



**Office of the Inspectors General**  
**U.S. Department of Justice**  
**U.S. Department of State**



**REDACTED**

**A Special Joint Review of  
Post-Incident Responses by the  
Department of State and  
Drug Enforcement Administration to  
Three Deadly Force Incidents  
in Honduras**

## **EXECUTIVE SUMMARY**

The Department of State (State) Office of the Inspector General (OIG) and the Department of Justice (DOJ) OIG conducted this joint review into responses by State and the Drug Enforcement Administration (DEA) to three drug interdiction missions in Honduras on May 11, June 23, and July 3, 2012, that resulted in deaths and injuries. The May 11 incident received substantial public attention, and concern by Justice Department leadership and Members of Congress, after reports surfaced that U.S. and Honduran law enforcement officers had killed and injured innocent civilians during the operation and had abused residents in a nearby village.

The three missions were conducted jointly by State, DEA, and the Government of Honduras (GOH) pursuant to a program known as Operation Anvil. The OIGs' joint review examined pre-incident planning and the rules governing the use of deadly force, the post-incident investigative and review efforts by State and DEA, the cooperation by State and DEA personnel with the post-incident shooting reviews, and the accuracy of the information State and DEA provided to Congress and the public regarding the incidents.<sup>1</sup> We found significant issues and challenges in each of these areas.

### **I. The Three Deadly Force Incidents**

Operation Anvil began in April 2012 as a 90-day pilot program designed to disrupt drug transportation flights from South America to Honduras. Members of DEA's Foreign-deployed Advisory and Support Team (FAST) and officers from a vetted unit of Honduran National Police known as the Tactical Response Team (TRT) comprised the ground team on the interdiction missions. The stated role of the FAST team members was to train and advise the TRT officers and assist them on these missions. State Department-owned helicopters provided transport and armed air support on the missions. The Honduran Air Force provided door gunners and, on certain missions, U.S. Customs and Border Protection (CBP) aircraft provided detection and surveillance capabilities. In addition, State's Bureau of International Narcotics and Law Enforcement Affairs (INL) provided operational support from the command center in Honduras.

#### **A. The May 11 Incident**

The May 11 incident took place late at night in Ahuas, Honduras. Three law enforcement officers (a FAST team member and two TRT officers) were piloting a small canoe-like boat, known as a pipante, containing large amounts of cocaine that they had seized earlier that evening. As the pipante lost power and floated down

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<sup>1</sup> A determination regarding whether the use of deadly force was justified under applicable laws or policy was not within the scope of this review. Such a determination would have been appropriate and expected as part of a proper shooting review by DEA and State immediately after the incidents, but as described below that did not occur for at least the May 11 incident.

the river, a larger boat carrying more than a dozen passengers made contact with it. Video recorded by a CBP surveillance plane shows that, following contact, officers in the pipante fired at the passenger boat. The gunfire continued for about 26 seconds, including several seconds when officers in the pipante appear to be shooting at people in the water who had fallen or jumped from the passenger boat. There is no video evidence of gunfire from anyone on the passenger boat. At least one DEA FAST member observing the encounter from a helicopter directed a Honduran door gunner to fire his machine gun. The door gunner then fired multiple rounds at the passenger boat. Honduran authorities later determined that four individuals from the passenger boat had been killed and four more injured. No evidence of narcotics was ever found on the passenger boat.

FAST and TRT did not conduct a search and rescue mission for individuals from the passenger boat who may have been injured, and instead focused solely on recovering the law enforcement officers stranded in the pipante. After the recovery of the officers and the cocaine from the pipante, the ground team loaded the helicopters and returned to base. Immediately thereafter, details of the incident were reported to and between DEA and State officials. The ground team reported that people in the passenger boat had fired at the officers and that TRT, not DEA, returned fire and stopped the threat. DEA officials also initially reported that there were no civilian injuries. However, Embassy officials soon received reports from Ahuas that innocent civilians had been killed and injured and that there had been abusive police activity in a nearby village.

Even as information became available to DEA that conflicted with its initial reporting, including that the passenger boat may have been a water taxi carrying passengers on an overnight trip, DEA officials remained steadfast – with little credible corroborating evidence – that any individuals shot by the Hondurans were drug traffickers who were attempting to retrieve the cocaine from the pipante. This failure to consider the relevant evidence had several negative consequences, which we summarize in Section II below and describe more fully in Chapter Thirteen.

## **B. The June 23 Incident**

The June 23 incident occurred while FAST and TRT officers were attempting to apprehend suspected drug traffickers near Brus Laguna, Honduras. Most of the suspects had fled, but a FAST member encountered one subject lying face-down near a tree. According to the FAST member, the subject refused to comply with oral commands and moved his hand toward a handgun holstered on his hip. The FAST member then fired two rounds, killing the suspect. FAST and TRT remained on scene throughout the night and the next day while they waited for a Honduran investigative team to arrive at the scene, in accordance with Honduran law requiring law enforcement personnel involved in firearms-related deaths to remain at the scene until a Honduran prosecutor processes the scene and examines the shooting victim. FAST reported that the interdiction resulted in the seizure of 390 kilograms of cocaine and 10 arrests.

Following this interdiction, DEA officials reported that during a search for suspected drug traffickers, FAST and TRT officers encountered an armed suspect

who failed to drop his weapon after being ordered to comply and was shot and killed by a FAST agent. Similarly, State officials reported that a FAST agent shot and killed an armed suspect after the suspect attempted to draw a gun. However, the TRT report did not mention FAST's use of deadly force and instead stated that multiple suspects fired at the TRT, and the TRT returned fire for a few minutes. According to FAST, this reported firefight did not happen.

### **C. The July 3 Incident**

The July 3 incident occurred after FAST and TRT officers responded to a suspect plane that crash-landed near Catacamas, Honduras. At the scene, a pilot who had sustained injuries in the crash surrendered to law enforcement and was taken into custody. When a second pilot did not comply with commands from two FAST members and instead turned in an apparent attempt to reenter the plane (giving rise to the threat that he would obtain a weapon), two FAST members fired multiple rounds, mortally wounding the second pilot. Shortly thereafter, the FAST team leader decided to evacuate the area with the drugs and pilots, rather than wait for Honduran authorities to arrive and process the scene.

Following this interdiction, DEA officials reported that the second pilot disobeyed FAST's commands to exit the plane and instead made a furtive movement and was subsequently shot by two FAST agents. They also reported that the second pilot was treated but later died of his injuries. State officials reported that the second pilot had ignored orders to surrender and was shot after making a threatening gesture and that both suspects were given first aid and transported by helicopter to a secure location.

TRT submitted two reports describing the July 3 events. The first made no mention of FAST's use of deadly force and stated that the second pilot died from injuries sustained as a result of the plane crash. The second stated this pilot had aimed and fired a handgun at the officers, and the officers responded with deadly force. Both reports made reference to a 9mm handgun found at the scene, but FAST personnel told the OIGs they never saw a handgun at the scene. DEA officials told us they were advised that following the incident, a Honduran police officer planted a gun in evidence and reported it as a weapon found at the scene.

### **D. Honduran and U.S. Government Investigations**

After the May 11 incident, at least five Honduran governmental organizations investigated aspects of it. State and DEA officials treated the report issued by the Honduran Special Prosecutor for Human Rights in September 2012 as the official GOH report. As we describe in Chapter Six, this report was favorable to law enforcement actions on May 11, though the OIGs found that the report had several flaws and omissions. For example, it included certain ballistics findings that we found questionable and lacked an explanation for the finding that the accounts of passenger boat survivors were inconsistent with other evidence.

DEA conducted internal shooting reviews regarding all three incidents. DEA initially decided not to review the May 11 incident because early reporting was that



no DEA agent fired a weapon and because the Hondurans who fired were foreign law enforcement officers (LEOs). DEA changed its mind after a local Honduran police report asserted four people were killed (including two pregnant women) and four others were injured after a helicopter with DEA personnel confused cargo in a passenger boat for bales of drugs and opened fire. The DEA's Office of Inspections presented all three shooting incidents to DEA's Shooting and Assault Incident Review Committee (SAIRC), which found that DEA personnel acted within the scope of their employment and authority and that, in the case of the June 23 and July 3 incidents, DEA's use of force was justified and did not violate law or policy.

U.S. Ambassador to Honduras Lisa Kubiske authorized State's Diplomatic Security (DS) to investigate the three incidents after she became frustrated by her inability to obtain information from DEA and concerned the Honduran investigation would not satisfy those interested in the May 11 incident. DEA refused to share information with DS or provide access to relevant personnel. DS continued its own investigations, and issued reports on all three incidents stating it was unable to make definitive or conclusive findings because of DEA's refusal to provide access to evidence and what it described as shortcomings in the Honduran investigations.

## **II. DOJ OIG Findings Regarding DEA'S Pre-Operational Planning And Responses To The Deadly Force Incidents**

DOJ OIG's analysis and findings more fully set forth in Chapter Thirteen are summarized below.

### **A. Inadequate Pre-Operational Planning**

DEA officials played a primary leadership role in planning Operation Anvil, including developing the operational plan. DOJ OIG found DEA's pre-operational planning was inadequate in two critical respects: FAST and TRT personnel had unclear understandings of what each other's deadly force policy permitted, and the planning for responding to critical incidents was almost nonexistent.

DOJ OIG found that the lack of clear understanding regarding the applicable deadly force policies had several negative consequences. First, neither FAST nor TRT could be confident about when and how their partners would respond to an imminent threat of death or serious physical injury. For example, this disconnect may have contributed to what FAST personnel reported as hesitation by a Honduran door gunner to return fire during an interdiction that occurred days before the May 11 incident, as well as TRT hesitation to approach the crashed plane on July 3 because of the possibility that heavily armed individuals were still inside. Second, a misunderstanding of the policy applicable to FAST likely contributed to the TRT reportedly planting a gun into evidence to help justify DEA's use of deadly force in the July 3 incident. Moreover, perceptions about restrictions on the TRT's use of force could have helped drive the narrative that DEA quickly adopted after the May 11 incident that there was no question that individuals on the passenger boat fired first.

DOJ OIG also found that DEA failed to ensure appropriate mechanisms were in place to adequately respond to shooting incidents. As a result, additional forces were unavailable to support FAST and TRT on the ground in the immediate aftermath of the June 23 and July 3 shootings, leaving the [REDACTED] law enforcement team in dangerous tactical situations.<sup>2</sup>

In addition, a lack of sufficient forces was identified by DEA as a reason the ground team was unable on May 11 to adequately maintain the scene, provide security, and maximize the safety of innocent bystanders. We believe the availability of sufficient forces on May 11 would have placed FAST and TRT in a better position to conduct an adequate search and rescue for passengers who may have been injured.

DEA also failed to ensure that there was a plan for who would investigate shooting incidents, and how the investigation would be conducted. This failure contributed to confusion, disagreements, and ultimately the absence of an immediate and comprehensive investigation into the May 11 shooting.<sup>3</sup>

## **B. DEA FAST's Role Was Not Solely Supportive or Advisory**

After the events of May 11, DEA consistently maintained in information provided to DOJ leadership, Congress, and the public that the Hondurans led and executed the operation and that DEA acted solely in a support role as mentors and advisors. Based on our review, DOJ OIG concluded this was inaccurate and that FAST personnel maintained substantial control over the conduct of the operation.

The review found that the TRT did not have the necessary equipment to command the operation or direct access to intelligence information. Only FAST had [REDACTED] while conducting the interdictions. Some FAST members told the OIGs they gave tactical commands to TRT during missions, whereas FAST did not take any orders from TRT. Further, the accounts of the three shooting incidents tend to show that FAST team leaders made the critical decisions and directed the actions taken during the mission.

## **C. Assessment of DEA's Internal Shooting Reviews**

### **1. The May 11 Shooting Review Was Significantly Flawed**

The DOJ OIG concluded that DEA's post-shooting incident procedures and decision-making failed to ensure that DEA initiated a timely review and thoroughly

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<sup>2</sup> The public version of this report contains redactions of information DEA determined is Law Enforcement Sensitive (LES).

<sup>3</sup> We also identified significant operational issues that concerned the ability of FAST to effectively communicate with the TRT during operations and the ability of the TRT to operate tactically in dark and remote locations. Although these issues fell outside the scope of this review, in September 2015, DOJ OIG advised DEA's new senior leadership of these issues so they could consider them further.

investigated the May 11 incident. DEA procedures do not address whether an incident in which shots are fired by a foreign LEO working on a joint operation with DEA in another country is a “shooting incident” that triggers a DEA shooting review. In the immediate aftermath of the May 11 incident, senior DEA officials decided against conducting a formal shooting review because no DEA agent fired a weapon and because the Hondurans who fired were foreign LEOs. DEA changed its position weeks later, after allegations of civilian deaths were reported publicly, resulting in mounting pressure from DOJ leadership and Congressional inquiries.

DOJ OIG found that the resulting investigation was little more than a paper exercise. DEA assigned the matter to a FAST Supervisor who did not conduct any interviews and merely collected written statements from FAST agents – statements we found in a few instances were improperly prepared or omitted material facts, such as the direction given by a FAST member to the Honduran door gunner to fire his machine gun at the passenger boat. The FAST Supervisor did not determine whether weapons checks, as required by DEA procedures, were conducted after the shooting (they were not). He also did not seek to interview or obtain witness statements and reports from FAST’s U.S. and Honduran partners who participated in the operation. We also did not find evidence that he gave any consideration to the accounts of survivors from the passenger boat or local residents of the village.

We found it equally troubling that DEA inspectors assigned to oversee the investigation did not provide the FAST Supervisor with any guidance about his role or the steps he should take (besides collecting certain basic documents) or, after reviewing his scant submission, direct that he conduct actual interviews or seek additional information and reports. For these reasons, we concluded that DEA inspectors did not meet their responsibility of ensuring a thorough, factual, and objective investigation of a very sensitive shooting incident. We also concluded that this undermined the foundation for the SAIRC’s findings, regardless of whether the SAIRC would have ultimately reached the same conclusion.

From the beginning, DEA officials should have taken more seriously the allegations that the operation resulted in injuries and deaths of innocent civilians and should have ensured a thorough investigation of the incident. Had they done so, we believe DEA officials would have learned that their personnel did, in fact, exercise deadly force when at least one of them specifically directed a Honduran door gunner on a helicopter to fire his machine gun at the passenger boat. They may have also learned other facts relevant to assessing the allegations of local residents regarding the forcefulness of law enforcement conduct in the village.

## **2. The June 23 and July 3 Shooting Reviews Were More Thorough, but Flaws Remained**

We found that both the June 23 and July 3 shooting reviews complied with procedures in the DEA Agent Manual and were opened immediately after each shooting. DEA appropriately assigned the investigations to a supervisory special agent (Assigned SSA) outside the FAST program with no ties to Operation Anvil in Honduras. The Assigned SSA’s investigation was more thorough than the May 11 review and included interviews of DEA personnel involved in the shooting incidents.

However, as with the May 11 incident, the Assigned SSA made no determination as to whether a weapons check was conducted after each shooting.

Further, we found that the presentations to the SAIRC omitted significant details, including important inconsistencies between TRT and FAST reports. Even if this additional information would not have changed the SAIRC's ultimate conclusions, we believe it is critical that all relevant information be known to the SAIRC so that its decisions are fully informed. Moreover, we believe there was a missed opportunity for a more careful examination of TRT's inaccurate reporting, which should have led DEA officials to also look more critically at TRT's narrative regarding the May 11 events, particularly their assertion that people in the passenger boat were armed and fired first.

#### **D. DEA Did Not Cooperate With the U.S. Ambassador and Investigations Conducted by DS and the Honduran Government**

Embassy officials told the OIGs that in the days after May 11, the U.S. Embassy tried to address questions raised about the possibility that innocent Hondurans had been killed in the operation. However, DEA Headquarters instructed DEA personnel not to provide information about the May 11 incident, and later the June 23 and July 3 incidents, to those outside DEA while DEA's own internal reviews were in progress. Frustrated by her inability to obtain information from DEA, and by conflicting findings of the various Honduran investigations, Ambassador Kubiske approved DS investigations into all three shooting incidents. However, DEA refused to participate in joint investigations with DS, to make FAST members available to DS for interviews, or to share with DS the evidence DEA collected as part of its own investigations. Within State, INL was not supportive of the DS investigations and suggested as an alternative that DEA share its final report with State. DEA eventually agreed to provide a summary of its findings to the Ambassador and DS upon completion of its investigations.

DS nevertheless continued with its own investigations and issued reports on all three incidents. DS's investigation of the May 11 incident included a review of the video footage by a DS video analyst who found no contrasts of light, which would be indicative of gunfire, originating from the passenger boat. However, DS was unable to make any "definitive findings" regarding the shooting because of DEA's refusal to provide access to evidence. In addition, because INL did not allow DS access to evidence regarding the INL helicopters, the DS report did not address actions taken on the helicopters, such as whether there was an instruction to fire. DS also reached "inconclusive" findings on the June 23 and July 3 incidents, citing the lack of access to DEA evidence and shortcomings in the Honduran investigations.

The DOJ OIG concluded that DEA's withholding of information from the U.S. Ambassador was inappropriate and unjustified. DEA's presence in Honduras was at the pleasure and discretion of the Ambassador, and requesting and receiving information about the results of law enforcement operations involving American personnel, which the Ambassador herself personally authorized, was clearly within her supervisory responsibilities and authority as Chief of Mission.

DOJ OIG found that DEA's obligations to DS were less clearly defined, and that this likely contributed to the dispute between DEA and DS over investigative jurisdiction. Although DEA told us that they resolved this dispute through an "agreement" with DS, this agreement appears to have been more of a unilateral expression of the limited terms to which DEA would agree, namely that DEA would provide a presentation and short, summary report to the Ambassador and the Embassy's Regional Security Officer at the conclusion of the DEA internal review.

DOJ OIG also found that even though State officials pressured Honduras to conduct an investigation into the May 11 incident, DEA – with State's concurrence – did not grant Honduran requests for information other than allowing them to watch the video, and specifically refused to provide DEA's investigative report and the opportunity to question DEA personnel involved in the operation. DEA officials provided us with several reasons why DEA refused GOH access to DEA personnel, including the desire to insulate U.S. personnel from host nation jurisdiction and that multiple witness statements could harm U.S. judicial proceedings against Anvil drug traffickers. Even assuming the validity of these reasons, it was inconsistent for DEA and State to assert to congressional staff that GOH should investigate the May 11 incident but not give Honduran authorities the information necessary to conduct a thorough investigation.

DOJ OIG found that the lack of cooperation between DEA, State, and GOH during their respective investigations was closely related to the deficiencies in pre-operation planning for what would happen in the event of a critical incident. And even under DEA's construct that each entity would investigate its own personnel, there was no mechanism for ensuring access to relevant information across the entities or for resolving or even identifying conflicting evidentiary or investigative gaps created by such a division of responsibility. The result was that no one did a comprehensive and thorough review of the May 11 incident.

#### **E. Incomplete and Inaccurate Information Provided by DEA to DOJ Leadership and Congress**

DOJ OIG found that DEA's misplaced confidence in its assumptions of the events that took place on May 11, and its failure to conduct a thorough post-incident investigation, resulted in DEA making several factual representations to DOJ leadership and to Congress that were inaccurate, incomplete, or based upon unreliable and insufficient information. This included representations regarding the central premises of DEA's narrative regarding the May 11 incident, namely that individuals in the passenger boat had fired first and Honduran officers returned fire, and that no DEA agents discharged their weapons.

DOJ OIG found that DEA's insistence that there was an exchange of gunfire between Honduran officers and individuals in the passenger boat was unsupported by the available evidence. Not only was there no credible evidence that individuals in the passenger boat fired first, but the available evidence places into serious question whether there was any gunfire from the passenger boat at any time. We based this conclusion on several factors, including the lack of evidence on the May

11 video footage of gunfire from the passenger boat and the pattern of inaccurate reporting by the Honduran TRT.

In addition, we were deeply troubled by DEA's continued reliance on a patently unreliable source of information (SOI #2) to corroborate its narrative that individuals in the passenger boat were attempting to retrieve the drugs from the pipante and that gunfire from the passenger boat initiated the firefight. As we describe in Chapter Five, SOI #2 provided inconsistent accounts of the May 11 incident to DEA over the course of three interviews and admitted to lying to DEA during his/her first interview. Yet, DEA failed to adequately question SOI #2 about his/her multiple versions of events or confront him/her with the inconsistencies between his/her various stories and the May 11 video footage. Further, even after SOI #2 admitted to lying to DEA and providing conflicting accounts, we found no evidence that DEA officials clarified or modified their prior representations to DOJ leadership and Congress. Moreover, DEA officials advised DOJ leadership and Congress that SOI #2 had passed a polygraph even though that polygraph was largely useless because it was not documented, there was conflicting information about what the polygrapher asked, and the available evidence indicated the examination may have been limited to whether SOI #2 was present on May 11 when the drugs were offloaded, as opposed to the more critical issues for which it was relied.

DEA's failure to adequately investigate the May 11 incident resulted in DEA providing inaccurate or incomplete information to DOJ leadership and Congress about FAST's involvement in the use of deadly force. Although the DOJ OIG found no evidence that contradicted DEA's assertion that none of the DEA personnel involved in the operation fired their own weapons on May 11, DEA nevertheless directly participated in the use of deadly force by at least one FAST member specifically directing the Honduran door gunner to fire his weapon at the passenger boat. Chapters Eleven, Twelve, and Thirteen describe additional examples of inaccurate or incomplete information DEA provided to DOJ leadership or Congress that was likely the result of carelessness or the failure to conduct a thorough investigation, such as the availability of additional May 11 video footage recorded by the CBP flight crew that DEA officials initially assumed did not exist and never thoroughly showed or described to DOJ leadership or Congress.

It also was concerning that, in some instances, DEA officials described information favorable to DEA's positions while omitting unfavorable information, such as video evidence of TRT officers shooting at people who had fallen or jumped into the water, the inconsistent TRT reporting and TRT gun-planting incident, and the results of a preliminary report from the Honduran National Police (described in Chapter Six) that made findings critical of law enforcement actions on May 11. DEA officials also did not disclose the existence or results of the video enhancement and analysis by the DS video analyst who found no evidence indicative of gunfire from the passenger boat. Moreover, DEA continued to inaccurately and incompletely characterize its role in Operation Anvil as being supportive and advisory only.

## **F. Inadequate Response to Certain TRT Actions**

During the review, the OIGs learned that the TRT provided inconsistent and inaccurate statements regarding the events that occurred before, during, and after the three shooting incidents. Yet, DEA officials who were aware of them took no action in response. In addition, DEA officials told us that following the July 3 interdiction, a Honduran officer planted a gun into evidence and reported it as a weapon found at the shooting scene. Although the gun-planting report reached senior DEA officials, no steps were taken to address it other than ensuring that DEA did not rely heavily on TRT information to support any U.S. prosecutions.

We believe these facts raised questions about the integrity of any evidence collected by TRT during Operation Anvil. Therefore, DOJ OIG concluded that DEA should have advised prosecutors handling Operation Anvil cases of the gun planting incident and notified them about the TRT's inaccurate reporting. Because DEA had not done so, DOJ OIG provided notification in October 2015 to the U.S. Attorneys for the Eastern District of Virginia and the Southern District of New York, the Chief of the Narcotic and Dangerous Drugs Section of DOJ's Criminal Division, and the Deputy Attorney General's Office, so they could evaluate the information for potential *Brady* or *Giglio* material.

## **G. DOJ OIG Recommendations**

Some of the problems we identified in this review resulted from deficiencies in DEA procedures, while others resulted from inadequate pre-operational planning. Accordingly, we provided eight recommendations to assist DEA in revising its procedures and protocols to address these issues, including the following:

- Requiring sufficient training and de-confliction between DEA personnel and host nation counterparts on their respective deadly force policies before commencing counternarcotics operations abroad;
- Ensuring that, in joint operations abroad, appropriate and sufficient mechanisms are in place in the event of a critical incident to support law enforcement personnel on the ground, provide for scene processing without prolonged delay, and allow for any and all search and rescue missions that may become necessary;
- Requiring that, in advance of counternarcotics operations abroad, DEA officials work with relevant U.S. Embassy and host nation partners to develop protocols that will govern post-incident investigations, ensure a thorough and comprehensive review is conducted, and provide a mechanism for timely and appropriate sharing of information; and
- Ensuring that DEA timely and thoroughly investigates shooting incidents that occur during joint operations with foreign LEO and that the investigation examines not only DEA conduct but also the conduct of foreign LEO who acted with advice or direction from DEA personnel.

Further, we recommended that the Deputy Attorney General determine whether revisions to post-shooting incident procedures should be made across DOJ

law enforcement components to ensure that shooting incidents similar to those that occurred during Operation Anvil are handled in a consistent and appropriate manner. Such operations are, by their nature, inherently dangerous, and it is incumbent on the DOJ to ensure that appropriate measures are in place and protocols followed so that they are conducted appropriately and, when incidents occur, they are fully investigated and the results reported accurately to Department leadership and Congress.

### **III. State OIG Findings Regarding State's Responses To The Three Deadly Force Incidents**

State OIG concluded that DEA failed to comply with the Chief of Mission authority granted to Ambassador Kubiske. Longstanding executive orders direct executive branch employees in a host country to comply with the direction of the Ambassador, who is the President's personal representative to the host nation government. However, DEA repeatedly refused to comply with the Ambassador's instructions to provide her and DS with information regarding the three incidents. This conflict was exacerbated by senior INL officials who told DS that DS had no authority to investigate the incidents and refused to provide the helicopter crews for DS to interview.

State OIG also found that State officials made inaccurate and incomplete statements to Congress and the public regarding Operation Anvil, including representations that it was a Honduran-led operation, which these officials knew to be inconsistent with how the operation actually proceeded. In addition, State officials never informed Congress of the DS investigation, despite numerous questions about whether the United States would conduct an investigation of the deadly force incidents.



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## **CHAPTER ONE: INTRODUCTION**

### **I. Background**

The Department of State (State) Office of the Inspector General (OIG) and the Department of Justice (DOJ) OIG conducted this joint review into the post-incident responses by State and the Drug Enforcement Administration (DEA) to three drug interdiction missions in Honduras in 2012 that resulted in deaths and injuries. The three missions were conducted jointly by the Government of Honduras (GOH), DEA, and State pursuant to an aerial interdiction program known as Operation Anvil.

Operation Anvil began in Honduras on April 24, 2012, as a 90-day pilot program designed to disrupt suspected drug transportation flights from South America to Honduras, with the goals of denying drug traffickers safe havens from which to operate and prosecuting high-level traffickers in the United States. The DEA personnel who participated in the operation were members of DEA's Foreign-deployed Advisory and Support Team (FAST). According to the DEA Operations Order, the stated role of the DEA FAST members was to train and advise a vetted unit of Honduran National Police officers known as the Tactical Response Team (TRT) and to assist them on drug interdiction missions. The DEA FAST members and TRT officers comprised the ground forces on these missions, while State Department-owned helicopters that had been originally loaned to the Government of Guatemala provided transportation and armed air support. The helicopters were piloted by State-contractors and Guatemalan co-pilots. The Honduran Air Force provided door gunners, and, on certain missions, U.S. Customs and Border Protection (CBP) surveillance aircraft provided detection capabilities, including infrared video monitoring and recording of activity in the air and on the ground. In addition, State's Bureau of International Narcotics and Law Enforcement Affairs (INL) provided operational support from a command center in [REDACTED], Honduras.

During the 90-day joint operation, FAST and TRT made five interdictions that yielded drugs, weapons, and numerous arrests of drug traffickers. Three of the five interdictions involved the use of deadly force by either Honduran officers or DEA FAST team members that resulted in injury or death. These interdictions occurred on May 10-11, June 22-23, and July 2-3, 2012. The May 10-11 interdiction received substantial public attention in Honduras and in the United States after reports surfaced that on May 11 U.S. and Honduran law enforcement officers had killed and injured innocent civilians during the raid and had abused residents in a nearby village. Members of Congress raised concerns about these reports, including a letter signed by 57 Members of Congress to the Attorney General and Secretary of State in January 2013 requesting a thorough investigation of the incident and a letter from Senator Patrick Leahy to the DEA Administrator in October 2013 expressing concerns that DEA had failed to recognize the seriousness of the events that occurred during the May 11 incident or thoroughly and critically assess the role of DEA in the operation and its aftermath.

The OIGs initiated this joint review in May 2014 shortly after DEA responded to Senator Leahy's letter and following information generated by the State OIG during a separate review it was conducting. The objectives of this joint review were to examine pre-incident planning and the rules governing the use of deadly force, the post-incident investigative and review efforts by State and DEA, the cooperation by State and DEA personnel with the post-incident shooting reviews, and the information provided to Congress and the public by State and DEA regarding the incidents. As the investigation proceeded, the OIGs identified several additional issues that are addressed in this report, including DEA's development of and reliance on source information concerning the May 11 incident, the investigations undertaken by Honduran authorities to investigate the incident and DEA's and State's responses to those investigations, and the information DEA provided to DOJ leadership concerning Operation Anvil and the May 11 incident. The OIGs also learned of grossly inaccurate statements made by a Honduran TRT Commander concerning the three deadly force incidents and reports that the TRT planted a gun into evidence. This report addresses these various issues.<sup>4</sup>

## **II. Methodology of the OIG review**

In the course of this review, the OIGs interviewed over 70 individuals. The OIGs interviewed personnel from DEA's FAST program, including the Section Chief and Deputy Section Chief of the FAST program during the relevant time period, all DEA personnel who participated in the May 10-11 interdiction, and the relevant DEA personnel who participated in the June 22-23 and July 2-3 interdictions. We interviewed the DEA personnel then assigned to the Tegucigalpa Country Office and the former DEA Regional Director and Assistant Regional Director for Mexico and Central America. We also interviewed personnel then assigned to DEA's Office of the Chief Counsel, Office of Inspections, and Office of Congressional and Public Affairs. We interviewed DEA leadership, including former Administrator Michele Leonhart, former Deputy Administrator and Chief of Operations Thomas Harrigan, and former Deputy Chief of Operations/Chief of Global Operations James Soiles.<sup>5</sup>

We were unable to interview the former head of DEA's Special Projects Branch, Jeffrey (Jay) Fitzpatrick, who had managerial responsibility over the FAST program and reported to Mr. Soiles and Mr. Harrigan. Mr. Fitzpatrick retired from the DEA and declined the OIG's request for an interview.<sup>6</sup>

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<sup>4</sup> A determination regarding whether the use of deadly force was justified under applicable laws or policy was not within the scope of this review. Such a determination would have been appropriate and expected as part of a proper shooting review by DEA and State immediately after the incidents, but as described below that did not occur for at least the May 11 incident.

<sup>5</sup> Michele Leonhart, Thomas Harrigan, and James Soiles served in these leadership positions at the time of the three deadly force incidents and during the events that followed. Leonhart resigned in May 2015. Harrigan and Soiles retired in December 2014 and November 2015, respectively.

<sup>6</sup> Because Mr. Fitzpatrick is no longer employed by DOJ, the OIGs were unable to compel his interview.

The OIGs interviewed officials from the Department of State, including former U.S. Ambassador to Honduras Lisa Kubiske and personnel from the U.S. Embassy in Honduras. We interviewed INL Assistant Secretary, Ambassador William Brownfield, and INL personnel from Western Hemisphere Programs. We interviewed Principal Deputy Assistant Secretary for the Bureau of Western Hemisphere Affairs (WHA) John Feeley, and WHA Director of Central American Affairs Gonzales Gallegos. We interviewed a former homicide detective hired by State to assist and train the Honduran National Police. We also interviewed Bureau of Diplomatic Security (DS) personnel, including officials from the Special Investigations Division, and INL contractor helicopter pilots from DynCorp International (DynCorp) who participated in Operation Anvil. We attempted to interview the former DS Director, Scott Bultrowicz, who declined our request for an interview. We also attempted to interview the INL Senior Aviation Advisor who participated in Operation Anvil from the operation's command center in [REDACTED], Honduras, but he did not respond to our requests.<sup>7</sup>

In addition, the OIGs interviewed officials from DEA's Forensic Multimedia Laboratory and the Federal Bureau of Investigation's (FBI) Forensic Audio, Video, and Image Analysis Unit, as well as officers from CBP's Office of Air and Marine who participated in or had knowledge of the May 10-11, 2012, interdiction.

In the course of this review, the OIGs obtained and reviewed thousands of documents generated by DEA and State, including operational documents, training materials, investigative files, photographs, video files, logs, e-mail communications, and draft and final congressional correspondence and presentation talking points. We obtained and reviewed additional documents generated by DynCorp, CBP, and the FBI. We reviewed reports from Honduran investigative authorities, including the Honduran National Police and the Honduran Special Prosecutor for Human Rights, concerning the May 11 incident. We also reviewed the reports of the Center for Economic and Policy Research (CEPR) concerning the May 11 incident and met with the authors of the CEPR reports, Alexander Main and Annie Bird. Main and Bird provided the OIGs with audio recordings of their interviews with local residents from the village of Ahuas.

Finally, the DOJ OIG retained independent video consultants to obtain information concerning the infrared video camera used by the CBP surveillance aircraft and expert analysis of the video footage of the May 10-11 interdiction:

(1) Cynthia Archer. Dr. Archer has 25 years of experience working in the fields of communications, signal processing, and image processing. She has extensive experience in data analysis, image and temporal signal processing algorithm design, and real-time implementation of signal processing and classification algorithms. She currently is owner and principal investigator at Signal Semantics, LLC. Prior to starting her own consulting firm, she was employed by FLIR Systems, Inc., where she was the lead image processing algorithms developer

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<sup>7</sup> Because Bultrowicz retired from the State Department, and the Senior Aviation Advisor is no longer a contract employee, the OIGs were unable to compel their interviews.

for the Government Systems Division, which provided expert services to a number of federal agencies including the Department of Defense and Department of Homeland Security. Dr. Archer has degrees in electrical engineering and computer science and engineering and obtained a Ph.D. in computer science and engineering from Oregon Health and Science University. She holds three patents and has authored numerous papers concerning technology for remote target detection and recognition using both single band and hyperspectral infrared imagery.

(2) John Lester Miller. Mr. Miller is the former Chief Technical Officer-Surveillance and Vice President of Advanced Technology for FLIR Systems, Inc. He has over 34 years of experience in infrared technology and electro-optics and has degrees in physics, astronomy, and an MBA in management of technology. He has worked his entire 35-year professional career in infrared imagery at Mount Wilson and Palomar Observatories, NASA's Infrared Telescope Facility in Mauna Kea, Hawaii, Rockwell International, the Research Triangle Institute, Lockheed Martin, and 19 years with FLIR Systems. He is currently owner and Chief Executive Officer of Cascade Electro-Optics. He has written four books and over 100 papers on infrared technology. He has several patents and has served as an expert witness in court proceedings.

(3) Mark Kikta, an account manager for L-3 WESCAM, a technology company that designs and manufactures infrared and targeting sensor systems. L-3 WESCAM manufactured the infrared video camera CBP used during the May 10-11, 2012 interdiction.

### **III. Access to Information**

The DOJ OIG submitted eight information requests to DEA resulting in the production of over 52,000 pages of documents, including e-mails, PowerPoint presentations, operational documents for Operation Anvil, internal reports, witness statements, and four shooting review presentations from DEA's Office of Inspections that we relied upon in drafting this report. The OIG also reviewed over 1,000 pages of documents and notes specific to Operation Anvil received in response to both formal and informal information requests to DOJ's Office of Legislative Affairs (OLA) and the Offices of the Deputy Attorney General (ODAG) and Attorney General (OAG).

DOJ OLA, ODAG, and OAG were fully responsive in providing the documents we requested. Although DEA ultimately provided the documents we requested, there were two issues that arose regarding DEA document production in 2014 and early 2015. First, DEA failed to timely produce numerous responsive e-mails of certain senior DEA officials connected to Operation Anvil, without justification. While DEA promptly produced responsive e-mails of non-Senior Executive Service (SES) employees, it initially refused to produce to the DOJ OIG responsive e-mails of SES employees despite the fact that the OIG was entitled to access the material pursuant to the Inspector General Act. Only after lengthy discussions over a 4-month period were some of those e-mails of SES employees finally produced to the

OIG. Others were not produced until as much as 11 months after we asked for them.

Second, while DEA produced a large number of documents in response to our requests, it omitted certain highly relevant reports and statements related to the specific issues of our review. For example, none of the eight document productions provided us with the initial witness statement of the only percipient DEA witness in the boat during the May 11 drug interdiction that resulted in the deaths of four individuals, even though this statement was clearly within the scope of our requests. We obtained this statement only after we requested bulk e-mails from the FAST Section Chief and located it among his e-mails as an attachment. Another example was the witness statement of the shooter in the June 23 shooting. Again, this statement was located only through a review of e-mails obtained by the OIG pursuant to a bulk e-mail request. While we do not have reason to believe the omission of these relevant documents was intentional, it does reflect an issue with document and case file retention practices.<sup>8</sup>

The failure to timely produce specific documents related to Operation Anvil and the shootings during the operation necessitated additional interviews with witnesses and caused an entirely avoidable delay in the production of this report. We note that DEA's current leadership has taken action since mid-2015 to ensure that the OIG receives timely access to information.

State OIG submitted records requests to and received timely replies from the Bureaus of Western Hemisphere Affairs, Diplomatic Security, Bureau of International Narcotics and Law Enforcement Affairs, Public Affairs, and Legislative Affairs. We reviewed the thousands of pages of documents resulting from these requests and interviewed over a dozen State officials, as well as contract employees.

#### **IV. Organization of the Report**

This report is divided into fifteen chapters. Following this introduction, Chapter Two describes the background and planning of Operation Anvil, the training DEA provided to Honduran counterparts, and the initiation of the operation in April 2012.

In Chapter Three, we set forth a detailed chronology of events concerning the May 10-11, 2012 interdiction. In Chapters Four, Five, Six, and Seven, we describe the DEA and State interpretation of the May 11, 2012 video footage, source information DEA developed concerning the May 11 incident, the Honduran investigations of the May 11 incident, and the DEA's post-incident review of the May 11 incident.

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<sup>8</sup> In discussions with DEA Information Technology staff, DOJ OIG was told that technical issues were the reason, in part, for a failure to identify all responsive documents and e-mails pursuant to our requests. We were also told that IT staff had interpreted OIG requests in a manner that resulted in a more limited search for relevant information than we had intended.



In Chapters Eight and Nine, we set forth the chronology of the June 22-23 and July 2-3, 2012 interdictions and the DEA's post-incident reviews of the June 23 and July 3 shooting incidents.

Chapter Ten describes the investigations of the three shooting incidents conducted by the Department of State.

Chapter Eleven describes the information DEA provided to DOJ leadership officials concerning the three shooting incidents and the response from Department leadership. Chapter Twelve describes the information DEA and State provided to Congress concerning the May 11 incident.

In Chapter Thirteen, DOJ OIG provides its analysis of DEA's pre-operational planning before Operation Anvil began and DEA's role during the operation. We assess DEA's internal reviews of the three Anvil shooting incidents, including the decision-making by senior DEA officials immediately after the May 11 shooting, the internal reviews that were eventually conducted, and the adequacy of DEA's post-shooting incident procedures. We assess DEA's cooperation with State and Honduran investigations concerning the May 11 incident and the representations DEA made to DOJ leadership and Congress about the incident. Finally, we analyze DEA's apparent failure to address the gun-planting report and inaccurate statements concerning the TRT.

In Chapter Fourteen, State OIG assesses compliance with Chief of Mission authority and the cooperation of INL with the Diplomatic Security investigation of the May 11 incident. In addition, we assess the representations State officials made to Congress and the public about Operation Anvil.

Chapter Fifteen provides DOJ OIG's recommendations.

Appendices A through D contain the responses to this report from DEA, the Office of the Deputy Attorney General, INL, and WHA. Appendix E contains a table of the Honduran investigations described in Chapter Six. Appendices F through O contain the correspondence between DEA, the Department of Justice, or the Department of State and Congress that are described in Chapter Twelve.

## **CHAPTER TWO: BACKGROUND**

In this chapter of the report, we describe the background regarding Operation Anvil in Honduras. We describe the agreements between the Government of Honduras (GOH) and the United States and other authorities relevant to the operation. We also describe the planned role of DEA personnel in Operation Anvil and the training of the Honduran personnel before the operation began. Finally, we describe the initiation of the operation in April 2012 and the outcome of the first interdiction missions.

### **I. Operation Anvil**

#### **A. U.S. Strategy for Honduras and the Region**

According to DEA and State documents, in 2011, an estimated 95 percent of all cocaine from South America destined for the United States transited through Central America and Mexico. To address security threats to the United States and the region posed by this activity, the Department of State led the development of the Central America Regional Security Initiative (CARSI), a 5-year strategy to guide U.S. engagement in Central America from 2012 through 2017. The stated objectives of the CARSI are to support law enforcement operations and counternarcotics efforts in Central America, strengthen rule of law and governmental institutions, and sponsor community-based programs in the region. Similarly, in 2011, DEA developed its Central America Counternarcotics Attack Strategy (CENTAM), focused on disrupting the ability of drug trafficking organizations (DTO) and transnational crime organizations to operate freely in Central America and building the capacity of host nation law enforcement to sustain security in the region.

Shortly after these regional strategies were developed, DEA proposed an initiative to INL for an aerial drug interdiction operation in Honduras. At that time, the Mosquito Coast and Gracias a Dios region in northeastern Honduras were primary landing zones and transshipment locations for cocaine-smuggling flights originating from South America. According to DEA documents, the remoteness of these areas and the lack of helicopter capability hindered GOH's ability to provide a rapid police response to DTO activity in the region.



In July 2011, DEA leadership met with then-Honduran Minister of Security, Oscar Alvarez, to discuss U.S. operational assistance in the Mosquito Coast area. By September 2011, DEA asked INL about the possibility of using INL helicopters to interdict drug smuggling flights from Venezuela to northeastern Honduras. In October 2011, DEA received support for its proposal from the Assistant Secretary of State for INL, William Brownfield, and DEA and INL began developing a plan for what eventually became known as Operation Anvil.

## **B. The Operation**

Operation Anvil involved intelligence-driven interdiction missions targeting drug smuggling flights, or ██████████ suspected of heading toward northeastern Honduras. Each suspect flight was identified based on information developed by DEA or intelligence collected by the Joint Interagency Task Force South (JIATF-South), an interagency organization under U.S. Southern

Command (SOUTHCOM).<sup>9</sup> With intelligence and coordination assistance from JIATF-South, Operation Anvil became part of a larger Department of Defense (DOD) operation known as Operation Martillo, which was initiated in January 2012 to disrupt drug trafficking routes by air, land, and sea from South America to Mexico. In addition, SOUTHCOM's Joint Task Force Bravo (JTF-Bravo), headquartered at Soto Cano Air Base, Honduras, provided logistical support for the interdiction missions.<sup>10</sup>

To carry out interdictions, Operation Anvil included the temporary relocation to Honduras of [REDACTED] INL helicopters stationed in Guatemala, which were flown by U.S. contractor pilots employed by DynCorp International (DynCorp) and co-pilots from the Guatemalan Air Force. Relocated to [REDACTED], Honduras, the helicopters provided necessary transportation and airlift support to law enforcement officers who carried out counternarcotic interdiction missions on the ground. The ground team included a vetted unit of Honduran National Police officers known as the Tactical Response Team (TRT) and DEA special agents who were members of DEA's Foreign-deployed Advisory and Support Team (FAST).<sup>11</sup>

The operation also included Honduran military officers who were responsible for operating door machine guns located on the helicopters and INL personnel who provided the necessary support to maintain the helicopter fleet. Beginning after the first few interdiction missions, U.S. Customs and Border Protection (CBP) or U.S. Air Force (USAF) provided surveillance aircraft and a flight crew, which provided detection and surveillance capabilities to better intercept suspect aircraft.

