

United States Senate
WASHINGTON, DC 20510

August 21, 2023

VIA ELECTRONIC TRANSMISSION

The Honorable Lisa Monaco
Deputy Attorney General
Department of Justice
Washington, D.C. 20530

Dear Deputy Attorney General Monaco:

This marks the third letter I have written to the Justice Department about its questionable decisions regarding the Drug Enforcement Administration's (DEA) investigation into the Chapitos' fentanyl distribution network. While the Justice Department (DOJ) failed to respond so far, the Department of Homeland Security (DHS) at least partially answered my previous letters.

DHS acknowledged an early working relationship between Homeland Security Investigations (HSI), DOJ, DEA, and the Federal Bureau of Investigation (FBI), which targeted notorious drug lord El Chapo's sons, the Chapitos.¹

In 2018, HSI worked with the Narcotic and Dangerous Drug Section of DOJ (NDDDS) to indict Ovidio and Joaquín Guzmán-López and designated them as Organized Crime Drug Enforcement Task Force Consolidated Priority Organization Targets in 2019. Ovidio and Joaquín inherited their father El Chapo's extensive drug distribution network, along with their half-brothers Iván and Alfredo Guzmán-Salazar. They have continued to use this network to pump fentanyl into the United States.

In 2019, HSI worked with Mexican counterparts to arrest Ovidio in Culiacán, Mexico, kicking-off the Chapitos' retaliatory "Battle of Culiacán" which won Ovidio's release from President López Obrador. After the failed operation, HSI continued to track and investigate the Chapitos. This investigation resulted in a December 14, 2022, joint superseding indictment that consolidated HSI and FBI's investigations and charged all four Chapitos brothers. However, DEA is notably absent from these efforts.

Instead of working together, DEA developed a competing case with the Southern District of New York, and your office for some reason allowed it. Written DOJ policy automatically paused arrest efforts by all DOJ agencies from the moment DEA launched its unilateral effort

¹ Letter from Department Of Homeland Security to Hon. Charles E. Grassley (Aug. 9, 2023), https://www.grassley.senate.gov/imo/media/doc/hsi_to_grassley_-_chapitos.pdf.

until your office resolved the dispute (attached). Additionally, records obtained by the *New York Times* show in May 2022, DOJ told federal agents to “stand down” on arrest operations against the Chapitos in favor of DEA’s competing case.² However, DHS is not a part of DOJ and is not bound by DOJ’s written policy. DHS’s investigative agency, HSI, continued tracking the Chapitos despite DOJ’s reported orders.³

DEA Administer Milgram attempted to justify DEA’s unilateral efforts by asserting no one had charged the Chapitos or their network with fentanyl, and implied that DEA was the first to investigate the Chapitos’ fentanyl sales.⁴ During a July 27, 2023, congressional oversight hearing, this exchange occurred:

Congressman Biggs: Senator Grassley conducted an investigation that revealed that DEA broke protocol slow walking some indictments of Los Chapitos ... and it resulted in a [year] long delay. My question is, is his investigative report accurate? Have you seen the report?

Administrator Milgram: I have not seen the report, but I if could speak to this overall I think it’s worth touching on just for a minute which is when I came in DEA had numerous cases against the Chapitos as did other federal law enforcement agencies—2011, 2014, 2019—no one had charged the Chapitos or their network with fentanyl trafficking. Given that we believe that they are one of the largest trafficking organizations for Sinaloa, we believed it was important that we proactively investigate not just the Chapitos, which we had already charged and investigated for cocaine and methamphetamine and marijuana previously, but that we go after them as well and their entire network with fentanyl. And that’s how we ended up with charging 28 individuals.⁵

My office received credible information that other federal agencies attempted to charge the Chapitos’ fentanyl distribution, but your office directed the prosecution teams not to out of deference to the DEA. According to this information, at the time of your office’s instructions, two cooperators inserted by DEA into the Chapitos network had been murdered in Mexico. Despite these deaths, your office reportedly gave the DEA more time to develop its unilateral investigation.

² Alan Feuer, *Behind the New Indictments of El Chapo’s Sons, Rivalry Seethed Between Agencies*, The New York Times (May 12, 2023), <https://www.nytimes.com/2023/05/12/us/el-chapo-sons-fentanyl-charges.html>.

³ See, Letter from Department Of Homeland Security to Hon. Charles E. Grassley (Aug. 9, 2023), https://www.grassley.senate.gov/imo/media/doc/hsi_to_grassley_-_chapitos.pdf.

