and prolific drug trafficking organizations in the world. It is clear to me as a career special agent and as DEA's administrator, that not only is our mission an essential element to our national drug control strategy and to our Nation's health, but also to the security of our country and our interests abroad.

Thank you for your partnership, and I look forward to continuing to work with this Committee and Congress on these important issues. I look forward to answering your questions.

[The prepared statement of Ms. Leonhart follows:]



# Department of Justice

---

TESTIMONY OF

MICHELE M. LEONHART  
ADMINISTRATOR  
DRUG ENFORCEMENT ADMINISTRATION

BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM, HOMELAND SECURITY  
AND INVESTIGATIONS  
COMMITTEE ON THE JUDICIARY  
U.S. HOUSE OF REPRESENTATIVES

FOR A HEARING ON

OVERSIGHT OF THE DRUG ENFORCEMENT ADMINISTRATION

PRESENTED

SEPTEMBER 18, 2014

**Written Testimony of Administrator Michele M. Leonhart  
Drug Enforcement Administration  
Before the Subcommittee on Crime, Terrorism Homeland Security and  
Investigations, Committee on the Judiciary  
U.S. House of Representatives  
Wednesday, September 18, 2014**

Chairman Sensenbrenner, Ranking Member Scott, and Members of the Subcommittee: Good morning, and thank you for inviting me to testify regarding oversight of the Drug Enforcement Administration (DEA). As the leader of DEA, an organization of almost 10,000 employees dedicated to the vital mission of enforcing our nation's drug laws, I would like to express our collective appreciation for the support that this Committee has shown us over the years. I welcome the opportunity to continue our partnership and share with you DEA's recent accomplishments.

DEA, in its unique capacity as the world's preeminent drug law enforcement agency, identifies, investigates, disrupts, and dismantles drug trafficking organizations (DTOs) responsible for the production and distribution of illegal drugs. DEA is responsible for enforcing the provisions of our domestic controlled substance and chemical diversion trafficking laws and is pleased to work closely with our local, state, federal, and international counterparts. Enforcement of our nation's drug laws is, and will always be, our top priority.

Throughout DEA's history of over 40 years, we have safeguarded Americans from the dangers associated with the drug trade. In recent years, DEA investigations, partnered with other federal, state, local, and international law enforcement counterparts, have resulted in the successful arrest of major international criminals. This includes arms trafficker Viktor Bout, 'The Prince of Marbella' Monzer Al Kassar, Afghan drug lord Haji Bagcho, Colombian drug trafficker Daniel Barrera-Barrera (aka Loco Barrera), and former President of Guatemala Alfonso Portillo. Most recently, DEA supported the Mexican government's successful efforts to apprehend the head of the world's largest and most prolific drug trafficking organization, Joaquin "El Chapo" Guzman Loera. He is the most significant of more than a dozen high level Mexican drug cartel leaders who have been put out of business in the past year.

We have also had many notable successes in the effort to reduce drug abuse in the United States. According to an analysis by the Substance Abuse and Mental Health Services Administration, illicit drug use rates are lower by approximately one-third compared to 30 years ago.<sup>1</sup> Since 2006, we have seen important decreases in the number of past month users, aged 12 and older of cocaine (from 1.0 percent to 0.6 percent, or roughly a million fewer persons).<sup>2</sup> Statistics like these demonstrate that through a balanced drug control strategy, one that includes strong enforcement, education, prevention, and treatment components, we can make significant progress in protecting our nation from drug abuse and its consequences. While these overall trends are positive, we still face significant challenges.

---

<sup>1</sup> 2013 National Report on Drug Use and Health, <http://www.whitehouse.gov/blog/2014/09/05/2013-national-report-drug-use-and-health>.  
<sup>2</sup> Results from the 2013 National Survey on Drug Use and Health: Summary of National Findings and Detailed Tables, <http://www.samhsa.gov/data/NSDUH/2013SummNatFndngTables/index.aspx>, Figure 2.2.



DEA continues to identify and respond to many new and evolving challenges. For example, the diversion and abuse of licit controlled pharmaceutical products is an elevating concern. Looking back at recent history, between 2003 and 2009 the number of prescription drug overdose deaths in Florida rose by 84.2 percent.<sup>3</sup> As the epicenter of the prescription drug problem during this time, Florida became a home to many internet-based pharmacies, and then (following the passage of the Ryan Haight Online Pharmacy Consumer Protection Act of 2008) to a rapidly increasing number of rogue ‘pain’ clinics.

Recently, the Centers for Disease Control and Prevention (CDC) reported that 41,340 people died of a drug overdose in the United States in 2011, the most recent year for which information is available.<sup>4</sup> Nearly 55 percent of those drug overdose deaths (22,810) involved prescription drugs.<sup>5</sup> And of those deaths, 74 percent (16,917) involved an opioid analgesic, also known as prescription painkillers.<sup>6</sup> These deaths represent not just a statistic, but our family members, friends, neighbors, and colleagues.

Years of over prescribing prescription painkillers and decreased perception of risk associated with drug use, particularly opiate abuse, resulted in an increased number of people abusing prescription drugs. In recent years, thanks in large part to the passage of new laws at both the federal and state level, as well as a series of coordinated law enforcement actions, we have seen a reversal of this trend. Approximately 250 ‘pain’ clinics were closed in Florida by 2013, and the number of high-volume oxycodone dispensing prescribers declined to zero in 2013.<sup>7</sup> While this is good news for Florida, rogue ‘pain’ clinic operators have already begun moving their operations to other states where the laws have not yet been updated. Federal drug enforcement, combined with effective state and local efforts and effective prevention, education and treatment programs, as well as improved access to treatment for substance use disorders, can reduce the number of Americans with substance use disorders, and the experience in Florida is an example of a successful implementation of this Administration’s drug policy.

DEA has taken additional steps recently which we believe will further address this challenge. For example, the recent rescheduling of hydrocodone from Schedule III to Schedule II should have a lasting, positive impact that will reduce the abuse of this potent, widely abused drug.<sup>8</sup> In addition, DEA has also coordinated a series of national prescription drug take back events for the disposal of controlled pharmaceuticals, taking 2,100 tons of these drugs out of harms’ way. The last DEA-sponsored nationwide take back event will be held on September 27, 2014. This will be the last take back day because we have also just released the final rule for a national, permanent solution for the disposal of these drugs, as directed by the Secure and Responsible

<sup>3</sup> Centers for Disease Control and Prevention, *Drug overdose deaths—Florida, 2003–2009*, MMWR 2011;60:869–72 (available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6026a1.htm>).

<sup>4</sup> Centers for Disease Control and Prevention, *Prescription Drug Overdose in the United States: Fact Sheet*, NCIP, Division of Unintentional Injury Prevention, July 3, 2014, (available at [www.cdc.gov/homeandrecreational/safety/overdose/facts.html](http://www.cdc.gov/homeandrecreational/safety/overdose/facts.html)).

<sup>5</sup> *Id.*

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

<sup>7</sup> *Baseline in Drug Overdose deaths After State Policy Changes*, page 2.

<sup>8</sup> On August 22, 2014, DEA published a final rule rescheduling hydrocodone combination products (HCPs) to schedule II of the Controlled Substances Act. HCPs are pharmaceutical drugs containing specified doses of hydrocodone in combination with other drugs in specified amounts. These products are approved for marketing for the treatment of pain and cough suppression. Abuse of HCPs is associated with large numbers of individuals being admitted to addiction treatment centers. Individuals are taking these drugs in sufficient quantities to create a hazard to their health, and abuse of HCPs is associated with large numbers of deaths. The final rule is available on [www.regulations.gov](http://www.regulations.gov), and through [www.DFA.gov](http://www.DFA.gov).

Drug Disposal Act.<sup>9</sup> These new regulations will expand the public's options to safely and responsibly dispose of unused or unwanted medications, and will allow for around-the-clock, simple solutions to this ongoing problem. In addition, DEA is supporting the Attorney General's initiative encouraging law enforcement and other first responders to be trained in the use of naloxone.<sup>10</sup> Currently, DEA is undertaking a review and assessment of whether certain employees should be equipped and trained to recognize and respond to opioid overdose, including the use of naloxone.

As DEA continues to address the rapidly-evolving challenges that lead to opioid abuse and drug trafficking, we would encourage Congress to protect critical enforcement tools like Immediate Suspension Orders (ISOs). Taking away this authority – or requiring DEA to prove “intent” in order to issue an ISO – will severely undermine DEA's ability to use this essential component of our regulatory authority. In practice, this would prevent DEA from suspending the registration of a rogue doctor, distributor, or pharmacy in most, if not all, egregious cases, because it would restrict DEA from taking immediate action in instances of negligence, gross negligence, and reckless conduct that disregards health consequences or death. Had this new standard been in place in recent years, DEA would have been unable to stop the distribution of controlled substances that contributed to the problems in Florida and elsewhere. Although this tool is used infrequently and with discretion (only 16 times in 2013), it is essential that this option be available in circumstances where there is a real threat to public health and safety.

It is also important to preserve DEA's ability to complete a thorough review of new substances, while also working to get drugs scheduled quickly upon receipt of the Department of Health and Human Services scientific and medical evaluation and recommendations,<sup>11</sup> which may occur before or after marketing approval by the Food and Drug Administration (FDA), so patients can access these medicines. The scheduling process must continue to allow sufficient time for DEA to complete a thorough review, particularly of the potential for diversion and abuse, and to determine the appropriate schedule for control. Restricting DEA's authority to this end would have a negative impact on public health and safety by putting new drugs out to market without full consideration of the potential for abuse or diversion. We appreciate that the House Committee on the Judiciary supports preserving DEA's ability under the CSA to review for the potential for diversion and abuse of new drugs in order to protect public health and safety.

We also support this Committee's work to protect the public, and especially our kids, from the dangers of designer synthetic drugs. These drugs are another one of the most rapidly evolving challenges we face. These drugs have been specifically created and marketed in a manner to avoid liability under the Controlled Substances Act. Traditional designer drugs were historically manufactured in clandestine laboratories in the United States. This new generation of designer synthetic drugs, such as synthetic cannabinoids (often marketed under the guise of herbal

<sup>9</sup> On September 9, 2014, DEA published a final rule for the disposal of controlled substances, which implements the Secure and Responsible Drug Disposal Act of 2010. DEA's goal in implementing the Act is to expand the options available to safely and securely dispose of potentially dangerous prescription medications on a routine basis. The Final Rule is available on [www.regulations.gov](http://www.regulations.gov), and through [www.DEA.gov](http://www.DEA.gov).