The immediate goal of Operation Anvil was to disrupt the aerial trafficking of drugs into Honduras and to help the GOH establish rule of law in the area. DEA officials told us that another goal of the operation was to obtain the evidence necessary to link the interdictions to major DTO investigations so that the major traffickers could be indicted, arrested, extradited, and prosecuted in the United States.

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<sup>9</sup> According to SOUTHCOM's official website, JIATF-South, located in Key West, Florida, is an interagency task force that serves as a catalyst for interagency cooperation and coordination in counter-narcotic operations, and it collects, processes, and disseminates counter-narcotic information for interagency operations. JIATF-South conducts detection and monitoring operations against illicit trafficking in order to identify targets for appropriate law enforcement authorities.

<sup>10</sup> According to its official website, JTF-Bravo conducts and supports joint counter transnational organized crime operations, provides humanitarian assistance/disaster relief, and engages in activities to build partner capabilities in the Caribbean, Central America, and South America.

<sup>11</sup> As described in this report, "vetted unit" refers to host nation police and military officers who undergo the Leahy vetting process (described later in this chapter) before receiving U.S. assistance and training to ensure that they have not committed gross violations of human rights.

## **II. Relevant Authorities**

### **A. Chief of Mission Authority**

Operation Anvil activities in Honduras were subject to oversight through the U.S. Embassy. Section 207 of the Foreign Service Act of 1980, 22 U.S.C. § 3927, provides that the Ambassador or Chief of Mission (COM) has “full responsibility for the direction, coordination, and supervision of all Government executive branch employees in that country,” subject to exceptions not applicable here. The law further provides that “[a]ny executive branch agency having employees in a foreign country shall keep the chief of mission to that country fully and currently informed with respect to all activities and operations of its employees in that country . . . .” The President’s Letter of Instruction to all COMs and the Foreign Affairs Manual (FAM) also states this authority. The Foreign Affairs Handbook (FAH) similarly states that “all executive branch agencies under COM authority are required to keep him or her informed of their current and planned activities in country.”

### **B. Mansfield Amendment**

There are long-standing legal limits placed upon law enforcement operations conducted overseas involving U.S. Government personnel. In particular, the Mansfield Amendment amended the Foreign Assistance Act in 1985 to prohibit any “officer or employee of the United States” from directly effecting an arrest in any foreign country “as part of any foreign police action with respect to narcotics control efforts,” although (with COM approval) they could be present for arrests and assist foreign law enforcement officers effecting arrests and could act in self-defense under exigent circumstances.

A 1986 opinion from the DOJ’s Office of Legal Counsel elaborated upon the prohibition as follows:

Joint drug raids provide the archetypical violation of Congress’ desire that United States agents not participate in foreign law enforcement operations in which violence or the use of force is likely to occur.

[The] definition of “arrest action” makes clear Congress’ intent to include more than the actual arrest of foreign nationals, but not to include activities which under normal circumstances would not involve such arrests. In the context of a drug raid, for example, the Mansfield Amendment would preclude the participation (though not presence) of United States officers only in the raid itself, for only the actual raid would, under normal circumstances, involve arrests or the probable use of force.

### **C. Diplomatic Agreement with the Government of Honduras**

The U.S. Embassy in Honduras formally proposed Operation Anvil to the GOH in February 2012, and in March 2012 the two nations approved a bilateral Letter of Agreement (LOA) authorizing the operation for 90 days. Under the terms of the LOA, the United States agreed to provide the helicopters, pilots, support personnel,

intelligence collection and operational planning assistance, and a maximum of [REDACTED] DEA special agents to assist and train the Honduran TRT. In exchange, the GOH agreed to provide the TRT officers, helicopter door gunners, access to [REDACTED] forward-operating locations, and authorization to fly in Honduran air space.

The GOH agreed to provide the participating U.S. personnel with the privileges and immunities typically accorded to administrative and technical staff of U.S. personnel assigned to U.S. embassies. The privileges and immunities accorded to administrative and technical staff provide personal inviolability, immunity from criminal jurisdiction, and immunity from the obligation to provide evidence as witnesses. They also receive immunity from civil jurisdiction, but only in connection with the performance of official duties.<sup>12</sup>

The LOA required that participating Honduran personnel pass a standard vetting procedure prior to the commencement of training for the operation. This vetting procedure is a typical requirement when U.S. personnel assist host nation counterparts in order to ensure compliance with the Leahy Amendment to the Foreign Operations Assistance Act, which prohibits assistance to any foreign unit when there is credible information that such unit has committed a gross violation of human rights. We discuss this vetting procedure in more detail in Section IV. A., below.

The U.S. proposal stated that the operation would be fully funded by the United States, and INL ultimately financed Operation Anvil using International Narcotics Crime and Law Enforcement (INCLE) funds granted to INL for CARSI initiatives. INL receives INCLE funding from Congress to support a range of regional and global initiatives that seek to help foreign partners build strong law enforcement capabilities. DEA does not receive similar funding for foreign assistance and must instead defer to INL or DOD to fund such initiatives.

#### **D. DEA Operations Order**

Shortly before the initiation of Operation Anvil, DEA issued a five-page Operations Order setting forth the operational plan, which was approved by the then-U.S. Ambassador to Honduras, Lisa Kubiske, and her Deputy, Matthias Mitman, on April 13, 2012. According to the Operations Order, personnel from DEA's Tegucigalpa Country Office (TCO), FAST, and INL would assist the Honduran TRT in conducting intelligence-driven interdiction operations. When not responding to suspect flights or assisting TRT in other enforcement activities, the Operations Order provided that FAST would conduct training exercises with the TRT.

According to the Operations Order, the TRT Commander "is considered the ground force commander assisted by DEA. TRT will be the lead element during all operations" and conduct all arrests and interviews. The Order provided that DEA's

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<sup>12</sup> See U.S. Department of State, Diplomatic and Consular Immunity: Guidance for Law Enforcement and Judicial Authorities, available at <http://www.state.gov/documents/organization/150546.pdf> (accessed October 27, 2016).

TCO and FAST personnel would participate in an investigative and tactical advisory role. The Operations Order also contemplated that a Honduran prosecutor, or fiscal, would be imbedded with the ground forces to oversee the TRT during arrests, interviews, and the seizure of evidence, as well as to participate in "operational and enforcement decision-making." However, DEA officials told us that there were no fiscales imbedded with the ground forces on any of the missions. A FAST team leader told us he believed that it was difficult to find a fiscal willing to go on the missions.

The Operations Order provided that TCO, FAST, and TRT personnel would maintain communications with INL helicopters and surveillance aircraft, and be prepared to establish communications with JIATF-South and JTF-Bravo. According to the Order's equipment list, FAST members were to have [REDACTED], hand-held radios, and [REDACTED]. The Order did not specify radio equipment for the TRT, and FAST members told the OIGs that the TRT did not have direct radio connection to the INL helicopters, surveillance aircraft, or JIATF-South. The Operations Order stated that both TRT and DEA personnel would have night vision goggles (NVGs).

In addition, the Operations Order noted that based on historical intelligence operation participants should expect that the ground party (DTO members or those assisting the DTOs in offloading drugs at the clandestine landing strips) would consist of an estimated 20-50 individuals and that it was common for members of the ground party to carry firearms, including AK-47s.

The Order provided that with respect to the use of force, TRT would adhere to unspecified "Honduran laws and TRT policy" and DEA personnel would adhere to the DOJ Deadly Force Policy. According to the Order, the TRT would carry [REDACTED] mm rifles and [REDACTED] mm pistols provided by the GOH, and DEA personnel would carry [REDACTED] rifles and pistols. The order also specified that FAST members would wear green tactical uniforms and carry [REDACTED].

With respect to injuries suffered during an interdiction mission, the Operations Order specified that injured GOH and U.S. Government personnel and injured prisoners would be treated on-scene by a FAST medic and that injured GOH and U.S. Government personnel would be removed by way of an INL helicopter to the nearest medical facility. The Operations Order did not specifically address injuries to others during an interdiction, such as innocent bystanders, or specify whether and to what extent GOH or U.S. personnel should actively search for injured persons.<sup>13</sup> The Operations Order also did not provide post-incident procedures for what should happen in the event of the use of deadly force by either

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<sup>13</sup> Except in a small number of situations not applicable here, the DEA Agent Manual does not specify requirements for what information agents must or should include in an operational plan or order. The manual also does not address the extent to which DEA personnel should actively search for injured persons following a use-of-force incident. However, the manual specifies that agents and task force officers will provide first-aid to injured persons and request emergency medical assistance when necessary.

Honduran or U.S. personnel, including the steps that should be taken on-scene, when possible, to collect and preserve evidence and who would be responsible for conducting any post-incident investigation.

The Operations Order did not include the availability of a Quick Reaction Force (QRF), a unit that could deploy quickly and provide additional protection and support to the TRT and FAST ground team against attack from armed individuals in the surrounding area. FAST Section Chief Richard Dobrich told the OIGs that planning for the operation had included the availability of [REDACTED], and documents reflect that [REDACTED].

However, QRF support did not progress beyond the planning stages, a fact that FAST personnel were not made aware of before missions began. As described in later chapters, FAST team leaders had requested QRF support on multiple occasions, but additional forces never arrived. The OIGs were unable to determine why QRF support never materialized.

#### **E. Honduran Use of Deadly Force Policy**

The OIGs requested the Honduran Use of Deadly Force Policy from INL staff at the U.S. Embassy in Tegucigalpa. In response, the Embassy provided the Spanish version of the United Nations' (UN) Human Rights Standards and Practice for the Police (2004), which it identified as the use of force policy followed by the Honduran National Police.

The UN Human Rights Standards identify the following guiding principles concerning police use of deadly force and firearms:

- Use of force shall always be proportional to lawful objectives.
- Firearms are to be used only in self-defense or defense of others against imminent threat of death or serious injury and only when less extreme measures are insufficient.
- Use of deadly force and firearms shall be permitted only when strictly unavoidable in order to protect human life.

In addition, under the UN Human Rights Standards, a police officer must identify him or herself as a police officer before using a firearm and must give a clear warning and adequate time to obey the warning, unless a delay would result in death or serious injury or is clearly pointless or inappropriate under the circumstances. Further, the UN Standards require that medical aid be rendered to all injured persons.

#### **F. DOJ Use of Deadly Force Policy**

The touchstone of the DOJ policy regarding the use of deadly force is necessity.<sup>14</sup> DOJ law enforcement officers may use deadly force only when

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<sup>14</sup> Policy Statement, Use of Deadly Force (July 1, 2004).



necessary, which under the policy means when the officer has a reasonable belief that the subject of such force poses an imminent danger of death or serious physical injury to the officer or to another person. The DOJ deadly force policy does not refer specifically to proportionality, as in the UN Human Rights Standards. The policy states that officers will be trained in alternative methods and tactics for handling resisting subjects, which must be used when the use of deadly force is not authorized under the policy. Similar to the UN Human Rights Standards, the DOJ policy states that an officer must give a verbal warning before the use of deadly force, unless doing so is not feasible or would increase the danger to the officer or others.

DEA's former Deputy Chief Counsel for international matters, John Wallace, told the OIGs that he had discussions with DEA and State officials about the use-of-force rules that would apply during Operation Anvil. Wallace told the OIGs that four use-of-deadly-force authorities had relevance for DEA personnel during the operation: the inherent right of self-defense, the DOJ Deadly Force Policy, the Chief of Mission Deadly Force Policy (discussed below), and the Honduran Deadly Force Policy. According to Wallace, the inherent right of self-defense and the DOJ deadly force policies were the principal authorities applicable to DEA personnel during Operation Anvil. He said that the policies of the Chief of Mission and host nation can further restrict the authority of DEA personnel to use deadly force, but they may not broaden their authority beyond what is provided in the DOJ Deadly Force Policy. Wallace told us that in this instance he did not believe either policy further restricted DEA authority, and that the COM policy was substantially similar to the DOJ policy. He also told us that he added language to the Operations Order to make clear that DOJ Deadly Force Policy would apply to DEA personnel during Operation Anvil, as referenced above.

#### **G. Chief of Mission Firearms and Use of Deadly Force Policy**

On April 18, 2012, the U.S. Ambassador formally approved the Mission Firearms and Use of Deadly Force Policy. It applies to all U.S. Government personnel "of any agency" under chief of mission authority in Honduras. It also applies to "third country nationals present in Honduras as the result of a contractual relationship with any agency of the U.S Government."

Similar to the DEA policy, the touchstone of the COM's policy is necessity. It states that "the use of deadly force must be objectively reasonable under the totality of the circumstances known to the individual at the time" and "reasonableness is not to be viewed from the calm vantage of hindsight." The policy defines necessity as circumstances "when all other available means of preventing imminent and grave danger to oneself or other innocent persons have failed or would likely fail."

The policy also requires that when deadly force is used, an individual "must use only well-aimed shots with due regard for the safety of any innocent bystanders and must immediately notify the appropriate authorities [and] request assistance as needed." Finally, the policy stated that any discharge of a firearm "must

immediately be reported to the Ambassador, through the RSO [Regional Security Officer].”

The COM Policy requires that all personnel subject to the policy sign a form acknowledging in writing that they have read and understood the policy. The current Deputy RSO at the U.S. Embassy advised the OIGs that the RSO’s files at Post did not have any record that the FAST personnel who participated in Operation Anvil signed these acknowledgment forms. As described later in this chapter, two FAST teams participated in Operation Anvil: FAST Team Bravo and FAST Team Delta. According to internal DEA e-mail communications, an Assistant Country Attaché in Tegucigalpa asked the Team Leader and Assistant Team Leader of FAST Team Delta to sign the acknowledgement forms on May 30, 2012, a few weeks after missions began. The Attaché also asked that they have their team members, who recently arrived in Honduras, sign the acknowledgements. The Delta Team Leader told us that he believed he satisfied this request; however, the OIGs found no record that he or any of his team members signed the form. The Bravo Team Leader said that he did not recall whether he ever received the COM Policy and signed the acknowledgement form. We found no record that he or his team members did so.

Nevertheless, under the express terms of the COM Policy, its provisions applied to all U.S. personnel assigned to the Embassy, regardless of employing agency.

## **H. Rules of Engagement for INL Personnel**

INL has rules of engagement that apply to INL personnel during authorized counternarcotics operations in Honduras. These rules apply only to officers and employees of INL and persons under contract to INL, but do not govern the activities of military personnel, law enforcement personnel, or other security forces that may be conducting operations supported by INL personnel. These rules apply to INL personnel in addition to the COM Policy.

According to these rules, INL personnel are not authorized to use force for mission accomplishment, but may use force in self-defense. The rules specify self-defense is only appropriate in response to a hostile act or demonstrated hostile intent and include defense of others in the vicinity such as United States officers or employees, officers or employees of a foreign government, or members of the public.

The INL rules include the principles of necessity, proportionality (“the nature, duration, and scope of force used should not exceed what is reasonably believed to be required to defend oneself”), due care for the safety of others in the vicinity, and de-escalation (to persuade the hostile actors to withdraw or cease the action).

## **I. Post-Incident Investigation Protocol or Procedures**

Information DEA had before Operation Anvil began indicated that the DTOs had encouraged the ground parties responsible for offloading the drugs, and

believed to be carrying AK-47 rifles, to resist law enforcement seizures. The DEA Operations Order therefore directed all law enforcement personnel to be cautious and exercise diligence for the safety and security of all personnel. As described above, the DEA Operations Order also provided instructions in the event of injuries suffered by GOH and U.S. personnel or by prisoners.

Several DEA officials told the OIGs that they understood at the time that there was a likelihood of shooting incidents occurring during the operation. A few, including the Country Attaché (CA) and Assistant Regional Director (ARD), told us that they had no doubt in their minds that there would be shooting incidents. According to the Country Attaché and the Assistant Regional Director, Ambassador Kubiske and her representatives were privy to discussions concerning the security concerns implicit in the planned drug interdiction missions. The Assistant Regional Director told us that the Ambassador would often state, "If there's a shooting . . .," and DEA officials would interrupt her and state, "[N]ot if. There will be several fatalities here. There will be shootings."

Similarly, Mark Wells, who was State's INL Director for Western Hemisphere Programs and participated in the planning of Operation Anvil, told us that he "fully expected" that there would be shooting incidents during the operation, though he said he was later surprised by how many incidents occurred. John Feeley, who was the Principal Deputy Assistant Secretary (PDAS) for Western Hemisphere Affairs (WHA), told us that he did not become involved in Operation Anvil until shortly before the May 11 shooting incident took place. However, he said that based on his experience in other countries, he would not have approved the concept of operations for Operation Anvil had he been the Chief of Mission because the risk of an officer losing his life was too great.

DEA and State officials told us that there were no discussions, or they did not recall discussions, during the planning phase of Operation Anvil about how the participating agencies would respond after-the-fact to a shooting incident. Before the beginning of the operation, officials did not agree to protocols or procedures to address who would investigate Operation Anvil shooting incidents, under what circumstances, what the investigation would entail, and what the process would be for responding to public inquiries.

DEA's then Deputy Chief Counsel John Wallace told us that he believed there was an assumption going into the operation that every party involved would operate under their own rules and regulations with respect to initiating and conducting post-incident investigations. For DEA, this assumption meant that DEA would follow the post-shooting and assault procedures set forth in its DEA Agent Manual.<sup>15</sup> Wallace said that he made this assumption with the understanding that the Ambassador had ultimate authority in Honduras and could have exercised her statutory authority as Chief of Mission to impose additional requirements upon DEA.

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<sup>15</sup> These procedures are described in more detail in Chapter Seven.

State officials told us that they understood that State's Bureau of Diplomatic Security (DS) Special Investigations Division (SID) would have the lead investigative jurisdiction over any shooting incidents involving COM personnel in Honduras.

### **III. Role of DEA FAST in Operation Anvil**

As discussed above, DEA deployed members of its FAST program to Honduras to participate in Operation Anvil with the stated purpose of assisting the Honduran TRT in conducting intelligence-driven interdiction operations and acting as trainers and advisors to the TRT. The FAST program is made up of five teams of highly-trained special agents, medics, and intelligence analysts. Created in 2005, the FAST program was initiated specifically to work closely with U.S. Special Forces and Afghan counterparts on counternarcotics operations in Afghanistan. According to DEA, the FAST teams provided guidance to their Afghan counterparts, while conducting bilateral investigations aimed at dismantling the region's DTOs. The FAST teams also helped with the destruction of existing opium storage sites, clandestine heroin processing labs, and precursor chemical supplies.

The FAST program was originally made up of three teams that took turns rotating through Afghanistan. DEA increased the number of teams to five in 2008 so that the FAST program could expand operations in the Western Hemisphere. Since the end of 2015, the FAST program no longer operates in Afghanistan, but it has conducted training and capacity-building missions in the Western Hemisphere.<sup>16</sup>

During all times relevant to Operation Anvil, the FAST program was supervised by FAST Section Chief Richard Dobrich. Dobrich reported directly to Jay Fitzpatrick, who at the time was the Deputy Chief of Operations for Special Projects. Fitzpatrick reported to Thomas Harrigan, then-Chief of Operations and Deputy Administrator, and also coordinated with James Soiles, the Deputy Chief of Operations for Global Enforcement, on activities within the FAST program. Each of these senior DEA officials, as well as Deputy Chief Counsel John Wallace, participated in the planning phase of Operation Anvil. Although these senior officials at DEA Headquarters managed the FAST program and participated in the planning of Operation Anvil, DEA officials told us that once FAST personnel arrived in Honduras, the FAST Team Leader fell under the operational command of the Country Attaché in Honduras, the Assistant Regional Director in Panama, and DEA

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<sup>16</sup> According to DEA, FAST conducted its last operation in 2015 in Afghanistan. In 2016, FAST was renamed the Special Support Section (S3) under the Office of Special Projects (OT). As S3, the section consisted of four Rapid Response Teams (RRTs), which provided personnel recovery training, special response training, and special rapid response operational support to domestic offices, and training and host-nation capacity building to foreign offices. In March 2017, S3 was transferred from OT to DEA's Office of Training (TR) in an effort to consolidate DEA's foreign and domestic training curriculums under one management structure. Under the TR structure, S3 personnel were integrated into TR's existing training units, which also include tactical training units. DOJ OIG has been advised that the RRTs and any operational or enforcement function, such as under previous iterations of FAST and S3, have been dissolved.

Regional Director (RD) Joseph Evans in Mexico City. According to Dobrich, DEA Headquarters exercised no tactical control over FAST during the operation.

As described below, Ambassador Kubiske and certain DEA officials at the regional level expressed concerns in the early planning stages of Operation Anvil about the role of FAST personnel in the planned interdictions. After multiple discussions, the U.S. Ambassador ultimately agreed to terms with senior DEA officials about FAST's role, and FAST personnel began preparations in early 2012 for their deployment to Honduras.

**A. Early Concerns Regarding Operation Anvil and the Role of FAST Personnel in the Operation**

**1. Initial Drafts of DEA Operations Order Raised Questions Regarding FAST's Role**

FAST Section Chief Dobrich told the OIGs that foreign operations like Operation Anvil are planned so that the host nation police commander serves as the Ground Force Commander and the FAST Team Leader serves as an advisor to the Ground Force Commander. Although the final DEA Operations Order was written in this manner, the initial drafts FAST leadership prepared stated that the FAST Team Leader (also sometimes referred to as the FAST Group Supervisor) would be the Ground Force Commander:

The FAST Group Supervisor is the Ground Force Commander (GFC). INL will designate the Air Mission Commander (AMC). The GFC will make the launch decision in consultation with the AMC. The GFC is the tactical commander. All aviation safety issues and procedures will be done in accordance with INL standard operating procedures. The AMC is the aviation commander. The GFC and AMC must both concur prior to launch.

The initial drafts contained a provision near the end of the order stating that the Honduran TRT would be the "supported command," that arrests and seizures would be conducted in accordance with local law, and that FAST would provide an advisory role to the Honduran TRT. During this early drafting phase, the FAST Team Leader told FAST and INL officials that "[e]ach FAST Agent will be assigned X number of Hondo's to herd/control."

Dobrich told us that he was a principal author of the initial drafts of what ultimately became the DEA Operations Order. He said that DEA presented an initial draft, which was called the "DEA Concept of Operations" or CONOPS, to INL and other interagency partners at a joint planning meeting in November 2011. After that meeting, DEA officials were told that they needed to rewrite the CONOPS so that the wording was clear that the TRT officers were in charge of the operation and that DEA and INL would be supporting the TRT Ground Force Commander.

According to e-mail communications on November 16, 2011, the request for the rewrite came after an INL attorney raised concerns with INL officials that the

language in the CONOPS reflected an operation that could not be supported with INL funds:

I'm concerned because [the CONOPS] reflects a combatant posture that INL cannot support but was probably drafted by someone not sensitive to the distinction between law enforcement operations and combat operations. At minimum, it needs to be redrafted but per the document, it appears that DEA is the "ground force commander." INL's funds are for foreign assistance purposes, not to support US agencies in their operations overseas. Admittedly, foreign and US law enforcement objectives may merge but INL's primary function is to support foreign (in this case Honduran) law enforcement, preferably the technical assistance vice operational support. It has been the Department's long-standing policy not to provide operational support with foreign assistance funds, but if we are going to provide it, we need to be clear that the support is for Honduras law enforcement. INL is not authorized to be DEA's air taxi, and host nation involvement must be real and not simply a fig leaf.

An INL official forwarded these concerns to DEA, and the Country Attaché told Dobrich and the Assistant Regional Director that he would help revise the CONOPS to address them.

Between November 2011 and April 2012, DEA made multiple revisions to the CONOPS. Among other revisions, the final CONOPS, which became the DEA Operations Order, addressed the concern about the draft's apparent focus on combat operations by removing the use of military terminology such as "rules of engagement" and "enemy action." The final order also changed the Ground Force Commander from the FAST Team Leader to the Honduran TRT, stating that the "TRT Commander is considered the ground force commander assisted by DEA. TRT will be the lead element during ALL operations." The final order also changed the mission language to specify that FAST (along with TCO and INL personnel) would be providing assistance to the TRT conducting the missions, whereas the initial drafts simply stated that FAST and TRT would conduct the interdiction missions.

## **2. Ambassador Kubiske's Concerns About the Role of FAST in Operation Anvil**

Ambassador Kubiske's term as U.S. Ambassador to Honduras commenced in August 2011. Shortly thereafter, DEA had initiated discussions with INL about using INL helicopters to support Operation Anvil, and the Country Attaché and Ambassador Kubiske began discussions about the operation's concept and design. Ambassador Kubiske told us that she had reservations about DEA's participation in the operation, which she discussed with the Country Attaché. She said she had "the very strong impression DEA FAST didn't really understand that this [operation] was supposed to be Honduran led." She said she communicated that she wanted DEA's involvement to be limited to advising and training the Honduran TRT officers and support them from behind. Ambassador Kubiske said that she was also

concerned that too few DEA FAST personnel were Spanish speakers to be able to communicate and work effectively with the Honduran TRT.

The Country Attaché passed Ambassador Kubiske's concerns about DEA's role during the operation to DEA officials at Headquarters and at the regional level. As early as November 2011, after INL asked DEA to rewrite the CONOPS, the Country Attaché notified Dobrich and the Assistant Regional Director that he had a long meeting with the Ambassador about her concern regarding how many DEA agents would be participating on the ground during the interdiction missions. According to internal e-mail communications, the Country Attaché told them that the Ambassador said that she would approve DEA assisting and advising the TRT, but that she wanted DEA to "lead from the rear," which was how she was presenting the operation to the GOH.

### **3. DEA Regional Leadership's Concerns About the Operation and the Role of FAST Personnel**

Senior DEA officials at the regional level told the OIGs that in the months before the start of Operation Anvil, they had concerns about the operation and the role that FAST personnel would serve during the operation. Joseph Evans, then DEA's Regional Director for North and Central Americas, told the OIGs that during early discussions in the planning phase of Anvil, he advised officials at DEA Headquarters that because of the limited capabilities of the Honduran police and prosecutors, his regional team was not convinced the proposed interdiction effort would have the desired effect of obtaining evidence sufficient to bring charges against the DTOs. According to RD Evans, he told Headquarters that the first priority should be in further developing the capabilities of the Sensitive Investigative Unit (SIU) program, which DEA had recently established in Honduras to equip and train the Hondurans to conduct the types of sophisticated investigations that would be necessary to ultimately pursue successful criminal prosecutions of the targets.<sup>17</sup> He said that he also expressed concerns about whether FAST had the "right background" to participate in the operation in a supportive role. He said that he understood that in Afghanistan FAST personnel were more "forward-leaning" when working directly with the military in a war zone and that serving in a supporting, advisory role in a host country in Central America would be a completely different situation.<sup>18</sup>

The Assistant Regional Director told the OIGs that she and RD Evans recommended against Operation Anvil and the use of FAST. She said that

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<sup>17</sup> DEA creates, trains, and supports SIU programs in key countries critical to the counter narcotics objectives of the United States. The conceptual basis of this program, which is authorized by Congress, is to identify and train DEA foreign counterparts to work on sensitive bilateral investigations.

<sup>18</sup> Although FAST provided training to foreign law enforcement in several countries, FAST personnel told us that they did not act operationally in a foreign country outside of Afghanistan until Honduras, as described later in this chapter.

interdictions are very difficult and dangerous, and she did not believe the planned interdiction effort was going to improve the situation in Honduras. She said she believed the focus instead should have been on training Honduran prosecutors and professionalizing the police force. She said she also had concerns about whether the Honduran TRT would take the lead during the interdictions because the Hondurans did not take enough ownership during the planning phase of Operation Anvil and instead seemed to rely too heavily upon their U.S. counterparts to do the necessary planning and preparation.

In addition, the Assistant Regional Director told us that another reason she was not in favor of Operation Anvil was that she did not believe Ambassador Kubiske fully understood the operation and would be supportive in the event "top cover" from the Chief of Mission became necessary. She said that in discussions with the Ambassador leading up to the operation, she thought the Ambassador was "indecisive" about whether she wanted to do the operation and whether she wanted to use FAST. According to the Assistant Regional Director, the Ambassador went back and forth on both issues and did not appear experienced in law enforcement operations of the scale of Operation Anvil.

RD Evans told the OIGs that leading up to Operation Anvil he discussed the regional team's concerns with multiple officials at DEA Headquarters, which he said would have included Chief of Operations Thomas Harrigan, Deputy Chief of Operations for Global Enforcement James Soiles, Deputy Chief of Operations for Special Projects Jay Fitzpatrick, and FAST Section Chief Richard Dobrich. According to RD Evans, the response from Headquarters was that the operation would not be a distraction from what he was trying to accomplish in Honduras and that capacity-building assistance to the Hondurans would remain the priority during the operation. He said he was also told that the operation would be a Honduran-led effort, with FAST personnel supporting the Hondurans.

Harrigan told the OIGs that while he knew RD Evans had been engaged with the U.S. Ambassador over her concerns and questions about FAST's role during the operation, he did not recall that RD Evans expressed his own concerns about the use of FAST or the operation itself. Soiles, with whom RD Evans said he communicated more often on Operation Anvil, recalled that RD Evans did not want FAST personnel in the operation, but he said he did not recall that RD Evans expressed a concern about the operation itself or a desire to focus attention on the SIU program. Dobrich told us that he did not recall RD Evans or the Assistant Regional Director expressing concerns about Operation Anvil or FAST.

Fitzpatrick, who retired in 2014, declined the OIGs' request for an interview. Internal DEA e-mail communications, however, indicate that RD Evans communicated to Fitzpatrick that FAST should play a support role during Operation Anvil. For example, on December 28, 2011, 4 months before the operation began, RD Evans sent an e-mail to Fitzpatrick emphasizing a focus on capacity-building:

Based upon [the Country Attaché] conversations with the COM Honduras [U.S. Ambassador Lisa Kubiske], we will need to consider a reduced FAST footprint that is focused on training, planning, and



operational support. We need to build host country capacities to successfully conduct these operations – not us doing the job for them. [The Country Attaché] has made tremendous progress with the vetted unit during the past two years, and we should look to build upon their success.

A few days later, Fitzpatrick responded that FAST could serve the desired capacity-building role:

My intent here is to be in synch [sic] with your direction as Regional Director. Clearly, Central America is not Afghanistan, the work is LE [Law Enforcement] and not LE-MIL [Law Enforcement-Military], but there are valuable lessons learned from DEA OPS in Afghanistan which can and should be applied to Central America.

If you are advocating a crawl-walk-run approach to capacity-building/training of Honduran MIL and/or TRT, FAST can definitely support and add value in just about any configuration.

Soiles told the OIGs that he asked both RD Evans and Ambassador Kubiske what they wanted to accomplish and then explained to them why the FAST program was best suited to accomplish their stated objective. According to Soiles, both RD Evans and the Ambassador told him that they wanted to train the Hondurans so that the Hondurans could conduct drug interdictions on their own, and Soiles responded that FAST personnel had the best tactical skill set, medical training, and planning capabilities to train the Hondurans to do these types of missions. He told us he also explained that based on intelligence indicating that the DTOs were entrenched in the northeastern regions of Honduras and would fight to keep their cocaine loads, FAST would provide the best tactical support in the highly probable event of a shooting confrontation.

Similarly, Harrigan told us that it made “perfect sense” to deploy FAST personnel to train and support the Honduran police because they are specifically and extensively trained to operate tactically in foreign environments. He said operations like Operation Anvil are exactly why FAST was created.

## **B. Ambassador Kubiske and DEA Agree to Terms Regarding the Use and Role of FAST Personnel During Operation**

In order to address Ambassador Kubiske’s concerns regarding FAST’s role in Operation Anvil, in January 2012, the Ambassador and senior DEA officials, including Soiles, Fitzpatrick, and Dobrich, participated in a joint conference call during which they agreed to terms that Ambassador Kubiske memorialized in an e-mail dated January 13, 2012:

- Embassy DEA [Country Attaché] would be in charge
- FAST understands that we work in the context of a GOH-led operation FAST therefore expects to “lead from behind” (under [the Country Attaché’s] direction)

- FAST would help plan tactical planning
- FAST understands that one of our goals is capacity building of the Hondurans
- FAST understands the desirability of having Spanish speakers and will try to include at least a few
- FAST hopes to send about [REDACTED] people ([REDACTED] special agents, [REDACTED] intel) to be [REDACTED] [REDACTED] helicopters
- FAST describes their value-added as in the areas of communication skills and medical
- FAST will bring a set of weapons into Honduras similar to what they used for [REDACTED] and understands that we need to seek GOH authorization for this
- FAST understands that we need to speak with GOH officials about their participation, and make them (including the Attorney General who previously reacted poorly to [REDACTED] FAST conduct) comfortable
- FAST expects to send a team different from the personnel of FAST-[REDACTED]
- DEA/FAST will consult with WHA/CEN over whether [REDACTED] is desirable/necessary

Soiles told the OIGs that the call with Ambassador Kubiske in January 2012 had two purposes: (1) to give the Ambassador the opportunity to tell DEA what she wanted to accomplish; and (2) to familiarize her with the FAST program and the skillsets FAST could provide to the operation. He said that during the call the Ambassador told DEA that she wanted to train the Honduran TRT so that they would be able to conduct interdiction missions on their own, and DEA described the planning, tactical, and medical skillsets of FAST and how they could use these skillsets to train the TRT. Soiles told us that the items set forth in Ambassador Kubiske's January 2012 e-mail represented everything he recalled they discussed, and that the Ambassador appeared comfortable with the operation and the use of FAST.

Dobrich told us that when the Ambassador's e-mail was forwarded to him, he had no objections at the time to the agreement she said she reached with DEA. He said that he understood that the essence of what the Ambassador wanted was that the host nation would be in charge and that FAST would play a supporting, advisory role. At the same time, he said that he did not view the items in the Ambassador's e-mail as a checklist, and he believed that some of her expectations were unrealistic. According to Dobrich, the Ambassador expressed a desire to have the Honduran TRT trained so that they would have the exact same abilities as the FAST team in short order. He said he thought this expectation was not realistic and told the Ambassador only that the FAST team would do the best they could to train their Honduran counterparts.

While DEA Headquarters officials wanted FAST participation in Anvil and were satisfied with the agreement reached with Ambassador Kubiske, it appears that the regional officials who worked more closely with the Ambassador were not supportive of the plan going forward. The Assistant Regional Director told the OIGs that RD Evans had raised his and her concerns about the operation with DEA Headquarters, and they were effectively overruled. In addition, she said that she thought the notion of DEA leading from behind, as stated in the Ambassador's e-mail, was unrealistic. She said that in the event of violent confrontations with the DTOs, which she expected, the idea that armed DEA agents would wait for the Hondurans to take the lead was not practical. "That's just not the way it's going to happen."

The Country Attaché told us that he also did not agree with the plan going forward. According to the Country Attaché, he and the Ambassador had a good working relationship and discussed the plan for the operation many times. He said that he had advocated a different approach from what DEA Headquarters had proposed, and he had the impression going into the call with DEA Headquarters that the Ambassador had already decided on his approach.

According to the Country Attaché, the approach he advocated during the planning phase of Operation Anvil included the return of FAST Team Echo, which participated in Operation ██████████ (described below) in Honduras the year before. He said that he thought the team leader was excellent and had already trained and worked well with the Honduran TRT officers who would be participating in Operation Anvil. He said that FAST Team Echo had many Spanish speakers and had developed good camaraderie with the TRT. The Country Attaché said that when he was told that Team Echo was unavailable for Operation Anvil because they were committed elsewhere, he had concerns with the idea of bringing in a new FAST team that did not know the TRT officers and would not have as many Spanish speakers as Team Echo. As an alternative to Team Echo, the Country Attaché told us he advocated using DEA agents of his own choosing from outside the FAST program, including agents from TCO and other DEA agents he knew.

The Country Attaché told us that when the Ambassador agreed to move forward with DEA Headquarters' plan to use FAST for the operation – despite the fact that the FAST team the Country Attaché wanted was committed elsewhere – he was not in agreement with that plan. Nevertheless, he said he complied with the direction he was given and helped redraft the CONOPS to be in line with the Ambassador's instructions.

### **C. Selection of FAST Teams Bravo and Delta**

Ultimately, DEA did not send Team Echo to Honduras for Operation Anvil and instead chose FAST Team Bravo. DEA officials told us that the selection of Team Bravo over Team Echo was dictated by FAST's deployment calendar, which already had Team Echo committed to its next rotation in Afghanistan. According to Dobrich, the Afghanistan rotations were fixed, and all other deployments were scheduled around them. He said that for this reason, and because of a delay in the start of Operation Anvil from January to April 2012, FAST used Team Bravo for the

first few weeks of Operation Anvil and then switched teams in the middle of Operation Anvil so that Team Bravo could prepare for its next rotation to Afghanistan. Dobrich told us that to assist the transition from Team Bravo to the next team, FAST Team Delta, FAST planned for the Delta Team Leader and one other Delta team member to deploy with Team Bravo in April and stay in Honduras for the entire operation.

Unlike the Echo Team Leader, the Bravo and Delta Team Leaders did not have previous FAST deployments to Honduras or previous experience working with the Honduran TRT officers who participated in Operation Anvil. Both team leaders told us that they spoke to colleagues who had worked in Honduras in the past and familiarized themselves with what they should expect. In particular, the Delta Team Leader said he was told the Honduran TRT were not yet fully trained but they were open to FAST training and motivated to learn.

During Operation Anvil, there were approximately [REDACTED] FAST personnel on each interdiction mission, plus at least one medic. The Bravo and Delta Team Leaders told us that they were both conversant, but not fluent, in Spanish. With respect to their team members, it appears that none of the Bravo and Delta Team members were fluent in Spanish, but half of the Bravo team members and only one Delta team member were conversant to different degrees. FAST also deployed with a DEA medic who was fluent in Spanish and participated with both Teams Bravo and Delta, and, after Team Delta took over operations from Team Bravo, FAST added an intelligence analyst for the last mission who was a native Spanish speaker.<sup>19</sup>

By comparison, DEA officials told us that about 40-45 Honduran TRT officers participated in Operation Anvil, and at least [REDACTED] took part in each mission. They told us that none of the TRT officers were fluent in English, and we received varying accounts regarding whether any of the TRT had the ability to communicate in English. At most, FAST personnel told us that a few TRT officers could speak "some" or a "little bit" of English. The Country Attaché told us that none of the TRT officers could communicate in English, but possibly one or two could speak "very broken" English. He said for this reason all communications with the TRT had to be in Spanish. To assist communication, Team Bravo and Team Delta members told us that they developed and rehearsed a list of tactical commands in Spanish to communicate to the TRT during missions.

#### **D. DEA FAST's Pre-Deployment Preparation**

In preparation for their deployment to Honduras, FAST personnel conducted [REDACTED]

[REDACTED] The Delta Team Leader also created a

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<sup>19</sup> The FAST Section Chief told us that sometime around the time of Operation Anvil, possibly before, he initiated a language training program for all FAST team members to improve their Spanish-speaking capabilities.

schedule for training the TRT, and the Bravo Team Leader and Dobrich met with Ambassador Kubiske in Tegucigalpa and gave her an overview of the operation.

In addition, the Bravo and Delta Team Leaders told us that they familiarized themselves with the DTO activity in Honduras by reviewing after-action reports of previous operations and studying [REDACTED]. The Bravo Team Leader said that [REDACTED] showed 20-50 people on the ground at the landing strips, many of them believed to be armed, so he knew Operation Anvil was going to be dangerous. In particular, he said he knew that the previous FAST deployments to Honduras were "extremely dangerous," with at least one instance in which suspected drug traffickers fired upon FAST and the TRT.

According to DEA officials and documentation, FAST made attempts to secure additional resources from other agencies to assist in the operation. Before and after the FAST team deployed to Honduras, FAST made attempts to obtain Intelligence, Surveillance, and Reconnaissance (ISR) support to assist the planned interdictions. The ISR capabilities FAST sought included aircraft [REDACTED]

[REDACTED] In mid-April 2012, Fitzpatrick sent a letter on behalf of FAST to JIATF-South requesting ISR support for Operation Anvil. Although FAST was unable to secure ISR support before the start of the operation, beginning in early May 2012, JIATF-South provided such support on missions in the form of a [REDACTED] aircraft and flight crew from CBP or an [REDACTED] aircraft and flight crew from the USAF.

FAST also attempted unsuccessfully to obtain officers from the U.S. Border Patrol Tactical Unit (BORTAC) to supplement the number of FAST personnel participating in Operation Anvil. In January 2012, Dobrich contacted the U.S. Border Patrol Special Operations Director to invite BORTAC to participate in the operation, with the request that BORTAC officers assist FAST with mentoring the Honduran TRT and serving as a "force multiplier" during interdictions, and BORTAC agreed. Dobrich told the OIGs that he viewed the operation as one that FAST and TCO could handle on their own, but if the operation turned into an ongoing effort, he believed DEA would require outside agency assistance, particularly given FAST's commitments in Afghanistan. In addition, Dobrich said that the use of BORTAC officers would have helped meet the Ambassador's desire for Spanish speakers on the U.S. side of the operation.

Over the course of almost 3 months, FAST made plans for BORTAC's assistance during the operation and also submitted a White Paper to their leadership for sustained BORTAC support in the Western Hemisphere. However, others expressed concerns over the use of BORTAC, and, ultimately, the plan for BORTAC did not move forward. The Country Attaché told us that he was not in favor of the plan to use BORTAC because he was already concerned about a new

FAST team getting to know the TRT and learning to work with them, and he did not want to add to that concern by bringing on a whole new agency with no familiarity with the TRT. Further, according to DEA and State documents, Ambassador Kubiske had not been informed of the BORTAC plan until she believed it was too late to obtain the necessary authorities to secure their participation.

#### **IV. Training Before and During Operation Anvil**

The Honduran TRT was created in 2003 with approximately 8-10 Honduran National Police Officers. By the start of Anvil, the unit had expanded to at least 40 officers. As described below, the U.S. Embassy vetted the Honduran officers as part of the selection process to participate in the TRT program.

##### **A. Vetting Process for Honduran Officers**

The Leahy Amendment to the Foreign Assistance Act is a U.S. human rights law that prohibits State and DOD from providing assistance or training to foreign security units, or members of those units, who engage in “gross violations of human rights.” The Leahy Amendment applies to: (1) assistance under the Foreign Assistance Act, (2) assistance under the Arms Control Act, and (3) funds for training, equipment, or other assistance under the Defense Appropriations Act. Security force units subject to Leahy vetting include foreign militaries, reserves, police, homeland security forces such as border guards or customs police, prison guards, and other units or individual members of units authorized to use force. To implement the law, embassies, the Bureau of Democracy, Human Rights, Labor (DRL), and the appropriate regional bureau vet potential recipients of assistance.