⁴ Oversight of the Drug Enforcement Administration Before the House Judiciary Committee, 118th Cong. 1 hour 29 minutes (2023) <https://judiciary.house.gov/committee-activity/hearings/oversight-drug-enforcement-administration> (testimony of Administrator Milgram).

⁵ At this same hearing, Administrator Milgram asserted, “we targeted and arrested El Chapo. That was a DEA case.” However, DHS’s response letter stated that HSI Operation Paisano lead to the arrest of El Chapo and generated evidence introduced at El Chapo’s trial.

While an estimated 110,000 Americans died of drug overdoses in 2022,⁶ Administrator Milgram appears to have coordinated more with the press than with other federal agencies to expose the cartels and crack down on these tragic overdose deaths.⁷ Administrator Milgram prominently features in this media as she reportedly directed millions of dollars of DEA funds toward consultants (e.g., Lena Hackett), publicists (e.g., Julia Pacetti), and friends of friends (e.g., Boyd Johnson).⁸ These actions call into question the priorities of the DEA and demand oversight. Under written DOJ policy, your office permitted DEA's actions.⁹

In addition to responding to my letter dated May 9, 2023, please provide the following information by August 31, 2023. Timely responses are imperative to ensure Congress can meet its constitutional obligation to conduct meaningful oversight of federal agencies, like the DOJ and DEA.

1. What measures, if any, do you have in place to ensure impartiality and objectivity in assessing and reviewing DEA's actions presented to your office at DOJ?
2. Please provide the information your office received about the deaths of DEA's cooperators and explain why your office allowed DEA to continue its investigation even after those deaths.
3. Please provide all documents or communications related to the death of any DEA cooperator inserted by the DEA into the Chapitos network.

⁶ Noah Weiland, *U.S. Recorded Nearly 110,000 Overdose Deaths in 2022*, The New York Times (May 17, 2023), <https://www.nytimes.com/2023/05/17/us/politics/drug-overdose-deaths.html#:~:text=The%20preliminary%20count%20of%20109%2C680,for%20Disease%20Control%20and%20Prevention>.

⁷ Meet the Press, *Full DEA Head: We Don't Know the Exact Amount of Fentanyl That Gets Through to the U.S.*, NBC News (July 2, 2023), <https://www.youtube.com/watch?v=wZgkdOkgJIY>; Americas Newsroom, *Social Media I Linked to Cartels, Fentanyl: Anne Milgram*, Fox News (May 5, 2023), <https://www.foxnews.com/video/6326834754112>; Americas News Room, *Justice Department Charges El Chapo's Son Sinaloa Cartel Members*, Fox News (Apr. 17, 2023), <https://www.foxnews.com/video/6325264607112>; CNN Town Hall, *DEA Administrator Anne Milgram*, CNN (Mar. 9, 2023), <https://www.facebook.com/DEAHQ/videos/dea-administrator-milgram-cnn-town-hall-1mp4/1240388253245637/>; CNN At This Hour with Kate Boludan Interviews DEA Administrator Milgram on 'Operation Overdrive', CNN (Feb. 8, 2022), <https://www.youtube.com/watch?v=R-jMJQ9kK-2Y>; DEA Administrator Milgram on Fox America's Newsroom, *Fentanyl: The Poisoning of America*, Fox News (Sept. 28, 2022), <https://www.youtube.com/watch?v=GWUK0ToHDsQ>; DEA Administrator Milgram on Nightline, *Hidden Epidemic: Experts discuss the growing fentanyl crisis*, Nightline (Sept. 28, 2022), <https://www.youtube.com/watch?v=CdpUIfJeieo>; CBS Mornings, *DEA Administrator on Record Fentanyl Overdose Deaths and How Cartels Target Americans*, CBS (Aug. 19, 2022), <https://www.youtube.com/watch?v=CoDjcn-HaJU>; CBS Evening News, *Exclusive Interview with DEA Administrator Anne Milgram*, CBS News (May 10, 2022), <https://www.youtube.com/watch?v=IXaAIJGlbE>; Full interview: *DEA Administrator Anne Milgram on "Face the Nation"*, Face the Nation (Dec. 19, 2021), https://www.youtube.com/watch?v=A_gzM6r-99w;

⁸ Joshua Goodman and Jim Mustian, *DEA Chief Faces Probe Into 'Swampy' Hires, No-Bid Contracts*, AP News (April 19, 2023), <https://apnews.com/article/dea-corruption-fentanyl-cocaine-drugs-contracts-milgram-7fd24fe46c4b664f285773798357d418>

⁹ Attachment at 2 ("no office may pursue any action to charge ... targets implicated in the dispute, absent exigent circumstances and explicit authorization. . . .").