<sup>10</sup> Naloxone is an opiate antagonist that can rescue individuals who have overdosed on an opiate. Introduction of naloxone into the victim immediately reverses the effects of the opiate and can save a patient from the overdose. Naloxone is currently available as an injectable, however, police departments in several areas of the country such as Quincy, Massachusetts and Suffolk County, New York are using a nasal naloxone delivery method that is administered by police officers who are certified to carry and utilize the drug under established protocols. Police first responders generally arrive on the scene of an overdose well before emergency medical service personnel and in overdose situations, every second counts. The quicker that naloxone is administered the better chance for patient survival.

<sup>11</sup> See 21 U.S.C. § 811(b).

incense or potpourri), stimulants (e.g., cathinones often marketed under the guise of “bath salts”) and hallucinogens (e.g., tryptamines, piperazines) are not predominantly synthesized in clandestine laboratories in the United States. Instead, the vast majority of this new generation of designer drugs are developed and manufactured in foreign clandestine laboratories and then smuggled into the United States in bulk form or as finished product.

In response to this growing threat, DEA has coordinated a series of law enforcement actions designed to disrupt the international production and domestic distribution of synthetic designer drugs. This past May, the second phase of *Project Synergy*, which involved more than 45 DEA offices, resulted in the serving of nearly 200 search warrants, the arrest of more than 150 individuals, and federal, state, and local law enforcement authorities seized hundreds of thousands of individually packaged, ready-to-sell synthetic drugs, as well as hundreds of kilograms of raw synthetic products to make thousands more. In addition, more than \$20 million in cash and assets were seized.

In addition to targeting retailers, wholesalers, and manufacturers, many of these investigations continued to uncover the massive flow of drug-related proceeds to countries in the Middle East, including Yemen, Jordan, Syria, and Lebanon, and as well as other countries. Investigations also targeted many trade implements such as organic leaves and packaging material used in preparation for drug re-sale and distribution. These facilitators are an integral part of the quickly evolving synthetic designer drug industry and raise additional concerns beyond the extremely dangerous drugs themselves. The shift to large-scale foreign manufacture of these synthetics limits the deterrent effect of the Analogue Act as well as the ability of law enforcement authorities to proactively identify and prevent potential designer drug threats. Instead, law enforcement authorities must wait for the next new designer drug to be identified after it is smuggled into the United States and sold in retail environments with inconspicuous labeling. As a result, abusers and unsuspecting youth have been exposed to the dangerous substances and, in many instances, have even suffered adverse health consequences, including death.

While we have made some progress in our efforts to address the abuse of prescription painkillers and to slow the spread of designer synthetic drugs, we are also beginning to see an increase in trafficking and abuse of one of the more traditional drugs of abuse: heroin.<sup>12</sup> South American and Mexican drug trafficking organizations are able to take advantage of this increasing demand by supplying heroin with a higher purity at lower prices. This heroin enters the United States primarily across our southwest border and, not surprisingly, the amount of heroin seized there has increased nearly 300 percent from 2008 to 2013.

During roughly the same time period, between 2002 and 2011,<sup>13</sup> rates of drug poisoning deaths involving heroin doubled.<sup>14</sup> After years of declining use, the availability and abuse of heroin, is now increasing, especially among younger Americans. This is due in part to increased production in Mexico, even as Colombian production declines.

<sup>12</sup> Pradip K. Muhuri, et al. *CBHSQ Data Review: Associations of Nonmedical Pain Reliever Use and Initiation of Heroin Use in the US, August 2013*, Center for Behavioral Health Statistics and Quality Data Review, SAMHSA (2013), (available at <http://www.samhsa.gov/data/2k13/DataReview/DR006/nonmedical-pain-reliever-use-2013.pdf>).

<sup>13</sup> 2002-2011.

<sup>14</sup> Centers for Disease Control and Prevention, *QuickStats: Rates of Drug Poisoning Deaths Involving Heroin, \* by Selected Age and Racial/Ethnic Groups - United States, 2002 and 2011*, MMWR, July 11, 2014 /63(27):595 (available at [http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6327a5.htm?s\\_cid=mm6327a5\\_w](http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6327a5.htm?s_cid=mm6327a5_w)).

In addition, approximately 19.8 million Americans have used marijuana in the past month, more than any other illicit drug.<sup>15</sup> Currently, marijuana is the most widely available and commonly abused illicit drug in the United States. In 2013 alone, nearly 33 million people ages 12 and older reported using the drug within the past year,<sup>16</sup> and in 2013 one out of every 15 high school seniors was a near daily marijuana user.<sup>17</sup> A major study published in the Proceedings of the National Academy of Sciences in August 2012, found that long-term marijuana use started in the teen years has a negative effect on intellectual function in adulthood; the more persistent the person's dependence on marijuana, the more significant the impairment.<sup>18</sup> Heavy marijuana users also reported that the drug impaired several important measures of health and quality of life, including physical and mental health, cognitive abilities, social life, and career status.<sup>19</sup> These statistics help describe the effects of marijuana and the health and safety implications on the users themselves, their families, and our communities.

DEA's enforcement responsibility as it pertains to marijuana and other drugs are clearly delineated in federal law. The Administration continues to oppose marijuana legalization, and DEA will continue to build cases against individuals and organizations that are using state marijuana laws as a pretext to engage in large-scale trafficking of marijuana and other illicit drugs to other states; target marijuana businesses near schools, parks, and playgrounds; and take action against those who cause environmental damage by growing marijuana on our public lands. However, our responsibility and dedication to the American people goes further, including educating about the misperceptions and dangers associated with drug abuse. In 2006, the FDA noted that "there is currently sound evidence that smoked marijuana is harmful," and "that no sound scientific studies support medical use of marijuana for treatment in the United States, and no animal or human data support the safety or efficacy of marijuana for general medical use."<sup>20</sup>

The term "medical marijuana" is generally used to refer to the whole unprocessed marijuana plant or its crude extracts, which are not approved as drugs by the FDA. Twenty-three states and the District of Columbia have now legalized marijuana's use for certain medical conditions. Another ten states allow the use of certain "low tetrahydrocannabinol (THC), high cannabidiol (CBD)" products for medicinal reasons. These state laws authorize the smoking of marijuana or the consumption of crude extracts that have not undergone scientific testing demonstrating that they are both safe and effective. The FDA has not approved marijuana as a safe and effective drug for any indication.

<sup>15</sup> SAMHSA, *Center for Behavioral Health Statistics and Quality*, National Survey on Drug Use and Health, 2002-2013, Figure 2.1.

<sup>16</sup> SAMHSA, *Center for Behavioral Health Statistics and Quality*, National Survey on Drug Use and Health, 2002-2013, Table 6.1.A.

<sup>17</sup> "Teens are more cautious about synthetic drugs" University of Michigan Press Release, December 18, 2013, available at [www.na.umich.edu/news/releases/21880-teens-more-cautious-about-using-synthetic-drugs](http://www.na.umich.edu/news/releases/21880-teens-more-cautious-about-using-synthetic-drugs).

<sup>18</sup> Madeline H. Meier, et al., "Persistent cannabis users show neuropsychological decline from childhood to midlife," Proceedings of the National Academy of Sciences, July 30, 2012, available at [www.pnas.org/cgi/doi/10.1073/pnas.1206820109](http://www.pnas.org/cgi/doi/10.1073/pnas.1206820109).

<sup>19</sup> AJ Gruber, et al., "Attributes of long-term heavy cannabis users: A case control study," *Psychological Med* 33(8):1415-1422, 2003, available at <http://www.ncbi.nlm.nih.gov/pubmed/14672250>.

<sup>20</sup> Food and Drug Administration, "Inter-Agency Advisory Regarding Claims That Smoked Marijuana is a Medicine," April 20, 2006, available at [www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/2006/bum108643.htm](http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/2006/bum108643.htm).

The scientific study of active chemicals in marijuana, specifically those referred to as cannabinoids, has led to the development of two FDA-approved drugs already.<sup>21</sup> Additional research is ongoing, and it may lead to the development of new pharmaceuticals that may harness the therapeutic benefits of cannabinoids, while minimizing or eliminating the harmful side effects (including the “high”) produced by eating or smoking marijuana. The National Institute on Drug Abuse (NIDA) and other components of the National Institutes of Health are funding research to determine the possible role that active chemicals in marijuana, like THC, CBD, or other cannabinoids may play in treating autoimmune diseases, cancer, inflammation, pain, seizures, substance use disorders, and other psychiatric disorders.<sup>22</sup>

DEA supports these scientific research efforts and ensures that there is sufficient marijuana available for research purposes through a robust process of providing Schedule I research registrations to qualified researchers. In fact, DEA has never denied a marijuana-related research application to anyone whose research protocol had been determined by the Department of Health and Human Services to be scientifically meritorious. If there are ways in which marijuana, through the tested, professional research protocols used to evaluate all other drugs, can help Americans who can benefit from its use, DEA will be supportive of those efforts. DEA has also taken steps to increase the amount of marijuana available to researchers in the United States. On May 5, 2014, DEA published a notice in the Federal Register indicating an increase in the annual aggregate production quota for marijuana to allow the NIDA to produce more marijuana for researchers.<sup>23</sup>

Looking forward, DEA will continue to build on the progress that has been made. With our state and local partners we will continue to target traffickers who operate in or whose drugs enter into our country, frequently bringing with them gang activity, violence, addiction and death. These investigations complement and support our international partnerships, allowing DEA to target the world’s most important and dangerous drug traffickers who manage sophisticated criminal organizations whose operations span the globe. Due to the very nature of the threat, it is clear that the antidrug mission DEA carries out is an essential element to the national health and security of the United States and our interests abroad.

Perhaps one of the most effective tools which we will continue to exercise is our ability to target the financial infrastructure of major drug trafficking organizations and those who facilitate the laundering of their proceeds. By seizing illicit drug proceeds, DEA prevents drug trafficking organizations from using these funds to fuel the next round of drug production or other nefarious activity to include terrorism. Between FY 2005 through the end of FY 2013, DEA has denied drug trafficking organizations approximately \$25.7 billion in revenue, including \$3.5 billion in FY 2013 alone. To put that in perspective, DEA’s total appropriated budget over that same time period totaled \$16.9 billion. This total includes major seizures and fines not only from drug traffickers themselves, but those who keep them in business, supplying weapons, laundering money, moving drugs, providing them with safe havens, and those who have taken their payoffs and bribes.

<sup>21</sup> An FDA-approved drug called Dronabinol (Marinol®) contains THC and is used to treat nausea caused by chemotherapy and wasting disease (extreme weight loss) caused by AIDS. Another FDA-approved drug called Nabilone (Cesamet®) contains a synthetic cannabinoid similar to THC and is used for the same purposes.

<sup>22</sup> National Institute on Drug Abuse, *DrugFacts: Is Marijuana Medicine?*, April 2014, available at <http://www.drugabuse.gov/publications/drugfacts/marijuana-medicine>.