The process begins at the embassy level, where a Leahy Vetting Coordinator enters those individuals or units nominated for training or assistance into a database called the International Vetting and Security Tracking (INVEST) system. When credible derogatory information is uncovered, the embassy may deny or suspend the individual or unit from receiving assistance or seek guidance from Washington. For information to be credible, it is not required to meet the same evidentiary standards for U.S. courts. Consideration is given to the source, details available, applicability to the individual or unit, circumstances in the relevant country, availability of corroborating information, and other factors.

##### **B. Previous DEA Training of Honduran TRT Officers**

Since the inception of the TRT program in Honduras in 2003, DEA special agents assigned to the Country Office in Tegucigalpa had conducted training and interdiction operations with vetted Honduran officers. According to the Country Attaché and other TCO agents, tactical training had historically been the primary focus of the training program, as the TRT were found lacking in tactical skills. Marksmanship had also been an important element of the training, as the TRT lacked the resources and equipment to develop strong shooting skills. In addition, local Honduran fiscales, or prosecutors, provided legal education to the TRT on a regular basis.

Beginning in 2008, FAST teams were deployed to Honduras to participate in training programs with the Honduran TRT as well as to provide operational assistance. In the fall of 2008, FAST deployed to Honduras and Guatemala for a 90-day interdiction operation with the TRT in an effort to stop the transport of drugs from ██████████, and later deployed to Honduras for similar interdictions and training with TRT throughout 2010 and 2011. In addition, DEA agents assigned to TCO periodically participated with the TRT in ground operations, sometimes with assistance from FAST and sometimes on their own.

The TCO agents and FAST members that participated in training the TRT prior to 2012 observed an improvement in the tactical and marksmanship skills of the TRT. According to FAST members and TCO agents that provided training, the TRT was a work in progress as their skills improved with each training. However, although the Honduran TRT had made progress in the years since its inception, there was an apparent consensus among DEA and State officials that the TRT officers were not capable of conducting Operation Anvil without DEA participation on the ground team. In addition to lacking the level of tactical and medical training and experience that FAST had, the Honduran TRT did not have access to the equipment and assets that their U.S. counterparts believed were critical to success. In particular, the TRT did not have access to the communication platforms necessary to communicate directly with JIATF-South, the helicopter pilots, and surveillance aircraft flight crews before and during the interdiction missions. Further, the TRT officers had less-sophisticated weapon platforms, ammunition, and night vision equipment than their U.S. counterparts, which were believed to make them less capable of operating tactically, especially in darkness.<sup>20</sup>

### **C. Previous Drug Interdictions with Honduran Officers**

Beginning in 2003, TCO agents periodically participated with the Honduran TRT in ground interdictions, sometimes with assistance from FAST and sometimes on their own. According to the Country Attaché, early interdictions with TRT officers rarely resulted in the seizure of drugs due to a lack of air support. As a consequence, in 2010, DEA sought and obtained helicopter support from JTF-Bravo to assist in interdictions. The goal was to have JTF-Bravo helicopters transport the DEA and TRT to intercept incoming aircraft suspected of carrying drugs. The JTF-Bravo helicopters operated under the DOD Rules of Engagement during these interdictions.

DEA's experience during two separate interdiction operations in 2011 helped inform the planning of Operation Anvil. The first operation involved an attempted interdiction by FAST and the Honduran TRT on March 2, 2011. Based upon intelligence DEA obtained, and with the assistance of a surveillance aircraft from JAITF-South, FAST and TCO DEA agents departed with the TRT on JTF-Bravo helicopters to a clandestine landing strip in order to intercept a suspect plane and

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<sup>20</sup> According to a TCO agent, DEA did not provide the Honduran TRT with the latest generation of night vision goggles (NVGs) because of rules prohibiting the transfer of new generation NVGs to foreign nationals. Consequently, DEA provided the TRT with older generation NVGs.

seize any drugs. Upon landing, the teams were immediately fired upon by members of the DTO with assault weapons and hand grenades. During the firefight, a TRT officer was wounded and suffered an arterial hemorrhage. The DOD Rules of engagement did not permit the helicopter door gunners to fire in an effort to assist law enforcement on the ground. According to reports, FAST provided the TRT officer with the necessary medical attention that saved his life and initiated a medevac of the TRT officer and retrieved the drugs before departing. Following this incident, and realizing the limitations of the DOD Rules of Engagement, DEA identified a need for alternative air support that could provide tactical assistance to ground teams in the line of fire.

The second was the 60-day operation involving DEA, INL, DOD, and TRT known as Operation [REDACTED]. During this operation, DEA used its own [REDACTED] helicopters as the primary air platform for the planned interdiction missions. The DEA [REDACTED] helicopters did not have the capacity to transport ground interdiction teams and instead conducted surveillance. The intelligence FAST and TRT gathered during this operation highlighted the need for more effective air support to conduct successful interdictions and seizures.

#### **D. Anvil-Specific Training of Honduran TRT Officers, Door Gunners, and INL Pilots**

The first FAST team members arrived in Honduras for Operation Anvil in early April 2012, approximately 2 weeks before the operation began. Once the rest of the team arrived 1 week later, the entire team met and began training with the Honduran TRT.

FAST team leaders created daily schedules for training the TRT based on an assessment from the TCO agents on the TRT's abilities. Initial training included responsibilities and roles, basics of aircraft interdictions, a review of equipment, communication on the ground, hand and arm signals, and tactical maneuvers. Training on responsibilities and roles included an introduction of FAST operations and an explanation of the TRT operations and procedures to familiarize the groups with one another and how they operate. Further training included helicopter operations (including exiting and entering the helicopters), medical training and evacuations, vehicle interdiction, marksmanship, use of NVGs during nighttime drills, land navigation, and radio communication procedures. Training also included ground tactics in both daytime and nighttime conditions. During this training period, the TRT provided training to FAST personnel in evidence collection, arrest procedures, and other aspects of Honduran law.<sup>21</sup>

Both the Bravo and Delta Team Leaders told us that they believed the team had enough time to prepare and train the TRT prior to the initiation of Anvil. Other FAST members told us that they were confident in the tactical capabilities and marksmanship of the TRT prior to the start of Anvil. Further, the Delta Team

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<sup>21</sup> Recollections varied, but it appears that the TRT training presentations were in Spanish, and it is not clear how much was understood by FAST personnel.



Leader told us he believed the TRT members were committed to the operation and were professional in their conduct during training.

FAST members who participated in Operation Anvil told us that TRT officers were not as well equipped as FAST personnel, and that they believed the inferior equipment significantly impacted the TRT's operational capabilities. The radios utilized by FAST were [REDACTED]

[REDACTED] Radio communications on the ground were limited for TRT members who were only able to communicate with other TRT members. As noted above, the NVGs used by the TRT were an older generation and not as good as the NVGs utilized by FAST, but DEA was prohibited from providing the newer generation NVGs to foreign nationals. The TRT members did not have laser sights on their weapons, which would have allowed them to see their targets at night while they were wearing their NVGs. Without this capability, they had to rely on sighting their target with a light and the naked eye, without using the single lens NVG, making it more challenging for them to accurately fire.

FAST members told us that they continued to conduct training exercises with the TRT after operations began. They said that when they were not on missions, they were training. Further, the Delta Team Leader told us that after Team Delta arrived to replace Team Bravo at the end of May 2012, there was a stand-down in operations for several days to allow Team Delta to meet and train with the TRT. Team Bravo advised Team Delta of the training that had taken place and provided an assessment of the TRT capabilities and equipment issues. Team Delta then trained the TRT on hand and arm signals, ground formations, helicopter operations, and medevac procedures. In total, the TRT and Delta Team trained together for approximately 1 week until the next interdiction.

DynCorp provided 30 days of training to the helicopter crew that included night vision and aerial gunnery qualification. This training was conducted at INL's aviation facility in Guatemala and the performance of the aircrew was reviewed by INL's Senior Aviation Advisor.

#### **E. Use of Deadly Force Training**

As described in Section II, the DEA Operations Order specified that the Honduran TRT would adhere to Honduran law and policy regarding the use of deadly force, and DEA personnel would adhere to the DOJ Deadly Force Policy. Training materials and other documents provided to the OIGs do not indicate that FAST and the TRT provided training or instruction to the other on their respective deadly force policies. The OIGs were provided with a FAST training PowerPoint slideshow the FAST agents viewed prior to leaving for Honduras. The slideshow did not include a description of the Honduran use of force policy; however, it did include a slide describing the sexually transmitted diseases prevalent in Honduras.

The OIGs asked FAST personnel whether the training they received on Honduran law included the use of deadly force rules applicable to the Honduran officers and received varying accounts. A few FAST personnel told us that they did not recall, a few told us that they received no such training, and one said that he

recalled receiving such training. When asked to articulate the practices of the TRT on the use of force or the differences in practice between the two, FAST members from Bravo and Delta could not articulate the specific TRT practices or policies or differences, but stated they understood the TRT's practice to be close to, or in line with, the DOJ policy.

FAST team members did not have a clear understanding of the circumstances under which to the Honduran military officers who operated the door guns on the helicopters were permitted to fire. One team member said that he believed that the door gunners could not make an independent decision to fire but could only fire when ordered to by a "commander," which included the TRT commander, FAST team leader, or lead pilot. A few FAST team members, including the Bravo Team Leader and Delta Team Leader, said that they believed that the door gunners could make their own decision to fire. One of these FAST team members also said that the door gunners could not be ordered by any member of FAST to fire. Another FAST team member said that he believed the door gunners could make the decision to fire but only after the pilot or another officer on the helicopter notified him that it was clear for them to fire.

The Country Attaché and one of his Assistant Country Attachés told us that in their experience the Honduran TRT did not have a clear understanding of their own rules regarding deadly force. They said that when asked, the Honduran officers had varying explanations of their own ability to use deadly force. Further, the Country Attaché, the Assistant Attaché, and the Delta Team Leader told us that, regardless of the formal rules, or any police training the Honduran officers may have received, the Hondurans understood from past experience that they would be prosecuted if they fired their weapons without being fired upon first. The Assistant Attaché said that the Hondurans' understanding of their own use of deadly force requirements was far more restrictive than the DOJ Deadly Force Policy applicable to FAST.

## **V. Initiation of Operations on April 24, 2012**

Operation Anvil began on April 24, 2012 and continued through July 3, 2012. During the first 2 weeks of operations, DEA, INL, and the Honduran TRT attempted to intercept suspect aircraft, but the early missions were unsuccessful primarily due to the [REDACTED]. After the Ambassador assisted DEA in obtaining surveillance planes and flight crews from JIATF-South, the operation experienced its first effective interdiction on May 7, 2012, and four more over the course of what became a 70-day operation. However, the May 7 interdiction also involved the first altercation with suspected drug traffickers and led to a heightened awareness of the possible operational dangers going into the next interdiction mission on May 10-11, 2012.

### **A. First-Attempted Interdictions**

During Operation Anvil, each mission began with the identification of a suspect plane from South America to Honduras. As information confirmed the probable landing of the suspect aircraft at a clandestine landing strip in

northeastern Honduras, the Honduran TRT and DEA FAST members set out late at night on [REDACTED] INL helicopters in an attempt to intercept the drug transport based on a predictive analysis of where the plane would land to offload the drugs. According to Dobrich, timing was critical to the success of each mission, as the helicopters attempted to arrive to the landing strip [REDACTED]

Dobrich told the OIGs that attempting interdictions was extremely difficult without surveillance plane support to monitor and follow a suspect aircraft. An interdiction effort on May 1, for example, was unsuccessful because law enforcement lost sight of the suspect aircraft before it landed in an unknown location due to a lack of surveillance plane support to follow the aircraft. On May 2, 2012, at the request of the Country Attaché, Ambassador Kubiske sent an e-mail communication to Southern Command requesting ISR support for Operation Anvil. The next day, Southern Command informed the Ambassador that it would work with CBP to ensure surveillance plane support would be available. Ultimately, a CBP or USAF surveillance aircraft and crew were made available for the interdictions on May 7, May 11, June 13, June 23, and July 3, all of which resulted in the seizure of cocaine.

#### **B. May 7 Interdiction and Shooting Incident**

As noted above, the May 7, 2012 interdiction was the first effective interdiction of the operation. According to DEA's internal reporting of the interdiction, FAST and the TRT departed on INL helicopters late in the evening on May 6, 2012 in pursuit of a suspect aircraft. With assistance from a CBP [REDACTED] surveillance aircraft tasked by JIATF-South, the helicopters learned that the suspect plane landed at a clandestine landing strip in eastern Honduras. The CBP flight crew reported a ground crew of approximately 100 people offloading suspected cocaine onto pick-up trucks. The CBP flight crew followed the trucks carrying the suspected cocaine and then notified the INL helicopters of the location where the trucks eventually stopped. According to reports, and as confirmed by the video footage recorded by the CBP flight crew, when the helicopters arrived at this location, people exited the trucks and began firing at the helicopters. It was also reported that a Honduran door gunner returned fire until the threat was suppressed. After the occupants of the trucks fled the area, FAST and TRT officers exited the helicopters and seized approximately 450 kilograms of cocaine. Due to the pending threat of the unknown location of the armed offloaders, FAST and TRT officers loaded the cocaine onto the helicopters and returned to base. While flying over the clandestine landing strip, the officers observed the aircraft that had transported the drugs engulfed in flames. There were no reported injuries.

The Delta Team Leader told the OIGs that FAST personnel were not aware at that time how many individuals were armed, only that the individuals armed were usually the ones escorting the drugs. He also told us that the Honduran door gunners were initially hesitant to return fire. He said that only after he and the helicopter pilot told the door gunners twice that the helicopter was taking fire did one of the door gunners on his helicopter fire back at the occupants of the trucks.

The Bravo Team Leader who was on the same helicopter told us that the door gunner made the decision to return fire on his own and was not ordered to fire.<sup>22</sup>

An INL contractor located at the local Anvil command center in Honduras sent live e-mail updates, or situation reports, as events were happening to the Country Attaché and officials from the U.S. Embassy, INL, JIATF-South, and JTF-Bravo. These updates included notification that the law enforcement team was receiving and returning fire. In addition, on May 7, TCO sent an internal report describing this interdiction, including the use of force by the Honduran door gunner, to various DEA officials at the regional and Headquarters levels, including RD Evans, the Assistant Regional Director, Fitzpatrick, and Dobrich.

The Delta Team Leader told us that in response to this incident, the entire team reviewed the deadly force rules with the door gunners to make sure they understood that they could engage when the team was fired upon. He said that the event was probably the first time the officer was fired upon, and that the door gunner's hesitance to fire was likely the product of his inexperience. He said the large number of offloaders at the landing strip also confirmed for him that they should not [REDACTED]. He also told us that the reaction from DEA and the Embassy to this mission was that the team did a good job.

The Country Attaché and Assistant Regional Director told the OIGs that the exchange of gunfire during the May 7 interdiction did not heighten their concerns because they expected that events like this were going to happen. The Delta Team Leader told us that the exchange of gunfire on May 7 confirmed his belief at the time that each mission posed the possibility that the drug traffickers would fight to keep their loads. The Bravo Team Leader said that he believed the gunfire on May 7 weighed heavily on the minds of his team going into the next mission on May 10 and 11. Further the Assistant Regional Director sent an e-mail communication to Dobrich shortly after the mission ended indicating that she told DEA personnel to be on alert: "Traffickers will return more pissed and hotter than ever next time – told the guys we need to be prepared."

## **VI. DOJ OIG Observations**

As we discuss in Chapter Thirteen, which provides the DOJ OIG's analysis and findings, the DOJ OIG concluded that DEA's pre-operational planning was inadequate in several respects and made an already dangerous operation even more so. We found that FAST and TRT did not have a clear understanding of each other's deadly force policies, and the TRT officers apparently did not have a clear understanding of their own policy. As shown in later chapters, this divergence in

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<sup>22</sup> As described in Chapter Seven, DEA did not initiate an internal review of this shooting incident because of reports that DEA personnel did not fire their weapons during the confrontation with suspected drug traffickers.

understandings had several negative consequences during and after the Anvil interdictions. Further, the DOJ OIG found that, despite the anticipation that there was a likelihood that there would be shooting incidents, the pre-operation planning for responding to critical incidents was almost nonexistent, and DEA, in particular, failed to ensure mechanisms were in place in the event of a critical incident to support the law enforcement personnel on the ground, allow for any and all necessary search and rescue missions, and ensure a comprehensive and timely post-incident investigation.

In the next chapter, we describe the Anvil interdiction that took place on May 10-11, 2012. This interdiction resulted in the deaths of four people and injuries to four others. It also received substantial public attention in Honduras and in the United States after reports surfaced that the law enforcement officers had killed and injured innocent civilians during the operation and had abused residents of a nearby village.

## **CHAPTER THREE: THE MAY 10-11, 2012 INTERDICTION**

In this chapter we describe the Anvil interdiction that took place on May 10-11, 2012. As detailed below, the shooting incident occurred at approximately 2:20 a.m., while three officers (a DEA FAST member and two Honduran TRT officers) were attempting to recover a small canoe-like boat known as a pipante containing large amounts of cocaine that had been abandoned by drug traffickers. As the pipante lost power and floated down the river with the three officers on board, a larger boat carrying more than a dozen passengers made contact with it. At the moment of contact, gunfire erupted on the river and continued for approximately 26 seconds. Approximately 20 seconds later, a Honduran door gunner in a helicopter fired multiple rounds at the passenger boat. Four individuals on the passenger boat were killed and four more injured. Following the event, DEA reported that the passenger boat was driven by traffickers attempting to recover the drugs on the pipante and that the shooting incident began when someone in the passenger boat opened fire on the pipante. However, local residents from Ahuas soon raised allegations that the individuals in the passenger boat, including those killed and wounded, were merely innocent passengers on a water taxi.

In Section I below, we provide the chronology of events that took place during this interdiction. Except as otherwise noted, the following description of events is derived from the infrared video footage the CBP flight crew recorded from the surveillance plane, operation-related documents maintained by DEA and State, and OIG witness interviews of U.S. personnel who participated in the interdiction. In Section II below, we describe the reporting of the May 11 incident in the first hours and days after the events took place.

### **I. Events on the Ground**

#### **A. Timeline of Significant Events**

Below we provide a timeline of the significant events that occurred during the May 10-11 interdiction. This timeline is based upon information we compiled from multiple sources, including the May 11 video footage, after-action timelines DEA officials prepared, and interviews with FAST personnel. The CBP camera did not capture the events that took place after approximately 2:23 a.m., and the timing referenced in documents and witness accounts varied. Therefore, the time-stamps noted in this timeline beginning with 2:25 a.m. are approximations only.

- ██████████ CBP surveillance plane begins video recording a suspect plane traveling toward eastern Honduras.
- ██████████ ██████████ helicopters containing FAST and TRT officers depart ██████████ Honduras and begin receiving updates from the CBP surveillance plane.

- 1:19 a.m. Suspect plane lands in wooded area a few miles from Ahuas, Honduras, bales of drugs are offloaded onto a truck, and truck drives away from the landing strip.
- 1:34 a.m. Truck arrives at Paptalaya, a small village in Ahuas on the Patuca River, and drugs are offloaded into a small boat (pipante).
- 1:36 a.m. Helicopters arrive at the village. Offloaders move the pipante away from the village.
- 1:52 a.m. Helicopter drops a group of FAST and TRT officers in the village. Offloaders flee, leaving the pipante unattended, and it begins floating downriver. Helicopter uses rotor wash to push the pipante to shore.
- 1:58 - 2:10 a.m. FAST and TRT officers on the ground reach the pipante and three of them (one FAST and two TRT) board the pipante and attempt to pilot it back to the village.
- 2:12 a.m. The pipante's engine stalls in the river and the pipante begins drifting downstream while the FAST and TRT officers attempt to restart it.
- 2:20 a.m. A larger, unlit boat containing over a dozen passengers makes contact with the pipante in the river. Gunfire erupts on the river and continues for about 26 seconds. TRT officers fire at people in the water. About 23 seconds later, a helicopter fires multiple rounds at the passenger boat for about 8 seconds. Passenger boat continues to travel upriver under its own power. Pilot of passenger boat jumps out of boat and pulls it to the shore on the same side as the village.
- 2:25 a.m. Helicopter uses rotor wash to push the pipante to the shore opposite the village and the officers with the boat wait on the riverbank for ground team to bring them back to village.
- 2:25 - 5:00 a.m. FAST and TRT attempt unsuccessfully to reach the stranded officers on foot. They return to the village, set up a security perimeter, and eventually enlist the assistance of a local resident to reach the stranded officers by boat.
- 5:00 - 6:00 a.m. Two FAST and one local resident reach the stranded officers and bring the officers and drugs back to the village by boat.
- 6:00 - [REDACTED]. FAST and TRT load helicopters with the drugs and leave village, returning to base in [REDACTED].

## **B. The Surveillance of the Suspect Plane and Communications Between Law Enforcement**

On May 10, JIATF-South notified DEA and INL of a suspect plane traveling from the [REDACTED] toward the eastern region of Honduras. JIATF-South instructed a CBP surveillance aircraft to locate and follow the plane. The CBP flight crew told us that once they identified the suspect plane in the air, the crew followed and monitored the plane, while reporting location information and possible landing sites to JIATF-South for passage of the information to DEA and INL. The flight crew also began video recording the suspect plane at 11:36 p.m. on May 10.<sup>23</sup>

A witness statement prepared by FAST's Bravo Team Leader after the mission reflects that after JIATF-South notified him that the suspect plane was in route, the Bravo Team Leader told the FAST members and Honduran TRT to depart the base in [REDACTED] to interdict the suspect plane.<sup>24</sup> According to a DEA After-Action Timeline, at [REDACTED] on May 11, FAST and TRT officers departed from a [REDACTED] site in [REDACTED], Honduras, on [REDACTED] State-owned helicopters piloted by U.S. contractor pilots employed by DynCorp International (DynCorp) and co-pilots from the Guatemalan Air Force and traveled to Gracias a Dios, located in the eastern region of Honduras. The helicopters carried a total of [REDACTED] FAST members and approximately [REDACTED] Honduran officers for the operation. Each helicopter had a pilot, co-pilot, [REDACTED] FAST members, [REDACTED] TRT officers, and a Honduran door gunner, except for Helicopter [REDACTED], which had an additional FAST member and a FAST medic.

While traveling towards Gracias a Dios, along the Mosquito Coast in eastern Honduras, the helicopter pilots and FAST team received updates on the suspect plane's location from JIATF-South. The Bravo Team Leader's witness statement reflects that he instructed the pilots to slow down to avoid arriving at the suspect plane's landing site too soon.

Officers said that once the suspect plane landed, the CBP flight crew established direct radio communication with the FAST team and helicopter pilots. They also said that the CBP flight crew communicated in English, predominately with the FAST team, and did not communicate directly with the Honduran TRT.

The FAST team and CBP flight crew told us that all communications between FAST, the helicopter pilots, and CBP took place through radios. FAST members used their radios to communicate with the helicopter pilots and the CBP crew through different channels on the radios. FAST members told us they used the radios to communicate with each other on the ground, while their team leaders used the radios to communicate with other FAST members as well as the helicopter

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<sup>23</sup> Unless otherwise noted, time references in this chapter reflect the local time in Honduras, which was 2 hours behind Eastern Standard Time on May 10-11, 2012.

<sup>24</sup> As described in Chapter Seven, following the May 11 interdiction, FAST members were tasked by DEA officials to write eye witness accounts of the interdiction. All [REDACTED] FAST members submitted statements documenting the events they witnessed on May 11.



pilots and CBP flight crew. FAST did not provide the TRT with [REDACTED]

In addition to radios, the FAST team was also equipped with at least [REDACTED], which the DEA Country Attaché (CA) said served as a means of communication between the ground team and DEA officials from the Tegucigalpa Country Office (TCO) in the event any problems arose. The Bravo Team Leader told us he also used a [REDACTED] to communicate with the CBP flight crew when [REDACTED] with the CBP surveillance plane. Some FAST members, including the Delta Team leader, also carried their Blackberry cell phones with them on missions. E-mail communications reflect that the Delta Team Leader used his cell phone during missions to send updates to TCO and INL officials.

Most TRT officers used their own radios during the operations, which allowed them to communicate with other TRT officers on the ground. According to the Delta Team Leader, a few select FAST members had dual-channel radios that allowed them to communicate with the TRT Commander and his Co-Commander. He said the radios the two TRT commanders used did not have the same range as the ones FAST used and could only work within "line of sight." The radios did not allow the TRT commanders to communicate with the CBP flight crew or the helicopter pilots. Most FAST members did not have radio connectivity with the TRT Commander and Co-Commander, and no FAST member had radio connectivity with the other TRT officers on the ground. Most of the time, the FAST team communicated with TRT officers when in close proximity and with hand signals.

### **C. The Offloading of the Plane and Transport of Drugs to a "Pipante" Near the Village**

The suspect plane landed at approximately 1:19 a.m. in an open field in the middle of a wooded area a few miles from Ahuas, Honduras. As the suspect plane came to a stop, approximately 30-40 people and two trucks approached the aircraft. For the next two and a half minutes, individuals unloaded bales from the plane onto one of the trucks. At 1:22 a.m., approximately eight to ten offloaders drove this truck away from the landing strip, while several other offloaders remained behind with the plane. The suspect plane then took off again and headed east.<sup>25</sup>

According to FAST members and CBP officers, the CBP flight crew reported the offloaders' activities over the radio to the FAST Team and pilots in the helicopters. The Bravo Team Leader told us that he advised the CBP flight crew to [REDACTED]. The video recording shows that the CBP

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<sup>25</sup> The OIGs asked the CBP flight crew on the surveillance plane if they were able to see weapons while observing the offloaders. The flight crew told us that while they assumed weapons were there during the offloading, they could not see any nor make that determination from their altitude. The CBP camera operator told us that because of the resolution of the camera, it would have been very difficult to see individual weapons.

camera remained focused on the truck, which traveled for approximately 12 minutes until it arrived in Paptalaya, a small village on the Patuca River within the municipality of Ahuas. The truck stopped next to the river where several individuals stood near a small, wooden dugout canoe with an outboard motor, called a pipante. Approximately 20 individuals then moved bales of drugs from the truck to the pipante.

**Figure 3.1: Photograph of the Pipante Taken After the Interdiction on May 11**



The Delta Team Leader told us that as the offloaders moved the drugs onto the pipante, the [REDACTED] helicopters made their approach toward Ahuas. The video footage shows that when the [REDACTED] helicopters arrived at approximately 1:36 a.m., nearly all of the offloaders ran away from the pipante and riverbank. A member of the CBP flight crew told us that the offloaders separated into two groups, with one group running under trees and the other toward buildings in the village. The video footage shows at least one individual driving the truck away from the riverbank and parking it next to a nearby building. Also at this time, a few individuals remained near the pipante and moved it along the riverbank, further away from the village. These individuals then moved the bales towards the center of the pipante. As the helicopters approached the village, these individuals ran

from the pipante, which drifted away from the landing unmanned and downstream in the fast moving current.

The Bravo Team Leader's witness statement reflects that he instructed the pilot of Helicopter [REDACTED] to land close to the river and told the pilot of Helicopter [REDACTED] to land as quickly as possible after Helicopter [REDACTED]. At 1:52 a.m., Helicopter [REDACTED] dropped off a group of FAST and TRT officers in the village at a clearing near the river. One of the CBP flight crew members told us that as the helicopter attempted to land, the offloaders who fled to the village and the few who remained near the river with the pipante ran away from the helicopter. Shortly thereafter, a helicopter pilot positioned his helicopter near the pipante, which was floating in the river, and used the helicopter's rotor wash to guide the pipante back toward the shore. The rotor wash pushed the pipante to the riverbank a short distance downstream from the village.

At 1:58 a.m., FAST and TRT from Helicopter [REDACTED] began to hike through the jungle along the riverbank towards the pipante and were soon joined by FAST and TRT from Helicopter [REDACTED], as Helicopters [REDACTED] hovered overhead. The Bravo Team Leader said that visibility was terrible that evening because the weather was overcast and there was very little natural light from the moon. Further, FAST members described the terrain along the riverbank as uneven, with crevasses, and thick vegetation. During a difficult hike through the jungle, a FAST member fell off a crevasse and injured his leg. Also during the hike, an unarmed teenage male ran across the path in front of the TRT. Both Bravo and Delta Team Leaders told us that a TRT officer grabbed the teenager, placed him on the ground, searched him, and placed him in flex cuffs.

A few minutes later, FAST and TRT arrived to the location where the pipante was washed ashore, and three officers – the Delta Team Leader, the TRT Commander, and a second TRT officer – boarded the pipante to pilot the boat, with the drugs, back to the village. The Bravo Team Leader told us that due to the heavy bales of cocaine, the jungle terrain, and the injured FAST member, he decided it would be faster and safer to use the boat to transport the drugs back to the village where the helicopter could pick up the team and the drugs. The Delta Team Leader told us that before he decided to drive the pipante himself, he first asked, and then told, the detained teenager to drive the pipante back to the village. According to the Delta Team Leader, the teenager refused and fell to his knees and cried. Another FAST member told us that the teenager was subsequently released without being questioned.

The Delta Team Leader told us that he was confident that he could drive the pipante back to the village himself, while the remainder of the FAST members walked back through the jungle. Before getting into the pipante, the Delta Team Leader said that he removed his bullet-proof vest and handed the vest and his [REDACTED] mm caliber rifle to the Bravo Team Leader. He said that he kept his [REDACTED] mm Glock handgun, which he carried on his hip. The two TRT officers who accompanied him had their [REDACTED] mm rifles with them when they boarded the pipante.

According to the Delta Team Leader, when he removed his bullet-proof vest, he inadvertently disconnected his radio. He and others told us that because he disengaged his radio, the three officers in the pipante did not have any radio communication with the teams on the ground, in the helicopters, or the CBP flight crew.

#### **D. River Encounter Between the Pipante and the Passenger Boat**

In this section, we describe the encounter between the pipante and a passenger boat on the river that resulted in an eruption of gunfire. We begin with a description of the video footage, followed by a discussion of witness accounts of this event.

##### **1. The Video Footage of the Encounter Between the Two Boats**

The infrared video taken from the CBP surveillance plane shows the officers in the unlit pipante traveling upriver toward the village with the drugs for at least 2 minutes after starting the engine. The camera momentarily pans away from the pipante, and when it pans back, the pipante appears stalled in the middle of the river. From 2:12 a.m. to 2:17 a.m., the video footage shows one and sometimes two officers in the back of the pipante near the engine, at times pulling on a cord in an apparent attempt to restart the engine, as the pipante drifts downstream. The third officer remains closer toward the front. The infrared imagery is not sufficiently detailed to determine unique characteristics that would identify each person in the boat.

At 2:17 a.m., the law enforcement officers can be seen using oars in an attempt to paddle the pipante upstream toward the village. However, the pipante does not move upstream but instead continues to drift with the fast-moving current away from the village.<sup>26</sup> As shown below in Figure 3.2, at 2:19 a.m., a larger boat, approximately 32-39 feet in length and 5 feet wide, carrying at least a dozen passengers appears on the video footage for the first time, traveling upriver in the direction of the pipante without any visible lighting. Almost all of the passengers appear to be standing in the front and rear of the boat, with cargo in the middle stacked well above the boat's sides. Several passengers are seen pointing up toward the helicopters. After the passenger boat becomes visible on the video, the boat can be seen changing direction multiple times – first toward one bank, then toward the opposite bank, in an apparent zig-zag pattern. Following its last turn, the passenger boat travels for approximately 23 seconds in the direction of the pipante.

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<sup>26</sup> The Delta Team Leader was unable to approximate the length of the pipante, but the video analysts retained by the DOJ OIG, Cynthia Archer and John Miller, determined it was approximately 28 feet in length.

**Figure 3.2: Video Footage of Passenger Boat Approaching Disabled Pipante at 2:19 a.m.**



At 2:20 a.m., the passenger boat makes contact with the stern, or rear, of the pipante. Shortly before the boats make contact, the camera zooms out and then back in, temporarily losing the boats from the field of view. The passenger boat comes back into the field of view approximately 2 seconds before contact, and the pipante reappears on screen 1 second before contact.

At the moment of contact, the video shows muzzle flashes originating from two officers in the pipante for about 4 seconds, as people in the passenger boat fall or jump into the water.



**Figure 3.3: Muzzle Flashes at Moment of Contact**



The third officer in the pipante, who was moving away from the pipante's engine toward the middle of the boat and facing in the opposite direction of the passenger boat, appears to dive or fall forward into the bottom of the pipante. The camera shifts around and briefly loses the boats from the field of view. The CBP officer who operated the camera told us that the camera shift was caused by aircraft movement. When the camera recaptures both boats after about 2 seconds, it zooms in, and 2 officers can be seen firing their weapons from the boat, including for approximately 20 seconds when they appear to be firing intermittently at people in the water. Video analysts Archer and Miller told the OIGs that at this time they observed splashes in the water from bullets around the heads of people in the water, and that the visibility of the muzzle flashes indicates gunfire in their direction from the pipante. In total, the officers fired their weapons for approximately 26 seconds before they ceased fire – from 02:20:09 a.m. to 02:20:35 a.m.

**Figure 3.4: Video Footage of Officers Firing at People in the Water**



Video analysts Archer and Miller told us that they found video evidence of numerous muzzle flashes from two shooters in the pinnace. They also told us that the rate of fire suggests the use of automatic weapons. The analysts told us that they found no video evidence of muzzle flashes originating from the passenger boat, even after they used video enhancement methods such as frame-rate reduction and temporal sharpening.<sup>27</sup> The OIG examined both the original video and the enhanced version, and none of our investigators were able to detect any muzzle flashes from the passenger boat.

The analysts told us they could not eliminate the possibility that the camera failed to detect or capture a muzzle flash from the passenger boat. According to the analysts, the probability of the camera missing a single muzzle flash could be as high as 50 percent, but the actual percentage depends heavily upon the type of weapon, ammunition load, and whether or not a flash suppressor was used. In the case of multiple muzzle flashes, the analysts told us that the probability of the camera missing all of the flashes is generally less than 50 percent. For example, in the case of a revolver firing six bullets, the probability of missing all six muzzle

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<sup>27</sup> Archer and Miller employed several techniques to resolve questions about the sequence of events, including temporal sharpening to enhance the detection of short-duration events such as muzzle flashes. Temporal sharpening is analogous to the traditional sharpening found in image enhancement applications such as Photoshop, but applied through time instead of over space. They also reduced the speed of the frames to 4 Hz to allow for human observation of each frame.

flashes is 1.56 percent, whereas the probability of detecting at least one of them is 98.44 percent.

The analysts told us that the quality and resolution of the video footage made them unable to determine how many people were injured during the encounter between the two boats. The analysts said that based upon a strong heat signal of one person and one or two fainter signals that may have also been people, there were likely one to three people still on board the passenger boat as it continued to travel upstream, under its own power, away from the pipante after the encounter. On the remainder of the video footage, the OIGs observed no movements from two of the three heat signatures on the passenger boat.<sup>28</sup>

## **2. Witness Accounts of the Encounter**

### **a. Delta Team Leader**

The Delta Team Leader told us that shortly after he and the TRT officers left the riverbank in the pipante, the engine stopped working and the pipante drifted downstream. He said that a partial moon provided some light, but visibility on the river that evening was dark. He said that he took off his helmet and NVGs and, for the next several minutes, examined the fuel line and attempted to restart the engine. He said he located the fuel line and was in the process of tracing it back towards the center of the boat when he heard one of the TRT officers call his name. Without looking up, the Delta Team Leader responded by asking him, "What?" After the TRT officer called his name a second time, the Delta Team Leader heard the TRT officers yell, "Policia." He said that at that moment, the passenger boat and the pipante made contact, gunfire erupted, and he dove forward in the boat to take cover.

The Delta Team Leader told us that he did not see the passenger boat approach because he had been working on the pipante's engine. He said he also did not hear the passenger boat approach likely due to the helicopter noise overhead. However, he said that he believed someone in the passenger boat fired a weapon at them because he felt bullets go right over his head from the direction of that boat.

According to the Delta Team Leader, at some point after he dove for cover, he sat up and drew his ■ mm handgun. He said that after he drew his weapon, he did not see anyone firing from the passenger boat, but he could hear people splashing and screaming in the water and the sound of the TRT officers firing into the water. He told us that after he sat up, he never saw any weapons other than the ones the officers had on the pipante. He said that because the passenger boat

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<sup>28</sup> As described later in this chapter, the reports of local residents after the May 11 incident included that two individuals, Candelaria Pratt Nelson and Emerson Martinez Henriquez, were found deceased in the passenger boat when it returned to the village later that day.



had disengaged and he determined that there was no continuing threat, he did not fire his weapon and instead gave a command to the TRT officers to cease fire.<sup>29</sup>

#### **b. CBP Flight Crew**

The OIGs interviewed three CBP officers who were part of the flight crew on the surveillance plane – two of the pilots and the officer who operated the infrared camera – all of whom told us that the CBP flight crew was not aware of the passenger boat’s existence until it appeared in the camera’s field of view, approximately 56 seconds before it made contact with the pipante. They told us that they then notified the helicopters and ground team of the approaching passenger boat, but no one had radio communications with the officers in the pipante to notify them as well.

The CBP officers told us that when the passenger boat made contact with the pipante, they observed muzzle flashes on their video monitors. All three told us that they did not see in real-time whether the muzzle flashes came from the passenger boat, the pipante, or both. However, both pilots told us that they assumed at the time that they had witnessed a firefight between the two boats. In addition, the camera operator told us that the CBP flight crew thought one of the officers on the pipante had been shot after they saw on the video monitor that he had fallen down.

Another CBP officer on the surveillance plane, who recorded the mission’s events in a flight log, noted in the log that the passenger boat approached the pipante and opened fire. The CBP officer who recorded this entry as the events unfolded told the OIGs that she did not witness where the first shots came from, but she assumed at the time that the passenger boat had fired first because it appeared on the video monitor to be intentionally heading straight for the pipante. She said that at the time she made the entry in the log she was also listening to the events as reported on the radio, though she did not recall whether she heard on the radio that the passenger boat fired on the pipante.

Accounts varied among the CBP officers about what information the CBP flight crew reported over the radio after observing muzzle flashes. One of the pilots and the camera operator said that the flight crew reported only that shots were fired. However, the camera operator said that the flight crew also reported that one of the officers in the pipante may have been shot. Further, a witness statement the camera operator prepared a few days after the interdiction reported that at least two members of the flight crew “reported to the other ground teams and DEA helicopters that gunfire had been exchanged.” Although the camera operator told us that it was possible he misworded his witness statement, the

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<sup>29</sup> As described in Chapter Seven, the Delta Team Leader wrote three witness statements that did not include certain material facts about the encounter on the river that he told the OIGs during his interview. Specifically, in his written statements, he did not describe that he felt bullets pass over his head from the direction of the passenger boat or that he drew his handgun after he dove for cover.

second CBP pilot told us that this notation “makes sense” because the operating assumption at the time was that there had been a firefight between the two boats.

### **c. Helicopter Pilots**

The pilot of Helicopter [REDACTED] told the OIGs that he observed the passenger boat coming toward the pipante and used the radio to notify the FAST members that the boat was approaching. The pilot stated that the passenger boat got very close to the pipante, at which point the boats “engaged.” The pilot was on the left side of the helicopter, and he could not see any gunfire himself, but his co-pilot, the door gunner, and the FAST members on board his helicopter told him that gunfire was being exchanged between the two boats.

The pilots of Helicopters [REDACTED] told the OIGs that they were not over the river when the two boats collided and thus did not witness the interaction. The pilot of Helicopter [REDACTED] told DEA in October 2013 that he also did not witness the collision of the two boats, but was listening to the radio traffic at the time. According to DEA documents, the pilot described hearing from individuals on the other helicopters that the two boats were approaching each other and that the FAST and TRT officers in the pipante were in increasing danger. He also heard over the radio that the officers in the pipante were under fire from the passenger boat and that they were responding with fire.

### **d. FAST Members on Helicopter [REDACTED]**

According to DEA documents, as well as witness interviews, Helicopter [REDACTED] was the closest helicopter to the two boats on the river. Accounts varied among FAST members from Helicopter [REDACTED] regarding the distance between the hovering helicopter and the pipante, but the estimates ranged between approximately 100 to 600 feet. We interviewed all [REDACTED] FAST members and the FAST Medic on Helicopter [REDACTED], all of whom told us that no one had radio communications with the officers in the pipante to notify them of the approaching boat. FAST personnel on Helicopter [REDACTED] told us that they were very concerned for the safety of the officers in the pipante as the passenger boat approached. One of the FAST members on the helicopter (FAST Member E) told us that he asked the pilot to fly lower and closer to observe the passenger boat.<sup>30</sup>

FAST Member E told us that he had observed the encounter between the two boats on the river from a good vantage point. He told us that the door on his side of the helicopter was removed, and he sat on a special seat facing outside with a view of the river. According to FAST Member E, he observed the passenger boat approach and steer directly into the pipante, at which point he saw a near simultaneous exchange of gunfire. He said that when he saw the muzzle flashes, it was difficult for him to see because the boats were very close together, but he perceived at that time that multiple individuals in the passenger boat had fired upon the law enforcement officers in the pipante. He said he could not recall

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<sup>30</sup> Specific FAST members are referenced throughout this report with non-consecutive letters.

whether he viewed what happened through his NVGs or without them. According to FAST Member E, after he saw gunfire, he and his helicopter pilot both yelled "they're shooting, they're shooting" on their radio headsets. He said that he then told the helicopter pilot that he thought the law enforcement officers in the pipante were fired upon.

The FAST Medic and FAST Member G sat near the door gunner and the [REDACTED] mm mounted machine gun, on the opposite side of Helicopter [REDACTED] from FAST Member E. The FAST Medic told us that he had a view of the river from his seat and was wearing his NVGs. He said that he saw the passenger boat approach and get close to or "bump" the pipante. The FAST Medic said that he saw muzzle flashes from the center of the passenger boat, which were immediately met by muzzle flashes from the pipante. FAST Member G who sat next to the FAST Medic told us that he watched the passenger boat steer towards the pipante in a manner that appeared to be intentional. He said that he did not recall which boat was on his right and which was on his left, but he remembered seeing muzzle flashes come from the passenger boat first. He said he was unable to discern whether the gunfire was directed toward the pipante or his helicopter. He said he believed that the muzzle flashes came from more than one automatic weapon or a rifle due to the rapid fire. He said he did not see any muzzle flashes from the pipante.

FAST Member P told us that he could not see the boats beneath the helicopter from where he was seated and therefore did not see what happened between the two boats. However, he said that he heard the CBP flight crew report over the radio that there was an exchange of gunfire and that "you have a man down."

#### **e. Other FAST Members**

The FAST members from Helicopters [REDACTED], including the Bravo Team Leader, were on the ground at the time of the river encounter. They told us that they did not see any of the gunfire on the river but could hear the shots fired. The Bravo Team Leader's witness statement reflects that before the encounter between the two boats he was told by a pilot that the pipante was drifting downstream, and he instructed the helicopters in the air to follow the pipante. The [REDACTED] FAST members on Helicopter [REDACTED] were still in the air at the time of the encounter, flying in a higher hovering pattern than Helicopter [REDACTED]. One of them said he was unable to see the two boats at the time of their impact. The other told us he saw what he believed was an exchange of gunfire, but he could not tell which boat fired first.<sup>31</sup>

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<sup>31</sup> This FAST member did not include this fact in the witness statement he prepared after the mission. In his witness statement, he stated that another FAST member on his helicopter told him that the pilots announced over the radio that the pipante was under fire and that he then observed Helicopter [REDACTED] fire upon the passenger boat. He did not state in his witness statement that he had observed gunfire from either the passenger boat or the pipante.