4. Please explain the role the Southern District of New York United States Attorney's Office played in the decision to insert and maintain DEA cooperators in the Chapitos network despite the existence of pending charges against the Chapitos in other districts.

Sincerely,



Charles E. Grassley

CC: The Honorable Anne Milgram
Administrator
Drug Enforcement Administration



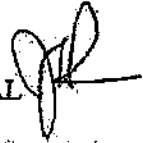
U.S. Department of Justice
Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

February 18, 2020

TO: UNITED STATES ATTORNEYS

FROM: THE DEPUTY ATTORNEY GENERAL 

SUBJECT: Adjudication of Venue Disputes Related to Multi-District Investigations and Prosecutions of International Narcotics Trafficking

This memorandum provides guidance regarding the adjudication of intra-Department of Justice (DOJ) disputes in investigations into international narcotics trafficking, where multiple Districts seek to prosecute the same target or targets for potentially overlapping conduct.¹

For over two decades, the federal investigative agencies represented at the Special Operations Division (SOD) have been responsible for coordinating and deconflicting potentially overlapping international narcotics investigations. Similarly, attorneys from the DOJ's Criminal Division's Narcotic and Dangerous Drug Section (NDDS) have been assigned to SOD assist with the coordination and deconfliction of such cases as they approach prosecution. This process, known as the SOD Process for Case Coordination and Deconfliction (SOD Process), promotes cooperation among agencies and prosecutors, with the goal of developing the strongest possible cases while avoiding the duplication of law enforcement efforts.

As early as appropriate upon learning of overlapping targets in an international narcotics investigation, the involved Districts are encouraged to try to coordinate, deconflict, and resolve any disagreements among themselves. If the Districts are unable to reach an agreement as to how to proceed with the investigation and any future prosecution, they should initiate the SOD Process, so that any conflicts can be identified and resolved before multiple offices devote extensive resources to investigating the same or similar criminal conduct. In addition, prosecutors may not charge a defendant known to be under investigation or charged in another District, without first coordinating and deconflicting through the SOD Process.

¹ This memorandum does not apply to disposition decisions involving maritime interdictions of vessels trafficking illicit narcotics. Those cases are assigned for prosecution through a separate protocol under the U.S. Department of Justice's Maritime Interdiction Case Disposition Protocol.

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This memorandum further sets out the following process for resolving disputes in those circumstances where the SOD Process does not result in an agreement as to the assignment of a prosecution to a particular District:

1. An NDDS attorney assigned to SOD will work with the involved prosecuting offices to attempt to mediate the dispute.
2. If a mediated resolution cannot be reached, the NDDS Deputy Chief for Special Operations will invite the involved offices to provide briefing documents setting out the equities of prosecution in their respective Districts. After submission of these documents, they will be shared with all involved Districts for transparency, absent rare instances where compelling reasons justify withholding a portion of the submission from the other involved District(s). The NDDS Deputy Chief for Special Operations will then assess the totality of the circumstances, including the strength of the proof developed by each office and the significance of the proposed charges, and render a recommendation as to where the case will be first prosecuted.² During the course of this dispute resolution process, no office may pursue any action to charge or apprehend any target or targets implicated in the dispute, absent exigent circumstances and explicit authorization from the NDDS Deputy Chief for Special Operations. Nor may any office take action contrary to the recommendation of the NDDS Deputy Chief for Special Operations unless the office seeks a decision from ODAG and prevails, as provided below in Paragraph 3.
3. Any prosecuting office involved in the dispute may seek a decision from ODAG as to which District should lead the prosecution.³ In the event that such a decision by ODAG is sought, no office may charge or pursue any action to apprehend any target or targets, absent exigent circumstances and explicit authorization from ODAG.

cc: Assistant Attorney General, Criminal Division
Director, Executive Office for United States Attorneys

² In those circumstances where NDDS has an interest in the venue dispute on account of its own investigation, the dispute will be heard in the first and final instance by the Office of the Deputy Attorney General (ODAG).

³ See Attorney General's Advisory Committee Memorandum, *Coordinating Cases Among United States Attorney's Offices* (Sept. 8, 2015); Attorney General's Memorandum, *Coordination Among Litigating Components and United States Attorney's Offices* (Dec. 15, 2010).