<sup>23</sup> 79 Fed. Reg. 25620 (2014).

DEA's comprehensive efforts reflect our historic commitment to bringing drug traffickers to justice. Arresting Chapo Guzman was a significant achievement for Mexico, and a major step forward in our shared fight against transnational organized crime, violence, and drug trafficking. The U.S. Government and Mexico have a strong partnership, and we will continue to support Mexico and our other partners in their efforts to improve security for their citizens and continue to work together to respond to the evolving threats posed by transnational criminal organizations.

DEA enforcement actions, which target major drug trafficking organizations and their proceeds, are only one element in the Administration's comprehensive national drug control strategy in which DEA plays an important role. Drug trafficking and abuse harms our citizens and endangers future generations of Americans. Today's drug traffickers exploit new and evolving technologies to communicate, launder ill-gotten gains, and facilitate the smuggling of drugs and weapons. DEA must continue to use every tool in the toolbox to combat these organizations through strategic enforcement.

Targeting the world's most prolific and dangerous drug traffickers is a dynamic and evolving mission, and with it comes a myriad of challenges. But throughout our history, DEA has met those challenges and produced impressive results. Using a blend of ingenuity, dedication and drive, our agency has time and again targeted the world's most infamous criminals and brought them to justice. DEA plays an important role in our country's holistic strategy of prevention, treatment, and enforcement.

DEA will continue to build upon these gains and focus on both emerging threats and ones we have been dealing with over many years, increasing our knowledge and our effectiveness. Additionally, we will keep working alongside Members of this Committee and other leaders to advance legislation to strengthen the Controlled Substances Act, to ensure the law keeps pace with changes in technology, illicit drug manufacturing, and the discovery of new substances that can be abused.

Thank you for the opportunity to appear before you today to discuss the activities of DEA. I would be happy to answer any questions you may have.

Mr. GOODLATTE. Thank you very much for your testimony. I will begin the questioning. Is marijuana possession use or distribution, medically or otherwise, legal under Federal law?

Ms. LEONHART. No, under Federal law, any growing, cultivation, distribution, transportation, importation of marijuana is against Federal law.

Mr. GOODLATTE. Despite the fact this Administration's current narrative in support of its position on sentencing reform relies on the supposition that too many low level, non-violent drug offenders are being investigated, prosecuted and incarcerated federally.

The Justice Department's own memo from last August providing guidance to Federal prosecutors stated that the Department of Justice has not historically devoted resources to prosecuting individuals whose conduct is limited to possession of small amounts of marijuana for personal use on private property.

Is this statement consistent with current and past DEA enforcement priorities?

Ms. LEONHART. DEA has never targeted drug users of any kind, especially marijuana users. We go after those that are trafficking, those that are members of organizations and cartels, those that are gang members that are supplying our communities. We do not target users. We do not target patients. We go after crime. We go after the drug traffickers.

Mr. GOODLATTE. In fact, in contrast to what this Administration would have us believe, the Federal prison system is not littered with scores of drug users ripped out of their bedrooms by DEA tactical teams for smoking marijuana; is that correct?

Ms. LEONHART. That is correct.

Mr. GOODLATTE. The reality is those targeted for sentencing relief by this Administration are only those whose conduct, that is trafficking large quantities of controlled substances, would subject them to mandatory minimum sentences.

You stated previously that based upon your 33 years of law enforcement experience you believe that mandatory minimum sentences play an important role in criminal investigations. I understand that you may have been discouraged from publicly taking this view, but how would the removal of this important tool affect the DEA's ability to carry out its mission?

Ms. LEONHART. Well, let me say I do believe that mandatory minimums have been very effective in our work over these many years, and would hope we can retain that tool.

On the other hand, I am aware that there are a number of initiatives that are being supported by the Attorney General to look at the bigger problem of prison overcrowding and to look at the money, the budget, now so much of it going to the Bureau of Prisons and not going to different programs that could help with recidivism, drug treatments and such in the prisons.

So, balancing those two things, yes, it has been an effective tool, and it is very important especially with the type of trafficker and the level of trafficker that DEA investigates and arrests and indicts, that these folks, these very dangerous criminals, these cartel members, these gang members, serve appropriate sentences.

Mr. GOODLATTE. It has been an effective tool and it is the law of the land, is it not, at this point in time?

Ms. LEONHART. Right now, yes.

Mr. GOODLATTE. As you know, switching to another subject, earlier this year, the House approved two amendments to the Commerce Justice Science Appropriations bill regarding industrial hemp.

These amendments were largely in response to litigation between the DEA and the State of Kentucky over the seizure of a large number of hemp seeds. The amendments disallowed DEA from blocking the importation of hemp seeds and preventing the cultivation of industrial hemp in states where it is legal.

If DEA does not find ways to improve the process for approving the importation of hemp or hemp seeds for legitimate research, it will continue to see the courts and Congress stepping in.

What are your comments? What is being done to improve that situation?

Ms. LEONHART. Well, DEA is looking at the Farm bill and harmonizing it with the Controlled Substances Act, and actually has worked with several states to ensure the provisions of the Farm bill, which allow institutions of higher education and state agriculture departments to grow industrial hemp for research purposes.

We have been helping them, like we have offered to help Kentucky.

Mr. GOODLATTE. I expect though this is the beginning of a process in which we are going to see the commercial production of industrial hemp, which is a historic product and a product that is abundant, and legitimate uses for it, but it has posed a problem in terms of DEA enforcement because it is sometimes difficult to distinguish it from marijuana.

So, what are the ongoing efforts to improve the ability of the DEA to set up a system where you can distinguish between the two so that this potential industry can continue to grow but not hamper the ability of the DEA to enforce the law?

Ms. LEONHART. We can get there by working with the states. In this particular case with Kentucky, they did not obtain the right registration or permit to import seeds. We have worked with other states now to help them get the proper registration.

By using the process, which is importing the seeds with an import registration and by DEA working with these agricultural departments and with these institutions of higher education, we then at DEA will have an idea of where the hemp is grown, but it does pose a very significant problem for not so much DEA, but really our state and local partners in that you cannot distinguish—

Mr. GOODLATTE. Let me reclaim my time because it has expired, and I just want to say that as this grows, literally and figuratively, this is an industry that is going to grow and you are not going to just have state departments of agriculture and research facilities at universities involved, but you are going to have lots and lots, maybe thousands and thousands of just average American farmers growing this crop.

The DEA is going to have to make adjustments and they are going to have to be aggressive about finding ways to more easily distinguish between what is going to be legal and what is going to be illegal.



My time has expired. I now am pleased to recognize the gentleman from Virginia, Mr. Scott, for his questions.

Mr. SCOTT. Thank you, Mr. Chairman. Ms. Leonhart, there are a lot of studies that have concluded that mandatory minimums disrupt rational sentencing strategies, they waste the taxpayers' money, they discriminate against minorities, and frequently require judges to impose sentences that violate common sense.

You have indicated that many times the mandatory minimums are appropriate but that is, of course, not the problem, because you do not need a mandatory minimum to impose an inappropriate sentence. The problem is it gets imposed on those for whom it is not appropriate.

Are you suggesting that the mandatory minimums do not inflict inappropriate punishment on anyone?

Ms. LEONHART. I am saying, you know, when asked the question had these been important tools, they have been for any of us in drug law enforcement. The decisions on what is an appropriate sentence for what a crime is is something that Congress takes up.

As long as there are sentences that fit the crime, sentences that ensure that the kingpins, the major traffickers, and those that are causing the violence in our communities are serving consistent sentences, then that will assist us in doing our drug law enforcement—

Mr. SCOTT. Are you suggesting they are not inflicted on people for whom there is no rational basis like girlfriends of kingpins getting decades of prison time? Are you suggesting it is never totally inappropriate, totally violative of common sense?

Ms. LEONHART. I would say it depends on what their role was in the organization and were they violent traffickers, what were they trafficking, the quantities.

Mr. SCOTT. The President's clemency program suggests that the Attorney General will consider clemency for those who have already served 10 years, low level, non-violent, essentially first offenders, and then it raises the question what is a "low level, non-violent first offender" doing with 10 years to begin with.

Ms. LEONHART. Again, DEA targets the baddest of the bad, the worse of the worse, the highest level trafficker.

Mr. SCOTT. They get long sentences and that is appropriate. What about those for whom the sentence—are you suggesting that you do not inflict that on people for whom the sentence violates common sense?

Ms. LEONHART. I think that—

Mr. SCOTT. That is what the mandatory minimum requires the judge to do.

Ms. LEONHART. I think it is important that there is discretion by the prosecutor on what they charge, and then it is up to the judge to sentence.

Mr. SCOTT. Wrong. That is what a mandatory minimum requires a judge to impose, a sentence that violates common sense.

Ms. LEONHART. And there are safety valves, protections, there are a number of things in sentencing that can be used, but I also support—

Mr. SCOTT. Ten years for non-violent, low level, first offender. Does that make sense to you?

Ms. LEONHART. I am sorry?

Mr. SCOTT. Ten years, more than 10 years, because you do not get clemency until you have already served ten, and you have so much more time to serve that you need clemency; low level, non-violent, first offender.

Ms. LEONHART. If that first offender was trafficking large quantities of heroin that were then spread across the community, I think that is an appropriate sentencing.

Mr. SCOTT. Suppose it is just a low level somebody on the tangent, girlfriend taking a message? Are you suggesting that makes any sense at all?

Ms. LEONHART. I would have to know the circumstances. I just know that—

Mr. SCOTT. All circumstances because it is a mandatory minimum.

Ms. LEONHART. If a mandatory minimum is appropriate for that crime, that is determined by the prosecutor who charges the crime, and these are decisions that are not taken into account when DEA investigates an organization.

Mr. SCOTT. I mean, yeah, but we are making policy and you suggested there is some value to these mandatory minimums. Yes, sometimes the sentence is appropriate. Many times, it is just stupid. That is what the mandatory minimum requires the judge to do, and that is why we are trying to get rid of them. If people say, well, you know, they have value, it is kind of hard to make policy.

Ms. LEONHART. The Attorney General is putting forward a number of initiatives under his Smart on Crime initiative, and one has to do with the sentencing and the clemency you are speaking of.

He has assured us that the traffickers that we go after, the traffickers that are the most violent and are leaders of gangs, cartel leaders, and the most violent of those traffickers trafficking on our streets, will not fall under that and will serve their appropriate sentences.

Mr. SCOTT. That is right, and those that do fall under that get stuck with the mandatory minimum anyway. That is the insanity of the mandatory minimum, whether it makes sense or not. I yield back.

Mr. GOWDY [presiding]. I thank the gentleman from Virginia. Madam Administrator, I want to start by inquiring of you—I got a phone call from an old colleague of mine, a guy named Beattie Ashmore, yesterday, who told us a DEA agent that we work with named Randy Smith was maybe contemplating retirement. I could not imagine that. It seemed like last week that Randy was just starting.