The Bravo Team Leader told us that he heard a helicopter pilot report on the radio that the Delta Team Leader was "down" or shot. He said that several minutes passed before the FAST members on the ground learned that the Delta Team Leader and the TRT on the pipante were uninjured. Although the Delta Team Leader told us he did not recall whether he signaled to the helicopters, FAST members on Helicopter [REDACTED] told us that minutes after the shootings, the Delta Team Leader signaled to Helicopter [REDACTED] that he and his fellow officers were unharmed.

**f. TRT Officers in the Pipante and the Honduran Door Gunner**

The TRT Commander, who was one of the two officers in the pipante, submitted a report to the Country Attaché dated May 11, 2012 that documented the events of May 11 in Ahuas. In the report, the TRT Commander submitted that at the time law enforcement officers observed individuals carrying drugs from the truck to the pipante, one or more of these individuals fired weapons at the helicopters. The report stated that "[b]ecause we defended ourselves" the offloaders decided to flee from the pipante, after which officers secured the pipante with the drugs and decided to use the pipante to transport the drugs to a safe location. Regarding the encounter on the river with the passenger boat, the TRT Commander reported:

However, we were attacked again by another small boat with a burst of gunshots in the vicinity of the Patuca River. For that reason, we chose to defend ourselves bearing in mind the right to self-defense and counting on aerial support at that time to provide us protection.

The second TRT officer in the pipante provided a sworn statement to the Honduran Special Prosecutor's Office for Human Rights two and one half months later, on August 1, 2012. In his statement, he described the encounter on the river as follows:

[B]eing there I saw through my night goggles that something got close to us[.] I could not identify it at first, but then it came closer and I could see that it was [a] boat with several people in it[.] I don't know how many and I thought that they were the other colleagues that were coming to rescue us, until [sic] that moment I could not identify the people then I was able to see that they weren't our colleagues because these people had unbuttoned shirts and once they were closer to us they said there is the boat with the drugs we said to them "STOP WE'RE THE POLICE" at that moment they began to shoot we covered ourselves by throwing ourselves to the bottom of the boat at that moment a helicopter came close to us carrying other colleagues of ours[.] [T]heir boat crashed into the boat we were in, then they took off once they saw the helicopter was there, then we lost them from our sight.

This statement made no mention of whether he or anyone else in the pipante fired upon the people in the boat that approached them. However, according to a June 12, 2012 report from the Deputy Commissioner of the Honduran National Police (further described in Chapter Six), the second TRT officer stated during an interview with police that he fired at the passenger boat, but did not fire first. According to the report, the second TRT officer stated that he fired his weapon when armed individuals in the passenger boat fired upon him and the other officers in the pipante.<sup>32</sup>

#### **g. Accounts of People on the Passenger Boat**

In August of 2012, the Center for Economic and Policy Research (CEPR) published a report titled *Collateral Damage of A Drug War: The May Killings in Ahuas and the Impact of the U.S. War on Drugs in La Moskitia, Honduras* (CEPR Report), which focused on the May 10-11 interdiction and the impact of U.S. intervention in La Moskitia, the Mosquito Coast region in eastern Honduras.<sup>33</sup> In July of 2012, the authors, Alexander Main from CEPR and Annie Bird from Rights Action, traveled to Gracias a Dios and interviewed Ahuas residents as well as most of the surviving passengers from the boat.<sup>34</sup> Seven of the 10 adult boat passengers survived the May 11 incident, and Main and Bird interviewed five of these individuals during a July 2012 visit to Honduras. Main and Bird provided the OIGs with video recordings of their interviews.<sup>35</sup>

According to the CEPR Report and interview recordings, the passenger boat belonged to Hilda Rosa Lezama Kenreth (Lezama), who worked in the business of commercial fishing and used her boat to transport herself, her husband Melaño

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<sup>32</sup> This sworn statement from the second TRT officer was appended to the investigative report issued by State's Bureau of Diplomatic Security's (DS) Special Investigations Division (SID). As more fully described in Chapter Ten, an SID agent conducted an investigation of the May 11 incident at the request of the U.S. Ambassador and issued a report in January 2013. Although it appears that the TRT Commander also provided a sworn statement to the Honduran Special Prosecutor in August 2012, that sworn statement was not included in the SID report. The OIGs obtained an unofficial translation of notes taken of the TRT Commander's sworn statement. According to the notes, the TRT Commander told the Special Prosecutor that one of the helicopters was attacked upon the approach to Ahuas, but the helicopter did not fire back. The notes reflect that the TRT Commander said that another boat approached, he heard gunshots, and then he and the Delta Team Leader sought protection on the floor of the boat. The notes also reflect that the TRT Commander said that, to his knowledge, no one on his team fired a weapon at the passenger boat. However, the OIGs were unable to verify the accuracy of these notes.

<sup>33</sup> According to its website, the Center for Economic Policy Research (CEPR) was founded in 1983 to enhance the quality of economic policy-making within Europe and beyond, by fostering economic research, and disseminating it widely to decision-makers in the public and private sectors.

<sup>34</sup> According to its website, Rights Action funds community-controlled development, environmental, human rights, and emergency-relief projects in Guatemala, Honduras, Chiapas and Oaxaca (Mexico) and El Salvador, and does education and activism work with North Americans to address global exploitation, repression, enviro-destruction and racism.

<sup>35</sup> Many of these witnesses were also interviewed by the Rights Action delegation and another human rights organization, the Alliance for Global Justice, in May 2012, and the authors of the CEPR report compared those interviews with their own.

Olopio Nixon, and commercial divers from Paptalaya (in Ahuas) to fishing locations near Barra Patuca off the island of Roatán. According to Lezama, after dropping off divers near Barra Patuca, she would usually have space in her boat for more passengers and would therefore pick up passengers along the river route. She also said that she often traveled at night to avoid the heat of the day. Lezama told Main and Bird that consistent with this practice, on May 10 at 8:00 p.m., she and her husband left Barra Patuca for an overnight trip to Paptalaya with 14 passengers, along with a large amount of cargo consisting of household goods and large bags of clothing.

In total, the 16 people on the passenger boat, as identified in the CEPR Report, were Hilda Rosa Lezama Kenreth (53 years old), Melaño Olopio Nixon (60 years old), Emerson Martinez Henriquez (21 years old), H.B.W. (14 years old), W.L.W. (14 years old), Juana Jackson (28 years old), Candelaria Pratt Nelson (48 years old), Lucio Adan Nelson Queen (23 years old), Clara Wood Rivas (adult, age unidentified), Bera Gonzáles (45 years old), S.W. (2 years old), A.G. (11 years old), Elvina Dolores (adult, age unidentified), Roldan López (adult, age unidentified), A.T. (12 years old), and Elvina Dolores's son (12 years old).<sup>36</sup>

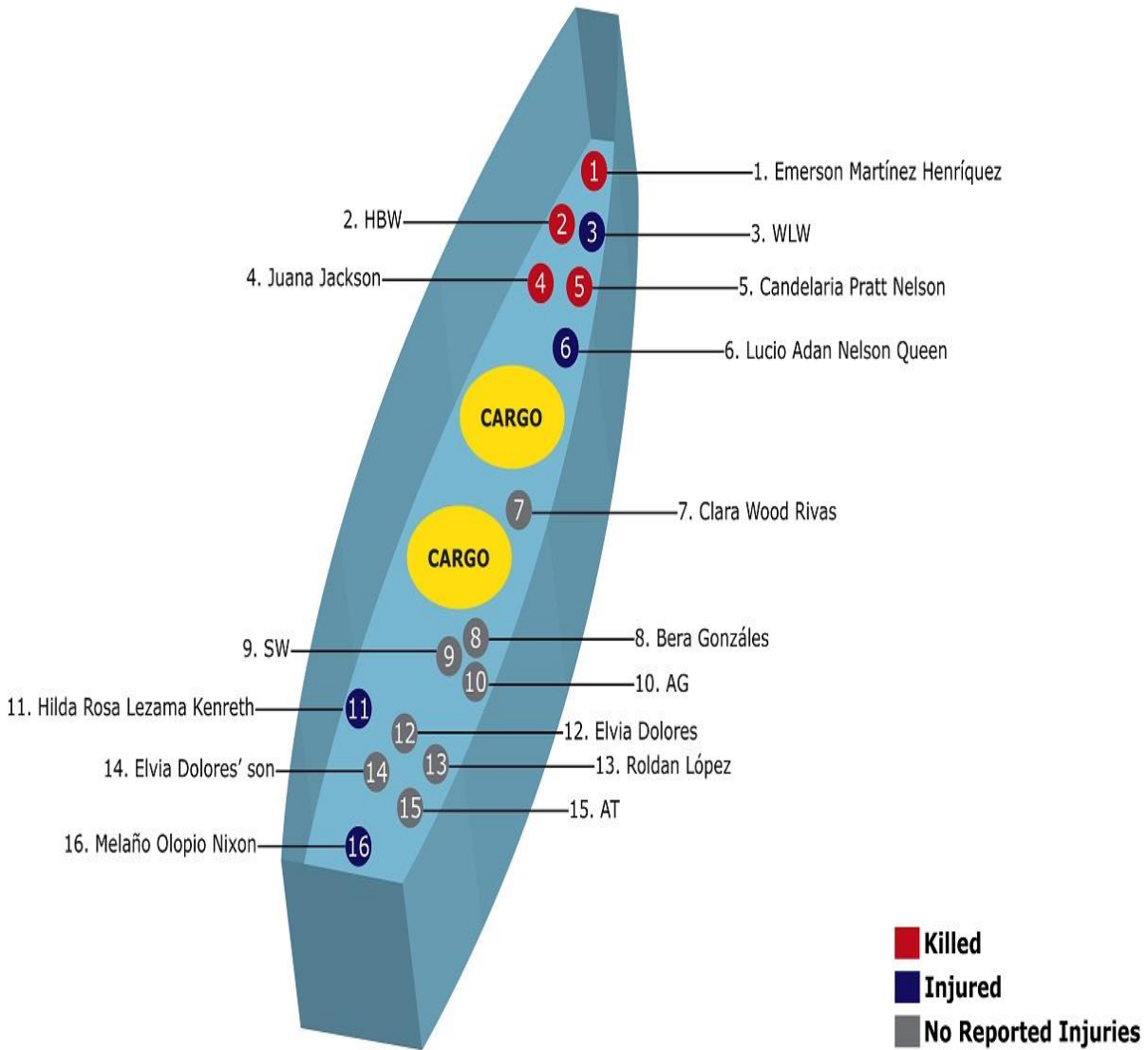
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<sup>36</sup> We found slight variations in the names of some of the passengers in the CEPR Report. We use the names as they appear on page 19 of the CEPR Report. Consistent with OIG and DOJ policy and practice, minor passengers are identified only by their initials.

**Figure 3.5**

**Approximate Position of Individuals on the Passenger Boat\***

\*According to Hilda Lezama and other passengers' testimonies



According to the CEPR Report, Nixon piloted the passenger boat. Nixon said that he piloted the boat along the right side of the Patuca River for the whole trip until he crossed the river to approach Paptalaya Landing located on the left side of the river bank. Nixon said that at the time he began to make his approach to the left side of the river, he heard helicopters in the area and saw an unmanned pipante floating downstream that passed by his right side. Nixon said after seeing the pipante quietly drift by, the helicopters flying overhead opened fire on him. Nixon told CEPR that most passengers jumped into the water immediately following the gunshots. Nixon said that after a bullet pierced and disabled his motor, he

jumped into the water to help guide the boat to the riverbank near Paptalaya Landing.

Consistent with Nixon's description of a bullet piercing the motor, video analysts Archer and Miller opined that a brief flash of light on the video footage that appears near the rear of the passenger boat at 2:20:21 a.m. (12 seconds into the encounter between the two boats) was most likely the result of a bullet striking the passenger boat's motor. They found that the shape of the flash and the orientation of a shooter on the pipante were most consistent with a bullet fired from the pipante striking the motor of the passenger boat.

**Figure 3.6: Photograph from CEPR of the Passenger Boat's Motor**



According to Lezama, all passengers were asleep as the boat made its approach to Paptalaya Landing. She said that she and the other passengers awoke to helicopters flying overhead. She stated she saw three helicopters in total, and did not think the helicopters would hurt her or the boat's other passengers because they were not doing anything wrong. She said the helicopters opened fire on the boat, and after getting hit by gunfire, she jumped into the water to save her life. Based upon the information Main and Bird provided us, it appears Lezama made no mention of the pipante in her description of the circumstances of the encounter between the passenger boat and the helicopter.

Lezama said that after jumping into the water, she unsuccessfully attempted to grab hold of the boat and observed gunfire striking the surrounding waters. Lezama said she felt like she was drowning and eventually grabbed onto a log near the shore to stay afloat. She said she kept her head above water and her body below to hide from the helicopters and prevent them from firing upon her again.

Another passenger told Main and Bird that she remained inside the passenger boat with her two young children, and a helicopter hovering above the boat shined



a spotlight on them.<sup>37</sup> She said that after the shooting, the helicopter left without providing assistance, at which time she went into the water with her children and swam to shore. She said she held onto her children near the riverbank for several hours because she was afraid for their safety. Another passenger told CEPR that she was sitting behind her 14-year old son, H.B.W., and witnessed him get shot. She said she jumped into the water and came ashore at the landing where she then began to look for her son.<sup>38</sup>

The passenger accounts in the CEPR Report and interview recordings describe being fired upon by a helicopter above them, but do not describe the two boats making contact or any gunfire coming from occupants in the pipante. According to the CEPR Report and interview recordings, no one from the passenger boat said anyone in their boat was armed or fired a weapon at any time during the encounter.

As described in Chapter Five, DEA developed three confidential sources, two of whom claimed that they [REDACTED]. One of these two sources was also interviewed by Main and Bird and is discussed above.<sup>39</sup> The other, referred to as Source of Information #2 (SOI #2), was not identified in the CEPR Report as one of the 16 passengers on the passenger boat. During an interview in June of 2012, SOI #2 told DEA that he/she lived in [REDACTED] Ahuas and was [REDACTED] on May 11. According to SOI #2, he/she [REDACTED] when the passenger boat, containing a passenger named "Emerson," approached another, disabled boat on the river. SOI#2 said that [REDACTED] individuals in the passenger boat had participated in the drug trafficking activity that evening and that as the passenger boat approached the disabled boat, Emerson opened fire on a helicopter that was hovering above the boats. SOI #2 said that people on the disabled boat then immediately opened fire on the passenger boat, followed seconds later by gunfire from the helicopter.

As described more fully in Chapter Five, over the course of three interviews, SOI #2 provided contradictory information on material facts in his/her accounts to DEA investigators and admitted to lying to the investigators who conducted his/her first interview. Some of the source's information also contradicts, or is unsupported by, events depicted on the May 11 video footage, specifically statements that the

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<sup>37</sup> As described later in this chapter, the helicopters were not equipped with external search and rescue lights as they interfere with the infrared the pilots were using to fly.

<sup>38</sup> According to the CEPR Report, this passenger had lived in Roatán and was on the passenger boat traveling to Ahuas after she and her husband decided to move to Ahuas with their only son, H.B.W. The OIGs were provided with certified school records for H.B.W. dated May 7, 2012, which reflected that H.B.W. had attended school in Roatán during the 2012 school year and, as of the date of the school report, had received passing grades in his subjects and had six recorded absences from school. The OIGs believe these records tend to support the notion that the passenger boat had traveled from Barra Patuca and that at least two of the passengers were not in Ahuas prior to the May 11 incident.

<sup>39</sup> This source of information's description of events documented in the CEPR Report and made to DEA were materially consistent.

two boats involved in the river encounter departed the riverbank together and that Emerson fired at a helicopter overhead as the boats collided.

### E. Helicopter █████ Fires Upon the Passenger Boat

The video shows that 48 seconds after gunfire first erupted on the river and 23 seconds after the last shot was fired from the pipante, the Honduran door gunner on Helicopter █████ fired multiple rounds at the passenger boat over the course of approximately 8 seconds. At the time of the shooting, the passenger boat had traveled upriver, some unspecified distance away from the pipante.<sup>40</sup>

Figure 3.7: Rounds Fired from Helicopter █████



The Honduran door gunner in Helicopter █████ provided a sworn statement to the Special Prosecutor for Human Rights on August 3, 2012. In his statement, he said that offloaders carried drugs in two vehicles and opened fire on the helicopters. He stated that in response to this gunfire, the helicopters did not return fire. According to his statement, the offloaders took the drugs to a riverbank and escaped by boat, at which time they opened fire on the helicopters a second time.

<sup>40</sup> At the time the helicopter began to fire, a light near the passenger boat is briefly visible on the video footage. According to Archer and Miller, the appearance and behavior of this light, which appears on the video for 42 consecutive frames, is strongly inconsistent with a muzzle flash. They said the light could be a signal flare or something similar, or a byproduct of camera processing. Less likely due to its brightness, the light could also be indicative of a person. In any event, they told us that they believe the light is an object, rather than a flash.

He said that in response to this assault, he received an order to fire, and he fired to "intimidate" the offloaders. The door gunner stated that it was the pilot in command who gave him the order to fire. He stated that after he fired the door gun, the offloaders continued to fire at law enforcement.<sup>41</sup>

The FAST members on Helicopter [REDACTED] described to the OIGs a stressful scene after the initial gunfire and before the Honduran officer fired the door gun. They told us that during this time officers were yelling over the radio headset and in the helicopter as everyone was reporting what they had seen and attempting to determine the status of the officers in the pipante. All of them told us that they were very concerned because they believed at the time that one or more of the law enforcement officers in the pipante were injured in the firefight. Three of the FAST members said that during this time, the helicopter pilot made a maneuver that placed the door gunner, who was on the right side of the aircraft, in a position to fire upon the passenger boat.

One or more FAST members on Helicopter [REDACTED] may have directed or otherwise told the Honduran door gunner to fire upon the passenger boat. FAST Member G, who said he was certain that the passenger boat had opened fire, told us that he instructed the door gunner to fire upon the passenger boat, by yelling in Spanish, "Fuego, fuego, fuego!" which translates to, "Fire, fire, fire!" According to this FAST member:

It took me about two times to tell that door gunner 'open fire'. . . . I was directing the door gunner because I wanted to make sure that [the pipante] wasn't going to be engaged [again]. I remember [FAST Member P] and myself were very adamant about the door gunner needs to open fire.

FAST Member P referenced above told us that he did not recall anyone on Helicopter [REDACTED] telling any officer to fire his weapon: "I don't recall anything like that."<sup>42</sup>

FAST Member E told us that after the initial muzzle flashes, and believing that the officers in the pipante were under fire and may have been injured, he yelled, "Shoot, shoot, shoot!" inside the helicopter and then using his radio headset. He said he did not yell specifically to the door gunner. However, he said that as he yelled, the pilot made the helicopter maneuver that allowed the door gunner on the right side to provide "support." He said he did not hear anyone else

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<sup>41</sup> Video analysts Archer and Miller did not identify any visible flashes on the video after Helicopter [REDACTED] fired at the passenger boat. The OIGs did not observe any such flashes either.

<sup>42</sup> As more fully discussed in Chapter Seven, in his witness statement documenting the events on May 11, FAST Member G omitted the fact that he directed the Honduran door gunner to fire his weapon at the passenger boat or that any DEA personnel were involved in the door gunner's decision to fire. FAST Member P's witness statement also did not mention whether DEA personnel were involved in the door gunner's decision to fire.

yelling "shoot" or "fire" in either English or Spanish, but he said that it was difficult to hear inside the helicopter.<sup>43</sup>

The FAST Medic told us that he did not direct the door gunner to fire. He also told us that he did not hear any of the FAST members direct the door gunner to fire, though he said helicopter noise made discussions difficult to hear when not over the radio headset. He said that after the helicopter maneuver he believed the pilot told the door gunner that he was cleared to fire.

The pilot on Helicopter [REDACTED] told the OIGs that he gave the door gunner permission to fire warning shots into the water. He said that he remembered DEA personnel in the back of his helicopter asking "for support" for the officers in the pipante, but he did not know who specifically may have asked. According to the pilot, after he was notified that the pipante was under fire, he consulted with the door gunner, his co-pilot, and the FAST members on board to confirm that the pipante was under fire and that "the rules of engagement [were] met." At that point, he repositioned the helicopter and gave the order to the door gunner to fire warning shots. His orders were to fire shots "close to the boat, not on the boat, close to the boat, just to break contact." The pilot explained that these discussions were the reason for the delay between the collision of the two boats and the door gunner firing. None of the FAST members on Helicopter [REDACTED] told us that the shots the door gunner fired were warning shots. Further, FAST Member G told us that he did not recall any discussion in the helicopter about the door gunner only firing warning shots.

#### **F. The Delta Team Leader Contacts the FAST Section Chief Using His Cell Phone**

After the encounter on the river ended, the passenger boat traveled upriver, while the pipante continued to drift downriver with the three law enforcement officers on board. The Helicopter [REDACTED] pilot used rotor wash to maneuver the pipante closer to the shore on the opposite side of the river from the village. The Delta Team Leader said he lowered himself into the water, grabbed some nearby branches, and pulled the pipante to the riverbank. Still unable to communicate with the FAST team or anyone in the helicopters, the Delta Team Leader used his cell phone to call the FAST Section Chief, Richard Dobrich, in Virginia.

According to the Delta Team Leader, he had been waiting with the two TRT officers for some time on the riverbank before he remembered he had his cell phone with him. He said that once he realized he had his phone, he found it in a pocket of his uniform and saw that the cell service indicator had "two bars." He estimated that he called Dobrich at about 2:30 a.m.; however, given the time of the river encounter at 2:20 a.m., we believe he likely made this call sometime later. Dobrich told us he received the call at about 3:00 a.m.

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<sup>43</sup> Similar to FAST Member G, FAST Member E omitted from his witness statement that he yelled, "Shoot, shoot, shoot!" inside the helicopter and over the radio.

The Delta Team Leader told us that during his telephone call with Dobrich, he advised Dobrich that there had been a firefight, and he asked Dobrich to contact the operation command center in [REDACTED] to notify everyone that he and the two TRT officers were okay. Dobrich told us that during this call, the Delta Team Leader told him that he never saw the passenger boat coming towards the pipante. According to Dobrich, the Delta Team Leader also told him that the TRT Commander was "worried about the consequences" of having returned fire. He said that the Delta Team Leader told him that the TRT Commander had said, "I identified myself as police. They shot at me. I fired back. I'm in trouble. I shot at them. I'm in trouble." Dobrich said that the Delta Team Leader told him that the TRT Commander believed he had to return fire to save his life. When the OIGs later asked the Delta Team Leader about this conversation, he said that he did not recall telling Dobrich that the TRT Commander was worried. According to the Delta Team Leader, the TRT Commander expressed no concerns to him about having fired his weapon.

After this call, the Delta Team Leader and the two TRT officers sat together with the pipante and awaited help from the ground team. Meanwhile, Dobrich immediately contacted the INL Senior Aviation Advisor at the command center to advise him of the status of the three law enforcement officers on the pipante. The Delta Team Leader told us that the INL Senior Aviation Advisor then contacted him on his cell phone about two or three times over the next few minutes and hours to give him updates on the ground team's efforts to locate him and the TRT officers and bring them back to the village.

#### **G. The Recovery Efforts to Locate and Rescue the Officers in the Pipante**

According to the Bravo Team Leader, after the team learned that the officers in the pipante were unharmed, the mission priority became a recovery effort focused on reaching the officers in the pipante as quickly as possible, while at the same time protecting the officers and themselves from possible danger. The Bravo Team Leader said that the officers in the pipante and the entire team on the ground were in a dangerous situation because it was extremely dark that night and he believed there were still armed offloaders in the jungle who they could not see. The CBP pilots told us that because of the possible dangers to the officers stranded with the drugs in the pipante, the CBP surveillance plane remained on scene, and the crew kept the camera focused on the pipante.

The Bravo Team Leader told us that he directed the officers from all the helicopters to assist the recovery effort on the ground. He said the helicopters dropped the ground team on the riverbank opposite the village, and the team spent the next couple hours trying to reach the location where the three officers remained stranded with the bales of cocaine. He said that they first attempted to reach the officers by walking along the riverbank, but they were unable to move through the high elephant grass and vegetation. He said that once he realized that they would not be able to reach the officers in that manner, he told the helicopter pilots to pick the team up and bring them back to the village. However, because the helicopters



██████████ the helicopters ██████████, leaving the teams on the ground to wait for ██████████ return.<sup>44</sup>

The CBP pilots told us that during the ground team's attempts to reach the officers in the pipante by foot, the CBP flight crew reported location information over the radio to assist the ground team in navigating their way toward the pipante. In addition, at some point, the CBP flight crew was able to establish radio communication with the Delta Team Leader, and they relayed information between him and the Bravo Team Leader. However, the flight crew said that as they attempted to navigate the ground team toward the pipante's location, there was some confusion regarding where the ground team was located in relation to the pipante, and these attempts were unsuccessful.

After the helicopters returned and brought the ground team back to the village, the Bravo Team Leader asked someone in the village for a boat to assist the ground team in finding the pipante. Several FAST members who witnessed this interaction with the local resident told us that the local resident agreed to assist and was not coerced or distressed and appeared to be assisting willingly. One of them said that the officers did not handcuff him or point a weapon at him during his interactions with law enforcement. Further, the FAST Medic told us he communicated in Spanish with the local resident and that the resident was eager to help. However, another FAST member told us that the local resident "was kind of noncompliant for a while," and came up with "all these excuses" for why he could not help them. He said they ultimately convinced him that they needed to get down the river to rescue officers who were potentially injured or dead.

According to FAST members, the local resident told them that he needed gas for the boat and pointed to a shed. A FAST member told us that finding the shed door locked, he kicked the door open to get the gas. When we asked him why he kicked in the shed door, he told us that he believed he needed to get to the gas quickly because he did not know whether the Delta Team Leader and TRT officers in the pipante were injured or safe.<sup>45</sup>

The Bravo Team Leader said that once the FAST members and the local resident obtained the gas, the Bravo Team Leader asked the helicopters to check the surrounding area for people on the ground who might pose a threat. He said the helicopter pilots flew up and down the river searching for possible dangers and reported that they did not see anyone. Thereafter, two FAST members and the local resident left in the boat and a few minutes later found the pipante and

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<sup>44</sup> The Bravo Team Leader told us that he thought he had requested a Quick Reaction Force (QRF), described in Chapter Two, during the recovery effort to help support and protect the ground team, but he said he could not recall for certain that he did so or when. DEA documents and OIG witness interviews do not reflect if such request was made or suggest that QFR in fact arrived at any time during this interdiction. Further, the Bravo Team Leader told us that the ability of the QRF to arrive on scene was always a concern for him because of the long distance and unpredictability of the locations he and the rest of the law enforcement team would travel to interdict the suspect planes.

<sup>45</sup> As we discuss in Chapter Seven, FAST Member G omitted from his witness statement that he kicked in a shed door.

officers, who were unharmed. The Delta Team Leader estimated that this boat reached him and the two TRT officers sometime between 5:00 and 5:30 a.m., shortly after which he and his two FAST members, the two TRT officers, and the local resident returned to the village. Four FAST members told us that when they returned to the village, they each gave the local resident money for the gas. According to the Delta Team Leader, he appeared "a little put out" but not upset about helping them.

Because of varying accounts, the OIGs were unable to determine with certainty the amount of time that passed between the encounter on the river and when the team rescued the officers in the pirog. However, based upon available information, we estimate about 3 hours or more for the recovery effort.

#### **H. Law Enforcement Activities in the Village**

The Delta Team Leader told us that when he returned to the village, he saw that the ground team had established a security perimeter and that TRT officers were speaking with people in the village. According to several FAST members and the Bravo Team Leader's witness statement, the Bravo Team Leader established a security perimeter, and the ground team secured the village to ensure their safety until they recovered the officers and returned to base. The FAST members who were on the perimeter told us that no one approached the perimeter and was turned away by law enforcement.

FAST members told us that those FAST and TRT officers who were not assigned to the perimeter searched for offloaders in the village. During this search, they did not locate or detain any suspected offloaders, but they found one M-4 automatic rifle, three magazines, and a backpack.

The CEPR Report documented accounts from local residents who said they witnessed abusive police activity in the village on May 11. One local resident said that near the landing six officers handcuffed him and punched him in the chest while questioning him about drug trafficking in the area. He said during that questioning they aimed three guns at him, threatened to throw him into the river with the handcuffs on, and threatened to shoot and kill him. A second local resident said that DEA agents handcuffed him and threw him face down onto the ground in front of his yard, asking him about drug trafficking in the region, and kicked down a door to his storage shed to take 18 gallons of gasoline and a refueling hose. A third local resident said officers took him by gunpoint to a boat at the landing, striking him in the back of the head several times, and forced him to pilot the boat to the location of another boat a half mile downstream carrying bales of cocaine and law enforcement personnel. Some community members said that the police blocked off the road into the landing area and prevented members of a crowd wishing to assist the injured from entering the area and forcing them to kneel at gunpoint.

All of the FAST members told us that they never witnessed any law enforcement officer mistreating a local resident. While in the village, FAST members saw several local residents seated on the front stoops of their homes,

talking with one another and on their cellphones. FAST members also saw several local residents that came out of their homes and communicated with some of the officers. FAST members who observed interactions between law enforcement and the local residents told us that they did not observe any conflicts or raised voices. At some point, a group of individuals approximately 100 yards away approached the village. A FAST member said that he watched as FAST and TRT approached the individuals without raising their weapons and notified them that there was police action in the village. FAST members told us that they never saw a weapon pointed at any local resident and that only one individual, the teenage male discussed above, was handcuffed during the entire operation.

One of the FAST members who had secured the area told us that a woman from the village approached him and appeared distraught. He said that he did not understand her because she was speaking Spanish in the local dialect, but he attempted to reassure her that everything was fine. The FAST member told us that he believed she heard the gunfire and was worried about a family member. After he spoke with her, she returned to a nearby house and sat on the front stoop. He said he did not search the woman before she returned to the house.

## **I. Efforts to Determine the Status of the Individuals in the Passenger Boat**

### **1. FAST Members**

The Delta Team Leader told us that he never discussed with the two TRT officers whether they saw any of the shots they fired hit the people in the passenger boat. However, the Delta Team Leader said that based upon the close proximity of the two boats at the time gunfire erupted on the river, he believed it was likely that the TRT officers shot someone in the passenger boat. Further, one of the FAST members on Helicopter [REDACTED] told us that having observed what he thought were people from the passenger boat falling into the water after the gunfire, he believed that people were probably injured as a result of the river encounter.

However, they and the other FAST members told us unequivocally that they never encountered or heard any injured people at any time during the mission. The FAST members who retrieved the officers in the pibante told us they did not see any wounded people or dead bodies in the river. The Bravo Team Leader said that when the helicopters [REDACTED], the area along the riverbank was quiet, and the ground team did not hear any cries for help or medical attention.

Both Bravo and Delta Team Leaders told us that had they or any of the officers encountered an injured person, protocol would have dictated that they render first aid, regardless of whether the person was a target of the law enforcement operation. Further, the Delta Team Leader told us that had they encountered a dead body, protocol would have dictated that they attempt to preserve the scene, to the extent they were able.



Based upon our interviews of FAST personnel, as well as certain CBP flight crew members and helicopter pilots, we determined that the law enforcement officers did not conduct a search and rescue mission to look for injured or dead people from the passenger boat. Instead, by all accounts, the priorities of the officers for the remainder of the mission were to recover the officers stranded with the pipante and drugs, while protecting the entire ground team from possible dangers.

According to CBP personnel, because the priority was the recovery of the officers and drugs in the pipante, they did not use the surveillance camera to follow the passenger boat, which had traveled upriver under its own power, and instead kept the camera focused on the officers and drugs in the stalled pipante that continued to drift downriver. The CBP camera operator told us that the only exception was that within minutes of the encounter he used the camera to conduct a "momentary scan" of the surrounding area to locate the passenger boat. He said that he thought he may have seen the boat on the riverbank somewhere upriver, but he lost track of it because he and the rest of the CBP flight crew refocused their attention on the officers in the pipante who they were concerned may have been injured. He said that the flight crew communicated over the radio that the passenger boat was no longer visible and its location was unknown. He and one of the CBP pilots told us that they had no information on the passenger boat or the status of the passengers other than that the boat appeared to have made its way onto the riverbank somewhere upriver.

The Bravo Team Leader told us that on at least two occasions he radioed to the helicopter pilots and asked if they saw anyone in the water or along the riverbank.<sup>46</sup> He said the first time was shortly after he heard the gunfire on the river and the second time was shortly before he sent FAST members with the local resident to recover the Delta Team Leader and the TRT. He said the pilots responded that they did not see anyone nearby. However, the Bravo Team Leader also told us that the helicopters had limited ability to search at night because they did not have search and rescue lights. According to the Bravo Team Leader, the lights would have interfered with the infrared the pilots used to fly and the NVGs the officers used on the ground.

## **2. Helicopter Pilots**

The pilot of Helicopter [REDACTED] told DEA officials who interviewed him in October 2013 that after the river encounter with the passenger boat, he orbited over the area and used the infrared light on his helicopter to look for additional threats, victims, or hazards, but did not see any injured persons. The pilot of Helicopter [REDACTED] told the OIGs that after the river encounter, he saw the two boats drift to opposite sides of the river and the passenger boat get stuck in the vegetation on the riverbank. He said it was very dark at the time, and he could not see anyone

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<sup>46</sup> State OIG requested audio recordings from DynCorp for communications on all [REDACTED] helicopters. DynCorp stated that there were no recordings of any of the interdictions that took place during Operation Anvil.

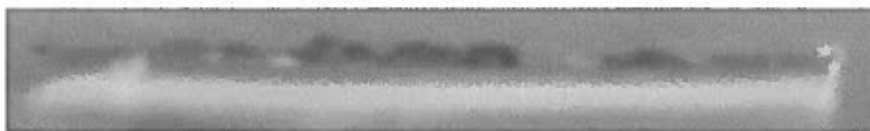
moving in or around the passenger boat. The pilot of Helicopter [REDACTED] told the OIGs that after the river encounter, he saw the passenger boat on the riverbank, but he did not see anyone inside. He said that he thought it may have been about 45 minutes to an hour after the river encounter when he saw the passenger boat on the riverbank, but he did not report this fact to the ground team.

**J. The Tasking of the CBP Surveillance Plane to Monitor the Pipante and the Misidentification of the Passenger Boat as the Pipante**

According to the camera operator, and a second camera operator [REDACTED] after the encounter with the passenger boat, they focused the camera for the next 2 hours, and until they left the scene, on the officers and drugs in the pipante. One of the CBP pilots told us that his flight crew made the decision to [REDACTED] in consultation with the DEA team leader leading the recovery effort on the ground. He said he did not recall the team leader making a request at any time to determine the status of the individuals who had been in the passenger boat. According to the pilot, the team leader was very concerned about the safety of the officers in the pipante and very anxious to get to them.

Although the intention of the CBP flight crew may have been to [REDACTED] [REDACTED] for the remainder of the mission, it appears that the camera had the passenger boat, not the pipante, in its field of view for the remainder of the recording. As shown in the Figures below, still images of the passenger boat and a boat on the video footage at 2:25 a.m. and 2:41 a.m., for example, appear identical in cargo load, draft, and length.

**Figure 3.8:  
Video Image of the Passenger Boat at 2:25 a.m.**



**Figure 3.9:  
Video Image of a Boat at 2:41 a.m.**



Based upon these comparison images, video analysts Archer and Miller opined with a high degree of certainty that the boats in Figures 3.8 and 3.9 are the same boat. Further, when the OIGs reviewed the video footage with the Delta Team Leader during his interview, he told us that the boat visible at 2:25 a.m. is not the pipante: "that is a different boat. [There] is a lot more stuff on that boat than ours." Further, he said that video footage of a boat at the river shoreline at

3:01 a.m. and for several minutes thereafter is not his boat because the boat on the video is on the opposite riverbank from where he was waiting with the pipante. He also said that this later footage shows only one individual near the boat, whereas he and the two TRT officers stayed together the entire time they were stranded.<sup>47</sup>

Based upon available information, we determined that the camera operators misidentified the passenger boat for the pipante, a mistake that went unnoticed for the remainder of the flight. This mistake may have been a contributing factor in the confusion the CBP flight crew encountered when attempting to navigate the ground team to the pipante during the recovery effort.

As shown below in Figures 3.10 and 3.11, there is an object visible on the video footage at 2:57 a.m. and 3:01 a.m. in the front of the passenger boat that is consistent with the appearance of a person lying still in the bottom of the boat: the object is consistent with a person in size and shape, and it has a brighter area at one end, which would be consistent with the shape and heat signature of a human head. This object is only visible when the surveillance plane is overhead, indicating that the object is lying on the bottom of the boat. Archer and Miller opined that given the size, shape, and heat signature, the appearance of this object is consistent with a person lying on the bottom of the boat; however, they told us that the video evidence is insufficient to identify this object as a person with certainty.

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<sup>47</sup> According to the Delta Team Leader, he had not seen this later video footage before his OIG interview and was not previously aware that the camera focused on the wrong boat. He told us that it now made sense to him why in after-action reports he saw photos of a boat he did not recognize.

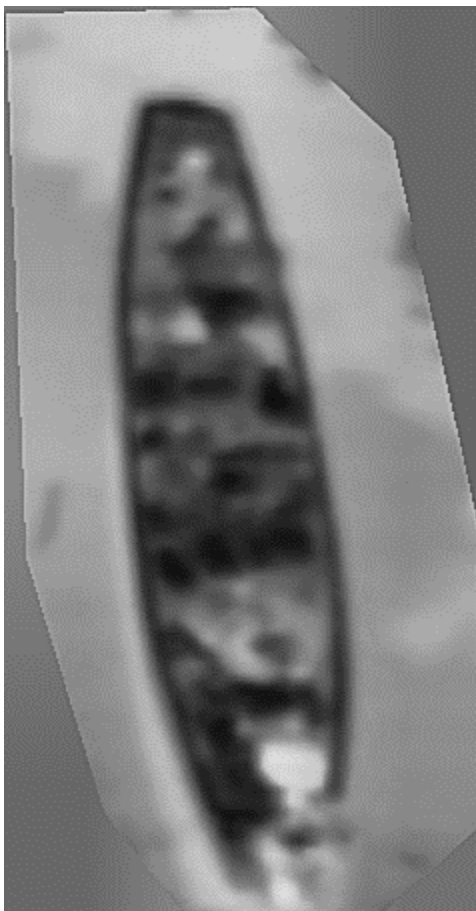
**Figure 3.10: Video Image of Passenger Boat at 2:57 a.m.**



**Figure 3.11: Video Image of Passenger Boat at 3:01 a.m.**



**Figure 3.12: Video Image of Passenger Boat at 3:01 a.m.  
Enlarged by Archer and Miller**



If the object in the Figures above is an injured or deceased person lying at the bottom of the passenger boat, none of the available information suggests that the CBP officers identified and deliberately ignored this individual. The CBP officers told us that they never observed any injured or deceased persons on the video monitors. The pilots said that had they identified any such people, the flight crew would have reported the information over the radio to the other officers.

#### **K. Departure from the Village**

The Bravo Team Leader told us that the ground team was in the process of loading themselves back onto the helicopters one group at a time in order to return to base when a helicopter pilot notified the Bravo Team Leader that approximately 20 individuals had amassed nearby and were walking towards the village. The Bravo Team Leader told us that he became "extremely concerned" about the possibility of another confrontation and did not want to risk getting into a firefight. His witness statement reflects that at this time he instructed the helicopters to land in the village so that FAST and TRT could load the drugs and depart the area.

**Figure 3.13: Photograph Taken Prior to Departure from Village**



The Bravo Team Leader told us that once the two FAST members returned to the village with the Delta Team Leader, two TRT officers, and the drugs, they loaded the drugs and themselves onto the remaining helicopters quickly and headed back to the base. The Delta Team Leader estimated that he remained in the village for only about 15 to 20 minutes before he left on a helicopter.

Accounts varied regarding the time the last helicopter left the village and how much time passed before all the helicopters returned to base. To determine the timeline, the State OIG subpoenaed the helicopter flight logs from DynCorp. However, the mission logs provided did not identify the actual times of arrival and departure. Based upon available information, we estimated that the helicopters returned to base sometime between [REDACTED] and [REDACTED]. In addition to the 439 kilograms of drugs, law enforcement returned to base with one M-4 assault rifle, three magazines for the rifle, and a backpack.

**L. FAST and TRT Conduct Debrief of the Interdiction in [REDACTED]**

Several FAST members told us that after each interdiction, the FAST team and the TRT gathered at the base in [REDACTED] to discuss, or debrief, what happened from an operational standpoint and to go through any "lessons learned" with the two groups. All of the FAST members told us that when the [REDACTED] helicopters returned to base on the morning of May 11, there was a short debrief to review the

interdiction. The Delta Team Leader told us that the debrief was short because they did not know at that time that anyone had been injured or killed.

By multiple accounts, during this debrief, the officers discussed what had happened both on the shore and on the river. One of the FAST members told us that he recalled that the group discussed the communication difficulties they encountered with the Delta Team Leader's radio and the difficulties they had attempting to recover him and the TRT officers in the pibante. He said that he also recalled receiving clarification from the Delta Team Leader and the two TRT officers that the passenger boat had shot directly at them and not at the helicopter above.

According to the Bravo Team Leader, he did not ask the TRT officers questions to obtain their full accounts of what happened on the river. He said that he knew the TRT would examine what happened on their side, and he probably made a conscious decision not to give the appearance that he was questioning their actions and potentially jeopardize the working relationship between FAST and the TRT. However, he said he did talk with each of the FAST members, including the Delta Team Leader and the four FAST members on Helicopter [REDACTED], to obtain their accounts. Although he said he did not recall the specific details of these discussions, he said that he determined that no DEA agent fired his weapon. When the OIGs asked how he made this determination, he told us that he took the word of the FAST members that they had not fired. He said that he did not conduct a check of each weapon's magazines before and after the mission to determine whether ammunition had been used. Another FAST agent told us that "if we would have fired a weapon, we would have known. And we would have reported it."<sup>48</sup>

The OIGs asked the Bravo Team Leader how long after he returned to base did he learn that people were injured or killed during the operation, and he responded that, "[there] was no doubt that, that somebody had been shot. I mean, we didn't know the extent of the injury, obviously. But there was no doubt that, I mean, I was pretty confident that TRT shot somebody." He told us that he reached this conclusion based upon the descriptions of the incident he received from the Delta Team Leader and the TRT officers, as well as the video footage he saw sometime after DEA received it on May 30 showing the two boats just a few feet away from each other at the time gunfire erupted.