I want to start—I want to call a list of names to you, and if you would be gracious enough if you ever run into any of these folks—you do not have to write them down, I will give them to you—Mark Knight, Tony Duarte, Steve Russell, Bill Lunsford, Mark Pogh, Randy Smith, Kevin McLaughlin, Frank Smith, are just some of the DEA agents that I had the pleasure of working with.

They represented your agency so well and so professionally, and it is such a difficult, hard, often times thankless job.

If you ever have a chance to tell any of them that they are appreciated, I would be grateful to you for that.

I want to touch on a couple of things real quickly, I want to finish—there is no one in Congress that I have more personal respect for than Bobby Scott, so I want to finish up by talking to you about mandatory minimums a little bit.

Speaking of the DEA, we prosecuted two physicians way back in the day for prescribing or dispensing controlled substances outside the course of a legitimate medical practice. I do not hear from doctors much any more. I do from time to time, not in a complaining way, but I do from time to time hear from drug companies. It just strikes me that the best way to get at folks who are abusing legal prescription drugs is to target the physicians. That is who is writing the prescription.

It has been done before. There were DEA diversion agents. I assume there may still be. Even if there are diversion agents, it is not that hard to go into a physician's office without establishing a doctor/patient relationship—one fact pattern, there was a prescription written on a cocktail napkin at a bar. Even I could win that case at trial.

So, I just want to ask you to be mindful, and I am not going to call the name of the drug company, but it is one of the most well respected companies in my entire district, and I just do not want any of the drug companies—in interest of full disclosure, my father is a physician, I grew up around doctors and pharmacists. I have incredible respect for them.

I do not want the message to be sent that we view them in the same light we view a doctor who is writing a prescription on a cocktail napkin for somebody he met at a bar.

If there are reporting requirements, I am all for working with the drug companies. I just do not want them to feel like—because my understanding is if you get a prescription, the pharmacist has a duty to fill the prescription, unless he or she has some reason to suspect it. You have a drug company even further removed that is just getting a request for X number of drugs so this pharmacist can fill that prescription.

So, if you would look into that and just make sure that we are including the drug companies so that they feel like they are part of the solution rather than surrogates for doctors who are writing prescriptions they should not be writing.

Ms. LEONHART. I can assure you that we actually view distributors and manufacturers, doctors, pharmacists, the whole gamut, everyone involved in this closed system of distribution, as partners in trying to resolve and tamp down on this exploding prescription drug problem.

We have had a number of initiatives where we are working with companies so that they can better understand what those signals are, what those red flags are, on what a suspicious order would be.

Many times, working with them, they are actually able to then put out warnings or cautions to the people they are distributing to that it is suspicious and they are not going to fill orders.

So, those companies are very important to helping us in our fight to prevent diversion. We do not look at them as the enemy. We do not look at them as—

Mr. GOWDY. I am sure you do not, and I know you will do a remarkable job of communicating to them that they are partners as opposed to targets.

In the few seconds I have remaining, I do not recall it being a crime to be the girlfriend of a drug dealer. Did that become a crime since I left the U.S. Attorneys Office?

Ms. LEONHART. That is why I said I needed to know what the circumstances were, what drugs were they distributing.

Mr. GOWDY. There would not be anybody serving Federal prison time for simply being the girlfriend or boyfriend of a drug dealer, nor is there anyone serving Federal prison time for being the boyfriend or girlfriend of a drug dealer and accepting a telephone call.

You have to be convicted of conspiracy. You have to be convicted of a RICO activity. You have to be convicted of possession with intent to distribute a controlled substance. There is nobody serving time for simply being the girlfriend or boyfriend of a drug dealer, much less serving the mandatory minimum. Agreed?

Ms. LEONHART. Correct.

Mr. GOWDY. All right. Why do you think—in your judgment, why do we have mandatory minimums? What was the impetus behind Congress deciding we should have mandatory minimums?

Ms. LEONHART. I came on DEA as an agent after being a police officer in 1979, hired by DEA in 1980. Went through the Academy. At the time, I can tell you that when we did our cases, the criminal histories we received for the people that we were investigating would blow your mind. It was a revolving door in and out of the system.

I also can tell you that working cases in the Midwest, more than often I was the undercover agent. It was also surprising to see, depending on where you were in the country, the different kinds of sentences that people would receive for the very same crime.

So, to see the mandatory minimums kick in, you started to see more consistency. You also started to see that those that have been routine, you know, criminals in and out of the system and increasing their involvement in drug trafficking were finally stopped by the types of sentences that they were sentenced to.

Mr. GOWDY. Well, I am well over time and I am going to—yes, sir?

Mr. SCOTT. Can I have a consent request?

Mr. GOWDY. Yes, sir.

Mr. SCOTT. Mr. Chairman, I ask unanimous consent to insert into the record case histories of girlfriends who have gotten caught up in taking messages—if you take a message, you are part of the conspiracy, and you are in fact sentenced based on the weight of the drugs that the boyfriend is dealing, which will result in decades of time for people who have no meaningful role in the conspiracy. I would like unanimous consent to insert those case histories into the record.

Mr. GOWDY. Without objection.

[The information referred to follows:]

## Stephanie George

***On December 19, 2013, President Obama granted Stephanie a commutation (reduction of sentence). She was released from prison on April 17, 2014.***

Without President Obama's act of mercy, taxpayers would have spent nearly \$1.4 million to incarcerate Stephanie George for being "a girlfriend and bag holder and money holder" in a drug conspiracy. Despite her judge's objection, Stephanie received a mandatory life without parole sentence for her role in the conspiracy – the longest sentence of any of her codefendants.



Stephanie's parents divorced when she was young, and Stephanie move between them until returning to her mother in Pensacola, Florida to start middle school. After graduating from high school, she moved out on her own and worked as a sales clerk, receptionist, housekeeper, nursing home assistant and beautician. Though Stephanie worked hard, her salary alone could not support her three young children.

Stephanie dated several men who were involved in selling drugs. At times, they would help Stephanie support her family. In exchange, she occasionally delivered and sold drugs and took messages for them. On October 26, 1993, police arrested Stephanie after she was found sitting on the front porch of a house next to a bag that contained cocaine residue. She confessed she had crack in her possession and surrendered it to the officers. She received probation. On November 10, several weeks after her arrest, police sent a confidential informant (CI) to make a controlled drug buy from Stephanie. On November 15, the CI purchased two crack rocks for \$120. On December 8, the CI bought \$40 worth of crack from Stephanie and several codefendants. After this final controlled buy, officers searched Stephanie's residence and found four pieces of crack cocaine and drug paraphernalia. Stephanie was fined and sentenced to nine months in jail with work release.

Nearly three years later on August 16, 1996, police raided Stephanie's residence after a CI reported that he had seen crack in the house. Officers found 500 grams of powder cocaine and \$13,710 in an attic safe belonging to Stephanie's former boyfriend, Michael. In the

master bedroom, police found utensils that tested positive for drug residue. Michael had the key to the safe, along with \$797 in cash in his pants pocket. He confessed to police that the money, the cocaine and the paraphernalia belonged to him and that the \$797 was from 500 grams of crack he had already sold.

Later, Michael would testify that he paid Stephanie to let him reside and store crack at her house. At the time of her arrest, Stephanie had no cash, no bank account and owned no other property besides her car, valued at \$2,500. She depended on food stamps and welfare to provide for her children.

Stephanie went to trial. She was held accountable for 500 grams of powder cocaine found in the attic safe as well as 500 grams of crack that Michael said he sold. Several of Stephanie's codefendants who dealt drugs with Michael testified against her. Because of their uncorroborated testimony, Stephanie was held accountable for an additional 290 grams of crack, for a total of 1,290 grams (about 2.84 pounds). Stephanie received a sentence enhancement for obstruction of justice because she testified that she had no knowledge of and did not participate in Michael's drug activity. Because of her 1993 drug offenses, Stephanie was categorized as a career criminal, an enhancement which mandates a life sentence. Despite his objections, Judge Roger Vinson was forced to sentence 26-year-old Stephanie to life in prison without parole. He said:

*There's no question that Ms. George deserved to be punished. The only question is whether it should be a mandatory life sentence ... I wish I had another alternative." He told Stephanie, "Even though you have been involved in drugs and drug dealing for a number of years ... your role has basically been as a girlfriend and bag holder and money holder. So certainly, in my judgment, it doesn't warrant a life sentence.*

Stephanie received the longest sentence of any of her five codefendants. Over 15 years ago, the young mother of three was led out of the courtroom quietly crying. Her children have grown up without her and her older relatives have aged and passed away. While in prison, Stephanie has actively participated in vocational and educational training and working hard at her prison job. She has completed drug treatment and is sober.

On December 19, 2013, President Obama took the extraordinary measure of granting Stephanie a sentence commutation. She was released from prison on April 17, 2014 after serving 17 years behind bars. Take a look at these heartwarming photos from her release.

#### **The Facts: Stephanie George**

**Sentence:** Life

**Offense:** Conspiracy to possess with intent to distribute cocaine base

**Priors:** Possession of cocaine with intent to distribute; resisting arrest without violence; principle to sale of cocaine; three counts sale and delivery of cocaine and possession of cocaine (1993)

**Year sentenced:** 1997

**Age at sentencing:** 26

**Projected release date:** None

©2014 Families Against Mandatory Minimums. All rights reserved.



Stephanie and her daughter embrace after her release



## **MONICA BOGUILLE**

---

**Date of Birth:** 1973

**Federal sentence:** 10 years

**Offense:** Crack cocaine conspiracy

**Prior Offenses:** None

**Date of Sentencing:** 1994

When Monica Boguille was in high school, she began dating a man she had known since grammar school who sold crack. They began living together and had a child. Monica never used or sold drugs. She knew about what was going on in her house and occasionally would count her boyfriend's money for him or store his cocaine. At 20, Monica was arrested along with her boyfriend and the others involved in his conspiracy. The government labeled Monica the least culpable participant in the offense, but it made no difference because the judge was forced to give her the mandatory sentence. Two of her co-defendants were crack suppliers and heavily involved in the drug ring; one had even been a violent gang member. By cooperating with the government, these co-defendants were able to reduce their sentences so that they are serving about the same amount of time in prison as Monica.



Mr. GOWDY. I am grossly over time, and I am going to give all of my colleagues on the other side at least as much time as I took over.

I am going to say again there is no one in Congress that I have more respect for than the gentleman from Virginia, who has been a champion on this issue for the entire time I have been in Congress, and if he says such cases exist, I believe him period.

I would encourage them to pursue post-conviction relief, because they had a lousy criminal defense attorney, if all they did was take a telephone call and the relative conduct racked up and accumulated such that they reached a mandatory minimum.

Before I recognize the next colleague, Madam Administrator, there are currently ways to get around mandatory minimums. There is Rule 35. There is the safety valve. I assume there are still 5K 1.1s, although the stated guidelines have changed.

So, the notion that there is no way to get around a mandatory minimum even today is not accurate; right?

Ms. LEONHART. That is correct.

Mr. GOWDY. All right. The gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman. You startled me today with some of your testimony, Madam Administrator. I would like to find out if you are familiar with data from over 17 states that demonstrates eliminating or reducing mandatory minimums has not statistically affected rates of cooperation or pleas.

Ms. LEONHART. I am not familiar with that data.

Mr. CONYERS. Well, I will put something in the record and give you some information on it.\*

Administrator Leonhart, it is fair to say based on Sentencing Commission data that the majority of drug convictions are of couriers, mules, drivers, low level dealers? So, I ask if you agree that existing state laws cover that conduct as well.

Ms. LEONHART. That is correct.

Mr. CONYERS. Sure. Okay. Would you also agree that kingpins and leaders do not by any stretch of the imagination comprise the bulk of the convictions, drug convictions, in this area?

Ms. LEONHART. When DEA pursues drug investigations, the goal is to disrupt and dismantle an entire organization. So yes, there are leaders, heads of organizations, lieutenants at the top, but there are also all those facilitators that help the organization in their crimes.

Mr. CONYERS. Yes, that is who gets caught, the little guys, the mules, drivers, low level dealers. I am talking about an examination which I will be doing after this hearing that kingpins—the people at the top very seldom get convicted. That is the issue that I am raising with you for a discussion at this time.

Ms. LEONHART. Ranking Member, I would have to tell you that DEA has been very successful in taking down the leadership of organizations. Just look at our kingpin program. Of all of the kingpins identified since 2002, DEA has indicted over 75 percent of

\*The information referred to, a report titled "Justice Reinvestment Initiative State Assessment Report," is not reprinted in this hearing record but can be accessed at <http://www.urban.org/UploadedPDF/412994-Justice-Reinvestment-Initiative-State-Assessment-Report.pdf>.

them. Most of them do not even operate on our shores, and yet we have been able to arrest over 55 percent of them, and we have extradited to the United States over 33 percent of them.

So, we are investigating them. We are indicting them or arresting them, and we are actually extraditing them to the United States. They are prosecuted and they serve long sentences.

Mr. CONYERS. What I am suggesting is the leaders and kingpins do not comprise anywhere near the bulk of the convictions. I would like to follow this up with you or your staff in terms of a study of the statements that you just made in that regard.

Let me turn now to this final question. The Drug Enforcement Administration is a component of the Department of Justice. So, would you agree that its official position supports the Smarter Sentencing Act which reduces mandatory minimums?

Ms. LEONHART. We support the Attorney General's initiatives under Smart on Crime.

Mr. CONYERS. And that includes the reduction of mandatory minimums, which is part of the Smarter Sentencing Act?

Ms. LEONHART. We support the initiatives forwarded by the Attorney General with his assurances that these will not impact the traffickers that the DEA spends the majority of our time going after, the kingpins, the violent traffickers, the gang leaders and such.

Mr. CONYERS. Well, I am going to have to compare that with some other comments that you have made because it seems to me that there is a certain contradiction between your response to this question and other comments that you have made here today before the Committee.

Well, here is the Huffington Post. "Obama's DEA Chief refuses to support drug sentencing reforms." I do not know how accurate it is and I do not know—it is dated from a few months ago. That is a part of the contradiction that bothers me between some of the statements and comments that you have made here today.

We will be following this much more carefully now that you have had a chance to come before us.

Thank you, Mr. Chairman. I yield back.

Mr. GOWDY. I thank the gentleman from Michigan. The Chair will now recognize the gentleman from Puerto Rico, Mr. Pierluisi.

Mr. PIERLUISI. Thank you, Chairman. Administrator, thank you for appearing before the Subcommittee. You and I met in February 2012 to discuss drug trafficking and related violence in Puerto Rico. In June of that year, we spoke again about this issue when you testified before this Subcommittee. Finally, we spoke by phone in April of 2013.

I have also spoken on multiple occasions with Vito Guarino, the special-agent-in-charge of the DEA's Caribbean Division based in Puerto Rico.

As you know, I have placed great pressure on DOJ and DHS to increase the level of resources dedicated to Puerto Rico, which is a major trans-shipment point for drugs destined for the U.S. Mainland.

The need for Federal law enforcement agencies to enhance their efforts in Puerto Rico is particularly important because according

to DEA, drug traffickers are increasingly using the Caribbean region to transport cocaine to the States.

In late 2013, DEA officials were quoted as saying that the percentage of U.S. bound cocaine trafficked through the Caribbean had risen to 14 percent, which was double the percentage in 2012.

Puerto Rico is an attractive jurisdiction for drug traffickers because the island is an American jurisdiction within the U.S. Customs Zone.

The role of Federal law enforcement agents is simple, to make Puerto Rico a less appealing operational environment for drug traffickers. That requires the Federal Government to develop a comprehensive strategy and to allocate the resources required to implement that strategy.

In terms of strategy, Congress has required ONDCP to prepare a counter-narcotics strategy for the Caribbean Border, with an emphasis on Puerto Rico.

In terms of resources, prior to 2012, I criticized the Federal Government for not doing enough. Since 2012, however, I have seen some real progress. Make no mistake, the effect of these enhanced efforts can be measured in lives saved. Nevertheless, Puerto Rico's murder rate is still the highest in the country, averaging nearly two homicides a day.

While I know DOJ is doing great work in Puerto Rico, I have candidly told Attorney General Holder and FBI Director Comey that the Department must do more. This is not just my personal opinion. In both the 2013 and 2014 CJS appropriations bills, Congress directed the Attorney General to assess whether there were sufficient DOJ personnel and resources assigned to Puerto Rico, to identify additional resources that may be necessary, and to brief Congress on the findings.

In light of this background that I am giving you, I have two questions, and depending on time, I might follow up on the sentencing guidelines' issue.

First, what specific steps, including any new initiatives, is DEA undertaking to combat drug related violence in Puerto Rico?

And second, I understand that the DEA has incentives in place to encourage agents to relocate to Puerto Rico and to remain there beyond their initial period of service. However, I have learned from agents assigned to the Caribbean Division that there appear to be inconsistencies in how agents have been treated under this incentive program.

I am concerned about the possible effect this could have on mission performance, so I would like you to give me your views on this issue.

I see time is kind of expiring on me. On this sentencing guidelines issue, let's set the record straight, you are not the one setting policy on the Administration's handling of sentencing guidelines; correct?

Ms. LEONHART. That is correct.

Mr. PIERLUISI. So, your views are just your personal views; is that correct?

Ms. LEONHART. My agency views, my views as a law enforcement officer and as a DEA special agent, but these issues are presented

by the Department of Justice, and we support the Attorney General in his initiatives.

Mr. PIERLUISI. And until Congress revises or changes the sentencing guidelines, your commitment is to go after major drug traffickers as opposed to low level drug offenders; is that correct?

Ms. LEONHART. That is correct, and that has always been DEA's mission.

Mr. PIERLUISI. Even before your tenure? Are you sure of that?

Ms. LEONHART. It has always been DEA's mission to go after organizations, major drug traffickers, and we even made a change in 2002. We started our own Smart on Crime initiative, and that was priority targeting and the kingpin list.

Mr. PIERLUISI. I will go back to Puerto Rico, but frankly, there is an issue here, because the statistics do not seem to—they are not consistent with what you are claiming has been DEA positions for so long. There is a problem here because the statistics do not confirm that.

But at least you are saying you are not going to be going after low level drug users, is that correct, or drug offenders?

Ms. LEONHART. No, we go after organizations that are causing the most violence in a community, are responsible for the majority of the supply in a community, are the most violent, and those are the heads of organizations.

Mr. PIERLUISI. Thank you. Mr. Chairman, thank you for your indulgence. If you could allow the witness to address my questions on Puerto Rico, the ones that were specific about Puerto Rico, I would really appreciate it.

Mr. GOWDY. Absolutely.

Mr. PIERLUISI. If you will allow her to answer.

Mr. GOWDY. Absolutely; yes, sir.

Mr. PIERLUISI. Thank you.

Ms. LEONHART. On your first question about new initiatives, we have seen an increase in productivity by our office in Puerto Rico. In fact, I was talking to the special-agent-in-charge, and we are up about 20 percent in major investigations. We are up over 80 percent in the number of Title III intercepts that we are doing of these major traffickers.

More importantly, I have over the past several years increased the staffing in Puerto Rico. What really hurt was during sequestration and the tough budget years, we were not able to hire. Our first full graduation class graduated last week or 10 days ago, and out of that class of 45 was our first chance to put new agents in Puerto Rico. Out of those 45 graduates, three of those graduates are headed to Puerto Rico.

We prioritized ahead of the Southwest Border and ahead of our major offices that have had lots of vacancies because I am about 600 agents down—we prioritized Puerto Rico so that they can get there and assist with the enforcement progress that we have seen in Puerto Rico.

On the other, on incentives, when we have met, you know, I have told you I am committed to do what we can do to help Puerto Rico, and that is why I traveled to Puerto Rico.

One of the things I heard was that there was a new incentive that the Department of Justice had approved for our components,

and that was to given extended assignment incentives to agents who had been transferred to Puerto Rico and after a number of years, an incentive to stay there, start paying those.

I approved that policy, and we started paying them. When we started paying them, some of the people who were getting another kind of bonus were paid incorrectly, and we are still correcting that, but I had approved the extended assignment incentives, and those agents have been getting paid.

So, I would be glad to come and talk to you about the specifics, but know that you have a brand new incentive that will not get the agent to Puerto Rico, but it will help the agents assigned to Puerto Rico decide to continue a tour longer than the standard three/four/five years in Puerto Rico. I think that will help you be able to maintain very good talent in Puerto Rico.

Mr. PIERLUISI. Thank you.

Mr. GOWDY. I thank the gentleman from Puerto Rico, and the Chair will now recognize the gentleman from Utah, Mr. Chaffetz.

Mr. CHAFFETZ. I thank the gentleman from South Carolina and the Chairman. I do appreciate you being here. I want to thank the men and women throughout your agency who do a very difficult job. I have seen them in action. I have enjoyed going out on ride along's to see how they do things firsthand.

They are professional and they do a very difficult job. I just want them to also know how much we care and appreciate what they do and how they do it, and are not thanked enough for the difficult job they have ahead of them, and to their spouses and loved ones who worry about them when they are out there doing their jobs. I just want to say thank you.