According to FAST Member G, he told the group during the debrief that he directed the Honduran door gunner to fire his weapon. He said that he told them:

Just basically that I saw the, the boat come up the river once the [surveillance aircraft] alerted us to it, that I saw muzzle flashes coming from that boat at, you know, and I wasn't clear whether it was coming at our helicopter or firing at [the Delta Team Leader] and, and

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<sup>48</sup> DEA's post-shooting procedures (further described in Chapter Seven) state that an Assistant Special Agent-in-Charge, Assistant Regional Director, Country Attaché, or their designee on scene is responsible for inspecting the weapons of all affected personnel to ensure that all weapons fired during a shooting are identified and all weapons not fired are identified.



the TRT on the boat. And that I basically told the door gunner to engage because I saw muzzle flashes coming from that boat and wasn't sure if it was at the helicopter or [the Delta Team Leader].

None of the other FAST members gave this account of the debrief during their OIG interviews, and the Bravo Team Leader said that no one ever told him that they directed the door gunner to fire his weapon. He said that if he had known that a FAST member had directed the door gunner to fire, he would have expected the agent to include the information in his witness statement, which the Bravo Team Leader would have later passed onto DEA Headquarters in the normal course. However, he stressed that the FAST member's actions would not have caused him any concern. He said his only concern would have been to determine the extent to which the door gunner failed to understand that there was a need for the use of force on his own.

The Delta Team Leader told us that he did not recall whether anyone advised him that they directed or told the door gunner to fire, but he did recall having some awareness that the door gunner may have had some hesitation before firing his weapon that evening.

#### **M. The Return to the Village of the Injured Passengers and the Deceased**

As a result of this encounter on the river, four individuals on the passenger boat were killed – H.B.W. (age 14), Juana Jackson (age 28), Emerson Martinez Henriquez (age 21), and Candelaria Pratt Nelson (age 49) – and four more were injured – Lucio Adán Nelson Escoto (age 23), W.L.W. (age 14), Hilda Rosa Lezama Kenreth (age 53), and Melaño Olopio Nixon (age 60). According to the CEPR Report and interview recordings the report's authors provided to the OIGs, three of the injured passengers said they made their way back to the village after the river encounter and sought medical attention. Several passengers who were uninjured, but had fallen into the water, spent the remainder of the night in the water or on a nearby riverbank fearful of returning to the village. The pilot, Nixon, said he remained in the boat, pulled the boat to the riverbank, and tied it to brush approximately 1 mile from the village.

One of the local residents told the interviewers that the bodies of Candelaria Pratt Nelson and Emerson Martínez Henriquez were later recovered from the passenger boat. Consistent with this account, the video shows the passenger boat remained on the riverbank until at least 4:18 a.m. with one individual in the rear of the boat moving to the riverbank, and one or two motionless individuals in the front and middle of the boat. According to relatives of H.B.W. and Juana Jackson, the bodies of Juana Jackson and H.B.W. were recovered from the river on May 12 and May 13.

During our review, Main and Bird provided the OIGs with photographs of a boat that witnesses told them was the passenger boat with patches over bullet holes.



**Figure 3.14: Photograph from CEPR of Passenger Boat with Repaired Bullet Holes after May 11**



As shown in the Figure above, the boat appears to have over a dozen markings on the sides and bottom that appear consistent with the patchwork witnesses described.

## **II. Initial Reporting of May 11 Shooting Incident**

In the hours and days after the interdiction on May 11, DEA and State officials reported the events that occurred in Ahuas to their agencies and interagency partners. The primary sources for these reports were the FAST team leaders and INL contractors that participated in the interdiction, as well as Honduran law enforcement. There were also reports from local residents through local Honduran authorities, international and local non-governmental organizations (NGO), and news outlets. As more information became available, the reports quickly evolved to include the fact that four individuals were killed and four more wounded during the interdiction. In this section, we describe the reports' sources and the evolving reports on the status of the passengers who were shot during the interdiction.

### **A. Initial Reporting: DEA FAST and Honduran TRT Were Fired Upon During Interdiction and TRT Returned Fire**

#### **1. Initial Reporting from the INL Senior Aviation Advisor**

The INL Senior Aviation Advisor based at the operation command center in ██████ sent e-mail updates beginning on May 10, and continuing throughout the interdiction, to State and DEA officials involved in the operation. The e-mail communications reflect that he based his updates on information he received during

the interdiction from JIATF-South, the helicopter pilots, the surveillance aircraft crew, and the Delta Team Leader.<sup>49</sup>

It appears that the INL Senior Aviation Advisor stopped sending e-mail updates for several hours after sending an update at 2:00 a.m. advising officials that the ground team had secured the drug load. A few hours later, at 7:52 a.m., the Delta Team Leader sent an e-mail to the INL Senior Aviation Advisor that read:

"2 trt guys were with me while driving the boat with the drugs to [a landing zone] when the engine died. Current was pretty swift and took us aways down river and to the other side. Lil fire fight but all our guys were good."

At 8:48 a.m., the INL Senior Aviation Advisor sent an updated event summary, which included the information he received from the Delta Team Leader, to several State, Embassy, and JIATF-South officials, as well as Dobrich, the Country Attaché, and the Bravo and Delta Team Leaders. This summary stated, in part:

At approximately [2:00 a.m. local time] the ground force was inserted as the personnel on the dock scattered and left the load. At approximately [2:40 a.m.] a second boat approached the dock and engaged the TRT, and FAST members. The ground forces, as well as the helicopters returned fire and neutralized the threat.

[redacted] At [a]pproximately [redacted] the Team returned [redacted] with all personnel and load.

The Delta Team Leader told us that the summary the INL Senior Aviation Advisor provided at 8:48 a.m. inaccurately described the confrontation with the second boat. According to the Delta Team Leader, the second boat did not approach a dock when it engaged the TRT and FAST.

## **2. The DEA Country Attaché Provides Initial Reports to DEA and State Officials After FAST Team Leaders Provide Him With an Event Summary**

At 8:18 a.m. on May 11, the Country Attaché sent an e-mail communication to the DEA Assistant Regional Director, as well as Ambassador Kubiske and Deputy Chief of Mission (DCM) Matthias Mitman, summarizing the May 10-11 interdiction based upon information he told us he received over the telephone from the FAST team leaders. Based upon available information, the Country Attaché's e-mail was

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<sup>49</sup> The INL Senior Aviation Advisor is no longer a contract employee for the Department of State. State OIG located current contact information for him, but he never responded to our requests for an interview.

the first written summary of the May 10-11 interdiction by a DEA official. The summary stated, in part:

[INL] helos with team departed Puerta Castilla at approx. [REDACTED] [REDACTED] landed near Ahuas (gracias Adios) at approx. 1:30 a.m. Approx. 30 people off loaded airplane and put cocaine in vehicle. [REDACTED] [surveillance plane] followed vehicle and observed load of cocaine being transferred to a small boat(s) on river. [INL] Helos landed and TRT team moved to boats to secure cocaine. Individuals in boat fled. While trying to maintain control of boats and cocaine, a small boat approached the area and began to fire upon the TRT team. TRT returned fire and was able to stop the threat. No reported injuries. The TRT and cocaine load was picked up by [INL] Helos and departed for [REDACTED]. The helos are [REDACTED] and will depart for [REDACTED].

As reflected in this e-mail, within hours of the shooting incident, initial DEA reporting was that there were no reported injuries. The Country Attaché told us that although the FAST team leaders told him that shots had been fired, they did not know at this time that anyone had been injured. When the OIGs asked the Country Attaché if either team leader mentioned whether anyone on FAST had observed or searched for any injured, he told us they did not mention it during the call. The Country Attaché also told us that the telephone call from the team leaders was very short, and they did not go into any detail as they were still in Ahuas and only provided basic information.

### **3. Reports Soon Surface That Individuals Were Injured and Killed**

At 11:01 a.m. on May 11, DCM Mitman sent an e-mail communication to the Ambassador, the Country Attaché, and several State officials, advising them that he had received reports that people had been injured and killed during the interdiction:

[W]e've heard reports that two miskito indians were killed and two wounded in this interdiction last nite. [S]ome calls apparently hav[e] been made to the [Government of Honduras] alleging that the those shot were "innocent bystanders" and claiming human rights violations. [W]e need to work up some press guidance and ensure that the [Government of Honduras] does the same.

Shortly after DCM Mitman's e-mail, at 11:07 a.m., Dobrich sent the Delta Team Leader an e-mail stating, "[t]wo bodies reported to Police in La Mosquitia," and a follow up e-mail at 11:34 a.m. that read, "And 2 reported wounded."

An Assistant Country Attaché from DEA's Tegucigalpa Country Office (TCO) wrote a Significant Enforcement Activity Report (SEAR) for the May 11

interdiction.<sup>50</sup> The Assistant Attaché told us that the information in the SEAR came from "the ground out there and the calls that were being made" throughout the early morning hours. After the Country Attaché approved the SEAR, the Assistant Attaché disseminated the report at 1:35 p.m. on May 11 to DEA officials at Headquarters, regional officials, and the DEA Headquarters' Command Center. The SEAR provided a summary of the interdiction that included:

[A] second boat approached the area and began to fire at TCO vetted unit members. The TCO vetted unit members as well as the INL door gunners comprised of TCO Honduran vetted unit members returned fire until the threat was stopped. . . . Initially there were no reported injuries. Subsequently the Honduran National Police responded to a small village near Ahuas where it was reported that two individuals were killed and two additional individuals were injured during the altercation.

Additional e-mail communications throughout the afternoon on May 11 described reports of deaths and injuries. At 1:44 p.m., an official from the State Department's Bureau of Western Hemisphere Affairs (WHA) sent an e-mail communication to the Office of Global Enforcement at DEA Headquarters, which read in part:

More immediately, we've heard reports that several people were killed and wounded in an interdiction effort in Honduras last nite. Some calls apparently have been made to the Govt of Honduras alleging that those shot were "innocent bystanders" and claiming human rights violations. Who at DEA has the lead on this, and do you have any press guidance for us to share with Emb Tegucigalpa?

At 1:54 p.m., the Executive Assistant to Deputy Chief of Operations for Special Projects Jay Fitzpatrick sent the following e-mail to Fitzpatrick, Dobrich, and Deputy Chief of Operations for Global Enforcement James Soiles:

I just got off the phone with the Country Attaché. He advised that the Ambassador is on vacation, but that she called to congratulate the office on the operation and is pleased with the two seizures. She is happy with the results thus far and pleased that the [REDACTED] was bringing everything together. She did mention a M4 rifle that was found and wanted to know more about that (NFI). [Mitman] also told

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<sup>50</sup> In May 2012, DEA reporting procedures required that personnel immediately notify the Command Center at DEA Headquarters in the event of a critical incident, shooting, threat or assault, or significant enforcement activity. Upon receipt of this notification, the Command Center was responsible for notifying the managers of the appropriate DEA HQ components. As described in more detail in Chapter Seven, TCO reported the May 10-11 interdiction to the DEA Command Center as a significant enforcement activity event, but it did not separately identify the May 11 incident as a "critical incident" or a "shooting incident." As a consequence, the DEA Command Center did not send a critical incident or shooting incident report to DEA's Office of Inspections. Nevertheless, the Deputy Chief Inspector told the OIGs that he learned of the May 11 incident sometime on May 11 or 12.

[the Country Attaché] good job and they are happy with the recent seizures.

The [Country Attaché] advised that the Ministers are being kept informed of progress. [Country Attaché] mentioned that word is circulating (not in the press) that an innocent bystander was hurt/killed. Which he stated is not true.

According to the Country Attaché, this account accurately reflected his conversation with the Executive Assistant. He said that it was difficult getting any information from Ahuas, and while he was aware someone had been injured when he had this telephone conversation with Fitzpatrick's Executive Assistant, he had no confirmation anyone had been killed. He told us that based on the information he received from the Delta Team Leader, he believed that any individuals shot were not innocent bystanders but people attempting to retrieve the drugs from the pipante. He explained that when he stated that no innocent bystanders were shot, he was not disputing that anyone was killed, only that anyone injured or killed would not be an innocent party.

The Country Attaché's account of the information he learned from the Delta Team Leader about the guilt or innocence of the people who may have been shot during the river encounter is consistent with statements the FAST team leaders made to the OIGs that they had little doubt that the passengers in the boat were involved in the drug trafficking activity that evening. The Delta Team Leader told us that his personal belief was that everyone who was in the passenger boat had previously assisted with the offloading of drugs at the clandestine landing strip and somehow made their way from the landing strip to the river to retrieve the drugs. Regarding the possibility that the passenger boat was only a water taxi, he said:

[T]he other part of a water taxi at that time in the morning, and the idea that that's a safe area before we got there is ridiculous. A water taxi at 2:30 in the morning, they're begging to get, you know, robbed or something happening.<sup>51</sup>

The Bravo Team Leader told us that he believed the people in the passenger boat had been called by whoever was in charge of the drug load to retrieve the drugs that were floating downriver. He said that he believed the May 11 video footage provided evidence of an intent to retrieve the drugs, explaining that: "When I watched the video. . . . I see a boat coming upriver that makes several course corrections in what can only be described as an attempt to intercept the boat with the drugs on it."

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<sup>51</sup> Through a basic Internet search in 2016 and 2017, we were able to find travel information that included an early morning commercial boat service (2:00 a.m.-5:00 a.m.) between Brus Laguna and Palacios in the La Mosquitia region of Honduras. <http://www.frommers.com/destinations/brus-laguna/planning-a-trip> (last accessed April 6, 2017). We have not determined whether this service ran in May 2012; however, we believe this information suggests that nighttime boat travel may not be as rare in the La Mosquitia region as DEA officials assumed.

Nevertheless, not long after the Country Attaché had his telephone call with Fitzpatrick's Executive Assistant, he and others received another report of allegations that innocent people were killed and injured during the operation. At 1:57 p.m. on May 11, a U.S. official from the Embassy sent the following e-mail communication to DCM Mitman and copied four individuals to include the Country Attaché and the INL Director at the U.S. Embassy in Tegucigalpa:

Early this morning I received word from our people that the Human Rights Commission [] had received a complaint related to a CN operation (Operation Anvil) overnight in La Mosquita (near Ahuas?) Mosquit Indians are claiming that several innocent people were killed as a result of a confrontation between the helicopters and narcos. Shortly after I received another telephone call from the Honduran Military warning me of the same thing. Initial reports were 2 killed, 2 drowned, and 2 wounded. (I also heard 2 killed, 3 drowned, and 1 wounded.) The military noted that one of those killed was a Honduran military reservist. The military suggested that if there was video of the confrontation, this could be used to deflate the situation. (They were calling simply to warn us of the pending situation, they did not necessarily give any credence to the allegations.)

At approximately 1030 a formal [complaint] of HOMICIDE (presumably against the U.S/HNP, but I do not know at this time) was apparently made in Puerto Lempira [] for ONE of the deceased.

The Country Attaché told us that because this U.S. official had very good contacts, he believed at this time that there had been people shot and killed during the operation. However, he said that he continued to believe that the people involved in the confrontation with law enforcement were also involved in the drug trafficking activity that evening and, more specifically, that they had been ordered by someone to retrieve the drugs in the pipante. The Country Attaché forwarded the e-mail from the U.S. official to the Assistant Regional Director at 6:33 p.m. on May 11.<sup>52</sup> The Assistant Regional Director told the OIGs that it was days after May 11 before she believed the deaths and injuries were confirmed.

## **B. Early Honduran TRT Reporting**

The Honduran TRT Commander submitted a report dated May 11, 2012 to the DEA personnel at TCO, as previously described, which contained the following description of the key events from the May 10-11 interdiction:

After the pilots performed numerous maneuvers searching for the small aircraft, we managed to observe the drugs being carried from two vehicles toward a small boat, in which there were more than thirty armed individuals, beginning to shoot at the helicopters. Because we

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<sup>52</sup> Contemporaneous e-mail traffic reflects that the Country Attaché was receiving and reporting information by e-mail and telephone throughout the day, though it is not clear why this particular e-mail was not forwarded until 6:33 p.m.

defended ourselves, they decided to flee the small boat, abandoning it in the middle of some shrubs at the bank of the Patuca River. Afterwards, we decided to secure the small boat, wanting to transport ourselves in the very boat itself to a more secure location. However, we were attacked again by another small boat with a burst of gunshots in the vicinity of the Patuca River. For that reason, we chose to defend ourselves bearing in mind the right to self-defense and counting on aerial support at that time to provide us protection.

Although the TRT Commander's name appeared at the bottom of the report – the same Commander who had traveled in the pipante with the Delta Team Leader and fired his weapon at the passenger boat – one of the Assistant Attachés told us that the TRT Commander may not have authored the report himself. The Assistant Attaché told us that it was often the case that lower-level TRT officers would write a report, and the Commander would later sign off on it.

The report's description of armed individuals on the river bank firing weapons at the helicopters is inconsistent with the description of events we obtained from FAST personnel who participated in the interdiction, as well as the May 11 video footage. The Bravo and Delta Team Leaders and other FAST members told us that when the offloaders were moving the drugs to the boat, the helicopters had not yet arrived and were not fired upon. They told us that the only gunfire on May 11 occurred on the river. Further, the Country Attaché told us that the TRT report's version of events was not consistent with anything he had heard, and he did not know why the report would have included things that did not happen.

### **C. Media Reports Surface That Law Enforcement Officers Killed and Injured Innocent Civilians**

The Committee of the Families of the Detained and Disappeared in Honduras, or COFADEH, issued a public statement within days of the May 11 incident stating that a DEA-led operation in Ahuas resulted in the massacre of innocent civilians and demanding an explanation and public apology from the U.S. Department of State. This public statement, dated May 14, appears to have been the first publicized statement alleging that DEA led a military-style operation that recklessly killed residents of the La Mosquitia region, including pregnant women and children.<sup>53</sup>

Further, on May 16 and 17, local and international press outlets reported on the May 11 interdiction in Ahuas, including Honduran newspaper El Tiempo, the New York Times, and the Associated Press. El Tiempo reported that a helicopter carrying Honduran police and DEA agents attacked a boat with innocent people onboard after mistaking the boat for another boat piloted by drug traffickers. The

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<sup>53</sup> Approximately 10 days later, on May 24, 2012, COFADEH filed a formal complaint with the public prosecutor in Puerto Lempira as legal representative of the victims and surviving family members. COFADEH later filed a formal complaint with the Honduran Special Prosecutor for Human Rights in Tegucigalpa.

article reported that four people were killed, including two pregnant women, and another four were wounded during the attack.<sup>54</sup>

Referencing the El Tiempo article, the New York Times reported that during a drug interdiction in Ahuas, helicopters fired on a boat by mistake, killing four and wounding four innocent civilians. The AP Article reported that a U.S. Helicopter opened fire upon a small boat on a Honduran River and two men and two pregnant women were killed. The article stated that local officials, including the mayor, reported that the passengers in the boat were diving for lobster and shellfish when their boat took fire. U.S. Government officials that were not named told the reporter that DEA agents did not fire their weapons and Honduran law enforcement did not initiate fire but were fired upon first.

Following the release of these stories, DEA's Office of Congressional Affairs e-mailed the following to Administrator Leonhart and Deputy Administrator Harrigan:

As you are aware, FAST was involved in a shootout last week in Honduras. While the real details are still being gathered, the media has begun running their own stories.

Below is an article in the Honduras Weekly that discusses the incident and FAST's involvement. We have also been contacted by the New York Times and AP, who are also working on stories.

We have been in contact with State about this from the beginning, and the State Dept is going to handle inquiries regarding the recent operations in Honduras. There is a lot of misinformation being circulated and State is trying to clarify the details. Their plan is to confirm – off the record – that DEA was involved in these operations, but on background they will only talk about 'U.S. law enforcement.' They plan to clear up inaccurate reports that the most recent operations resulted in the deaths of innocent bystanders.

On May 16, Administrator Leonhart responded to the press reports by sending an e-mail to Harrigan, Fitzpatrick, Dobrich, and others stating, "let's get a briefing on the specifics of this op/incident. First I am hearing of this erroneous info." In response, Dobrich sent an e-mail to the Bravo and Delta Team Leaders tasking the Bravo Team Leader with preparing a more comprehensive summary of the interdiction than what was included in the SEAR.

The Bravo Team Leader generated a 5-page summary of the May 10-11 interdiction that Dobrich provided to Fitzpatrick on May 23. In describing the events on the river, the summary stated:

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<sup>54</sup> A Honduran medical examiner subsequently concluded that neither female decedent was pregnant; however, the families of the deceased have publicly criticized the manner in which the medical examinations were conducted.



As they were discussing options for reaching [the Delta Team Leader] the [surveillance] aircraft stated that he could see a second boat with several individuals traveling upstream towards [the Delta team Leader]. Only seconds later gunfire could be heard originating from [the Delta Team Leader's] direction. The initial gunfire lasted three to five seconds followed by gunfire from one of the [Helicopters] which lasted less than five seconds. After this, NO other gunfire was ever heard.

Dobrich asked Fitzpatrick to discuss the summary with him before it was sent to anyone else. Dobrich told us that he was not asked for any follow up after sending this summary to Fitzpatrick and believed it satisfied the request for a summary of events.

#### **D. State Department Press Guidance**

On May 17, 2012, INL and WHA drafted press guidance related to the events of May 11. The high-level points included: "All U.S. personnel operate under strict rules of engagement that limit the use of force . . . to instances of self-defense" and "DEA agents . . . were involved in a supporting role only and did not use force. No DEA agents fired any weapons." The guidance also noted that the U.S. only acted "in a supporting, advisory role" to assist the "highly trained and vetted" local law enforcement. The guidance also had a "if asked" section that included the details "the crew on one of the cocaine transport boats began shooting at law enforcement" and "Honduran law enforcement officers returned fire in self-defense." Although DEA received this press guidance, we found no evidence that DEA officials requested any adjustments to State's description of DEA's role during the operation.

This guidance was followed by the Department of State's spokesperson who said in the daily press briefing on May 17:

In this particular operation on May 11th, the U.S. DEA was involved only in a supporting role. We did not use force. No U.S. personnel fired any weapons. We were involved purely supporting and advising. The units that we support are comprised primarily of host country – in this case, Honduran – law enforcement officers. They were trained, they were vetted, as part of this program we work on together.

Similarly, Embassy officials prepared talking points for the Ambassador to use during an interview with the Associated Press on May 25, 2012. The talking points stated that the DEA agents were involved in "a supporting, advisory role only" with "highly trained and vetted" Honduran officers "who operate with advice from U.S. Government law enforcement agents."

### **E. Local Honduran Police Report Alleges That Law Enforcement Operation Killed and Injured Innocent Persons**

On May 18, 2012, a deputy police commissioner from the local police department based in Puerto Lempira, the capital of Gracias a Dios in northeastern Honduras, submitted an investigative report to the Honduran Preventive Police National Director on the events of May 11. The report findings were based primarily on interviews with local residents and boat passengers. In the report, the deputy commissioner asserted that four individuals were killed and four others were wounded after a helicopter containing DEA personnel confused cargo in a passenger boat for bales of drugs.

The report observed that passenger boats traveled in the evening and carried bags of household items which could be confused with bales of drugs. The report stated that the passengers reported that no one in their boat fired at the helicopters. Photographs that accompanied the report depicted the damaged passenger boat and motor in a manner similar to photographs we received from CEPR, shown earlier in this chapter. The investigator counted no less than 21 bullet holes in the passenger boat and at least one in the damaged motor. The investigator also identified the four passengers killed and stated that, although unconfirmed, two of the women killed were reportedly pregnant.

The Country Attaché received an English translation of the report on May 21 and forwarded the translation to the Assistant Regional Director the same day. The Assistant Regional Director immediately e-mailed it to RD Evans who forwarded it to Fitzpatrick with the message, "The official report from the GOH is that civilians were lit up- mistaken identity." Dobrich told us that he reviewed but discounted the report because he viewed it as a plagiarized version of the press reports. He told us that the report stated there were three boats, as the press reports alleged, when there were never more than two and was therefore not credible. Harrigan told us that he recalled reviewing the report and determining that it left "a ton of holes," and did not include any information from law enforcement.

The Ambassador did not read the report but was told of its conclusions by Embassy personnel. She was told that it was incomplete and inaccurate because it was written by a police bureau in an area in which collusion with drug traffickers was well known. The Ambassador also recalled the report's finding that two of the deceased may have been pregnant, and thus she pressed the Hondurans to conduct autopsies. The INL Director at the Embassy described the report as incomplete and lacking "a well-articulated path unto how the conclusion was formed." She described this as a general concern with Honduran police reports, in that they were often conclusory with no stated reasoning behind the conclusions reached.

Mark Wells, INL's Director of Western Hemisphere Programs, discounted the report because it "reached conclusions that no one could reach based on the information put in the report" and was drafted without speaking to the pilots or the FAST or TRT members. Wells also dismissed the report because it seemed to be largely based on secondary sources.

### **III. DOJ OIG Observations**

Four days after an interdiction in which suspected drug traffickers used deadly force to protect their load, three law enforcement officers found themselves stranded with cocaine and separated from their partners, in a vulnerable situation in the middle of the night, with no radio communication to warn them of an approaching boat with a large number of people on it. We do not believe it can ever be known exactly what transpired in the seconds before two of the officers made the decision to fire at the people in the approaching boat.

DEA asserted from the start that the passengers in the boat had attempted to retrieve the drugs that the law enforcement officers had seized and that these people initiated a firefight with the officers. As we discuss in our analysis in Chapter Thirteen, we found that as additional information became available after the operation that conflicted with DEA's initial reporting, DEA officials did not consider even the possibility that their assumption of a firefight initiated by drug traffickers was wrong or that the passenger boat carried innocent civilians. Instead, as shown in later chapters, DEA remained steadfast in its commitment to the initial reporting that drug traffickers had attacked the officers in the *pipante* and that none of their own agents had used deadly force. Overconfidence in premature, foregone conclusions led to a delayed and inadequate DEA reaction to the incident and to DEA providing incomplete and inaccurate information to DOJ leadership and Congress.

As described in Chapter Seven, DEA officials did not adequately investigate the incident. Had they done so, we believe they would have learned that DEA personnel did, in fact, exercise deadly force by at least one of them specifically directing a Honduran door gunner on a helicopter to fire his machine gun at the passenger boat. They may have also learned other relevant facts that would have hopefully given them some appreciation for the allegations of local residents regarding the forcefulness of law enforcement conduct in the village.

Finally, we concluded that the facts in this chapter demonstrate that no effort was made, or even considered, to search for and render aid to the people who may have been injured. We found that at a minimum the FAST members on Helicopter [REDACTED] who witnessed the encounter on the river knew or should have known that there would be individuals injured. We found no evidence that Honduran authorities were contacted by FAST or TRT during or immediately following the interdiction to render aid to any injured. This was a flaw in both the planning and the execution of the operation, regardless of whether the officers believed at the time that the people in the passenger boat may have been innocent bystanders or suspected targets of the operation. As DEA later conceded, a lack of sufficient personnel on May 11 contributed to making them unable to adequately maintain the scene, provide security, and maximize the safety of innocent bystanders. If there had been sufficient personnel, FAST and TRT would have been in a better position to ensure that an adequate search and rescue for people who may have been injured in the river was conducted, rather than focusing solely on recovering the law enforcement officers stranded in the *pipante*.

Following the initial reporting of the May 10-11 interdiction, DEA and State officials sought additional information to counter growing allegations and questions concerning the actions of U.S. personnel. As described in the next chapter, this effort included obtaining the recording of the interdiction from CBP and analyzing the video footage.

## **CHAPTER FOUR: DEA AND STATE DEPARTMENT INTERPRETATIONS OF THE MAY 11 VIDEO FOOTAGE**

In response to the allegations of DEA misconduct that surfaced after the May 10-11 interdiction, DEA requested a copy of the May 11 video footage from CBP at JAITF-South and received nine video clips. In this chapter, we describe DEA and State Department interpretations of this video footage and the attempts DEA and State made to enhance and analyze the video. We also describe how DEA discovered that CBP had additional video footage of the May 10-11 interdiction and how DEA subsequently interpreted the events depicted on the additional footage.

### **I. DEA's Receipt and Interpretation of the May 11 Video Footage**

#### **A. DEA Obtains Video Footage From JIATF-South**

FAST Section Chief Richard Dobrich told us that sometime in May he learned from the DEA liaison to JIATF-South that CBP had a recording of the May 11 interdiction and requested a copy. Neither the DEA Liaison nor Dobrich recalled when DEA received the video; however, DEA documents reflect that DEA received nine clips of video footage shortly before showing the video to the House Foreign Affairs and Appropriations Committees on May 30. The nine video clips were consecutive in time and represented approximately 5 minutes of footage each, beginning with the suspect plane landing on the clandestine landing strip and ending 2 minutes after the shooting incident on the river.

The DEA Liaison told us that when he requested "the video" from a senior CBP agent at JAITF-South, he assumed that CBP would provide the entire footage. He said that he neither discussed nor specified how much of the video DEA needed – whether only specific portions or the whole recording. The senior CBP agent told us that he did not know whether a long or short version was provided to DEA. He said that one reason they may have provided a shorter version is that the complete file was too big to transfer electronically, although he was not certain that was the reason in this case. The member of the CBP flight crew who made a copy of the video for DEA told us that although he did not recall who made the request, he was asked to provide specific segments of the video.

DEA officials told us that when they received the nine video clips from CBP, they believed they had all the video footage available concerning the May 10-11 interdiction. In particular, Dobrich told us that when he requested "the video" from the JIATF-South DEA Liaison, he did not ask for what someone else determined to be the relevant portions of the video. Dobrich said he therefore believed that the video he received was the entire video that the surveillance plane recorded on May 11.<sup>55</sup>

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<sup>55</sup> When the OIGs requested the video from CBP, we also received only a portion of the recorded events of May 11, specifically, nine consecutive video clips, not the entire video. After we

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## **B. DEA's Interpretation of the Video Clips**

On May 31, Dobrich received an e-mail communication from INL official Joe Furloni stating, "Rich, just wanted you to know that I detected shots fired by the bad guys first." Dobrich forwarded this e-mail to the Country Attaché (CA), the Assistant Regional Director, and the FAST Bravo and Delta Team Leaders advising them that DEA just received a copy of the video and it corroborated DEA's reporting of what occurred on May 11:

I've reviewed the critical piece several dozen times and each time I pickup [sic] more. A lot depends on the monitor you view from. Everything DEA has put out is corroborated by the video. The [drug trafficking organization] fired first. Yesterday, along with WHA and INL, we briefed staff at House Foreign Affairs and Senate Appropriations Committees. It went very well.

Dobrich sent a similar e-mail communication to another DEA official later the same day, in which he stated, "We now have the [redacted] video of May 11 which obliterates all the bogus press. DTO fired upon us first. 100% legit shooting."

When the OIGs asked Dobrich about the first e-mail to the Country Attaché, Dobrich said that his statements reflected his observations about the video, based upon his general experience and training. He said that he also thought there was value in the fact that his observations were consistent with those of a senior INL official who he highly respected. However, Dobrich said that the video was not of the best quality, and he never viewed it as a "Holy Grail" that provided all the information relevant to May 11.

Dobrich told us that the principal value of the video footage was that it dispelled press stories that he believed alleged that an innocent third boat had somehow become caught in the cross-fire between law enforcement and drug traffickers. He told us that the video clearly shows that there was no third boat involved during the encounter on the river, as only the pipante and passenger boat were observed.<sup>56</sup>

With respect to whether the video answered the question of who fired first, Dobrich told the OIGs that the video was subject to interpretation. He told us that he was aware that many who saw the video did not see any gunfire originate from the passenger boat when the boats collided. While watching the video during our OIG interview, Dobrich told us he could not determine whether there were gunshots fired first from the passenger boat. He said that because the camera temporarily lost the two boats from the field of view shortly before the boats made contact, he

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determined from DEA documents that a longer version of the video existed, a second request by the OIGs and discussions with CBP resulted in the delivery of the complete video.

<sup>56</sup> Although the OIGs are not aware of a media account that specifically stated a third boat was on the river on May 11, Dobrich told us that the theory of a third boat gained traction after the initial press articles were released.

was unable to determine from the video footage alone exactly what happened in the moment before the TRT fired. He did state that he thought there was a moment when it appears as if a muzzle flash emanates from the passenger boat toward the pipante; however, the video segment he identified for us was a few seconds after the contact between the two boats and once they had separated.

The video analysts retained by the OIG, Cynthia Archer and John Miller, told us that they found no video evidence of muzzle flashes originating from the passenger boat, even after they used video enhancement methods such as frame-rate reduction and temporal sharpening. OIG representatives also did not observe any video evidence of muzzle flashes from the passenger boat, including the flash Dobrich said he saw after the contact of the two boats.

Dobrich also told us that he believed a flash of light near the passenger boat shortly before Helicopter [REDACTED] fired down upon it represented another muzzle flash from that boat, this time toward the helicopter above. At the time the helicopter began to fire, a light near the passenger boat is briefly visible on the video footage. According to Archer and Miller, the appearance and behavior of this light, which appears on the video for 42 consecutive frames (about 1.4 seconds), is strongly inconsistent with a muzzle flash. They said the light could be a signal flare or something similar, or a byproduct of camera processing. Less likely due to its brightness, the light could also be indicative of a person. In any event, they told us that they believe the light is an object, rather than a flash.

According to DEA documents and OIG witness interviews, it appears that several DEA officials on the operations side of the agency agreed with Dobrich's May 31 e-mail that there was video evidence of gunfire originating from the passenger boat. Administrator Michele Leonhart and Deputy Administrator Thomas Harrigan told us that when they first viewed the video, which was on or about June 4, 2012, they saw a simultaneous exchange of gunfire, and one of the Assistant Country Attachés from the Tegucigalpa Country Office (TCO) told us the same. When Harrigan viewed the video during his OIG interview, he told us that he saw an exchange of gunfire between the two boats when the boats collided. However, the OIG representatives who viewed the video with him did not observe any muzzle flashes from the passenger boat. When we viewed the video with the Assistant Attaché, he said that he did not see any distinguishable gunshots from the passenger boat.<sup>57</sup>

A second Assistant Attaché from TCO and one of the FAST members who had been on Helicopter [REDACTED] told us that they had seen video evidence of gunfire originating from the passenger boat before the pipante fired. When we played the video during his interview, the second Assistant Attaché was unable to identify gunfire from the passenger boat during the encounter between the two boats. The Bravo Team Leader and an executive assistant to Deputy Chief of Operations Jay

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<sup>57</sup> The OIGs did not play the video for all of the witnesses during interviews. The interview of Leonhart, in particular, was limited in time and because she indicated that she clearly recalled her initial impressions of the video, we elected not to replay the video.

Fitzpatrick told us that they recalled seeing shots fired from the passenger boat and the pipante when they viewed the video, but both were unable to point them out with any certainty for OIG representatives when they were shown the video during their interviews.

The Country Attaché told us that when he initially viewed the video and when he watched it again during his interview with the OIGs, he found the footage difficult to interpret in terms of whether the passenger boat or pipante fired first. He said based on the footage alone it could have been either boat that fired first. Nevertheless, like Harrigan, The Country Attaché said that he believed the muzzle flashes seen when the boats made contact depicted a firefight between the two boats. Similarly, Deputy Chief of Operations James Soiles said that although he could not determine who fired first when he initially watched the video, he believed he saw gunfire from the passenger boat. However, Soiles also said that it was difficult to see where the muzzle flashes were coming from and he recalled officials had differing interpretations.

The majority of DEA officials we interviewed told us that they believed the May 11 video footage was unclear or inconclusive as to whether there was any visible gunfire from the passenger boat. These officials included the Assistant Regional Director and all three inspectors who conducted the internal shooting review, including then Deputy Chief Inspector Kevin Foley. These officials also included the former and current Chiefs of DEA's Office of Congressional and Public Affairs, Eric Akers and Gary Owen, who oversaw DEA's congressional briefings and letters. All of these officials told us that they did not see muzzle flashes from the passenger boat on the video footage.

DEA Deputy Chief Counsel John Wallace who, as described in later chapters, participated in aspects of the internal review process and congressional briefings told us that he was unable to reach a conclusion from the video footage alone that someone in the passenger boat fired a weapon. He told us that he thought the May 11 video footage was ambiguous, at best, but cautioned that he did not consider himself an expert in thermal imagery analysis.

Not all personnel from the FAST program shared the same view as Dobrich that there was video evidence of gunfire from the passenger boat. The FAST Deputy Section Chief who DEA assigned to conduct the internal shooting review of the May 11 incident told us that when he initially viewed the video, he specifically searched for a muzzle flash from the passenger boat but was unable to find one, possibly because of the angle and zooming in and out of the camera. Further, the Delta Team Leader, as well as all three FAST members on Helicopter [REDACTED] on May 11, told us that they were unable to see evidence of gunfire from the passenger boat on the video. Finally, the executive assistant to Harrigan told us that he did not see any gunfire originating from the passenger boat.<sup>58</sup>

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<sup>58</sup> CBP personnel told us that they also did not observe video evidence of gunfire from the passenger boat. The OIGs interviewed three CBP officers who were part of the flight crew on the

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A few other DEA officials told us that they saw the May 11 video footage sometime after DEA obtained it, but they did not recall at the time of their OIG interview whether they saw evidence of gunfire from the passenger boat. Regional Director Joseph Evans (who has left DEA and was interviewed telephonically abroad) told us he never saw the May 11 video footage.

## **II. State Department Interpretation of the Video Footage**

After watching the video, State officials seemed to agree that the passenger boat made a definitive change in course to collide with the pipante, but there was significant doubt as to whether any fire originated from the passenger boat.

Deputy Assistant Secretary Gonzalo Gallegos told the OIGs that when he initially viewed the video, he thought that “some of the flashes that we saw could have been firing from the boat that came into contact with the boat with the police, which would have been the impetus for return fire from the police.” However, according to Gallegos, “subsequent review leads us to believe that we can't be certain that that was actually what happened.” INL Director Mark Wells likewise thought the video failed to clarify key events and said “you can see in it what you want.”

Ambassador Lisa Kubiske told the OIGs that after watching the video, which was first shown to her by the Country Attaché, she thought “it was very clear that this other boat was ramming . . . essentially full-steam ahead into the boat with the drugs,” but “[i]t was less clear how the fighting happened.” The INL Director at the Embassy described the video to the OIGs as showing: “the second boat make a correction and start to head towards the drug boat . . . [and] collide with the front of the boat.” She described this as a “definitive” turn. She then described seeing a “dragon's breath of fire,” but it was unclear to her if it was “an exchange of fire, or . . . just fire coming from one side.”

On July 12, 2012, INL Assistant Secretary William Brownfield sent an e-mail to his Principal Deputy Assistant Secretary, Carol Perez, INL's Director of Western Hemisphere Programs Mark Wells, and several other Department officials describing

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surveillance plane that recorded the May 11 video footage – two of the pilots and the officer who operated the infrared camera. All three told us that they commonly used infrared imagery during missions, and the camera operator and one of the pilots said that they had used infrared imagery for many years prior to the May 10-11 interdiction. As described in Chapter Three, all three told us that in real-time they observed muzzle flashes on their video monitors at the moment the two boats made contact, but they said they did not see whether the muzzle flashes came from the passenger boat, the pipante, or both. They told us that after the May 11 mission, they reviewed the video footage again and did not observe any evidence of gunfire from the passenger boat in the video. Specifically, the camera operator told us that although muzzle flashes were “very visible” from the pipante, he was unable to determine from the video footage whether anyone on the passenger boat fired a weapon. One of the pilots told us that he did not see any video evidence of gunfire from the passenger boat, though he said it was possible that there was such gunfire and the camera did not capture it. The second pilot told us that all of the muzzle flashes in the video footage appeared to come from the officers in the pipante.

his reaction after watching some of the May 11 video footage. He stated, "it is unclear to me from the video who fired first, and I cannot even state with certainty that I see flashes from the aggressor boat, although I think I do." He also noted, "[t]here is nearly a minute elapsed between when the boats separate after the firefight, and when the helo strafes the aggressor boat." Brownfield closed the e-mail with a recommendation to take the video to the next congressional briefing.

### **III. DEA's and State's Attempts to Enhance and Analyze the Video Footage**

#### **A. DEA**

Shortly after receiving the video, Dobrich took steps to obtain an enhancement or analysis of the video. Dobrich told us that while he did not believe he was "duty bound" to obtain an enhancement or analysis of the video, he wanted to take the extra steps to get a better copy of the events depicted on the video. He told us that the reflection off the water has an impact on the thermal imagery in relation to direction and timing, which he thought an enhancement might address. Dobrich initially attempted to have the DEA's Office of Investigative Technology enhance and analyze the video, but they were unable to do so. Later, in 2013, Dobrich sent the video to the FBI's Forensic Audio, Visual, and Image Analysis Unit (FAVIAU), which provided still images of certain video frames but not an analysis.

#### **1. DEA's Office of Investigative Technology**

On June 1, Dobrich sent an e-mail to Fitzpatrick and his executive assistant advising them that the DEA's Office of Investigative Technology provided the name of an agent in the Houston Division that was a technical expert and could analyze the CBP video.<sup>59</sup> E-mail communications reflect that on June 4, Dobrich and an individual in the Investigative Technology Office communicated about uploading the video file to the shared drive so that the Houston agent could access the video for analysis.

On June 15, Dobrich e-mailed the agent in Houston and asked for an update on the May 11 video enhancement and analysis. On July 18, the Houston agent e-mailed Dobrich that due to the severe compression of the video, he could not determine how many people were on the passenger boat. His e-mail did not specifically state whether he attempted to determine evidence of gunfire. The Houston agent told the OIGs that he tried to enhance the video so that the transfer of fire between the two boats could be better seen on the footage. He said that he recalled that Dobrich was seeking to determine the number of gunshots and who fired first. However, the Houston agent told us that he was unable to provide either an enhanced version or conduct an analysis of the video due to the compression of the video file.

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<sup>59</sup> DEA's Office of Investigative Technology assists investigators with technology seized or otherwise involved in investigations.

## **2. The FBI's Forensic Audio, Video, and Image Analysis Unit**

A year later, in June 2013, DEA worked with the FBI's FAVIAU on an unrelated case involving video evidence that required an enhancement. Dobrich told us that he had not previously worked with the FAVIAU and when it produced an enhanced video for DEA in the unrelated matter, he asked FAVIAU to enhance another video of a shooting.<sup>60</sup> An FBI's Report of Examination and Evidence Receipt shows that on July 17, 2013, Dobrich provided a copy of the May 11 video footage to the FAVIAU requesting technical assistance. Dobrich also sent an e-mail communication the same day to DEA's Office of Investigative Technology requesting assistance from the FBI's FAVIAU and an enhancement of approximately 1 minute of video from 08:20:06 through 08:21:10. Dobrich also specifically asked the following questions for the analysis:

- How many occupants are on the second vessel?
- During the initial course of fire between both boats, can you determine if gun fire comes from both vessels?
- Circa 08:20:58, a State Department helicopter approaches the second (trafficker) boat, and illumination is observed from the boat consistent with muzzle flash from an automatic weapon. Can FBI opine on the illumination coming from the vessel?

On September 5, 2013, FAVIAU assigned a forensic examiner (FE) to provide the requested enhancements. The FE told the OIGs he was able to produce a slowed down portion of the video, and he used an Adobe-based program to highlight the dark or bright areas of four images captured from the video, to make them more viewable. The four stills depict the second before the boats made contact, the second the boats collided, and the moment a light can be seen from or near the passenger boat seconds before Helicopter [REDACTED] fires at the boat. The FE told us that although he produced the four still images for DEA, he believed they were "worthless" because this video captured events that require the viewer to see all the frames in motion to understand what was occurring.