I want to talk about prescription drugs for a moment. There is some concern that perhaps in the prescription drug process that there is maybe not as much involvement with those along the chain there, that your lack of interaction and communication and input from those who are dealing with these controlled substances, whether they be the drug stores themselves, those who are writing the prescriptions, and the consumers.

What is it that you are doing to make sure that you understand that process, what they are going through, and that they are included as you move along to set up the rules and boundaries, and the second part of that is what sort of recourse do they have?

If you have some new rule, are they allowed an opportunity to have some sort of recourse and interaction with you?

Ms. LEONHART. Thank you for the question. You know, you were not here when I said it earlier, we consider everyone in the chain, that closed chain of distribution—we consider everyone partners, and we all have to do our part, and that is what will stop diversion.

So, we have over the past several years implemented a number of ways to improve communication. I can tell you more recently we have done some things to improve that communication.

Mr. CHAFFETZ. And I guess, not to cut you off here—I am sure there is a much more elaborate process and there are things that I am not aware of that I would like to become aware of. Is that something you can share with this Committee or with my office? I would sincerely appreciate it.

Ms. LEONHART. Yes.

Mr. CHAFFETZ. Because I do think there are people who are wondering what is the formal process or recourse for when you are going through one of the things, as we wrap up here, the disposing of prescription drugs. For instance, that was put into law that you were to implement that.

It took years for you to come up with a process to do this. It seems rather simple to me. I am sure there are a number of gyrations and things you have to go through in order to get it just right. It took an exceptionally long period of time. Nevertheless, I am glad it is there.

But it was stone silence on figuring out where you were at, how long it would take in order to get there. In general, are you going to be able to go to a pharmacist or a pharmacy or drug store and be able to dispose of prescription drugs that you did not consume or did not need? Is that something you are going to be able to readily do?

Ms. LEONHART. The new disposal regulations that we put out are going to allow Americans on a 24/7 basis a way to dispose of their drugs, and one of the things they will be able to do is participating pharmacies will have receptacles, some of them will also have mail back programs that will be available.

Citizens can also go to their participating hospitals and clinics and those that have a pharmacy in-house are allowed the same rules and will be able to have receptacles or mail back programs.

We also thought it was very important to preserve the ability to have community groups partner with law enforcement to have periodic take back programs.

So, we have made sure that we have covered the whole gamut from pharmacies, hospitals, clinics, police departments and community groups, and included a way for people within the VA to do it as well, and long term care facilities.

Mr. CHAFFETZ. I look forward to following up with you on that. It is a keen interest to people in my district and some of the hospitals and pharmacists in our district. I look forward to following up with you on that program, and I yield back.

Mr. GOWDY. I thank the gentleman from Utah. The Chair now recognizes the gentlewoman from California, Ms. Chu.

Ms. CHU. Thank you, Chair. Actually, I wanted to follow up on this issue of prescription drugs because I have been contacted by my pharmacies who are very concerned about this as well.

It has come to my attention that there have been cases where individuals who suffer chronic pain have faced challenges accessing properly prescribed pain medication. I am concerned that some pain sufferers are not able to gain such access.

For example, take the case of Karen Westover of Newport Richey, Florida who had one knee cap removed and suffers from fibromyalgia. She has had pharmacies deny her prescriptions many times over the past couple of years.

On one occasion, Walgreens initially refused to fill her prescription because Westover did not live within five miles of the store. When it was confirmed by the pharmacist that she lived within three miles of the store, Westover was still unable to get her prescription filled.

Now, I understand that pharmacies have been tightening their rules after the DEA has imposed record fines on pharmacies based on allegations that they were not scrutinizing questionable prescriptions, but I do believe that a careful balance has to be struck between attacking the prescription drug abuse epidemic while not preventing legitimate patients from accessing pain medications.

It is for this reason that I am proud to be an original co-sponsor of H.R. 4709, the "Ensuring Patient Access and Effective Drug Enforcement Act," which was introduced by another Member of this Committee, Tom Marino, and passed by the House in July. I believe that this bill would foster communication transparency between industry and the DEA.

So, Ms. Leonhart, could you comment on how the bill could help in ensuring that patients with legitimate prescriptions for pain are not being denied their prescriptions at pharmacies, and could you expand on what the DEA is doing to ensure access for these patients?

Ms. LEONHART. Well, I thank you for your question because this balance is very important to us. You know, we have a responsibility to make sure that patients that need the medication have it available, and at the same time, make sure that those that are participating in diversion are investigated by us, whether they are the pharmacy, the doctor, the retail distributor, or the wholesaler.

I, too, get calls and letters from people concerned about not being able to get their medications. We have followed up on a number of them, and one of the things we have found is that often when someone has gone to fill a prescription, the pharmacist will say "I am out of my DEA quota." There is no DEA quota to a pharmacy.

What has happened is because of the explosion of the prescription drug problem, you have a number of people, drug seekers, with invalid prescriptions, going and getting their prescriptions filled, and that is the reason people with legitimate needs when they go to try to get it, they cannot get their prescriptions.

So, we are working very closely with the pharmacies. In fact, we did a training last week in Phoenix. We call them "pharmacist drug awareness conferences." We have done them in over 20 locations. We will continue to do that.

What we are finding out is that by sitting down together and going through what the drug problem is, we go through all the methods of diversion, we go through what the corresponding responsibility is, we feel that in those locations where we have done that, we walk away feeling that the pharmacists are better aware of what their responsibilities are.

We are hoping that a lot of the efforts we have put in place, such as the pill mills that were shut down in Florida that now really is part of the reason that Florida has a 50 percent lower overdose rate currently, that these different things we have put in place over the last couple of years will ensure and help make sure the patients who have a valid prescription will be able to get their medications.

Even in the enforcement actions we take, we take that into consideration if we take an action on one pharmacy, what is that going to do to the patients who depend on that pharmacy. We take that

all into consideration, and it is not lost on us, the importance of making sure that the balance is right.

Ms. CHU. Okay. Thank you.

Mr. GOWDY. I thank the gentlelady from California. The Chair will now recognize the gentleman from Virginia for any closing remarks he thinks are appropriate.

Mr. SCOTT. Thank you, Mr. Chairman. Mr. Chairman, as I indicated, I would like to introduce for the record—we have right now two case histories.

One points out that a girlfriend, Stephanie George, was sentenced based on 500 grams of crack that her boyfriend had, and she was given a life sentence. She did have a prior record. Because she had let him leave his crack there, she was part of the conspiracy, and the weight of the conspiracy on which the sentencing was based on was 500 grams.

I mentioned Kemba Smith. This is an outline of her case. Her boyfriend was dealing crack. She ended up with 24.5 years. Both of these were subject to presidential commutations.

There are as I indicated hundreds, possibly thousands of people in jail today on low level, non-violent offenses for which their sentences of over 10 years must have been a product of mandatory minimums.

I would like these in the record and unanimous consent to introduce others as they come in.\*\*

Mr. GOWDY. Without objection.

Well, while my friend from Virginia was talking, I could not help but think, Madam Administrator, about the awesome power that prosecutors and law enforcement agents and officers have that play an incredibly important role in our society, but the awesome power to accuse and to then prosecute and ultimately sentence should be sobering for all of us.

But it is also a nice opportunity in conclusion for me to again thank you, women and men of DEA, who do an incredibly difficult job.

You do not have to see it up front. Guys like Marino and others have seen it up front. You do not have to see it up front to appreciate how difficult it is to be in law enforcement.

If you could just let the folks know that, and in conclusion, I just made a couple little notes. If you do have an opportunity to sit down with Congressman Marino, I would encourage you to do it. Tommy has a very compelling life narrative. I have the pleasure of sitting beside him.

The way he came to become a prosecutor, working in the family business. U.S. attorney. State prosecutor. I know that you all would have a whole lot more in common than you would have differences. If you have an opportunity to sit down with Tommy, I would appreciate that.

Anything you can do to work with drug companies so they view themselves as partners as opposed to targets, I would be grateful for, and continue to express your opinion with respect to matters related to sentencing reform, and the virtues of mandatory minimums or the shortcomings, as you see them.

\*\*See page 25.



You know, I keep coming back to the biggest point of distinction between a safety valve or Rule 35 and 5K 1.1 and what the Attorney General has proposed is cooperation with law enforcement. I just do not think it is asking too much of those that want to benefit from a reduction in sentencing that they cooperate with law enforcement. I think that is a legitimate expectation.

Mr. SCOTT. Mr. Chairman?

Mr. GOWDY. Yes, sir.

Mr. SCOTT. As I indicated, additional case studies have come on. One is Bonnie DiToro who was in the next room when her boyfriend sold an undercover agent a lot of cocaine. She received a 15 year mandatory minimum. Mandy Martinson was essentially sentenced for her boyfriend's offenses and received a mandatory of 15 years.

I would like these also entered into the record.

Mr. GOWDY. Without objection.

[The information referred to follows:]

## Bonnie DiToro

In 1995, Bonnie was living overseas with her family when her husband, an Army Special Forces officer, suffered a fatal heart attack. Depressed and suicidal, she returned to Massachusetts with her two children. She began abusing cocaine and soon started dating her dealer, who sold drugs to subsidize his own addiction.



In 1996, an undercover officer approached Bonnie's boyfriend, asking to buy cocaine. Her boyfriend and two acquaintances arranged for the sale of a kilogram of cocaine (about 2.2 pounds). Bonnie knew about the impending drug deal but wanted no part of it. On the day of the sale, she left home on her motorcycle but was in an accident. When her parents and friends weren't available to pick her up, she called her boyfriend. He agreed to take her home after making the sale at the acquaintances' home.

Bonnie was in the next room when the drug deal took place. After her boyfriend sold the cocaine to the undercover officer, the police arrested everyone present. On the advice of her attorney, Bonnie rejected a three-year plea agreement and instead took her case to trial. She lost — and because Massachusetts' rigid drug trafficking laws consider no factors except the weight of the drug involved, the judge was forced to sentence Bonnie to a 15-year mandatory minimum sentence.

While in prison, Bonnie overcame the substance addiction and grief management issues that led to her drug abuse. She took advantage of numerous educational opportunities. Yet Bonnie wasn't eligible for parole or even for work release programs. Bonnie acknowledges that she made bad choices. But as she told FAMM, "I got into trouble because I was a drug user, not a drug dealer. I needed help."

Bonnie was released shortly after the 2012 sentencing reforms were enacted, after serving 14 years. She had accumulated enough "earned good time" credits (even though she hadn't previously been able to use them) to reduce her 15-year sentence to time served.

### **The Facts: Bonnie DiToro**

**Offense:** Trafficking in cocaine

**Court:** Massachusetts state court  
**Prior drug offense:** Possession of paraphernalia  
**Sentence:** 15 years  
**Year of sentencing:** 1998  
**Age at sentencing:** 40  
**Released:** 2012

©2014 Families Against Mandatory Minimums. All rights reserved.