The FAVIAU Supervisory Photographic Technologist (SPT) told the OIGs that his unit informed DEA they could not conduct an analysis but agreed to provide screen shots or captures of the video described above. He said that his unit did not, as a matter of practice, make a determination as to whether or not there is gunfire depicted in an infrared video because in their experience, discharge signatures on infrared are unreliable.

On September 30, 2013, the FAVIAU completed a Report of Examination that documented the details and summary of the examination. There were no opinions noted on the report and the summary stated that video prints and video copies were made in 8 x 10 print size, DVD, and CD formats. DEA received the four stills,

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<sup>60</sup> As described in Chapter Twelve, DEA was still engaged in congressional correspondence about the May 11 incident in June and July 2013.

DVDs, and CDs on September 16, 2013. Dobrich told us that the FBI did not answer any of his questions that he e-mailed but provided the slower video version and photographic stills. Dobrich said he did not question the FBI's reasons for not providing any conclusions or opinions when he received the FBI report.

## **B. State Department**

In August 2012, State's Bureau of Diplomatic Security's Special Investigations Division (SID) tasked its Computer Investigations and Forensics Division with analyzing the initial video provided by CBP. This request was tasked to a contract computer forensic analyst who specialized in forensic video analysis. The analyst prepared a memorandum that was reviewed and signed by the Division Chief of the Computer Investigations and Forensics Division, dated August 31, 2012. The memorandum's conclusions included the statement: "All changes in contrast (flashes) appear to originate from one Boat [the pipante]." The memorandum also concluded that these flashes originated from the individual closest to the bow (front) of the pipante and the individual closest to the stern (rear) of the pipante. The memorandum stated that: "No conclusions can be drawn as to whether any flashes originated from [the individual in the middle of the pipante]." The memorandum included over 150 still frames from the video with notes and color codes to show individuals and flashes.<sup>61</sup>

## **IV. DEA's Receipt and Interpretation of Additional Video Footage**

### **A. DEA Learns About Additional Video Footage and Obtains a Copy from JAITF-South**

As described in Chapter Twelve, after receiving additional questions from Senate Judiciary staff in mid-July 2012 about the video, including whether there was additional video footage available, Dobrich contacted the DEA Liaison at JAITF-South on July 17 and learned that CBP had almost 5 hours of video footage, not the approximately 45 minutes of footage CBP originally provided in the nine video clips described above.

By July 22, Dobrich had received the 5-hour video footage from CBP. On July 24, Dobrich contacted the JAITF-South Liaison to ask whether there were any additional logs verifying the video JAITF-South sent was complete. In addition to ensuring DEA received the complete video footage, the JAITF-South Liaison sent flight logs, CBP crew reports, a mission summary, and a Significant Incident Report narrative. Dobrich told us he never received an explanation from JAITF-South or CBP as to why the video he initially received was only a portion of the events on May 11. As noted earlier, the JAITF-South Liaison told the OIGs that when he requested the FLIR video from the senior CBP agent at JAITF-South, he requested

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<sup>61</sup> As more fully described in Chapter Ten, SID officials conducted an investigation of the May 11 incident and briefed their preliminary findings, including its video analysis, to DEA's Deputy Chief Inspector Kevin Foley and Deputy Chief Counsel John Wallace on September 17, 2012.

the video, and neither discussed nor specified how much of the video the DEA needed. He also told us he assumed the video provided to the DEA would be the entire video.

## **B. Analysis of the Additional Video**

DEA and DOJ e-mail communications reflect that after reviewing the additional video, Dobrich represented to DEA and DOJ officials, and later congressional committee staffers, that the footage did not contain any new significant information. For example, Dobrich sent an e-mail communication to the Bravo Team leader on July 22, 2012 stating:

. . . I have the whole CBP video and reviewed all. Nothing significant to add. Camera was focused on our canoe the whole time.

The boat/boat encounters [sic] was at 2:20am(L). The CBP video ends at 4:20am. Was this about the time they went off station? Approx what time did you guys get to [Delta Team Leader]/TRT – it must have been after 4:20am unless I missed it. Are you in tomorrow? Let’s all get together early. I need to have clear timeline. I plotted points from google earth (NTC will plot via Falconview) – it looks like where [Delta Team Leader] went to shore was a good distance from the dock? See you tomrw.

Dobrich told the OIGs that the additional video “didn’t have anything really of more substance. It was just another 3 or 4 hours of the [redacted] flying the river. . . . It doesn’t contain anything actually of substantive value.” He said that he made similar statements about the additional video during briefings with DOJ leadership and congressional staff. He also told us that he watched the entire additional video and believed the boat that was in view on the remainder of the video was the pipante that the Delta Team Leader and TRT were in on May 11.

As described in Chapter Three, the additional video footage shows the passenger boat drift on the river until an individual in the boat jumps into the water to pull the boat to the riverbank. The video analysts retained by the DOJ OIG, Cynthia Archer and John Miller, compared the pipante and the passenger boat on the river and concluded that the boat that appears repeatedly on the video for the remainder of the recording (about 2 hours) is the passenger boat, not the pipante.

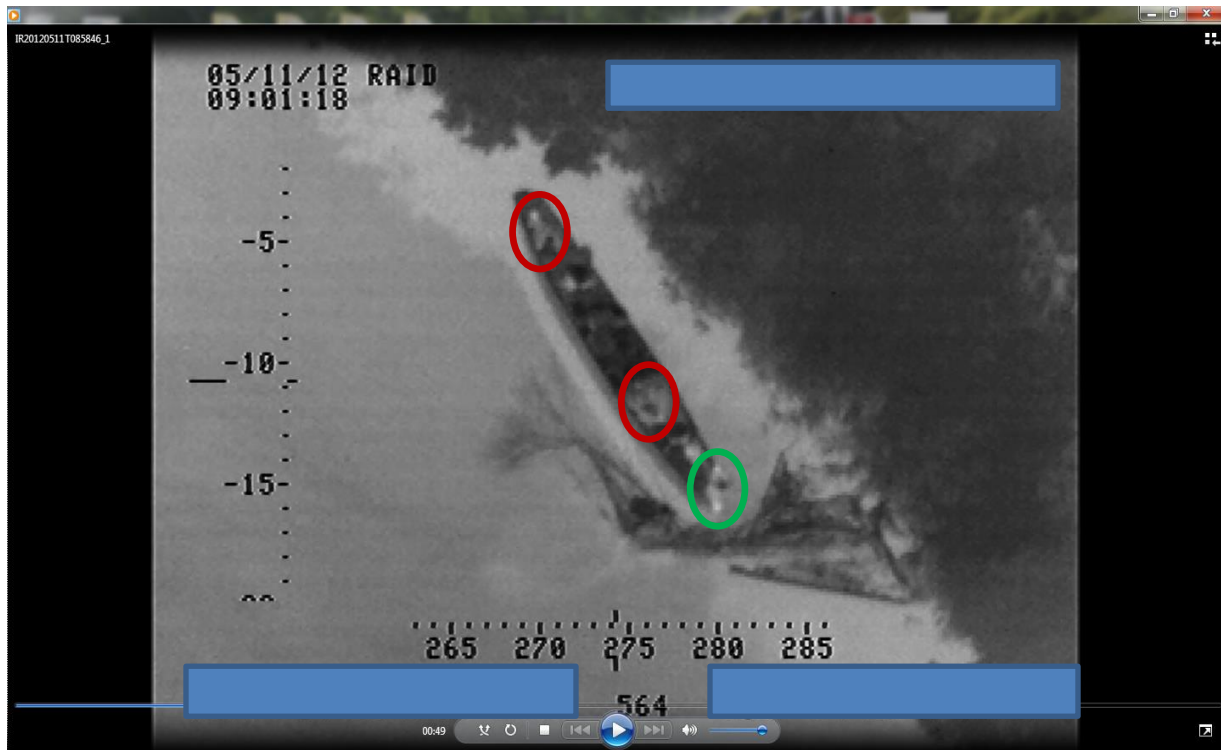
During the remainder of the video, only one individual is seen moving in the boat (circled in green in Fig. 4.1). According to the video analysts retained by the DOJ OIG, there is a strong signal of one individual and two fainter signals that may also be people. The OIGs believe that at least one, and possibly two, of the fainter heat signatures appears to be an individual lying in the boat, not moving (circled in red in Fig. 4.1).<sup>62</sup>

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<sup>62</sup> As described in Chapter Three, the bodies of Candelaria Pratt Nelson and Emerson Martínez Henriquez were reportedly recovered from the passenger boat after the incident.

The surveillance plane recorded the passenger boat and the surrounding river until 5:20 a.m. From 2:23 a.m. until the video stops at 5:20 a.m., the passenger boat was the only boat to appear on the video footage.

**Figure 4.1:  
Video Image of Passenger Boat at 2:57 a.m.**



During the interview with Dobrich, we played the additional video footage and asked specifically why there was only one individual moving and in view in the boat. Dobrich was not certain as to why only one individual was seen moving around when there were three law enforcement officers in the pipante. Dobrich also was not certain as to why there appeared to be two non-moving heat signatures in the boat for the remainder of the video. He said that when he saw the additional footage in July 2012, he did not notice the two additional heat signatures, one of which he told the OIG he agreed looked like a person lying in the boat near the bow.

The Delta Team Leader told us he did not view the additional video footage prior to our interview. As he watched the additional footage, he almost immediately pointed out that the boat the recording captured and followed after the encounter on the river was not the pipante he and the TRT officers had commandeered on May 11. As he watched more of the additional footage, the Delta Team Leader confirmed that the boat the surveillance plane recorded was not the pipante. In addition to the boat's larger size, he told us that the river bank where the boat came ashore was opposite of where he and the TRT officers were waiting for help.

## **V. DOJ OIG Observations**

As we describe in our analysis in Chapter Thirteen, the DOJ OIG concluded that the May 11 video footage did not support DEA's claim that there was evidence of gunfire from the passenger boat. We based this finding on our own examination of the footage, as well as the opinions of independent video analysts, who found no video evidence of gunfire from the passenger boat. Nor was there consensus within DEA on this issue. Only Administrator Leonhart, Deputy Administrator Harrigan, FAST Section Chief Dobrich, and a select few DEA officials close to the operation told the OIGs that they observed gunfire from the passenger boat.

The lack of video evidence of gunfire from the passenger boat undermined a key aspect of DEA's account that the occupants of the passenger boat were drug traffickers or assisting drug traffickers with retrieving the drugs. Although the video evidence does not support this narrative, as described in later chapters, DEA persisted in promoting it in representations to DOJ leadership and to Congress. DEA also provided DOJ leadership and Congress with misinformation about the additional video footage of the May 10-11 interdiction – first about the availability of additional footage and later about what was on the footage after it was discovered.

In the next chapter, we describe information DEA obtained from sources who told officials that they were occupants of the passenger boat and had witnessed the events on May 11.

## **CHAPTER FIVE: SOURCES OF INFORMATION REGARDING THE MAY 11 INCIDENT**

In early June 2012, a source of information (SOI) previously known to DEA approached DEA officials in Honduras and represented that he/she knew people who witnessed the events that took place on May 11. This source (SOI #1) advised DEA that he/she could bring these witnesses to DEA to report on what they saw. Between June 2012 and January 2014, SOI #1 brought in two sources of information, previously unknown to DEA, who provided eye witness accounts. The first of these sources (SOI #2) provided multiple and conflicting accounts of the events that took place on May 11. Nevertheless, DEA officials relied upon the information SOI #2 provided in representations they made to DOJ leadership and Congress.

In this chapter, we describe the sources of information that DEA obtained regarding the May 10-11 interdiction in Ahuas. We describe the information provided by SOI #1 who recruited SOI #2 and SOI #4 for DEA. We also describe the different accounts of SOI #2, who reported that he/she [REDACTED] when the encounter on the river occurred. Finally, we describe the information provided by SOI #4, who was an occupant of the passenger boat and related to one of the people killed on May 11. In later chapters, we describe how DEA officials relied upon information SOI #2 provided in briefing DOJ leadership and providing information to Congress regarding the May 11 incident.

### **I. The DEA Sources of Information for the May 11 Incident**

DEA developed three sources of information in Honduras who provided details on the events of May 11. These sources, as described below, provided varying accounts of what transpired, from the drug delivery by plane to the travel in the passenger boat that morning.

#### **A. Source of Information #1**

According to a DEA Assistant Country Attaché in the Tegucigalpa Country Office (TCO), SOI #1 approached DEA because he/she said he/she had information to provide on a local drug trafficker operating near Ahuas. The Assistant Attaché and another Assistant Attaché from TCO told us that they had met SOI#1 on prior occasions unrelated to May 11 and Operation Anvil and thought he/she was unreliable. Specifically, they told us that they did not trust SOI#1 because he/she frequently requested money for information, information that one of the attachés described as not very specific or helpful.

During an interview on June 1, 2012, SOI#1 told two Assistant Attachés that he/she was not present in Ahuas on May 11, but had conversations with an individual from the village who was present for the events that evening and claimed he/she was an occupant of the passenger boat. SOI#1 provided the name of this source; however, the OIGs observed that his/her name does not match any names



on the passenger list in the Center for Economic and Policy Research (CEPR) report that was issued in August 2012 (described in Chapter Three).

According to the DEA's written report of the interview, SOI#1 told DEA that the witness he/she spoke to told him/her that a local drug trafficker paid local residents of the village, including children, to unload drugs from an airplane at a clandestine landing strip onto two trucks on the night of May 10. He/she said that some of the offloaders were armed with AK-47 assault rifles and that at least one ground crew member was a Honduran National Police officer. SOI#1 said this witness told him/her that after offloading the cocaine, the crew transported it to a nearby river where it was loaded onto a boat. He/She also told him/her that after offloading the cocaine, he/she and 10 other individuals, including someone from the Honduran Army, got into a boat to travel back to their village.

SOI#1 said that his source told him/her that shortly after they were underway on the river, helicopters appeared and the Honduran Army member in the passenger boat began firing a gun at the helicopter. He/She told SOI#1 that crew members were instructed to fire at helicopters during the offloading and transportation of cocaine. He/She said the helicopters fired back killing two ground crew members including the Honduran Army member. He/She also told SOI#1 that three other passengers were injured by gunfire and several sustained injuries while trying to exit the passenger boat. This account did not mention the drifting pipante, the collision between the passenger boat and the pipante, or any gunshots fired at or from the pipante.

Ultimately, SOI#1's original source did not meet with DEA, but SOI#1 encouraged two other people to do so, later identified in the DEA Operation Anvil case file as SOI#2 and SOI#4.<sup>63</sup> As described below, SOI#2's description of what occurred on May 11 [REDACTED].

## **B. Source of Information #2**

As described below, DEA conducted three interviews of SOI#2, during which the source gave inconsistent and contradictory accounts of where he/she was on May 11, what role he/she played in the events that evening, and who had died as a result of the encounter. His/Her various accounts were also inconsistent with the events depicted in the May 11 video footage. DEA did not adequately question SOI#2 about his/her versions of events or confront the source with the inconsistencies between his/her various stories and the May 11 video. Nevertheless, as we describe in later chapters, DEA relied upon information SOI#2 provided to corroborate DEA's narrative that individuals in the passenger boat were attempting to retrieve the drugs in the pipante and that gunfire from the passenger boat had initiated the firefight. DEA also advised DOJ leadership and Congress that

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<sup>63</sup> While there was a source designated under Operation Anvil as SOI #3, he/she did not provide any information relevant to Operation Anvil and was incorrectly assigned to the Operation Anvil case file.

SOI#2 had passed a polygraph even though that polygraph was largely useless because of the failure to document it, conflicting information about what the polygrapher asked, and available evidence indicating that the polygraph did not address the critical issues upon which it was relied.

### **1. FAST Members Conduct Interview of SOI#2**

DEA tasked members of the FAST team that participated in the operation, who were witnesses themselves to the events of May 11, to conduct the interview of SOI #2. Specifically, on June 16, the Delta Team Leader and FAST Member G interviewed SOI #2, along with the FAST team medic who translated during the interview. The interview took place at a local restaurant in [REDACTED]. SOI #2 told the FAST interviewers about his/her role during the May 11 cocaine delivery at the clandestine airfield and where he/she was during the gunfire on the river.

The FAST members told us that when the interview began, the information SOI #2 provided did not sound credible. They said that SOI #2 initially told the interviewers that he/she was [REDACTED] that evening, and he/she expressed concern about getting arrested by the Honduran Police for admitting [REDACTED].<sup>64</sup> Further, in an e-mail sent from the Delta Team Leader to an Assistant Attachés on June 20, the Delta Team Leader wrote that SOI #2 initially lied about his/her name. None of these facts were noted in the DEA's written report of this interview of SOI #2.<sup>65</sup>

According to the FAST interviewers, SOI #2 was nervous during the interview and asked to continue it outside the restaurant. Once SOI #2 and the FAST members moved the interview outside of the restaurant, SOI #2's information made more sense to the interviewers. SOI #2 told the FAST interviewers that he/she had lived in a village in [REDACTED] for 8 years. He/She reported that Paptalaya, Ahuas was controlled by a Honduran Army Sergeant who worked for local drug traffickers. He/She said that all the local residents were forced to work as part of the ground crew when drugs came into the area on planes. He/She told the FAST interviewers that when drug loads were flown in, a runway would be created by lighting gasoline along strips for the planes to land. Once the drugs were offloaded onto trucks, the plane would be lit on fire and destroyed. The trucks transported the drugs to the village where they would be offloaded into small boats for transportation to lobster boats waiting in the Caribbean Sea.

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<sup>64</sup> During this interview, SOI #2 referred to the pipante, which carried the drugs and law enforcement officers, and the passenger boat, which carried individuals traveling to Ahuas, both as "boats."

<sup>65</sup> None of the misstated or erroneous facts SOI #2 provided were included in DEA's written reports. Pursuant to a January 4, 2010 Department of Justice memorandum, all members of a prosecution team, to include federal, state, and local law enforcement officers, are to retain any and all impeachment and exculpatory information to meet the discovery obligations of the Federal Rules of Criminal Procedure. To ensure all discovery is disclosed, all potentially discoverable material within the custody or control of the prosecution team is to be reviewed. This includes, but is not limited to, information from the agency's investigative files, confidential informant and source files, *Giglio* information, and case related communications.

SOI #2 said that on May 11 he/she was not [REDACTED] (as he/she first reported), but was instead [REDACTED]. Once the plane landed, [REDACTED] local residents offloaded what he/she believed to be 20 bales of cocaine onto a truck that carried the drugs to a boat in Paptalaya for transport upriver. He/She said he/she saw Honduran National Police officers take another 20 bales of cocaine from the plane and transport them to an unknown location.

SOI #2 told the FAST interviewers that after the truck left with the drugs, [REDACTED] a boat traveling back to the village with approximately 10 other local residents, including someone named Emerson. As described in Chapter Three, according to the August 2012 CEPR Report, a person in the passenger boat named Emerson Martinez Henriquez was among the four people killed on May 11.<sup>66</sup> SOI #2's name does not appear on the list of passengers identified in the CEPR Report.

SOI #2 said that as the boat was traveling upriver, the passengers observed a disabled boat that they believed contained other local residents. SOI #2 told the FAST interviewers that as the passenger boat approached the disabled boat, Emerson opened fire at a helicopter that was hovering above the river.<sup>67</sup> SOI #2 said that people in the disabled boat then immediately opened fire at the passenger boat, followed seconds later by gunfire from the helicopter. SOI #2 said that he/she believed Emerson and a female passenger were killed and that four others in the boat sustained non-life threatening injuries during the exchange. He/She also stated that four additional passengers injured themselves exiting the boat.

According to the DEA's written report, at this point in the interview, the Delta Team Leader decided to stop the interview and send SOI #2 to TCO where a native Spanish speaker could conduct a more detailed interview. Before SOI #2 left the interview, the Delta Team Leader asked him/her if he would agree to take a polygraph examination, and he/she agreed.

We received differing explanations for why the Delta Team leader terminated the interview. The Delta Team Leader told us that he and the FAST Medic were uncomfortable with the Spanish that SOI #2 was speaking during the interview. However, the FAST Medic told us that he understood everything that SOI #2 was relating during the interview. FAST Member G told us that they stopped the interview because it was becoming an interrogation and the FAST Medic, who was being used as a translator because he was the only FAST member fluent in Spanish, was not an agent and had not been trained to handle interrogations.

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<sup>66</sup> An investigative report issued by the Honduran Special Prosecutor for Human Rights, more fully described in Chapter Six, also identified Emerson Martinez Henriquez among the people killed on May 11.

<sup>67</sup> This was inconsistent with the analysis of the video footage conducted by the OIG-retained video analysts who, as described in Chapters Three and Four, did not identify any gunshots originating from the passenger boat at the time the passenger boat and pipante made contact and at the time prior to Helicopter [REDACTED] firing.

An e-mail from the Delta Team Leader to FAST Section Chief Richard Dobrich on June 22 provided a second summary of the SOI #2 interview, but for reasons unknown to the OIGs this summary contained two facts that were not included in the DEA's written report of the June 16 interview.<sup>68</sup> The first was that the passenger boat pulled alongside the pipante in order to retrieve it. The second was that SOI #2 said that no pregnant women were killed on the passenger boat.<sup>69</sup>

All three FAST members and the Assistant Attaché told us that when they met SOI #2, they observed [REDACTED]

[REDACTED]. They told us that SOI #2 [REDACTED]. The OIGs asked the Delta Team Leader and the FAST Medic if [REDACTED]

[REDACTED]. The Delta Team leader told us that [REDACTED]

[REDACTED]. The FAST Medic told us that [REDACTED]

[REDACTED] he was not certain [REDACTED], whether SOI #2 would have [REDACTED]

The Assistant Attaché told us that his first impression was that SOI #2 [REDACTED]

To assess the truthfulness of SOI #2's version of events, on June 17, the Delta Team Leader sent an e-mail to an Assistant Attaché and Dobrich asking if there was a polygrapher available to conduct a polygraph on the source. He also referenced the interview on June 16 and asked for a native speaker to conduct a more detailed interview. The Delta Team Leader also stated that SOI #2's statements were "consistent with our accounts from that night." On June 20, Dobrich sent his supervisor, Deputy Chief of Operations Jay Fitzpatrick, an e-mail informing him of the interview with SOI #2 and providing a synopsis of the source's account from information he had received from the Delta Team Leader. Dobrich also informed him that SOI #2 was on a plane to Tegucigalpa and would be taking a polygraph examination.

## **2. SOI #2 Takes Polygraph Examination**

According to DEA e-mail communications, the Delta Team Leader tasked FAST Member G with drafting the written report documenting SOI #2's June 16 interview. However, when SOI #2 arrived in Tegucigalpa for his/her polygraph, FAST Team Member G notified the Delta Team Leader that he had not drafted the report. FAST Team Member G told us he believed he

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<sup>68</sup> The FAST team was stationed in [REDACTED], [REDACTED] hours from TCO where they did not have access to their DEA internal computer systems. The FAST team was training daily as well as going on interdictions, and, as such, their reports often took several days, in this case, six, to be completed.

<sup>69</sup> As described in Chapter Three, days after the May 10-11 interdiction, public reports surfaced that two pregnant women were among the people killed.

contacted the Assistant Attaché before SOI #2's polygraph interview to brief him on the first interview.

The Assistant Attaché met with the Columbian National Police polygrapher prior to SOI #2's polygraph on June 21 and informed him that DEA had a witness who claimed to be present during the May 11 incident in Ahuas. An e-mail from the Delta Team Leader stated that the polygrapher was told that the scope of the polygraph should be limited to the incident on May 11.

The Assistant Attaché said that he took SOI #2 to his/her polygraph examination that day. The Assistant Attaché told us that he met with the polygrapher following SOI #2's polygraph, and the polygrapher told him that SOI #2 passed and was "at the event." On June 22, the Attaché sent an e-mail communication to Ambassador Kubiske and other Embassy officials stating, in part, "SOI #2 passed a polygraph exam yesterday," without providing a description of the scope of the polygraph examination. The same day, the Delta Team Leader sent an e-mail to Dobrich reporting more broadly that when the Assistant Attaché met with the polygrapher, the polygrapher told the Attaché that "he believed the witness to be truthful regarding being present, [his/her] ██████████, and [his/her] version of events on May 11."

On July 10, another Assistant Attaché from TCO reported to the Assistant Regional Director that SOI #2 passed a polygraph examination where he/she admitted to ██████████. However, on July 12, this Attaché sent an e-mail communication to Dobrich, stating that the polygrapher asked SOI #2 only two questions during his examination, which differed from the admission reported to the Assistant Regional Director:

. . . SOI2 was asked the following questions by the Colombian examiner. We wanted to establish that he/she was present during the May 11th incident to validate [his/her] statements. He/She answered in the affirmative and didn't show deception thus corroborating his/her presence/participation.

1. Estuvo presente cargado la droga? [Were you present while the drugs were loaded?]
2. Estuvo cuando cargaron la droga a 11 de Marzo? [Was it when they loaded the drugs May 11?]

Further, on July 17, Dobrich sent an e-mail communication to the Assistant Regional Director on July 17, stating that SOI #2 was sent to Tegucigalpa and "passed a polygraph that asked 1) where [sic] you there (yes) 2) did EMERSON fire at helos first (yes)." Dobrich told the OIGs that he did not recall who reported this information to him, but he believed it may have been one of the attachés in Tegucigalpa or the Delta Team Leader in a telephone conversation with him.

To determine the questions asked during the polygraph examinations and to further assess the thoroughness of the polygraph examination, the OIGs requested the polygraph report or any DEA report documenting the pre-polygraph interview,

polygraph examination, and follow-up polygraph interview. DEA advised DOJ OIG that it did not have any such reports from the Columbian examiner or generate any such reports of their own. In addition, an INL representative from the U.S. Embassy in Tegucigalpa advised the OIGs that the Embassy also did not have record of any such report.

### **3. DEA Interviews SOI #2 a Second Time**

As described in Chapter Twelve, Dobrich shared the new information his team in Honduras had developed from SOI #2 with staffers from the Senate Judiciary and Appropriations Committees during a briefing on July 18, 2012. DEA documents reflect that during the course of preparation for the July 18 briefing, Dobrich determined that additional information from SOI #2 was needed and reached out to the Assistant Regional Director for assistance. In the same e-mail communication to the Assistant Regional Director on July 17 discussed above, Dobrich stated:

We are meeting with [Senate Judiciary Committee staff] tomorrow ref 11 May Ahuas. [Fitzpatrick], Mark Wells and I just prepped for about an hour. We agree that SOI #2's statements ([he/she] was debriefed in ██████████) rebuke the false allegations. . . . The interview was a touch sled in Spanish since SOI speaks Moskit more than Spanish. Although we hope the committee will welcome the SOI's debrief, admittedly the DEA-6 is not thorough enough. I believe we need to debrief in much greater details about what [he/she] saw before, during and after the shooting.

In a response on July 17, the Assistant Regional Director questioned why the first interview was not sufficient. Dobrich responded that the interview was "superficial at best." Dobrich told the OIGs that based on his review of the DEA report documenting the interview of SOI #2 on June 16, he did not think the interview was sufficiently detailed. Shortly after the July 18 briefing, Fitzpatrick asked the Assistant Regional Director to have the TCO agents locate SOI #2 for another interview. Fitzpatrick stated that based on the last congressional briefing, it was apparent that DEA needed to ask the source additional and more specific questions.<sup>70</sup>

On July 23, an Assistant Attaché, a DEA Intelligence Research Specialist (IRS), and a TRT officer conducted a second interview of SOI #2. The Delta Team

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<sup>70</sup> As described in Chapter Twelve, Dobrich shared the information from SOI #2's first interview with Senate staff during the July 18 briefing, and Senate staffers asked several questions about the source's information that Dobrich was unable to answer at that time, such as ██████████ was in the passenger boat and when and how ██████████ got into the boat. Consequently, a staffer requested that DEA obtain more information from the source. As we describe later in this report, given DEA's own recognition that the SOI #2 interview was "superficial at best," as well as the undocumented and inadequate polygraph, the DOJ OIG concluded that the DEA briefers should have ensured that DEA had obtained sufficiently detailed - and reliable - information from SOI #2 before briefing Senate staff that the source corroborated DEA's narrative.



Leader and FAST Member G told us they did not talk to the DEA personnel conducting the second interview of SOI #2 and had no knowledge of who interviewed him/her or what SOI #2 said during the second interview. The Attaché told us that he reviewed the written report of the June 16 interview before conducting the second interview of SOI #2.

According to the DEA's written report of the July 23 interview, SOI #2 told the interviewers that he/she was not truthful during his/her first interview with FAST personnel on June 16. However, the DEA written report did not specify what SOI #2 lied about and the Assistant Attaché told us he did not follow up. According to the report, SOI #2 said that he/she lied because he/she was fearful he/she would be arrested for [REDACTED] on May 11, and he/she feared retaliation from a local drug trafficker. SOI #2 said that he/she decided to fully cooperate and tell the truth after his/her June 16 interview and before taking his/her polygraph examination. The account SOI #2 provided, as described below, contradicted the account SOI #2 gave during his/her initial interview.

SOI #2 told the interviewers that he/she was a resident of [REDACTED] and worked with the local drug trafficker [REDACTED] to help with the offloading of cocaine. SOI #2 said that on [REDACTED] occasion he/she recruited approximately 25 people to assist as ground crew members for a drug load. SOI #2 told the interviewers that due to his/her [REDACTED], he/she was [REDACTED]. SOI #2 said that on or about May 10, he/she was approached [REDACTED], this time to [REDACTED].<sup>71</sup> The drug trafficker agreed to pay [REDACTED] help with the incoming load.

Contradicting what he/she told FAST personnel on June 16, SOI #2 said during his/her second interview that he/she did not [REDACTED] on May 11. He/She said that at approximately midnight, he/she [REDACTED] two boats on the river that borders Ahuas, while a 15-20-member ground crew departed en route to a nearby landing strip. SOI #2 described one boat as a go-fast boat (pipante) with two motors and the other boat as a hand carved wooden pipante passenger boat (passenger boat) with a 40-horsepower engine that belonged to an individual with the name Eulopio.<sup>72</sup>

SOI #2 identified the ground crew as consisting of mostly people from Puerto Lempira and a few people from Ahuas. SOI #2 stated that while he/she did not know most of the ground crew, he/she could identify several including Emerson who was a former Honduran military member and Ahuas resident, an adult woman named Candaleria, and an adult man named Nelson who was an active member of the Honduran military. SOI #2 said that he/she waited approximately an hour and

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<sup>71</sup> The report of the interview does not reflect whether SOI #2 indicated whether he/she was armed.

<sup>72</sup> According to the CEPR Report, the driver of the passenger boat on May 11 was Melafío Eulopio Nixon.

forty minutes for the ground crew to return from the landing strip to the river with the cocaine. SOI #2 said that the local drug trafficker that [REDACTED] was not present during the interdiction, but SOI #2 identified Eulopio as being the individual in charge of the drug delivery that evening.

SOI #2 said that when the ground crew returned by vehicle, they had 15-20 bales of cocaine, which they loaded on the pipante. SOI #2 saw two ground crew members armed with guns enter the pipante, while the remaining ground crew members got into the passenger boat. SOI #2 stated that the occupants of the passenger boat included Emerson, Nelson, Candelaria, an unidentified Honduran woman, and two juveniles 16-17 years of age, and unidentified adult men.<sup>73</sup> According to SOI #2, several of the occupants of the passenger boat, including Emerson, were armed with AK-47 rifles. The passenger boat, according to SOI#2, was not equipped with lights, and flashlights held by the ground crew were the only lights on the boat. SOI #2 said that since the passenger boat did not have seats, the majority of the occupants sat toward the front of the boat.

SOI #2 said that the pipante and passenger boat departed the riverbank in Ahuas and headed toward the sea to transfer the drugs to a fishing vessel. SOI #2 told the interviewers that as soon as the pipante and passenger boat pulled away from the riverbank, the first helicopters arrived overhead. According to SOI #2, at that time, he/she saw Emerson and other individuals he/she did not know fire their AK-47 rifles at the helicopters and in return, the helicopters fired at the passenger boat. He/She told the interviewers that as the passenger boat took on water, the pipante accelerated and struck the passenger boat, forcing its passengers to jump into the water. SOI #2 said that [REDACTED] passengers jumped into the water just before the boats collided and [REDACTED] swam to shore taking cover on land near the riverbank. According to the written report, SOI #2 made no mention of the disabled boat he/she described in the first interview or the passenger boat taking fire from occupants in the boat that collided with the passenger boat.

According to SOI #2, he/she heard shots shortly thereafter from what he/she believed to be a helicopter downriver. SOI #2 remained near the riverbank away from the village but was able to hear one or more helicopters land in the village. He/She told the interviewers he/she stayed near the riverbank until the helicopters departed and then returned home. When asked by the interviewers about law enforcement, SOI #2 told them that he/she was not aware law enforcement officers had boarded the pipante, and he/she never heard anyone identify themselves as police. SOI #2 maintained that the pipante was occupied by ground crew members. SOI #2 also told the interviewers that the passenger boat did not contain clothing or personal items.

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<sup>73</sup> The occupants of the passenger boat, according to the passengers interviewed for the CEPR Report, included 16 individuals: Emerson Martinez Henriquez, Lucio Adan Nelson Queen, Candelaria Pratt Nelson, five adult women, two adult men, two 12-year-old boys, two 14-year-old boys, an 11-year-old girl, and a 2-year-old girl.



SOI #2 was asked about the injuries and deaths of individuals the morning of May 11 and stated that Nelson and Candelaria were the only two deaths. He/She also said that two ground crew members, both juvenile males, were wounded by gunfire, and several others in the boat were injured jumping overboard or during the collision between the boats. Contrary to his/her first interview, he/she told interviewers during his/her second interview that Emerson survived the incident – SOI #2 said he/she saw Emerson 1 week after the incident in Ahuas.<sup>74</sup>

The Assistant Attaché who conducted this interview told us that he was aware of, but unable to explain, the inconsistencies between the interview on June 16 and the interview on July 23, but he did not think there was a language barrier with the source. He said that SOI #2's Spanish was very good, and the interviewers had no trouble understanding him/her. The Assistant Attaché mentioned that based on the two interviews of SOI#2, he did not know whether Emerson or Nelson died. He also did not know how to resolve the issue of where SOI #2 was on the evening of May 11: [REDACTED] or [REDACTED].

On July 24, the Assistant Attaché forwarded the written report of the July 23 interview the Assistant Regional Director, Dobrich, and a second assistant attaché, and Dobrich later forwarded the report to Fitzpatrick. The Assistant Attaché told us that there was a lot of interest within DEA about the second interview with SOI #2, but he never heard anything further regarding the inconsistencies in the source's accounts. He said that after his interview of the source he believed that SOI #2 was present in Ahuas on May 11, but he did not know what role he/she played, and he could not believe his/her statements without independent evidence to support them.

#### **4. DEA Interviews SOI #2 a Third Time**

Dobrich told the OIGs that DEA was getting a lot of pressure from congressional staffers to find out what had happened on May 11. Dobrich said that it was not one specific issue upon which staffers needed more information, but the totality of the circumstances that led him to believe more information was needed. Consequently, Dobrich and a native-Spanish-speaking IRS traveled to Tegucigalpa and interviewed SOI #2 on December 8.<sup>75</sup> A few days later, the IRS prepared a written report memorializing the interview, which was forwarded by one of the assistant attachés to Dobrich on December 13.

According to the written report, SOI #2 "re-told the relevant events" regarding the two boats. SOI #2 told Dobrich and the IRS that the local drug trafficker [REDACTED]. He/She stated that he/she was not [REDACTED].

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<sup>74</sup> As noted earlier, both the CEPR Report and Honduran Special Prosecutor's Report identified Emerson Martinez Henriquez as among the people killed on May 11.

<sup>75</sup> This IRS was not the same IRS who participated in the second interview of SOI #2 on July 23.

and instead [REDACTED]. The written report refers to these boats as Vessel 1 (the pipante) and Vessel 2 (the passenger boat).<sup>76</sup>

According to the written report, the passenger boat belonged to an individual he/she knew as Eulopio who worked for the local drug trafficker and operated a water taxi. SOI #2 told the interviewers that before the truck transporting the cocaine arrived at the boat landing, several individuals got onto the passenger boat to travel to the mouth of the Caribbean Sea. SOI #2 said that the passenger boat was hired by the local drug trafficker to act as a lookout vessel. According to SOI #2's third interview, SOI #2, Eulopio, and at least four other people in the passenger boat knew that the passenger boat had been hired to act as a lookout. SOI #2 said that although there were [REDACTED] passengers in the boat, he/she did not know if they were aware that the boat was being used as a "decoy or surveillance lookout."

SOI #2 said that the passenger boat left the landing and proceeded slowly downstream to get ahead of the pipante, which was still at the boat landing. SOI #2 said [REDACTED] when it left the landing and that at least four people in the passenger boat were armed with AK-47s, including Emerson and Nelson. He/She said that Eulopio was under instruction that in the event anyone saw Honduran military or police, Eulopio was to alert the people in the pipante by cell phone. According to SOI #2, Eulopio heard helicopters approaching and decided to return the passenger boat to the landing in order to warn the others. According to the written interview report, SOI #2 was not aware that the pipante was loaded with cocaine and drifting down the river.

According to SOI #2, as they were returning to the landing, a helicopter passed overhead, and Emerson fired his AK-47 at the helicopter. As Emerson was firing his AK-47, the passenger boat collided with another boat (which the written report noted was the pipante that SOI #2 did not know had been set adrift) and "rounds were fired." The written report does not specify who fired the rounds or from which location. Dobrich told us that he did not know which rounds SOI #2 was referring to when SOI #2 said rounds were fired. Dobrich said that he did not recall specifically asking SOI #2 questions about what rounds came from which boat at which time.

SOI #2 said that when rounds were fired [REDACTED] jumped into the river and hid for several hours before departing the area. According to the written report, SOI #2 was not on board the passenger boat when an "exchange of gunfire" occurred between the passenger boat and the helicopter, approximately 30 seconds after Emerson first fired at a helicopter passing overhead.

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<sup>76</sup> During this interview, SOI #2 was questioned regarding his/her terminology and, according to the DEA report, "repeatedly confused the same terms to identify the two vessels." The report states that SOI #2 was asked to refer to the pipante as Vessel 1 and the passenger boat as Vessel 2 during this third interview.

Dobrich told us that following this interview, he believed that SOI #2 was [REDACTED] on May 11 and was [REDACTED]. Dobrich said that he did not believe the account SOI #2 had given during his/her first interview about having been [REDACTED] and then later [REDACTED] because SOI #2 would not have had enough time to be in both places. Dobrich told us he pressed SOI #2 about the inconsistencies between his/her first interview and his/her subsequent interviews regarding whether he/she [REDACTED] or [REDACTED]. Dobrich said that SOI #2 was clear that he/she was [REDACTED] and not [REDACTED]. SOI #2 also said that he/she did not think everyone in the passenger boat was aware of what was taking place. Also, according to Dobrich and the interview report, he and SOI #2 did not discuss the passengers who were killed or injured during the incident.

The IRS told us that when Dobrich asked him to travel to Honduras for the interview, he did not know that SOI #2 had been interviewed on two previous occasions. The IRS believed at the time that the December interview was the first occasion anyone from DEA had spoken to SOI #2, and he did not learn otherwise until his interview with the OIG. He told us he also did not know that SOI #2 had previously been polygraphed. The IRS said that he asked SOI #2 to tell them everything that occurred on May 11 but did not compare or go through the inconsistencies in his/her previous two interviews. The IRS observed SOI #2's [REDACTED] and said that despite this [REDACTED], he believed the DTOs [REDACTED].

On December 8, following the interview with SOI #2, Dobrich sent an e-mail to Fitzpatrick, INL Director of Western Hemisphere Programs Mark Wells, the Assistant Regional Director, the DEA Country Attaché, and the Delta and Bravo Team Leaders that read, in part:

Today we met source of information (SOI) previously debriefed ref Ahuas, 11 May. The information will be shared with SJC on our 17 Dec meeting. [Country Attaché] please pass along to Ambo/DCM as they requested. We clarified the discrepancies in earlier reports regarding conflicting information with the 2 boats. Below is a sanitized summary:

Vessel 1 (V1) had seized narcotics. Vessel 2 (V2) was the "water taxi."

The plan was for V2 to act as a lookout vessel. In the event GOH police/mil were encountered along river, V1 would be alerted. There were 4 armed persons (AK-47) aboard V2. SOI does not believe all passengers had knowledge of illicit activity. The owner of V2 knew the plan. It is likely that V2 had a dual legit-illegitimate purpose. V2 departed Papatalay [sic] just as the truck loaded with cocaine arrived and transferred to V1. V2 did not know that DTO cut loose V1 from boat landing as helos were descending. V2 heard the helos and doubled back to Papatalaya [sic] in order to warn V1. As V2 approached V1 (V2 did not know V1 had TRT/FAST aboard) a

helicopter was overheard and EMERSON fired at the helo. (NOTE: We know that TRT believed themselves to be under fire and returned fire in perceived self defense). SOI [REDACTED] and was not [REDACTED] when it fired at helo 30 seconds later in the second instance of V2 firing at helo (captured on FLIR).

SOI provided additional investigative information which will be documented on DEA-6.

I believe this interview answers many questions. The V2 firing at helo was perfect storm of wrong place/wrong time, since V1 TRT reasonably believed their lives to be in danger. The DTO's used civilians as unwitting surveillance shields and brought them into this tragic situation.<sup>77</sup>

In addition to the DEA officials who received this e-mail from Dobrich, other DEA officials were aware that DEA had interviewed SOI #2 on multiple occasions to obtain additional information and clarify discrepancies in the source's accounts. Deputy Chief Counsel John Wallace told us that he was aware SOI #2 was interviewed on multiple occasions and that he/she had provided inconsistent statements. Administrator Leonhart told us that she was generally aware that DEA developed a source that provided varying information over time. Deputy Administrator Harrigan told us that he did not recall learning that SOI #2 had made inconsistent statements during multiple interviews. Deputy Chief of Operations James Soiles told us that he was not involved in the development of SOI #2 and did not recall learning that the source had changed parts of his/her account. He said that he generally recalled that there was a problem with the source's reliability, but he thought that problem may have been that the source had an obvious mental deficit.

As described in Chapter Seven, DEA's Office of Inspections eventually opened an internal review of the May 11 incident, and its inspection file included a copy of the written report of SOI #2's first interview but not the reports of the second and third interviews. Deputy Chief Inspector Kevin Foley told us that he did not believe he was aware of the second interview in which the source admitted to lying to DEA during the first interview and changed material parts of his/her accounts. Foley told us that he was also not aware of the third interview of SOI #2.

## **5. Summary of Inconsistencies Between SOI #2's Various Accounts**

In Figure 5.1 below, we summarize the material inconsistencies in SOI #2's various accounts, as reported in DEA's written reports. The OIGs were unable to determine the extent to which these inconsistencies were the result of deliberate misstatements by SOI #2, different interviewers who were unaware of previous

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<sup>77</sup> Dobrich told us that by "sanitized" he just meant that this account was a summary of the interview.

statements made by SOI #2, poor or imprecise interviewing techniques or report writing, language barriers, or some combination of these.

**Figure 5.1**

Date	June 16, 2012	July 23, 2012	December 8, 2012
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Cocaine	The cocaine was loaded on one boat for transport upriver.	Cocaine loaded onto a go-fast boat (pipante).	Did not know where cocaine was placed after unloaded from aircraft.
Boat Passengers	SOI #2 [REDACTED] a boat traveling back to the village from the landing strip with 10 other offloaders.	At the boat landing, 2 offloaders got into the pipante armed with pistols. The remaining offloaders enter the passenger boat, 3-4 carried AK-47s.	Passenger boat has passengers who may or may not have known about drug activity and offloaders who were armed with AK-47s.
River encounter	Passenger boat with [REDACTED] offloaders observes disabled boat they believed carried other local residents from the village. As passenger boat approached disabled boat, Emerson opened fire on a helicopter hovering overhead. When Emerson fired, people on disabled boat fired at the passenger boat.	Both boats left the boat landing en route to the Caribbean. SOI #2 saw helicopters. Emerson and other armed offloaders fired their AK-47s at the helicopters. Emerson was the first to fire a weapon. The helicopters returned fire and the passenger boat started taking on water. At the same	The passenger boat left the boat landing ahead of another boat. The pilot of the passenger boat turned to go back to the boat landing when he/she heard helicopters. When the passenger boat made a turn on the river, they saw another boat approaching and a helicopter overhead. DEA's written report identifies this other

	Seconds later, the helicopter fired.	time, the pipante accelerated to a high rate of speed and struck the passenger boat. [REDACTED] offloaders jumped out of the boat. Shortly after [REDACTED], SOI#2 heard shots from the helicopter.	boat as the pipante. Emerson fired his AK-47 at the helicopter at the same time the passenger boat collided with the other boat. [REDACTED] jumped in the river after rounds were fired. He/She was [REDACTED] when there was an exchange of gunfire between the passenger boat and the helicopter.
Deaths and Injuries	Emerson and one female were killed. Four others were injured from gunfire, four injured from exiting the passenger boat.	One male and one female died from gunshot wounds. Emerson survived and SOI #2 saw him 1 week after May 11.	Report does not reference deaths or injuries.

**6. None of SOI #2's Versions of Events are Consistent with the Video**

The video evidence does not support any of SOI #2's versions of events on the river. The video analysts that viewed the video reported that they did not see any gunfire from the passenger boat at the time the pipante and passenger boat made contact and prior to Helicopter [REDACTED] firing. Further, the video does not show two boats departing from the landing; it shows only one boat empty of people with bales of cocaine in the boat drifting downstream. In addition, autopsy reports reflect that four individuals, two men and two women, died of gunshot wounds. One of the people who died was Emerson Martinez Henriquez, negating the possibility that SOI #2 saw him a week after the incident.

## **C. Source of Information #4**

### **1. DEA interviews SOI #4**

In January 2014, 19 months after the May 11 incident, SOI #1 brought ██████████ to DEA who said he/she was an occupant of the passenger boat. According to the Country Attaché and an Assistant Attaché, SOI #1 brought SOI #4 to TCO where he/she agreed to an interview and a polygraph examination.

On January 21, 2014, a DEA agent and an IRS from TCO interviewed SOI #4 regarding the events of May 11.<sup>78</sup> According to DEA's written report of the interview, SOI #4 said that he/she and 15 other passengers boarded a river boat at the village of Patuca (located several hours upstream from Ahuas) around 6 or 8 p.m. on May 10. He/She was traveling to Ahuas with household goods and knew several other persons in the boat, including several of the children. SOI #4 provided the names of the individuals he/she knew in the boat, and they matched the list of passengers noted by CEPR in its August 2012 Report. SOI #4 said that he/she knew the pilot of the boat and could name all the passengers killed and injured.

According to DEA's written report, SOI #4 told the TCO agent and IRS interviewing him/her that he/she was sleeping on top of bundles of clothes in the boat when the sound of helicopters woke him/her up shortly after midnight. SOI #4 said that he/she sat up and saw a wooden pipante coming straight at them. SOI #4 said that he/she did not hear an engine running on the pipante, and it was possible the boat was drifting. He/She said he/she heard gunshots coming from the bank of the river and then heard gunshots from somewhere close by. SOI #4 said that while the gunshots could have been coming from his/her boat, he/she had not seen any of the passengers with a firearm. Although it was very dark, SOI #4 was able to see one person at the front of the oncoming pipante and one person at the rear. When the pipante bumped his/her boat, he/she heard two quick bursts of machine gunfire coming from a hovering helicopter.

SOI #4 said that once the passengers heard the first gunshots, everyone in the boat panicked and jumped into the river. SOI #4 said that he/she swam to the riverbank where Honduran police officers patted him/her down for weapons and let him/her go. SOI #4 said he/she believed that everyone except the boat driver, whom he/she called "Eulopio," dove into the water.<sup>79</sup> He/She said he/she saw Eulopio take cover in the boat and attempt to maneuver it after the gunfire.

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<sup>78</sup> The IRS that conducted this interview of SOI #4 was the same IRS that conducted the second interview of SOI #2 on July 23, 2012.

<sup>79</sup> As previously stated, according to the CEPR Report, the driver of the passenger boat on May 11 was Melaño Eulopio Nixon.



SOI #4 gave the interviewers the names of the passengers who were killed and provided them the names of three others he/she knew were injured.<sup>80</sup> SOI #4 said that he/she searched unsuccessfully for a minor child who he/she knew was also in the boat, and it was not until the following day that his body was recovered from the river.

SOI #4 told DEA that approximately 1 month after the incident, the mayor in Ahuas gave him/her money. He/She was not certain why he/she received the money but believed it was either to compensate him/her for what happened on May 11 or it was from the local drug trafficker. According to the interview report, SOI #4 said that human rights representatives contacted him/her, promising to compensate him/her for him/her assistance, but he/she had not received any monies from them. SOI #4 told the interviewers that he/she agreed to be interviewed by DEA because he/she was hoping to receive compensation for his/her cooperation.

## **2. SOI#4 Takes a Polygraph Examination**

The Country Attaché told us he made the decision to bring in a DEA polygrapher for SOI #4 because there was information "floating around with some of the previous SOIs and/or events," and DEA wanted to determine if SOI #4 was credible. He said the question of who and how many were on the passenger boat and whether anyone was armed on that boat had not been answered by anyone else. According to the polygraph report, which the OIGs obtained from DEA, the purpose of the polygraph was to determine whether SOI #4 observed anyone in the passenger boat with a firearm and whether he/she observed anyone discharge a firearm on May 11. On February 6, 2014, SOI #4 met with the polygrapher and signed a consent form agreeing to a polygraph.

According to the polygraph report, during his/her pre-polygraph interview, SOI #4 told the polygrapher he/she was traveling to Ahuas with bags of clothes and relatives. They arrived in Patuca but waited 4 hours until additional passengers arrived. SOI #4 recalled that the boat left at 7 p.m. with an estimated non-stop travel time of 7 hours to Ahuas. SOI #4 said that at 2 a.m. he/she received a call on his/her cell phone from his/her mother, which is how he/she knew the time he/she first heard the helicopters flying overhead. He/She observed one person in the front of the boat with a flashlight directing the pilot, who was located in the rear of the boat. SOI #4 explained that trash, fog, and wood debris were causing problems with visibility on the river. He/She never saw anyone with a weapon in the passenger boat. The remainder of his/her account of what occurred was the same account described in DEA's written report of his/her January 21 interview,

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<sup>80</sup> The names of the passengers SOI #4 provided matched names of passengers listed in the CEPR Report.



except that he/she reported to the polygrapher the additional fact that when he/she swam to the riverbank, he/she saw a passenger who had been shot in the back.<sup>81</sup>

In his report on the polygraph examination of SOI #4 the polygrapher noted:

The examinee was afforded a polygraph examination consisting of the following relevant questions. The result for the Series is noted below.

Series I

1. DID YOU SEE ANYONE SHOOT ANY TYPE OF FIREARM ON YOUR BOAT? Answer- No.

2. DID YOU SEE ANYONE WITH ANY TYPE OF FIREARM ON YOUR BOAT? Answer- No.

Result- NO OPINION (COUNTERMEASURES)

After the polygraph, the polygrapher told the IRS who interviewed SOI #4 on January 21 that he believed SOI #4 took a drug to alter the outcome of the polygraph, despite the polygrapher advising SOI #4 the day before to refrain from taking any medication.

The IRS and polygrapher conducted a post-polygraph interview of SOI #4 during which he/she said that he/she took a pill to calm his/her nerves that morning because SOI #1 suggested it would help. SOI #4 said that although he/she did not see anyone in the boat with a weapon, Emerson was a former Honduras police officer and therefore carried a weapon. He/She also said that he/she did not see anyone on his/her boat fire a weapon. SOI #4 told the interviewers that he/she did not know if anyone in the boat was working for the local drug traffickers. He/She said that all the passengers were traveling from Patuca to Ahuas on a water taxi, and he/she was not aware of any drug transactions. According to the DEA report, the interview was terminated because "it was apparent that SOI-4 was going to stick to the statement that [he/she] made on January 21, 2014."

The Country Attaché told us that he believed the statements of SOI #4 were in conflict with information they had from SOI #2, specifically concerning whether there were weapons aboard the passenger boat. He also said that SOI #2 told DEA that the passenger boat left at a different time than SOI #4's reporting during his/her interview, which he said also brought into question SOI #4's version of events.<sup>82</sup> The Country Attaché told us that there was no further follow-up with SOI #4 because he/she attempted to "discredit the polygraph" and alluded to wanting

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<sup>81</sup> According to the information provided in the Honduran Special Prosecutor's Report, further discussed in Chapter Six, as well as information from the CEPR Report, two victims, Candelaria Pratt Nelson and Lucio Nelson Queen had bullet wounds in their backs.

<sup>82</sup> The OIGs observed that the account of SOI #4 is more consistent with the video evidence recorded by the CBP surveillance plane than any of the statements provided by SOI #2.

compensation from another government entity.<sup>83</sup> An Assistant Attaché said that he believed SOI #4 was "looking for a payday" and was expecting something from the Honduran government. The Assistant Regional Director told us that based on the information from the agents that interviewed SOI #4, she understood that the agents believed that SOI #4 was not honest. She did not recall specifically why they believed SOI #4 was not being honest, and she did not know that SOI #4 was polygraphed.

## **II. DOJ OIG Observations**

Over the course of three interviews, SOI #2 had provided inconsistent accounts of the May 11 incident, and the source's claim that the gunfire that had initiated the firefight came from an individual in the passenger boat was not supported by any other reliable evidence, including the May 11 video footage. DEA failed to adequately question SOI #2 about his/her multiple versions of events or confront him/her with the inconsistencies between his/her various stories and the May 11 video footage. Eight different DEA personnel interviewed SOI #2, some of whom were not fully briefed regarding the prior statements the source provided in previous interviews. The three reports submitted documenting each interview did not include all pertinent information or address the inconsistent statements made by SOI #2. Consequently, the DOJ OIG was unable to determine the extent to which the inconsistencies with the statements of SOI #2's various interviews were the result of deliberate misstatements by SOI #2, different interviewers who were unaware of previous statements made by SOI #2, poor or imprecise interviewing techniques or report writing, language barriers, or some combination of these.

In addition, we are concerned that DEA chose to send members of the FAST team that participated in the operation, who were witnesses themselves to the events of May 11, to conduct the first interview of SOI #2. We believe DEA should have made the effort to have agents from TCO meet with the source in [REDACTED] or made other arrangements to ensure that personnel involved in the incident were not also the ones debriefing a potential key witness to the incident.

As described in later chapters, during DEA's internal review process, in briefings to congressional committee staff, in correspondence to Members of Congress, and in internal discussions with DOJ leadership, DEA officials relied upon information provided by SOI #2 as evidence corroborating DEA's narrative that individuals in the passenger boat were attempting to retrieve the drugs and that gunfire from that boat initiated the firefight. By contrast, DEA did not give much, if any, consideration to the statements SOI #4 made about the May 11 incident despite the fact that his/her account was more in line with the events depicted in the video.

Further, as SOI #2 undermined his/her own credibility by admitting to lying to DEA and providing conflicting accounts during his/her second and third

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<sup>83</sup> All three SOIs for Operation Anvil received compensation and/or travel expenses from DEA.

interviews, we found no evidence that DEA officials clarified or modified their prior representations to DOJ leadership and Congress to account for the source's inconsistent statements or questionable reliability. Further, although DEA officials advised DOJ leadership and Congress that SOI #2 had passed a polygraph, that polygraph examination was largely useless because of the failure to document it, conflicting information about what the polygrapher asked, and available evidence indicating that the examination may have been limited to whether the source was present on May 11 when the drugs were offloaded.

## **CHAPTER SIX: HONDURAN INVESTIGATIONS AND VICTIMS COMPENSATION EFFORTS**

In this chapter, we describe the investigative activities undertaken by Honduran governmental organizations concerning May 11.<sup>84</sup> As discussed in detail below, between May and September 2012, no less than five Honduran authorities investigated some or all aspects of the May 11 shooting: (1) the Honduran Police Department in Puerto Lempira, which issued a report on May 18, 2012; (2) a task force convened by the Honduran Foreign Ministry, which issued a preliminary report on June 5, 2012; (3) the Honduran National Police, which briefed and provided a written report to U.S. Embassy staff on June 13, 2012; (4) the Honduras National Human Rights Commission (known as CONADEH), an independent governmental entity that issued a report on August 27, 2012; and (5) the Honduran Special Prosecutor for Human Rights in the Office of the Public Prosecutor, who issued a report in September 2012.<sup>85</sup> A table of these reports appears in Appendix E.

In this chapter we also describe efforts by State and Honduran officials to provide compensation to the victims of the May 11 incident and their families.

### **I. Honduran Investigations**

#### **A. May 18, 2012 Honduran Local Police Report**

As described in Chapter Three, on May 18, 2012, a deputy police commissioner from the local police department based in Puerto Lempira, the capital of Gracias a Dios in northeastern Honduras, submitted an investigative report to the Preventive Police National Director's Commissioner of Police on the events of May 11 (the May 18 Police Report). According to the May 18 Police Report, a police investigator visited Ahuas on May 14, 2012 and interviewed witnesses and victims. The report contained testimonial statements from seven people, three of whom said they were on the passenger boat during the May 11 incident. According to these statements, the people in the passenger boat were traveling from Barra Patuca to Paptalaya when they came upon a cocaine-laden boat on the river with its engines shut down. They said that as they came upon this other boat, a helicopter flying overhead opened fire and shot at the passenger boat repeatedly. The report and testimonial statements from those on the passenger boat did not state that shots were fired from the boat carrying the cocaine, or that there were people in the

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<sup>84</sup> Honduran authorities conducted limited investigations regarding the June 23, 2012 and July 3, 2012 incidents, but the OIGs have been advised that no reports were ever issued.

<sup>85</sup> In addition to these reports, forensic examiners issued corpse records dated May 12, 2012, concerning three of the deceased victims: Juana Jackson, Emerson Martinez Henriquez, and Candelaria Pratt Nelson. The body of the fourth victim, H.B.W., was not found until May 13. The corpse records of the three decedents documented medical examinations conducted on May 12 in the presence of a Public Ministry Justice of the Peace in Paptalaya, Ahuas. Because the actual medical findings on the documents are handwritten and illegible, the OIGs are unable to note the specific findings.

drug-laden boat. The report provided identifying information regarding the four people killed and contained four Honduran newspaper articles reporting on the May 11 incident, as well as the following photographs that were taken after the incident.

**Figure 6.1: Photograph taken of the Passenger Boat at the Landing**



**Figure 6.2: Bullet Holes in the Sidewall of the Passenger Boat**



**Figure 6.3: Two Metal Bullet Fragments Reported to Have Been Embedded in the Passenger Boat**



Other photos depicted an outboard boat engine, reportedly from the passenger boat, with a bullet hole, bags of clothing, a round plastic container transported in the passenger boat with bullet holes in two items, the interior of a wooden shed containing plastic drums, in which law enforcement agents allegedly obtained gasoline, and a broken plastic flex cuff.

The May 18 Police Report made several observations. First, the report stated that boats similar to the passenger boat were used by residents who frequently traveled at night and transported bags with household goods that may easily be confused with bales of narcotics. Second, according to unconfirmed statements from the surviving occupants of the passenger boat, no one in the boat fired at the helicopters. The report did not state whether anyone in the passenger boat fired at the *pipante* with the cocaine. Third, the passenger boat was struck by 21 bullets, which damaged its cargo and motor and resulted in the deaths of four passengers and injuries to four others. Fourth, according to unconfirmed statements, both of the women killed were pregnant.

The May 18 Police Report concluded that during a helicopter operation in which 439 kilograms of cocaine were seized, there was confusion identifying the passenger boat, and bags of household goods were mistakenly identified as narcotics. According to the report, this confusion resulted in the deaths of four people and injuries to four others who had no link to persons engaged in drug trafficking.

State documents reflect that U.S. Embassy officials became aware of the May 18 Police Report in the days after it was issued. On May 24, 2012, the Embassy's Political Counselor circulated to Embassy, INL, and DEA officials a set of talking points to be used in response to media inquiries about the report. The guidance stated: "We consider this to be a preliminary report that needs to be taken into consideration as part of a full and complete review," and that "[w]e are exploring

ways in which the U.S. can assist in the investigation should the Honduran government request our assistance.”

As described in Chapter Three, Ambassador Lisa Kubiske told the OIGs that she did not read this report but was told of its conclusions by Embassy personnel. She said that she was told that it was incomplete and inaccurate because it was written by a police bureau in an area in which collusion with drug traffickers was well known. The Ambassador said she recalled the report’s finding that two of the deceased may have been pregnant, and afterwards she pressed her Honduran counterparts to conduct autopsies.

The INL Director at the Embassy described the report as incomplete and lacking “a well-articulated path unto how the conclusion was formed.” She described this as a general concern with Honduran police reports, in that they were often conclusory with no stated reasoning behind the conclusions reached. Mark Wells, then INL’s Director of Western Hemisphere Programs, discounted the report because it “reached conclusions that no one could reach based on the information put in the report.” In particular, Wells said that he could not see how the report could conclude that the people in the passenger boat had been fired upon in error when the investigator had not spoken with the helicopter pilots or the FAST or TRT members. He said that he also dismissed the report because it seemed to be largely based on secondary sources.

According to handwritten notes Wells provided to the OIGs, senior INL officials discussed the possibility of mistaken identity during a senior staff meeting on May 18, 2012. The notes reflect a statement attributed to INL Assistant Secretary William Brownfield that “probably some people mistakenly hit.”

The DEA Country Attaché received an English translation of the report on May 21 and forwarded the translation to the DEA Assistant Regional Director the same day. The Assistant Regional Director immediately e-mailed it to Regional Director (RD) Joseph Evans who forwarded it to DEA Deputy Chief of Operations Jay Fitzpatrick with the message, “The official report from the [Government of Honduras] is that civilians were lit up - mistaken identity.” FAST Section Chief Richard Dobrich told us that he reviewed but discounted the report because he viewed it as a plagiarized version of the press reports, which alleged that innocent people had gotten caught in the crossfire between law enforcement and suspected drug traffickers. DEA Deputy Administrator Thomas Harrigan told us that he recalled reviewing the report and determining that it left “a ton of holes,” including not having any information from law enforcement. As described in the next chapter, Harrigan told the OIGs that the assertions in this May 18 Police Report were one of the reasons he decided that DEA needed to open an internal review of the May 11 incident.

## **B. Limited Investigative Activity by the Honduran Foreign Ministry Task Force**

Shortly after the issuance of the May 18 Police Report, the Government of Honduras (GOH) created an inter-agency task force of Honduran officials, organized

by the Foreign Minister, to investigate the May 11 incident. The creation of the Honduran Task Force coincided with pressure from U.S. officials who urged their Honduran counterparts to open an investigation.<sup>86</sup> In a memorandum dated May 24, 2012, to the Secretary of State, INL and WHA, officials stated that, “[a]t our urging, the government is launching an investigation in which Embassy law enforcement personnel will provide behind the scenes technical assistance.”

According to Ambassador Kubiske, following the reports that innocent civilians had been killed during the operation, she received guidance from WHA and INL that the Embassy should urge the Hondurans to investigate the incident. She said that WHA and INL officials explained that because Operation Anvil was a Honduran-led operation, it was the responsibility of the Honduran authorities to conduct the investigation. She said that she then spent considerable time working with her Honduran counterparts to convince them to investigate, which she said took effort. According to Ambassador Kubiske, the Hondurans did not have much interest in investigating the incident, in part because they were concerned that questioning the actions of their law enforcement officers would deter their future effectiveness. However, she eventually persuaded them to open an investigation after explaining that Operation Anvil would lose support if the incident was not properly investigated.

The first meeting of the Honduran Task Force occurred on May 23, 2012 at the Office of the Foreign Ministry. Invited attendees included representatives from the Honduran Directorate against Drug Trafficking (DLCN), the Special Prosecutor Against Organized Crime, the Honduran Ministry of Justice and Human Rights, and a U.S. Embassy representative. The Embassy representative was a State Department contractor, previously hired by the Bureau of Conflict and Stabilization Operations (CSO) as an advisor to provide expert advice to Honduran police agencies. This CSO Advisor had worked for many years as a homicide detective in Dallas, arrived at the Embassy in April or May of 2012, and had been working with Honduran detectives conducting homicide investigations.

A week after this first meeting, the Country Attaché provided an update to Jay Fitzpatrick, RD Evans, and the Assistant Regional Director on June 1, 2012, stating that the Task Force’s preliminary investigation revealed no wrongdoing by the Honduran police or other participants in the operation and that the use of deadly force was in self-defense. According to the Country Attaché, the Task Force made this preliminary assessment after reviewing all Honduran reporting of the May 11 incident, including the official police report from the Honduran TRT to the Director General of the Honduran National Police.<sup>87</sup> In addition, the Country Attaché’s update said that he provided the Task Force with a 2-hour briefing about

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<sup>86</sup> The creation of the Honduran Task Force also coincided with DEA’s decision to initiate an internal review of the May 11 incident, described in the next chapter.

<sup>87</sup> As described in Chapter Three, the Honduran TRT Commander had submitted a police report of the May 10-11 interdiction that was inconsistent with DEA’s and State’s own reporting, including that the helicopters were attacked by armed suspects on the river bank before the encounter between the two boats on the river.



the operation and how it was carried out, and that the Task Force interviewed several (unidentified) witnesses.

A week later, the Task Force submitted a preliminary report dated June 5, 2012 (Task Force Report) to the Honduran Foreign Minister documenting the information it collected concerning the May 11 incident.<sup>88</sup> According to a translation of the Task Force Report, the Task Force stated that it had reviewed “some reports” and “informal information” from the Ministry of Foreign Affairs, as well as an unidentified “research report” forwarded to the Office of the Public Prosecutor. The Task Force Report stated that according to the research report:

On Friday, May 11, 2012, at approximately 03:00 hours, a Task Force of the National Police, comprised of different special units, performed an airborne operation in interdiction to an airplane suspected of drug trafficking, but it had already landed, so what they did was perform an aerial search around, managing to identify a boat that transported bags of mezcal at coordinates 15.31:N, 084 °21'W (Aldea Paptalaya, Municipality of Ahuas, Gracias a Dios); on this route there are several communities of the department. Once they realized the authorities were there, they abandoned the boat carrying the drugs in the middle of the river and that is where they found 14 sacks of mezcal containing 439 packets of cocaine, according to the Toxicology Laboratory.

At that place and at the moment of the boat seizure another boat approached in which several people were being transported and shot at the Special Team of the National Police, so they returned fire.

Under “Actions Taken,” the report stated that the Task Force interviewed four people:

- (1) Country Attaché who described the nature of the joint operation.
- (2) An unidentified Honduran police officer who provided an account of the May 11 events – that people in a boat approached the police and, after the police announced themselves, the people in the boat opened fire on the officers, and the officers returned fire.
- (3) a senior public official from Gracias a Dios who described what was reported from local residents of Paptalaya – that the people in the passenger boat “were coming from Barra Patuca Paptalaya at two in the morning when they heard the noise of the helicopter, but they continued on their way upriver to meet the boat where they found four dead people and three injured people.”

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<sup>88</sup> According to public sources, the Office of the Public Prosecutor (Ministerio Público or Public Ministry) in Honduras is an autonomous entity not under either the Supreme Court or Office of the Attorney General. It is functionally unattached to all three branches of government, and is responsible for the prosecution of all crimes and felonies, as well as ensuring compliance with the Honduran Constitution and laws, and protecting the general interest of society.

(4) a representative from an unspecified organization representing indigenous people in La Moskitia (Mosquito Coast region) who provided the accounts of local residents who witnessed the May 11 events – that the people were in a boat on the Patuca River “when they noticed the presence of helicopters operated by the Authorities in the area, and they continued on the route where they collided with a boat that was seized by the police, that’s what occurred in the incident.”

The Task Force Report did not provide specific findings or conclusions and instead recommended that additional investigation be conducted by the Honduran Public Prosecutor.

U.S. officials were not satisfied with the results of the Honduran Task Force. After receiving the report on June 7, 2012, Ambassador Kubiske noted in handwritten comments to the Embassy senior staff: “I also didn’t see any conclusion.” At a June 11, 2012 meeting involving INL and WHA staff, an agenda document for the meeting described concerns that the Honduran investigation “is not producing results.” The agenda stated that the Embassy “received the initial report and it is clear that the GOH did not conduct a thorough investigation (second hand sources) or reach meaningful conclusions.”

We have been unable to determine whether the Honduran Task Force requested the opportunity to speak with any of the U.S. personnel who participated in the May 10-11 interdiction before submitting its report. According to State documents, during the first meeting of the Task Force on May 23, Task Force members indicated that they would likely want to obtain the U.S. Government’s internal investigation reports on the May 11 incident and have access to personnel who participated in the operation. We found no information that either request was made before the Honduran Task Force submitted its report. The CSO Advisor told us that the original intention of the Task Force members was that they would interview the witnesses to the events, but the investigation was “cut off” shortly after it began because a decision was made to transfer it to another office (the Office of Public Prosecutor).

Shortly after the Honduran Foreign Ministry delivered the Task Force’s report to the U.S. Embassy on June 7, investigative work by the GOH into the May 11 incident continued under the direction of the Honduran Special Prosecutor for Human Rights in the Office of the Public Prosecutor who, as described later, issued an investigative report in September 2012. According to the Country Attaché, the work of the Honduran Task Force was an “unofficial review” of the May 11 incident, and, as such, the Task Force Report was submitted to the Office of Public Prosecutor so that office could conduct an official review and investigation. However, before the Special Prosecutor for Human Rights issued his report in September 2012, the Honduran National Police completed its own investigation of the May 11 incident, described below.

### **C. June 2012 Honduran National Police Report**

The Honduran National Police conducted its own investigation of the May 11 incident.<sup>89</sup> On June 9, an investigative team consisting of a National Police Officer-in-charge, two other investigative police, and attorneys from the independent Honduras' National Human Rights Commission (CONADEH) traveled to Ahuas and ██████████. The team interviewed five individuals: the Ahuas police chief, three people from the passenger boat who had been wounded, and the Ahuas resident who alleged, as reported in the May 18 Police Report, that law enforcement officers had commandeered gasoline from his shed. Following the site visits, the investigative team interviewed the two TRT law enforcement officers who were aboard the drug-laden pipante and fired their weapons, as well as the Honduran door gunners on the helicopters. Shortly thereafter, the investigative team issued a June 12, 2012 report (4 pages in length) to the Director General of the National Police (Honduran National Police Report), which was provided to the Embassy on June 14, 2012.

The Honduran National Police Report stated that the passenger boat had departed Barra Patuca at 8:00 p.m. on the evening of May 10 with 13 aboard for a 5-6 hour trip to Ahuas and that the encounter with law enforcement occurred approximately 6 hours later, at 2:00 a.m., as the passenger boat neared Ahuas. According to the report, one of the TRT officers who was on board the pipante said that he fired his weapon because he heard shots but was not sure from where, and that he and his fellow officers in the pipante received help from a helicopter. The report stated the other TRT member from the pipante said he fired his weapon when they were shot at by the people in the passenger boat, but he did not mention help from the helicopter. The report stated, without further explanation, that these accounts from the TRT officers in the pipante contradicted each other. The report also stated that the TRT members claimed that they did not know what happened to the passenger boat after the shots were fired, but the report stated that this claim was not credible because the passenger boat was going against the current and was only 1 kilometer from where some of the officers were stationed.<sup>90</sup>

The report also contained observations including: (1) the passenger boat was not a high speed boat commonly used in trafficking; (2) the cargo likely appeared from the air as drugs; (3) excessive force was evident from the large number of perforations on the passenger boat; and (4) the TRT and FAST members did not attempt to provide medical assistance to the wounded. The report

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<sup>89</sup> As described elsewhere, the Honduran National Police supplied the officers who made up the TRT vetted unit that participated in Operation Anvil.

<sup>90</sup> The report did not further describe the location of the passenger boat, at what time, or where it was believed the team members were stationed. Further, the OIGs have not been able to confirm the distance between the passenger boat and the FAST and TRT ground team when the passenger boat came to rest on a riverbank after the encounter on the river. However, as described in Chapter Three, according to witness accounts, the passenger boat was on the river bank on the opposite side of the river from the pipante some distance from the village.

concluded that further investigation was necessary in coordination with the Public Prosecutor.

On June 13, 2012, the INL Director in the U.S. Embassy met with the Director General of the National Police, and the officer-in-charge of the investigation, who provided a briefing and copies of the report's conclusions and observations. Later that day, she drafted a lengthy e-mail summarizing the meeting, highlighting the report's conclusions, and translating the report from Spanish into English, which she sent on June 14 to the Ambassador and several Embassy officials. On the same day, she also sent the report's findings to the Country Attaché. The findings were later forwarded to Dobrich and the Assistant Regional Director, and news of the report spread to other DEA officials, including Harrigan, Fitzpatrick, and Deputy Chief Counsel John Wallace.

According to the INL Director's e-mail communication, notwithstanding an agreement to merge the Honduran Task Force's work with the investigative work of the Public Prosecutor, neither the CSO Advisor representing the Embassy nor staff from the Public Prosecutor's Office had participated in the National Police's site visits or interviews. The INL Director further noted that both she and the Director General agreed "that this report left us with confusion and more questions," and said that the Director General had ordered the officer-in-charge to finish the investigation.

According to the Ambassador, after she had learned of the problems with the police report and the inconsistencies between the various Honduran investigations, she decided greater U.S. involvement in the investigation was needed, despite having really "pushed hard" for the Hondurans to perform their own thorough investigation. She said that she began to explore whether State's Bureau of Diplomatic Security (DS) should conduct its own investigation to definitively answer some of the questions raised by the conflicting Honduran investigations.<sup>91</sup>

#### **D. August 2012 Independent Honduran Human Rights Commission Report**

The Honduran National Human Rights Commission, or CONADEH, is an independent Honduran government institution, led by a Commissioner who is empowered to investigate human rights abuse complaints.<sup>92</sup> It opened a case concerning the May 11 incident on May 15, 2012, following its receipt of complaints and review of media reports. CONADEH attorneys traveled with Honduran National Police investigators to Ahuas on June 9, 2012, and interviewed witnesses and took photographs. Between July 9 and 11, CONADEH investigators also interviewed TRT officers about the May 11 incident (as well as the June 23 and July 3 incidents described later in Chapter Eight).

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<sup>91</sup> As described in Chapter Ten, in late July 2012, Ambassador Kubiske authorized DS to conduct an investigation of the May 11 incident. In that chapter, we fully describe DS's efforts to investigate the incident and the results of its investigation.

<sup>92</sup> <http://conadeh.hn/informacion/> (accessed December 20, 2016).

CONADEH publicly issued its report on August 27, 2012. The Report included an introductory section in which it attributed to TRT officers (in an English translation) that "a burst of fire could be heard, supposedly coming from the boat coming from Barra Patuca causing the member from the FAST Team of the DEA to communicate by radio with the foreign pilot on helicopter [REDACTED], who proceeded to give the order to the artilleryman from Honduras who was on the same helicopter to support his teammates by opening fire on the boat . . . ."

Like the Honduran National Police Report, the CONADEH Report observed that "[s]tatements of police elements involved in the operation are contradictory in several parts, both among themselves and with the statements of the victims." However, the report did not give any explanation or provide examples of the contradictions.

The CONADEH Report also observed that unspecified Honduran authorities had not been able to interview FAST personnel because these authorities were unable to identify them. The report also stated the "officer in charge of the TRT said that he never knew any of the details regarding his operations. He would only find out about them when receiving calls from . . . a member of the FAST Team." The Report made no comments about the conduct of U.S. personnel during the operation.

Ambassador Kubiske told us that after the release of the CONADEH report, she did not view the findings as conclusive because she did not believe CONADEH had sufficient budget or technical equipment to conduct a complete investigation. In addition, she said that in late August 2012 she was waiting for the completion of the DS investigation and DEA's own internal review to learn what U.S. officials thought happened on May 11.

#### **E. September 2012 Human Rights Special Prosecutor Report**

The Honduran Office of the Public Prosecutor conducted its own investigation of the May 11 incident, based on a complaint filed with the local prosecutor's office in Puerto Lempira.<sup>93</sup> This investigation was led by the Honduran Special Prosecutor for Human Rights, German Edgardo Enamorado, and, as detailed in subsequent chapters, the resulting report was considered by U.S. officials to be the official Honduran Special Prosecutor's Report on the May 11 incident.

As part of the Special Prosecutor's investigation, on June 21 and 22, 2012, a team of investigators traveled by helicopter to the sites where the bodies of the four people killed on May 11 were buried. The investigation team included two public prosecutor attorneys, a medical examiner, a forensic pathologist, an evidence technician, a circuit judge from Puerto Lempira, and several soldiers. The

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<sup>93</sup> As described in Chapter Three, the Committee of the Families of the Detained and Disappeared in Honduras, or COFADEH, filed a formal complaint concerning May 11 with the public prosecutor in Puerto Lempira as legal representative of the victims and surviving family members. COFADEH later filed a formal complaint with the Honduran Special Prosecutor for Human Rights in Tegucigalpa.

CSO Advisor traveled with the investigation team and provided status reports to INL and Embassy officials.

The exhumations and autopsies were carried out over 2 days in the open air, with village bystanders watching. According to e-mails reporting information provided by the CSO Advisor, two bullets were recovered from two bodies. The other two bodies exhibited signs of gunshot wounds. Neither female decedent was determined to be pregnant.

As part of his investigation, the Special Prosecutor sought information from the U.S. Embassy, including the opportunity to interview DEA personnel, review DEA's internal investigation, and obtain a copy of the CBP's May 11 video footage. Specifically, in July 2012, the Honduran Attorney General informally requested information from the U.S. Embassy to assist the Special Prosecutor's investigation, including a copy of the May 11 video footage, access to the helicopters and weapons carried on the helicopters, information regarding the types of weapons carried by the participating officers and on the helicopters, and a copy of any DEA incident reports. In August 2012, the Honduran Special Prosecutor for Human Rights formally requested from the U.S. Embassy access to the DEA's internal investigation of the May 11 incident, as well as the opportunity to interview the DEA personnel involved in the interdiction. The U.S. Embassy and DEA did not agree to grant these requests. However, the U.S. Embassy invited Honduran officials to view the May 11 video footage, which they did on multiple occasions.

DEA officials provided the OIGs with a number of reasons why DEA did not agree to provide the Honduran authorities with access to DEA personnel, including that the Letter of Agreement between the GOH and the United States for Operation Anvil provided diplomatic protections that insulated participating U.S. personnel from host nation jurisdiction and concern that multiple statements from witnesses could harm judicial proceedings in the United States against Anvil drug traffickers. Deputy Chief Counsel John Wallace told us that he attended a meeting in late July 2012 during which the Honduran Foreign Minister told DEA officials not to worry about responding to the Honduran Attorney General's request for information. Wallace told us that his impression was that the Foreign Minister did not believe the May 11 investigation was important or necessary.

In September 2012, the Special Prosecutor for Human Rights issued a report concerning the May 11 incident (Special Prosecutor's Report). According to the report, the Special Prosecutor's investigation included taking witness statements from the TRT, survivors, and families of the deceased, autopsies of the exhumed bodies, ballistic analysis of TRT weapons and bullets collected, examination of the boats, and reviewing the CBP video of the incident with U.S. Embassy officials.<sup>94</sup>

Although the report did not specifically address the conduct of U.S. personnel, the Special Prosecutor's findings were generally favorable to the actions

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<sup>94</sup> Unlike the reviews conducted by the DS and later by the OIGs, the video reviewed was not enhanced or subject to any forensic analysis.

of law enforcement during the operation. According to the Special Prosecutor's Report, a TRT member and the Honduran door gunner aboard the helicopter who fired his weapon (Helicopter [REDACTED]) stated that "they observed at least three or four persons inside the boat, a motorized canoe, advancing and firing on the stalled boat" containing the narcotics, the FAST member, and the two TRT officers. The report further stated that the law enforcement agents in the stalled boat, realizing that they were in:

extreme, even mortal, danger, sought cover in the bottom of the boat and began to fire their weapons. The member of the FAST team had only his handgun on him at the time, and the members of the counternarcotics team are unable to say whether the FAST team member used his firearm or not in the midst of the cross-fire fray.

According to the report, TRT officers stated that they fired shots "under the rational belief that the people driving the boat were criminals, and that, as they explained, they feared being shot and felt that their lives were in danger." The report stated that all [REDACTED] TRT officers who took part in the operation told investigators that "they were not aware at the time of the deaths of those persons, so they confined themselves to seizing the drugs and transferring them. . . ."

The Special Prosecutor's Report summarized the statements obtained from the passenger boat survivors. According to the report, the survivors' statements were in agreement that approximately 15 unarmed people left Barra Patuca at 8:00 p.m. on May 10 to go to Ahuas, that around 2:00 a.m. they were near the boat landing at Paptalaya when they heard helicopters nearby, that "a second later, they heard shots coming from one of the helicopters, aimed first at the motor of the boats," that passengers "began jumping in the water," that four were killed and that some who had been wounded had managed to make it to the shore and "sought help getting to the hospital."

The Special Prosecutor's Report also summarized the results of forensic activity. It described results from the autopsies, including that the four decedents were killed by bullet wounds, that two bullets (a rifle bullet and a bullet tip) were recovered from a male and female body and sent for forensic analysis, that it "was also determined that wounds were made along a level bullet trajectory, with the exception of [the 49-year old female], whose wound showed a downward trajectory ... [but] this is explained by how she was moving prior to being shot." However, the report did not identify any evidence to establish the position of the victims at the moments they were shot.

The report found that neither of the two female decedents was pregnant. The report also noted that physical examinations of three people who had been wounded on May 11 indicated that two of them had suffered gunshot wounds and one an exposed fracture, and one of the people who suffered a gunshot wound also suffered an exposed fracture.

Like the Honduran National Police Report issued in June 2012, the Special Prosecutor's Report described the condition of the passenger boat. According to the

report, a ballistics analysis identified what appeared to be 19 areas of small repairs indicative of bullet-hole repairs. The report stated that it was not possible to determine the exact trajectory of the gunshots or the type of firearm used because the bullet holes had been repaired. However, the report stated that it could be inferred from the ballistics analysis that the damage was caused by shots fired from a "left-to-right and top-to-bottom trajectory," possibly from another boat or from the river bank. The report also noted that a second boat, identified as the boat the three law enforcement officers commandeered, had no bullet holes.

The Special Prosecutor's Report stated that 32 TRT weapons (16 rifles and 16 handguns) had been subjected to ballistic analysis, and that the bullet recovered from 1 of the decedents exactly matched the rifle assigned to a TRT officer on board the pipante. The report did not specify whether a second recovered bullet matched a TRT weapon. However, DEA and State e-mail communications from August, September, and October 2012 reflect that Honduran authorities were unable to match at least one bullet reportedly recovered from May 11 to a TRT weapon. This fact was not noted in the Special Prosecutor's Report.

The Special Prosecutor's Report provided a narrative of the incident based on a review of the May 11 video, which, as noted below, the U.S. Embassy permitted Honduran prosecutors to view but not have their own copy. The narrative stated that the passenger boat with "unidentified cargo in the center" approached the drifting narcotics-laden pipante, "ran across the back part of" it, and "was practically alongside the other boat when flashes of light – apparently gunfire – could be seen. This took place mostly around the boat carrying the drugs with the three people" and lasted 2 minutes. Finally, the report stated that the "boat with several people onboard was then seen traveling away and stopped further on. This was all that could be observed from the film."

The Special Prosecutor's Report offered four final observations. First, "[t]he version given by the survivors" – that they had been fired upon by a helicopter overhead – was "not consistent with the technical and scientific analysis." The observation was based on bullet trajectories, which were determined to be on the same level of the shooter, observations from the video, and the statements provided by the TRT members in charge of the operation. Second, the report observed that the recovered bullets and casings were fired from [REDACTED] mm rifles, consistent with the rifles carried by the police who had taken custody of the pipante. Third, the ballistics analysis determined that there were 19 holes in the passenger boat "that could have come from gunfire from the other boat or from the riverbank, *i.e.* from the same level." Finally, the "autopsies provided scientific evidence that neither of the women who died was pregnant" at the time of death.

Unlike the May 18 Police Report and the Honduran National Police Report, the Special Prosecutor's Report did not discuss whether the passenger boat was a victim of mistaken identity. Further, the report does not reflect any effort to assess the survivors' accounts that the passenger boat was a water taxi that had begun its journey upriver to Ahuas 6 hours earlier.



Ambassador Kubiske told us that she did not recall her specific reaction to the findings in the Special Prosecutor's Report, although she did note that the report's description of the witness accounts was just another piece of a "continuing saga" in which accounts of what happened differed from one other. She said she also understood that the Special Prosecutor's office was not capable of performing the ballistic analysis referred to in the report and that the office was "just sort of making it up, you know, not actually able to determine it." Further, Ambassador Kubiske told us that her impression from her own interactions with the Special Prosecutor was that, although not reflected in his report, the Special Prosecutor believed the accounts of the witnesses from the village and was doubtful of the accounts from law enforcement officials.

As described in Chapter Seven, DEA's Office of Inspections waited for the completion of the Special Prosecutor's investigation and final report before presenting the May 11 incident to DEA's Shooting and Assault Incident Review Committee (SAIRC). Based upon the information contained in the Special Prosecutor's Report, the Office of Inspections reported to the SAIRC that:

- Four individuals were killed during this incident.
- Before the use of deadly force the Honduran TRT officers had a rational belief that the people in the approaching boat were criminals and feared for their lives.
- No individuals were killed by the Honduran door gunner's use of deadly force from an INL helicopter.
- The witness statements from surviving members of the passenger boat were inconsistent with statements from law enforcement personnel and with visual and scientific analysis by forensic personnel.

Further, as described in Chapter Twelve, DEA referenced the Special Prosecutor's Report in letters to Congress, stating that the report determined that neither of the female decedents was pregnant, and that no DEA FAST members fired their weapons. DEA later acknowledged that it had misstated the findings of the Special Prosecutor's Report and that the report did not contain a determination that no DEA FAST members fired their weapons.