## Mandy Martinson

Mandy Martinson is serving 15 years in federal prison for helping her dealer-boyfriend in exchange for feeding her methamphetamine addiction. Mandy's judge, unable to go below the mandatory minimum, expressed his objection to the sentence stating: "The Court does not have any particular concern that Ms. Martinson will commit crimes in the future." Mandy was able to achieve sobriety and get her old job back before her trial. Nevertheless, taxpayers are spending \$420,000 to incarcerate the first-time, nonviolent offender for the mandatory 15 years – 3 years longer than the boyfriend will spend behind bars.



Mandy grew up in a happy home in Mason City, Iowa. Well-liked and cheerful, Mandy was an honor roll student in high school and went on to excel in college. Mandy had a steady work history and became a licensed dental hygienist after graduating with her Bachelor's degree. She had experimented with marijuana and methamphetamine at parties, but in August 2003 she began using methamphetamine every day after her relationship with an abusive boyfriend took a turn for the worse. Even after she broke up with the man, Mandy was forced to protect herself against her possessive ex-boyfriend. The stress of domestic violence caused her to slide into what she describes as a "self-destructive rampage." Her addiction to meth eventually cost Mandy her job as a dental hygienist.

In December 2003, Mandy started dating a man who was selling methamphetamine. They soon moved in together, and though Mandy knew that he was a drug dealer, she did not care because he was kind to her and had a steady supply of drugs. Mandy never sold drugs or carried a gun, but she traveled with her boyfriend when he went to pick up marijuana and one-pound quantities of methamphetamine from his supplier. She also helped him count and bundle money for the drug transactions. Unbeknownst to Mandy, her boyfriend had been under police investigation since October 2003.

Iowa police discovered that Mandy's boyfriend and several others were receiving drugs from California and Des Moines, Iowa, and selling them in the Mason City, Iowa area. On January 5, 2004, police stopped a man after he left the house Mandy shared with her boyfriend and found 28 grams of methamphetamine in his vehicle. Police searched the home of another suspected co-conspirator and found drug paraphernalia. On January 14,

2004, police searched Mandy and her boyfriend's home. They found a duffle bag that belonged to Mandy's boyfriend containing ten one-pound packages of marijuana and two one-pound packages of methamphetamine "ice," as well as two handguns. One of these guns was found in a large bag that also contained Mandy's purse.

Prior to her trial, Mandy was released on bond and entered into drug treatment. When she failed a drug test, the court gave her a second chance, and Mandy was able to successfully achieve sobriety. She resumed her old position as a dental hygienist and started to piece her life back together.

At Mandy's trial, her boyfriend testified against her, claiming that her assistance made him a more efficient drug dealer and that he'd given Mandy the gun found next to her purse. According to Mandy, the gun was her boyfriend's. She was convicted for both the drugs and the gun.

Mandy was held accountable for all 4,506.9 grams of marijuana and 979.19 grams of methamphetamine attributed to the conspiracy, giving her a sentencing guidelines range of 188-235 months. At sentencing, however, Mandy's judge balked at imposing such a long sentence:

*[T]he evidence demonstrated that [Mandy] was involved due to her drug dependency and her relationship with [her boyfriend] and that she was largely subject to his direction and control . . . Even Ms. Martinson's possession of the firearm was at the direction of [her boyfriend] and was facilitated by [her boyfriend]. By accepting responsibility and cooperating with the government, the apparent leader of this matter, [Mandy's boyfriend], has ultimately received a sentence of 90 months on the conspiracy and 60 months consecutive on the gun charge for a total of 150 months in custody. **Under any possible sentence that the law would allow for Ms. Martinson, the sentence will exceed that of [her boyfriend].** Ms. Martinson's involvement is closer to that of [one of her codefendants] . . . who received a mandatory minimum sentence of 120 months. . . . Upon obtaining reasonable drug treatment and counseling and in the wake of what she is facing now, **the Court does not have any particular concern that Ms. Martinson will commit crimes in the future.***

Nonetheless, the judge was forced to give Mandy a mandatory minimum of 10 years for the conspiracy and possession charges, and a mandatory five-year consecutive term for the gun charge, for a total sentence of 15 years behind bars.

Since her conviction, Mandy has successfully completed numerous additional treatment courses and remained drug free. She has been certified to operate heavy equipment, is taking a horticulture class, and is teaching a course on *The Purpose Driven Life*. Mandy was selected to be a companion to prisoners on suicide watch. "It is very frustrating to think I may have so many years left in prison," says Mandy. "I am making the most of my time here, though. I know change is coming. There are just way too many people like me incarcerated for way too long."

**The Facts: Mandy Martinson**

**Sentence:** 15 years

**Offense:** Conspiracy to distribute 500 grams or more of methamphetamine and marijuana; possession with intent to distribute five grams or more of methamphetamine; possession of a firearm during a drug trafficking crime

**Priors:** None

**Year sentenced:** 2005

**Age at sentencing:** 28

**Projected release date:** Oct. 21, 2017

Mr. GOWDY. I will again say what I said earlier to my friend from Virginia, if either of those two defendants had somebody as capable as you defending them, they would not be in prison at all, because mere presence at the scene of a crime is not a crime.

But because I do respect the gentleman from Virginia, I am going to read the cases because I told him I would. Again, it reminds us of the awesome power law enforcement has, judges and prosecutors, and they should be ministers of justice and not just try to rack up as many convictions as they can rack up.

So, with that, this concludes today's hearing. I want to thank our witness for attending. Without objection, all Members will have 5 legislative days to submit additional written questions for the witness or additional materials for the record.

Mr. GOWDY. And with that, thank you, Madam Administrator. This hearing is adjourned.

[Whereupon, at 12:42 p.m., the Subcommittee was adjourned.]





A P P E N D I X

---

MATERIAL SUBMITTED FOR THE HEARING RECORD

INSENBRENNER, JR., Wisconsin  
 JRI, North Carolina  
 TX, Texas  
 OT, Ohio  
 GILLES, Alabama  
 ISSA, California  
 RBES, Virginia  
 Iowa  
 KES, Arizona  
 ABET, Texas  
 I, Ohio  
 XAS  
 PFETZ, Utah  
 O, Pennsylvania  
 Y, South Carolina  
 RADOFF, Idaho  
 NTHOLD, Texas  
 LDING, North Carolina  
 NS, Georgia  
 TIS, Florida  
 H, Missouri

ONE HUNDRED THIRTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-3951  
<http://www.house.gov/judiciary>

November 24, 2014

RANKING MEMBER

JERRI D. NADEAU, New York  
 ROBERT G. "BOBBY" SCOTT  
 ZOE LOFGREN, California  
 SHEILA JACKSON LEE, Texas  
 STEVE COHEN, Tennessee  
 HENRY C. "HANK" JOHNS  
 PEDRO R. PIERLUISI, Puerto Rico  
 JUDY CHIL, California  
 TED DEUTCH, Florida  
 LUIS V. GUTIERREZ, Illinois  
 KAREN BASS, California  
 CEDRIC L. RICHMOND, Louisiana  
 SUZAN K. DELBENE, Washington  
 JOE GARCIA, Florida  
 HAKEEM S. JEFFRIES, Nevada  
 DAVID CICILLINE, Rhode Island

The Honorable Michele M. Leonhart  
 Administrator  
 Drug Enforcement Administration  
 8701 Morrisette Drive  
 Springfield, VA 22152

Dear Ms. Leonhart,

The Judiciary Committee's Subcommittee on Crime, Terrorism, Homeland Security and Investigations held a hearing on the Drug Enforcement Administration on Thursday, September 18, 2014 at 10:00 a.m. in room 2141 of the Rayburn House Office Building. Thank you for your testimony.

Questions for the record have been submitted to the Committee within five legislative days of the hearing. The questions addressed to you are attached. We will appreciate a full and complete response as they will be included in the official hearing record.

Please submit your written answers by Thursday, December 18, 2014 to Alicia Church at [alicia.church@mail.house.gov](mailto:alicia.church@mail.house.gov) or 6340 O'Neill Federal Building, Washington, DC, 20024. If you have any further questions or concerns, please contact Robert Parmiter at [Robert.Parmiter@mail.house.gov](mailto:Robert.Parmiter@mail.house.gov) or 202-225-5727.

Thank you again for your participation in the hearing.

Sincerely,



BOB GOODLATTE  
 Chairman  
 House Committee on the Judiciary

The Honorable Michele Leonhart  
November 24, 2014  
Page 2

**Questions for Witnesses and/or to Submit for Written Responses**

**House Judiciary Oversight Hearing**

**September 18, 2014**

Mandatory Minimum Sentencing

1. When asked during a Senate Judiciary Committee hearing in May about your support for the Smarter Sentencing Act, you were quoted as expressing support for mandatory minimum sentencing policies saying: "Having been in law enforcement as an agent for 33 years, [and] a Baltimore City police officer before that, I can tell you that for me and for the agents that work for DEA, mandatory minimums have been very important to our investigations," Leonhart said. "We depend on those as a way to ensure that the right sentences are going to the ... level of violator we are going after." The SSA has been supported by the Obama Administration and Attorney General Eric Holder, and would lower the length of mandatory minimum sentences for federal drug crimes.
  - a. Can you please elaborate on these comments, and whether your view has evolved at all since you made this statement?
  - b. What is the DEA's position on the application of mandatory minimums on both minor and major drug offenses?
  - c. Would you agree that since DEA is a component agency of DOJ, it is bound to implement and support the Attorney General's policy directives?

The Honorable Michele Leonhart  
November 24, 2014  
Page 3

DEA Use of NSA Programs to Surveil U.S. Citizens

1. On August 5, 2013, Reuters published an article by John Shiffman and Kristina Cooke titled "U.S. directs agents to cover up program used to investigate Americans."<sup>1</sup> The piece contained the startling news 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. It is estimated that 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 titled "Drug Agents Use Vast Phone Trove, Eclipsing N.S.A.'s."<sup>2</sup> 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 stated that it was, "looking into the issues raised by this story." More than six months later neither the DEA nor DOJ have answered questions about the legitimacy of the operation.
  - a. When will Congress and/or members of the public receive an official response to the issues raised in these stories?
  - b. Has the DEA suspended use of parallel construction pending internal review?
  - c. Does the DEA believe that using wiretap information at trials, and in turn misleading judges, prosecutors and defenders as to the origins of the information either given the role of executive or as an officer of the court is constitutional or ethical?
  - d. In how many trials was parallel construction used?

---

<sup>1</sup> Kristina Cooke & John Shiffman, *U.S. Directs Agents to Cover Up Program Used to Investigate Americans*, REUTERS (Aug. 5, 2013), <http://www.reuters.com/article/2013/08/05/us-dea-sod-idUSBRE97409R20130805>.

<sup>2</sup> Colin Moynihan & Scott Shane, *Drug Agents Use Vast Phone Trove, Eclipsing N.S.A.'s*, THE NEW YORK TIMES (Sep. 2, 2013), [http://www.nytimes.com/2013/09/02/us/drug-agents-use-vast-phone-trove-eclipsing-nsas.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2013/09/02/us/drug-agents-use-vast-phone-trove-eclipsing-nsas.html?pagewanted=all&_r=0).

The Honorable Michele Leonhart  
 November 24, 2014  
 Page 4

- e. In trials where parallel construction was used, would you class the defendants as high-level or low-level drug offenders?
- f. Does the DEA believe that it should be using programs created for counterterrorism to make domestic drug convictions of U.S. citizens? Is the constitutional analysis distinct and if so, how?
- g. In October 2013, the Department of Justice announced that when evidence has been "derived from" warrantless electronic surveillance, the government "shall disclose" that fact to the defendant. Has DOJ or the DEA begun informing defendants who were subject to parallel construction? If not, why? How and when does it plan on doing so?

#### Marijuana

1. In a recent New Yorker interview, President Obama discussed marijuana legalization in Washington and Colorado and said, "[I]t's important for it to go forward because it's important for society not to have a situation in which a large portion of people have at one time or another broken the law and only a select few get punished."
  - a. Do you agree with President Obama that legalization in those states should be allowed to go forward?
  - b. What does DEA plan to do to implement?
2. How much money are drug cartels making off of marijuana? How much of that is from smuggling marijuana into the U.S? How much is from growing marijuana inside the U.S., in our national parks, etc.? How is the growing number of marijuana farms within the U.S. impacting drug trade across the border? Would legalizing, taxing and regulating marijuana take hundreds of millions of dollars a year, perhaps even billions of dollars a year, away from the cartels? Legalization would deal a major blow against organized crime. It might not knock them out, but it would damage them. Correct?
  - a. Regulation of marijuana in other countries has (divided?) their budgets and addiction rates, has it not?

The Honorable Michele Leonhart  
November 24, 2014  
Page 5

3. Of the 1.6 million arrests for drug law violations in 2010, approximately 854,000 were for marijuana, approximately half. Of the 854,000 marijuana arrests in 2010, about 750,000 were for simple possession of small amounts for personal use. Or put another way, 88% of all marijuana arrests were for simple possession – not sales, not trafficking. And that is just one year. Since President Nixon declared a war on drugs in 1971, tens of millions of Americans have been arrested for marijuana. Even if someone is incarcerated for just one day, that can be enough for them to lose their job due to collateral consequences. And in today's economy losing a job can lead to months of unemployment, undermining families and costing taxpayer money. A conviction can follow for life, making it harder to get a job and lead to reduced earnings potential. If college students are arrested for marijuana possession they lose their student loans under current law.
  - a. What is the DEA's position on whether the U.S. should continue arresting hundreds of thousands of citizens for marijuana, depriving them of their public benefits, causing them to lose their jobs, and incarcerating them and thus separating them from their families?
  - b. Does the DEA agree that reforms may be wise?
  
4. We regularly discuss racial profiling in our criminal justice system, and there are particular policies, similar to the crack-to-powder cocaine sentencing disparity, which should be eliminated given the racial biased nature in which they are enforced, such as marijuana prohibition. SAMHSA research has shown that whites consistently outpace African Americans and Latinos in marijuana use in their lifetime, in the past year, and in the past month. Yet despite this fact, for instance, in the seven largest counties in Georgia from 2003-2007, black residents were anywhere from 1.6 to nearly 10.4 times more likely to be arrested for marijuana possession than white residents. This is not unique to Georgia: in states all over the country, African Americans and Latinos are significantly more likely to be arrested for marijuana possession than whites.

The Honorable Michele Leonhart  
November 24, 2014  
Page 6

- a. Does reforming enforcement of marijuana prohibition fuel racial profiling, and if so, should we discuss ending marijuana prohibition as a means of reducing inequalities and increasing trust in the criminal justice system?

Medical Marijuana

1. In March, the National Institute on Drug Abuse approved a study that will focus on the effects of marijuana in veterans suffering from post-traumatic stress disorder. However, that requires final approval from the DEA.
  - a. Does the DEA plan on letting the study move forward?
  - b. If not, why?
2. In May, the DEA announced it was raising its production quota for the cultivation of marijuana for research purposes from 21 kilograms of research-grade marijuana to 650 kilograms of research-grade marijuana in response to significant interest in the study of therapeutic applications for medical marijuana. This marijuana is grown at a DEA-permitted facility operated by the University of Mississippi through a contract with the National Institute on Drug Abuse, which is responsible for all government-sponsored marijuana research in the country. In the past, researchers and experts have criticized the DEA and NIDA for not making more marijuana available for research purposes, especially for the study of potential therapeutic uses. In fact, NIDA recently confirmed that they have conducted only about 30 studies to date on the therapeutic potential for marijuana, while the vast majority of NIDA funded studies have examined potential harms from marijuana use.
  - a. Does the recent decision by the DEA to allow for a major increase in government produced marijuana for research purposes indicate that the DEA is taking a more proactive step toward supporting research into the medical and therapeutic uses of marijuana?

The Honorable Michele Leonhart  
November 24, 2014  
Page 7

- b. Will the DEA take the next step and allow researchers to independently cultivate research-grade marijuana following the same requirements that must be followed when producing and handling any other Schedule I drug?
  
3. Lyle E. Craker, Professor in the Department of Plant, Soil, and Insect Sciences at the University of Massachusetts Amherst, has been trying to obtain a permit from the DEA to grow marijuana for research since 2001. In August and December of 2005, DEA Administrative Law Judge (ALJ) Mary Ellen Bittner conducted a hearing for Prof. Craker's request and on February 12, 2007, ALJ Bittner recommended the DEA grant a license to Prof. Craker. But, on January 14, 2009, Then-Director Leonhart rejected the recommendation of ALJ Bittner and denied Prof. Craker's application. Why? Will this matter be revisited?

#### Prescription Pain Medications

1. Law enforcement and health officials around the country are reporting increasing rates of heroin use and, consequently, heroin-related overdoses. There have also been widespread reports of people with a history of misusing prescription medications taking up heroin, particularly in more suburban and rural areas. Some experts believe that heroin use is on the rise because of its low cost and as an unintended consequence of the reduction in source and supply of illegal prescription pills.
  - a. As a recent article in the Washington Post on the emerging crisis stated, "Justice Department officials reject any direct linkage between the crackdown on prescription drugs and rising heroin use." Would you agree that it's fair the crackdown on "pill mills" and sources of diverted opioid medications has been a contributing factor in the noticeable shift from opioid medications to heroin by people who struggle with addiction to opiates?
  - b. To what extent did the DEA anticipate that this shift would occur and does the DEA have plans to address this shift?



The Honorable Michele Leonhart  
November 24, 2014  
Page 8

2. There has been much attention paid to certain store-front pain clinics, known as “pill mills,” that are allegedly visited by patients from other states and are allegedly inappropriately prescribing opioid pain medications to patients, prescribing to patients who travel as far as one or more states away, and prescribe opioid medications in high volumes.
  - a. How does the DEA determine what is an appropriate volume of prescriptions for a clinic and a physician?
  - b. Wouldn't it be appropriate for a panel of medical experts to determine what constitutes legitimate medical practice, and what constitutes a “pill mill,” rather than the DEA as a law enforcement agency?
  
3. In recent years, we have seen an alarming increase in fatal overdoses from use and misuse of opioid pain medications such as Oxycodone. The focus in Congress has been to crack down on “doctor shoppers” and irresponsible physicians who are clearly prescribing opioid medications without regard for patient safety or federal law. However, most doctors who prescribe scheduled opioid medications are law-abiding. They are also seeing greater demand for medications that relieve acute and chronic pain, especially among the aging “Baby Boomer” generation and the overall older US population trend. As such, there is concern about the extent to which legitimate and law-abiding doctors who regularly prescribe scheduled medications are facing undue and inappropriate scrutiny from the DEA. There is concern that the level of scrutiny and fear of prosecution for what the DEA determines is an inappropriate volume of prescribing, or “over-prescribing,” is having a chilling effect on the prescription of medications for the relief of pain.
  - a. What is the DEA doing to police the prescribing practices of physicians and should a general practitioner whose practice sees a large number of elderly or chronically ill patients be concerned?

International Issues

The Honorable Michele Leonhart  
November 24, 2014  
Page 9

1. On May 11, 2012, a joint operation involving the DEA and Honduran police agents in Ahuas, Honduras, left four indigenous villagers dead. None of the victims had ties to drug trafficking. Honduran police agents that participated in the mission have alleged that the DEA played a leading role in the mission.
  - a. There have been reports that Honduran public prosecutors investigating the Ahuas shootings have not received substantial cooperation from the DEA. In particular, they have not been able to question DEA agents involved in the operation and have been unable to carry out forensic studies of the DEA weapons used in the operation. What is the DEA's rationale for this?
  - b. On the matter of the killings of unarmed civilians in the area of Ahuas in the Moskitia region of Honduras, reportedly by Hondurans from a helicopter with DEA on board, DEA has been sharing a video with Members and staff that purports to clarify what really happened. The video is reportedly classified. What was the justification given for classifying the video, and will DEA share the full, unedited video so that those subsidizing these operations here in the US, and the victims in Honduras, can judge for themselves? What national security secrets can a video from a law enforcement action in Honduras possibly hold? Has the DEA been involved at all in reparation payments?
  - c. On the Honduras attack, is DEA satisfied that current "rules of engagement" are sufficient to protect civilians? If the current protections are sufficient, how did an incident like this happen? Or is this kind of "collateral damage," simply built into our militarized approach to the drug war? Isn't it very dangerous blur the line between war-fighting and law enforcement in Central America generally, where the military and police have been involved in domestic repression over many decades, and in Honduras specifically, where democracy was interrupted just three years ago, the last election was held under martial law, and critics of the post-coup government have been attacked, killed, and silenced?

The Honorable Michele Leonhart  
November 24, 2014  
Page 10

2. In January 2014, an investigation by Mexican newspaper El Universal revealed that from 2000-2012, the DEA had an agreement with the Sinaloa cartel that enabled it to smuggle billions of dollars of drugs, in exchange for information on rival drug cartels.
  - a. Is this story true? Did the Mexican government know of such deals? Is making deals with cartels a sanctioned and/or regular DEA practice?
  - b. Does the DEA regularly pick sides in the drug war and make deals with cartels?
  - c. Did high-level prosecutions result from these deals and if so, do they justify the policy of allowing a cartel to continue its operations and bring drugs to U.S. communities?