#### **F. Arrests of the TRT Officers Involved in the May 11 Shooting**

Although no criminal charges were filed immediately following the release of the Special Prosecutor's Report, the Honduran Attorney General never filed a written order not to prosecute the officers involved. More than a year later, in November 2013, the Office of the Public Prosecutor reopened the investigation and filed criminal charges of homicide and abuse of authority against the two TRT members and Honduran door gunner who exercised deadly force on May 11.

On November 4, 2013, DEA's new Assistant Regional Director for Central America sent an e-mail to several DEA officials, including Dobrich and the former Assistant Regional Director, notifying them that the Special Prosecutor's office had obtained arrest warrants for the TRT officers:

[An Assistant Country Attaché in Tegucigalpa] received a call just now from [a TRT official], regarding arrest warrants for two members of the TRT Vetted Unit. This had been rumored previously, but today was confirmed that the Honduran Human Rights have issued arrest warrants for TRT members [the TRT Commander in the pipante during May 11 interdiction] and [the 2nd TRT officer in the pipante]. [They] were the shooters involved in the Ahuas shooting (May 11th) that resulted in the deaths of four people. The TRT members are looking for assistance from the US Embassy (DEA and NAS) for legal representation.

E-mails reflect that after this notification, DEA officials communicated concerns within DEA that Ambassador Kubiske and her Deputy Chief of Mission (DCM) were not fully engaged on the this issue, that the TRT vetted units would be negatively impacted by the prosecution, and that the Honduran National Police had no legal defense fund to assist the TRT officers charged.

On November 5, 2013, an INL official in Washington sent an e-mail to the DEA Country Attaché and an Assistant Country Attaché, along with the INL Director at the U.S. Embassy, stating that the reason for the reopening of the investigation was not yet known because he was aware of no new information presented against the officers. The INL official further stated that there was speculation that the reopening of the case had something to do with the fact that a new Attorney General and Special Prosecutor for Human Rights had taken office, or possibly that the upcoming Presidential election in Honduras had caused officials in the current administration to reopen the case. According to an e-mail from DEA Regional Director (RD) Paul Craine to senior DEA officials, the Honduran Foreign Minister had reported to U.S. officials that a prosecutor in the Special Prosecutor's office had filed the charges, without supervisor approval, on the day he was to be transferred to another office.

E-mail communications reflect that DEA regional officials engaged GOH officials in discussions about the possibility of getting the case against the TRT officers dismissed. An Assistant Attaché and the Assistant Regional Director met with the Honduran Ambassador to the United States and the "right hand man" to the Honduran Minister of Security (who was also the Deputy Ambassador (DCM) to the United States) on or about November 6, 2013. According to an e-mail from the Assistant Regional Director to RD Craine summarizing the meeting, the Honduran Ambassador was unaware of the prosecutions and told the Assistant Regional Director that based on his work with some non-governmental organizations he believed that the prosecutions were politically motivated in anticipation of the Honduran elections to be held on November 24. The Assistant Regional Director also stated that the Ambassador told him that he would address the prosecutions "at the highest levels of government" and have an answer for the Assistant Regional Director the following day. In an e-mail sent by the Assistant Regional Director to RD Craine later that evening, he advised that:

[An Assistant Attaché] and I just had dinner with [Honduran DCM] from the Honduran government. Below is a summary of the meeting.

[The Honduran DCM] informed [the Assistant Regional Director] and [the Assistant Attaché] that [the Honduran] Ambassador contacted the Honduran Attorney General. The AG stated that he was not aware of the recent indictment against the TRT members and needed to check on it. Shortly thereafter, AG returned [the] Ambassador's call. The AG confirmed that a Human Rights prosecutor, who was recently re-assigned, indicted the case without notifying the Director of Prosecutors or the AG. The AG also stated that 3 people were indicted (2 TRT members and 1 Honduran Air Force door gunner) in the case. [The] Ambassador also contacted the President of the Supreme Court and advised him of the situation. They discussed how to resolve this issue within Honduran law.

[The] Ambassador, the AG, and the [Supreme Court] President are currently discussing the best way to proceed in dismissing the charges against the 3 members.

Despite discussions about the possible dismissal of the charges, the case against the three TRT officers involved in the May 11 shooting went to trial in early 2014. While the OIGs do not have details regarding the conduct of the trial, afterward, in March 2014, the charges were dismissed by the Civil Court of Puerto Lempira, which held that the officers had fired in self-defense.

## **II. Victim Compensation Efforts by State and Honduran Officials**

An effort to compensate the victims of the May 11 incident began as part of the effort to lift a funding hold placed on INL funds. As we describe in Chapter Twelve, in July 2012, the Senate Foreign Operations Appropriations Subcommittee placed a hold on INL funding for foreign counternarcotics operations, training, and assistance in Honduras. Before this funding hold, on December 13, 2012, Assistant Secretary Brownfield had a telephone discussion with a staffer from the Subcommittee and one of the main items discussed was how to compensate the individuals injured and the families of those who were killed during the May 11 incident. A month later, in January 2013, the staffer gave State officials a list of 12 conditions for lifting the hold on INL funding, which included a compensation fund established to assist victims of counternarcotics operations and drug trafficking in Honduras.<sup>95</sup>

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<sup>95</sup> The list of 12 conditions for lifting the hold on INL funding, also included, among other things, that: (1) State develop and implement written policies and procedures governing use of force, protection of innocent people, and planning for contingencies; (2) a Honduran prosecutor be deployed on any future counternarcotics operations involving U.S. personnel; (3) no DEA participation in such operations until further consultation with the Senate Judiciary and Appropriations Committees about DEA's role; (4) a compensation fund be established to assist victims of counternarcotics operations and drug trafficking in Honduras; and (5) DEA and State cooperate fully with Honduran authorities investigating the May 10-11 interdiction. As of this date, we have no information that State and DEA have fully met these conditions.

State officials from INL and WHA initially discussed using INL funds to administer a grant that would be used to set up a fund for the victims of narco-terrorism, including the medical or funeral costs of the May 11 incident victims. However, State legal officials advised INL that its funds were not legally available for compensating individual persons. State officials also considered using money from funds appropriated for emergencies in the Diplomatic and Consular Service, but the Under Secretary of State for Management rejected this approach because he was concerned about the appearances such a payment might create. Efforts were also made to encourage the GOH to set up a compensation fund, but they only agreed to review the suggestion.

In July 2013, James Story succeeded Mark Wells as Director of Western Hemisphere Programs for INL. Story renewed efforts to compensate the victims, because in his view, failure to do so would turn the local Honduran population against drug interdiction efforts. In September 2013, Story traveled to Honduras and met with both government officials and representatives of civil society groups and realized the mutual lack of trust. According to Story, efforts to encourage the GOH to set up a compensation fund had failed because civil society groups had been disparaging the government, so government officials were reluctant to help. INL attempted to break this impasse by awarding a fixed obligation grant to INGWAIA, a non-governmental organization run by people of Miskito Indian descent. Story had another INL official vet the organization, which previously performed work for the Pan American Development Bank and the World Bank.

The grant of approximately \$23,000 required INGWAIA to meet with the Ahuas community, assess the situation, and come up with a plan for the GOH to compensate the victims. The plan that INGWAIA completed in the summer of 2014 called for the GOH to provide \$200,000 in assistance: 25 percent of which would be used for medical assistance for the May 11 victims; 50 percent would be used for repairing the homes of the community; and 25 percent would be used for community support projects, such as a women's cooperative bakery.

After the plan was developed, the GOH agreed to send funds to INGWAIA, with which it had signed a memorandum of understanding, to implement the distribution according to its plan. In late 2014, the GOH notified State that it had sent government funds to INGWAIA. However, Story told us that State officials could not verify that the funds were distributed to the victims because of the remoteness and dangerous nature of the area.

The authors of the CEPR report described in Chapter Three told the OIGs that as of March 2015, the May 11 victims had received only \$16,555 in compensation or assistance from INGWAIA. According to the authors, the victims had expressed frustration that INGWAIA never asked them to describe their needs (help with medical costs, living expenses, and education) and instead dictated that most of the funds would be used to repair housing. The authors told us that the compensation distributed by INGWAIA had done little to address the financial and medical hardships resulting from the deaths and injuries on May 11.

### **III. DOJ and State OIG Observations**

After the May 10-11 interdiction, at least five Honduran governmental organizations investigated aspects of the May 11 incident. U.S. officials treated the investigative report issued by the Special Prosecutor for Human Rights in September 2012 as the official report of the Honduran Government on the May 11 incident and, as described in Chapter Twelve, made representations regarding that report's findings in congressional correspondence. However, we found several flaws and omissions in the Special Prosecutor's Report, including: 1) at least one bullet recovered from May 11 was not matched to a Honduran weapon; 2) the basis for the ballistics finding regarding the other bullets matching TRT weapons was unclear given Ambassador Kubiske's observation that the Special Prosecutor's Office was not capable of performing the ballistic analysis referred to in the report; 3) the basis for the ballistics finding that the gunshot wounds came from shots fired on the same level as the victims was dubious given the absence of any evidence put forth to establish the position of their bodies at the moments they were shot; 4) the report stated but did not explain why the video evidence undermined the accounts of the survivors; and 5) the investigation was concluded without information from DEA that was requested from the U.S. Embassy.

We also found that even though State officials pressured the GOH to conduct an investigation into the May 11 incident, DEA – with State's concurrence – did not grant Honduran requests for information. DEA officials provided the OIGs with several reasons why DEA refused GOH access to DEA personnel involved in the operation, including the desire to insulate participating U.S. personnel from host nation jurisdiction and concern that multiple witness statements could harm U.S. judicial proceedings against Anvil drug traffickers. Even assuming that DEA's reasons were valid, it was contradictory for DEA and State to assert that the GOH was the entity that should investigate the May 11 incident but not give Honduran authorities the information necessary to conduct a thorough investigation.

As we describe in later chapters, DOJ OIG found that despite requests for updates on the Honduran investigation, DEA did not always provide complete or accurate information to DOJ leadership and Congress about the investigation, including the extent to which DEA had cooperated with the Honduran authorities in their review of the May 11 incident. Further, although U.S. officials accepted the Special Prosecutor's Report and made representations about its findings, DOJ OIG found no evidence that DEA advised DOJ leadership or Congress that a preliminary report from the Honduran National Police made findings unfavorable to the officers who participated in the operation. We found this particularly troubling given that the Honduran National Police was the parent organization of the TRT officers who participated in the operation and exercised deadly force.

In the next chapter, DOJ OIG describes DEA's internal shooting review of the May 11 incident, the completion of which was held in abeyance pending issuance of the Special Prosecutor's Report. After the Special Prosecutor issued his report, DEA inspectors presented the findings to DEA's SAIRC as the results of the Honduran investigation. The presentation to the SAIRC did not describe the findings or

observations from any of the other Honduran investigations described in this chapter.

## CHAPTER SEVEN: DEA'S INTERNAL REVIEW OF THE MAY 11 INCIDENT

In this chapter, we describe DEA's internal review of the May 11 incident and the findings of DEA's Shooting and Assault Incident Review Committee (SAIRC).

### I. DEA's Post-Shooting Incident Procedures

The DEA Agent Manual contains DEA's post-shooting incident procedures, the most relevant of which we describe in this chapter.<sup>96</sup> The procedures apply to a "shooting incident," defined as:

[A]ny discharge of a firearm by a Drug Enforcement Administration (DEA) Special Agent (SA) or deputized Task Force Officer (TFO) (whether on or off duty), another law enforcement officer (LEO) (federal, state, or local, whether deputized or non-deputized) working on a joint investigation and/or law enforcement operation with DEA, or other DEA employees authorized in writing to carry a firearm by the Administrator.

Although the DEA has hundreds of agents stationed overseas who work with foreign LEOs, the DEA Agent Manual does not address whether an incident in which shots are fired by a *foreign* LEO (as opposed to federal, state or local LEOs) working on a joint law enforcement operation with DEA in another country falls within the definition of a "shooting incident" triggering DEA's post-shooting incident procedures.<sup>97</sup>

The Chief of Operations is responsible for designating a shooting incident as "critical" or "non-critical" depending upon whether the incident resulted in the loss of life or personal injury or could result in the filing of criminal charges against any person, or whether the incident has a significant potential for civil liability, adverse publicity, or political reaction.<sup>98</sup>

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<sup>96</sup> DEA also has post-shooting procedures contained in its Planning and Inspection Manual. We have been advised that this manual pre-dated the DEA Agent Manual and is in the process of being updated to reflect the procedures in the DEA Agent Manual. Although many of the procedures in the two manuals are the same or similar, we have been advised that the DEA Agent's Manual was the operative document in 2012.

<sup>97</sup> The Federal Bureau of Investigation's (FBI) and U.S. Marshals Service's (USMS) post-shooting incident procedures also do not address whether an incident in which shots are fired by a foreign LEO working on a joint law enforcement operation in another country falls within the definition of a "shooting incident" triggering their post-shooting incident procedures. We recommend at the end of this report that the post-shooting incident procedures of DOJ's law enforcement components be considered more broadly by the Deputy Attorney General to determine whether revisions should be made to address this issue across the components.

<sup>98</sup> Although the DEA Agent Manual does not make clear the significance of the distinction, DEA's Office of Inspections (IN) advised the OIG that when the Chief of Operations designates a

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DEA's post-shooting procedures include steps that must be taken immediately by non-supervisory and supervisory personnel on-scene as well as the requirements for the post-shooting investigation and administrative review. However, the procedures also make allowances for incidents that occur in "uncontrolled areas" where adherence to certain requirements may be impractical or unsafe. According to the DEA Agent Manual:

DEA has expanded its operations into various foreign uncontrolled areas that may render some traditional aspects of this subchapter impractical. Uncontrolled areas are any remote, ungoverned, unsecured or hostile location where a shooting investigation team (SIT) or country office (CO) personnel could not safely return to the scene of a shooting or other incident covered by this subchapter to conduct the required post-event investigation. Examples include areas governed by corrupt local officials, combat zones, unstable regions, and other places that do not afford the security needed to complete an investigation, as well as areas in which the mere presence of a post-incident investigative team might itself be reasonably expected to cause or invite further shooting or hostile incidents.

Under the procedures, the DEA Administrator may designate a location as an uncontrolled area before an incident occurs, or a Regional Director, in consultation with the Chief of Operations, may designate a location as such after-the-fact.

#### **A. Immediate On-Scene Requirements**

The post-shooting procedures specify several on-scene responsibilities for various DEA personnel, including: (1) special agents (and TFOs), (2) supervisory special agents, (3) assistant special agents-in-charge (ASAC), assistant regional directors (ARD), and country attachés (CA), and (4) special agents-in-charge (SAC), regional directors (RD), and Headquarters office heads (HOH).

Most of the responsibilities of special agents focus on securing the safety and health of persons at the scene, preserving evidence, and securing all firearms and other weapons. Special agents must also immediately notify their supervisor of the incident. With respect to providing medical attention to persons at the scene, the procedures state that special agents are expected to provide first aid and request medical assistance, if necessary.

The supervisor at the scene is responsible for determining the condition of the special agents and others on scene, ensuring that the special agents fulfill their on-scene responsibilities, and protecting the integrity of the shooting scene by moving affected personnel and witnesses to a controlled area. Supervisors are also responsible for making the appropriate notifications to senior management (SAC,

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shooting incident as "critical" and the incident occurred within the United States, IN deploys an inspector to the location immediately.



RD, HOH, ASAC, ARD, and CA) and state and local law enforcement authorities, establishing a command post, and starting the process of information collection.

In all shooting incidents involving death, personal injuries, or in situations that have resulted or are likely to result in the arrest of any DEA or LEO participants, the ASAC, ARD, or CA is responsible for responding immediately to the scene, making sure there are a sufficient number of unaffected personnel available to provide necessary assistance, and coordinating weapons surrender. The ASAC, ARD, or CA is also responsible for gathering all information regarding the incident and advising any agents, TFOs, or DEA employees who discharged a firearm that any statement he or she makes is not privileged and that he or she has the right to request representation.

The ASAC, ARD, CA, or a designee on scene is responsible for inspecting the weapons of all affected personnel to ensure that all weapons fired during the shooting are identified and that all weapons not fired are identified.<sup>99</sup> The procedures do not state how the inspection must be conducted to determine the weapons fired and not fired during the incident. The procedures state that after a weapons inspection, the ASAC, ARD, CA, or designee on scene must consult with and obtain the approval of the SAC, RD, or HOH before transferring any weapons to state or local authorities as evidence or for ballistic testing. If the SAC, RD, or HOH determines that a weapon should be surrendered to a state or local authority, the senior DEA manager on scene will make the surrender.

In all "serious" incidents, the SAC, RD, or HOH is expected to personally respond to the scene.<sup>100</sup> The SAC, RD, or HOH is responsible for ensuring that trauma team members are dispatched or that affected DEA employees communicate with an Employee Assistance Program (EAP) clinician within 96 hours. The SAC, RD, or HOH is also responsible for immediately establishing liaison relationships with appropriate federal, state, and local authorities.

The Manual waives some of these requirements, including securing the scene, preserving evidence, and requiring that managers respond personally to the scene, when the incident occurs in an uncontrolled area and compliance with the requirements is not practical or safe. In addition, for safety reasons, weapons surrender may be waived temporarily when inside an uncontrolled area. As discussed below, the location where the May 11 incident occurred was not designated an uncontrolled area in advance, but was treated as such by DEA in the aftermath of the incident.

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<sup>99</sup> The "affected" personnel whose weapons should be inspected are not further defined in the policy.

<sup>100</sup> The term "serious" is not defined in the policy, nor is any difference between "serious" and "critical" incidents discussed above.

## **B. Investigation Procedures**

### **1. Reporting Requirements**

DEA's post-shooting procedures provide that any discharge of a firearm meeting the definition of a "shooting incident" must be reported, documented, and investigated. As described in Chapter Three, DEA's reporting procedures require that personnel immediately notify the DEA Headquarters' Command Center in the event of a critical incident, shooting, threat or assault, or significant enforcement activity. Upon receipt of this notification, the Command Center is responsible for notifying the managers of the appropriate DEA Headquarters' components. These components include DEA's Office of Inspections (IN) for notifications involving a critical incident, shooting, or threats or assault.<sup>101</sup> In addition, within 24 hours, the SAC or RD is responsible for transmitting a teletype or e-mail communication to IN detailing the shooting incident, which is then followed by a responsive teletype or e-mail from IN containing instructions and an IN case number.

Further, the post-shooting procedures required that DEA's Office of Professional Responsibility (DEA OPR) notify the Department's Civil Rights Division (CRT) and the relevant U.S. Attorney's Office (USAO) of all "shooting or assault instances involving injury or death." The Associate Deputy Chief Inspector of DEA OPR told us that in 2011 CRT advised DEA OPR that it would no longer require notification of foreign shooting incidents because persons shot outside of the United States did not have standing to claim a civil rights violation under U.S. law.<sup>102</sup>

### **2. Roles and responsibilities**

The DEA's post-shooting procedures place primary responsibility for all shooting investigations upon IN and, in particular, the Deputy Chief Inspector (DCI). The DCI is expected to take "prompt and appropriate measures to ensure that DEA shooting and assault investigations are thorough, factual, timely, and objective." These investigations are carried out by IN's Shooting Incident Team (SIT) – a team of inspectors and a program analyst who function under the direction of a Senior Inspector. In the event of a shooting incident, the SIT assigns

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<sup>101</sup> IN does not automatically receive a notification for significant enforcement activity not otherwise reported as a critical incident, shooting, threat, or assault.

<sup>102</sup> However, DOJ OIG would still have had jurisdiction to review any such matters for possible misconduct by a DOJ employee or task force officer. Further, a December 2015 MOU between DOJ OIG, CRT, and DOJ's law enforcement components expanded the reporting requirements for shooting incidents. Under the 2015 MOU, DOJ's law enforcement components (including DEA) are required to advise both CRT Criminal Section and DOJ OIG of all incidents that involve: (1) any intentional discharge of a firearm aimed at or striking another person, (2) any unintentional discharge of a firearm striking another person, and (3) any intentional or unintentional discharge of a firearm resulting in damage to private property. By its express terms, the MOU covers shootings by DOJ employees, as well as non-federal law enforcement officers who are acting as DOJ-deputized task force officers or who are participating on DOJ-led enforcement operations, and applies regardless of whether the reportable shooting incident occurred inside or outside the United States. The 2015 MOU provides procedures for coordinating any criminal or administrative investigation among and between DOJ OIG, CRT Criminal Section, the FBI, and the DOJ component of the involved employee.

an inspector to conduct the investigation, or, in instances in which the investigation is delegated to a supervisory special agent in the field (described below), the assigned inspector will direct and monitor the progress of the investigation and ensure adherence to procedures. Under either scenario, the SIT is expected to “ensure that a logical, thorough, objective, and factual inquiry is conducted and documented.”

### **3. Delegation of Authority for a Shooting Investigation**

The DEA’s post-shooting procedures allow the DCI to delegate the authority to investigate a shooting incident to a supervisory special agent (SSA) in the field, rather than having the SIT deploy “on-site” to the location of the incident. There are two separate provisions that appear to govern the determination of whether to deploy the SIT or delegate the investigation to the field. The first provision states that the SIT will conduct on-site investigations of any incident that resulted in: (1) death or injury to a DEA employee, TFO, defendant, or suspect; (2) death or serious injury to a confidential source while participating in DEA activity; (3) death, serious injury, or significant property damage to non-DEA personnel; or (4) has a recognized potential for adverse publicity.

The second provision states that the DCI will make the final determination as to whether to have the SIT conduct the investigation on-site or whether to delegate the investigation to the field. This provision contains separate delegation guidelines for domestic and foreign shooting incidents. For domestic shooting incidents, the provision states that IN will usually delegate the investigation to the relevant DEA field office, and, specifically, to the SAC of the office involved, when the shooting incident did not result in significant or life-threatening injuries, deaths, or other significant liabilities. The provision does not specifically state what will happen when a domestic incident involves significant injuries, death, or other significant liabilities. Former DEA Deputy Chief Inspector (DCI) Kevin Foley told us that in those situations IN would deploy a SIT to conduct an on-site investigation.<sup>103</sup>

For foreign incidents, including those involving FAST personnel, the delegation guidelines are less clear. The guidelines do not specifically mention delegation and state only more generally that IN will address “investigative requirements” pertaining to foreign offices and the FAST program on a case-by-case basis in close coordination with the Office of Global Enforcement. DCI Foley told us that it was common for IN to delegate foreign shooting incidents to the field, which typically meant to the Regional Director with responsibility over the geographical area involved in the incident.

In instances in which the DCI delegates the investigation to the field, the procedures specify two requirements for an SSA assigned by the SAC or RD to handle the investigation, namely that he or she be a GS-1811-14 level or higher and have had no involvement in the incident under investigation. Although the procedures do not identify the official or office responsible for making the

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<sup>103</sup> Foley, who retired from DEA in 2015, was the DCI during all times relevant to this report.

assignment, DCI Foley told us that the SAC or RD with responsibility over the office to which the investigation was delegated makes the assignment to the SSA.

Finally, the delegation procedures emphasize the need for sufficient oversight over all investigations delegated to the field:

It is essential that sufficient oversight authority of the delegation process be exercised to ensure that:

1. A thorough, factual, and objective investigation is conducted.
2. The results of the inquiry are documented in a comprehensive report appropriate for the type of incident being investigated.
3. Potential conflicts of interest are avoided including even the appearance of a conflict of interest or impropriety.

Although this provision does not identify the official or officials responsible for providing this oversight, presumably the provision refers to the DCI and the SIT who, as described above, are responsible for ensuring a thorough, factual, and objective investigation.

#### **4. Investigation Requirements**

The DEA's requirements for the shooting incident investigation cover only about two pages of the DEA Agent Manual's post-shooting procedures and consist of a list of forms, reports, and other documents that must be collected for the shooting investigation file (often referred to as the "shooting investigative package" or "shooting package"). No other requirements for the investigation are identified or described, except that investigations should be completed within 30 business days unless an extension is granted. For example, the requirements do not state whether interviews of the shooter or other witnesses must or should be conducted under particular circumstances, or what procedures should apply to such interviews. In fact, the requirements do not mention witness interviews at all. They also do not provide procedures or guidance regarding how witness statements should be prepared and collected.<sup>104</sup>

Further, the requirements, at least on their face, apply only to assigned SSAs in the field. The procedures make no reference to the requirements for inspectors from the SIT conducting "on-site" investigations.

The list of documents required for the investigation file include 18 categories for most shooting incidents and 12 categories for shooting incidents in uncontrolled areas. According to IN officials, the smaller file for shootings in uncontrolled areas is sometimes referred to as an "abbreviated" shooting package. The categories in

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<sup>104</sup> By contrast, the FBI's Shooting Incident Guide is approximately 263 pages and includes the chain of command for shooting incidents, pre-incident preparation, and the collection of investigative and administrative documents, as well as protocols for conducting interviews of agency and non-agency personnel.

both instances include the initial internal notifications reporting the incident to the Command Center and relevant DEA offices, an investigative report prepared by the assigned SSA summarizing the relevant events, witness statements, operational plan, diagrams, photographs, maps, the current Firearms Qualification Form (DEA-279) for the shooter, a Report of Shooting Form (DEA-485), and "other relevant memoranda/documents" not further defined. The full shooting package for all other shootings also includes official investigative reports (such as police reports, ballistic reports, and forensic reports), medical and autopsy reports, description of property damage, authorization to carry a personally owned firearm (if applicable), deputization documents (if applicable), and a declination of prosecution from the USAO.

Finally, the procedures require that the delegated field office submit the complete investigation file to the SIT for review. Together with the file, the SAC, RD, or HOH is expected to include a cover memorandum attesting to the completeness of the investigation. Upon receipt of the entire package, the assigned IN Inspector in the SIT is responsible for reviewing the investigation for completeness, sufficiency, and adherence to applicable policies. If the Inspector finds the package deficient, he or she returns it back to the field office for follow-up investigation.

### **C. Shooting and Assault Incident Review Committee**

According to DEA's post-shooting procedures, after a "full investigation," all shooting incidents will undergo administrative review by the SAIRC. The SAIRC has three voting members – the Chief Inspector, the Chief of Operations, and the SAC of the Office of Training – and one non-voting member representing the Office of the Chief Counsel. According to the procedures, the SAIRC is expected to immediately review the IN investigation and render an opinion as to the facts and circumstances surrounding each incident.

Specifically, the SAIRC is responsible for rendering a decision as to whether the application of deadly force was consistent with existing legal and policy guidelines and for answering the following questions:

1. Have the events and facts surrounding the incident been accurately and completely reported?
2. Was the DEA employee acting with his/her scope of employment and authority?
3. Were the actions taken by the DEA employee in compliance with DEA policies and procedures?
4. Was there evidence of employee misconduct or malfeasance?

As described in Chapter Two, the touchstone of the DOJ policy regarding the use of deadly force is necessity.<sup>105</sup> DOJ law enforcement officers may use deadly force only when necessary, which under the policy means when the officer has a reasonable belief that the subject of such force poses an imminent danger of death or serious physical injury to the officer or to another person. If the SAIRC determines that the use of deadly force was not justified or inconsistent with DOJ's Deadly Force Policy, the SAIRC is required to advise DEA's Board of Professional Conduct, which will determine disciplinary action. The SAIRC may make recommendations for corrective actions concerning any "management, administrative, integrity, criminal, legal, equipment, safety, and training issues." It may also evaluate the incident for "lessons learned" for future instructional purposes.<sup>106</sup>

#### **D. Jurisdictional Issues**

The DEA's post-shooting procedures briefly address jurisdictional issues and the responsibilities among state, local, and federal agencies concerning shooting incidents. According to the procedures:

Investigative and prosecutorial responsibilities for shooting incidents will vary from one jurisdiction to another and will be governed by precipitant circumstances. In most instances, particularly when a shooting results in a death, state and local authorities will be required to conduct an investigation pursuant to existing local laws and/or regulations. The results of their investigation may be presented to either a state grand jury or a coroner's inquest, depending on the jurisdiction. This does not, however, preclude a parallel investigation by DEA or the FBI, as in the case of an assault on a federal agent. Recognizing that parallel federal and local investigations could lead to a possible conflict between investigative authorities, it will be the responsibility of the SAC/RD/HOH to initiate appropriate efforts to successfully resolve and coordinate all issues relating to the investigation.

The procedures do not address jurisdictional issues and responsibilities concerning shooting incidents that occur outside the United States during joint operations with host nations.

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<sup>105</sup> Policy Statement, Use of Deadly Force (July 1, 2004).

<sup>106</sup> Although DEA's post-shooting procedures do not appear to have required that the OIG also receive notice of any adverse SAIRC determinations, the 2015 MOU described above recognizes that DOJ components have a continuing obligation to notify the OIG of any evidence of misconduct in relation to shooting incidents developed through the shooting review board process or otherwise. Further, under the terms of the 2015 MOU, upon mutual agreement of the OIG and the Department component, the OIG may attend the shooting review board meeting and receive full information regarding the shooting incident as far in advance of the meeting as possible.

## **E. Interviews by Outside Agencies**

With exceptions not applicable here, the Manual requires that the SAC, RD, or HOH be fully informed and approve all interviews of DEA personnel by outside investigative authorities requesting their statements as participants or witnesses to a shooting incident. According to the Manual, DEA employees will be available for interviews with investigative authorities when an injury has occurred as a result of a shooting incident or law enforcement operation. However, the procedures specify that, whenever possible, the employee will first be removed from the scene, meet with DEA management, and have a DEA management representative with him or her to represent DEA's interests during the interview.<sup>107</sup>

According to the Manual, the role of the DEA management representative at the interview is to serve the interests of DEA. The procedures place the burden upon the DEA employee to determine when a conflict exists between agency and employee. If the employee determines that a conflict may exist (and, presumably, informs the management representative of his concerns), it is the DEA management representative's responsibility to stop the interview and advise the employee to consider retaining personal legal counsel if he or she has not already done so. The Manual states that after the employee is afforded reasonable time following the incident to regain "composure or obtain medical attention," the employee must cooperate fully with DEA and any other law enforcement agency with jurisdiction over the shooting incident.<sup>108</sup>

The Manual includes a special provision for "non-federal" interviews.<sup>109</sup> For such interviews, the employee is entitled to the opportunity to request legal representation from DOJ or retain personal legal counsel at his or her own expense. For purposes of DOJ representation, DOJ must make a determination of whether the employee was acting within the scope of his or her authority. DOJ representation is generally not available in federal criminal proceedings.

## **II. DEA Deliberations Regarding Whether to Initiate a Post-Shooting Review of the May 11 Incident**

As described in Chapter Three, on the afternoon of May 11, DEA's Tegucigalpa Country Office (TCO) reported the May 10-11 interdiction in a Significant Enforcement Activity Report (SEAR) to the DEA Command Center and various operational divisions within DEA. TCO did not separately report the May 11 incident as a "critical incident" or "shooting incident," and, therefore, the DEA Command Center did not send a critical incident or shooting incident notification to

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<sup>107</sup> The presence of such component management representatives would not generally be permitted by the OIG in matters that it investigates.

<sup>108</sup> The Manual is silent as to any right against self-incrimination with regard to such cooperation.

<sup>109</sup> While not defined in the Manual, this provision appears to address interviews with state or local law enforcement authorities.

IN. Further, as described below, TCO did not send a teletype detailing the shooting incident to IN until May 22. Nevertheless, DCI Foley told the OIGs that he learned of the May 11 incident sometime on May 11 or 12.<sup>110</sup>

**A. DEA's Initial Decision Not to Initiate an Internal Review of the May 11 Incident**

In the immediate aftermath of the May 10-11 interdiction, senior DEA officials discussed whether to open an internal review to investigate the circumstances of the shooting incident but decided not to do so. According to Deputy Administrator Thomas Harrigan and Deputy Chief Counsel John Wallace, DEA officials initially decided not to open a review because DEA's post-incident reporting was that no DEA personnel discharged a firearm. According to both officials, because none of the DEA personnel involved in the operation discharged a firearm, the incident did not fit within the parameters of DEA's shooting review procedures. As noted above, the DEA Manual does not address whether DEA must conduct post-shooting reviews of incidents involving shots fired by foreign LEOs in joint operations with DEA.<sup>111</sup>

Harrigan told us that he believed it was questionable whether DEA had the authority to investigate the incident given that none of its officers fired a round. Harrigan told us that typically in these circumstances, when a foreign partner discharged a weapon, even in the course of a joint operation, DEA officials would do no more than report the incident to senior management in a SEAR, which DEA officials in TCO did on the afternoon of May 11.

In Chapter Three, we described how one or more FAST members on Helicopter █████ directed or otherwise told the Honduran door gunner to fire upon the passenger boat. According to Harrigan, Wallace, and DCI Foley, they did not have any discussions about the circumstances of the Honduran door gunner's decision to fire upon the passenger boat – including whether someone on Helicopter █████ directed the door gunner to fire his weapon. DCI Foley said he never learned any information suggesting that U.S. personnel directed the door gunner to fire, and his understanding from FAST witness statements was that none of the FAST members did so. Similarly, the Inspector assigned to oversee the internal review told us that he did not know whether FAST personnel directed the door gunner to fire and that this question never came up during the internal review.

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<sup>110</sup> CRT advised DOJ OIG that it had no record of any referral or notification from DEA concerning the May 11 incident (or the subsequent shooting incidents on June 23 and July 3, 2012). As noted above, the Associate Deputy Chief Inspector of DEA OPR told us that in 2011 CRT advised DEA OPR that it would no longer require notification of foreign shooting incidents (such notification is required per the 2015 MOU referenced above).

<sup>111</sup> As described in Section I above, the DEA Agent Manual includes in the definition of a "shooting incident," a shooting by another federal, state, or local law enforcement officer (LEO) (whether deputized or non-deputized) working on a joint investigation and/or law enforcement operation with DEA, thereby triggering DEA's post-shooting procedures.



## **B. DEA Reverses Decision and Opens an Internal Review**

DCI Foley told us that although some DEA officials may have discussed not opening a review, he thought the incident presented little question. He said that in his view it was “straight forward” that IN should conduct a review. He said that a number of reasons pointed in favor of DEA conducting a review, including the fatalities involved, the joint nature of the operation, and the fact that the Hondurans operated under the training and guidance of DEA personnel. According to Foley, the best analogy would have been a shooting by a task force officer working jointly with DEA. In that situation, DEA’s procedures would have required a post-incident shooting review. Foley said that after his staff gathered the preliminary information about the operation and the May 11 incident, he recommended to then Chief Inspector James Kasson that IN open a review, and Kasson agreed.

According to Wallace, sometime before the end of May, he participated in several conversations with Harrigan, Kasson, and Foley during which the officials decided that the more prudent course of action was that even though the incident did not automatically trigger the post-shooting procedures, they would treat the May 11 incident as if there had been a DEA firearms discharge and use the formal shooting review process to memorialize DEA conduct during the event. He said the process would give them the means by which to memorialize what happened and give senior management the opportunity to determine what had occurred and what course of action should be taken as a result of what occurred.

Harrigan told us that he changed his mind regarding May 11 after the emergence of conflicting stories about what happened, including assertions in the May 18 Police Report from Puerto Lempira, Honduras, (described in Chapters Three and Six) that were unfavorable to law enforcement actions, as well as the emergence of questions from congressional committees. As described in previous chapters, the DEA Country Attaché (CA) received the report on May 21, in which a local deputy police commissioner from Puerto Lempira asserted that four individuals were killed, including two pregnant women, and four others were wounded after a helicopter containing DEA personnel mistakenly confused cargo in a passenger boat for bales of drugs. Harrigan said that the local police report was an impetus for him deciding that DEA needed to do something more. According to Harrigan, the report’s methodology and findings had a “ton of holes,” including the lack of any information from Honduran or U.S. law enforcement, which suggested to him that more needed to be done to investigate what happened.

Harrigan said that he had discussions with INL Assistant Secretary William Brownfield and WHA Principal Deputy Assistant Secretary John Feeley during this time and that they agreed that State would request that the GOH conduct an investigation into the incident and, separately, that DEA would open an internal review of DEA conduct during the operation. According to Wallace, during discussions with Brownfield and Feeley, DEA officials said that only DEA would conduct a review of DEA conduct – to the exclusion of all other U.S. agencies –

because of DEA's concerns that multiple investigations could potentially create *Jencks* or *Giglio* material for underlying counternarcotics investigations.<sup>112</sup> According to Wallace, Brownfield and Feeley raised no objections or concerns regarding this approach.

On May 22, a day after DEA received the May 18 Police Report, TCO provided IN with the teletype necessary to initiate the DEA internal review. As described earlier in this chapter, a teletype informing IN of a shooting incident was required to trigger the opening of an internal shooting review. The same day, the Government of Honduras (GOH) agreed to organize the Honduran Task Force (described in Chapter Six) to investigate the May 10-11 interdiction.

Harrigan told us that he likely briefed the Office of the Deputy Attorney General (ODAG) and advised ODAG of the decisions DEA was in the process of making with its State counterparts. As we describe in Chapter Eleven, the opening of DEA's internal review coincided with urging that DEA received from ODAG to conduct an investigation. The ODAG Attorney responsible for the DEA portfolio told us that at some point during his early discussions with DEA officials about the May 11 incident, he asked them about what more DEA could do to gather information, whether DEA officials were talking to their agents, whether they were getting witness statements, and more generally whether they were going to conduct a formal review. He said that when DEA officials, including Harrigan, advised him that they did not intend to investigate the incident because a DEA agent did not fire a weapon, he was not satisfied with this explanation and urged them to reconsider. Further, after DEA advised him that the GOH agreed to organize a task force to investigate the incident, the ODAG Attorney contacted Administrator Michele Leonhart to ensure that DEA would nevertheless conduct its own review. Harrigan told us that although he may have had discussions with the ODAG Attorney, the final decision to initiate an internal review was DEA's decision.

On May 30, IN formally opened an internal review of the May 11 incident. The scope of DEA's internal review was limited to the conduct of the DEA participants in the May 10-11 interdiction. IN did not examine the conduct of any of the other participants working jointly with DEA, including the Honduran TRT officers, the Honduran door gunner, the State-contractor pilots, or the Guatemalan co-pilots. According to Harrigan and Wallace, the scope was limited to DEA personnel because DEA had no authority to investigate the actions of any other party. Harrigan told us that as a sovereign country it was incumbent upon Honduras to conduct a broader investigation. Nevertheless, according to Harrigan and Wallace, DEA did not desire to participate in the Honduran investigation.

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<sup>112</sup> As a result of the interdictions in Operation Anvil, several drug traffickers have been indicted in federal district court. The Jencks Act, Title 18 U.S.C. § 3500, generally requires that government prosecutors provide all statements or reports made by a government witness after the witness has testified. Pursuant to *Giglio v. United States*, 405 U.S. 150 (1972), prosecutors are required to disclose any promises made to a witness in exchange for his testimony, and this has been expanded to include a further duty to disclose to the defense exculpatory information including credibility issues with law enforcement officers.

According to Harrigan, DEA did not want to give the appearance that it was exerting undue influence over the conduct or results of the investigation.

### **III. DEA's Delegation of the Internal Review to the Regional Director Who Assigns FAST Supervisor to Conduct Investigation**

On May 30, after IN officially opened the internal review of the May 11 incident, DCI Foley delegated the investigation to TCO under the direction of Regional Director Joseph Evans. Foley told us that he discussed delegation with Kasson and Harrigan, and the three agreed that delegating the investigation was the best course of action given the foreign and remote location involved. According to Foley, the delegation of foreign shootings to the field was a common practice. He said that IN did not deploy inspectors to foreign locations like Ahuas because they could not get there quickly after a shooting and they would face safety and security concerns, corruption issues, and a limited ability to talk to host nation citizens. However, he said that in this and other shooting reviews he and his office remained involved and assigned an inspector to oversee and advise the assigned SSA on the investigation.

In an e-mail communication to RD Evans and the Country Attaché on May 30 delegating the investigation to TCO, IN directed that TCO prepare an "abbreviated shooting investigation report package" containing the 12 categories of forms, reports, and documents that DEA's post-shooting procedures require for shooting incidents in uncontrolled areas. According to DCI Foley and the Inspector overseeing the investigation, they considered Ahuas an uncontrolled area because of the remoteness of the location, as well as their belief that the area posed corruption and security problems from the presence of drug trafficking organizations in the area. There was no record in the investigation file that the Regional Director or the Administrator designated Ahuas as an uncontrolled area (as contemplated under the DEA Agent Manual), and the SIT Senior Inspector told us that he did not believe a formal designation was made.

Shortly after the e-mail communication from IN to RD Evans and the Country Attaché, RD Evans and the Assistant Regional Director discussed possible SSAs to handle the investigation. E-mail communications reflect that after Evans told the Assistant Regional Director that he was short on available staff in the region, the Assistant Regional Director offered to find someone outside the region to do the investigation and eventually suggested two supervisors from the Office of Global Enforcement Special Projects Branch – the FAST Deputy Section Chief (FAST Supervisor) and the Special Projects Section Chief for Strategic Planning. The FAST Supervisor reported directly to FAST Section Chief Richard Dobrich, and the other official reported directly to Dobrich's supervisor, Deputy Chief of Operations for Special Projects Jay Fitzpatrick. Evans told the Assistant Regional Director that he approved either choice, and, after Dobrich notified the Assistant Regional Director that the FAST Supervisor was available to conduct the shooting investigation, the FAST Supervisor was selected. The Assistant Regional Director said she did not recall who ultimately selected the FAST Supervisor.

The FAST Supervisor assigned to the review was a career DEA agent with over 20 years of experience in both domestic and foreign operations. In 2012, he was a FAST Deputy Section Chief who supervised all five FAST teams and, as previously stated, reported directly to Dobrich. He participated in the planning of Operation Anvil but did not deploy to Honduras or directly participate in the operation.

The Assistant Regional Director told us that her preference would have been to assign someone outside of the FAST program to conduct the investigation since the incident involved FAST personnel. She said that she did not recall the reason the FAST Supervisor was ultimately selected but speculated that the reason may have been because her region was very understaffed at the time. In addition, Dobrich told us that he raised a concern with Fitzpatrick about whether it made sense to assign the investigation to someone within the FAST program, but Dobrich said that Fitzpatrick ultimately directed him to task the FAST Supervisor and so he did.<sup>113</sup>

RD Evans told us that normally he would have chosen an SSA outside the supervisory chain of the office directly involved in the operation so that the investigation maintained a degree of independence. He said that in this instance he agreed to assign the investigation to a FAST supervisor because the FAST team had already returned to the United States, and it did not make sense to task an SSA from TCO or one of his other regional offices, which were small and understaffed, to travel to Washington to conduct the investigation when there were plenty of SSAs in Washington available to do so.

DCI Foley and Harrigan told us that they did not have any concerns at the time about the assignment of a FAST supervisor to conduct the investigation. Foley said that when IN delegated an investigation to the field, the field office had the option of choosing an SSA from the same office or another office. He said that from his perspective what was more important was the investigative experience and abilities of the person selected, and the FAST Supervisor was a veteran supervisor with the appropriate investigative experience. He said that he also understood why regional leadership would want to select someone with knowledge of and experience in the type of operation involved. He said that for these reasons he did not object or believe he had a basis to be concerned about the selection.

#### **IV. Investigative Steps Taken During DEA's Internal Review of the May 11 Incident**

As noted above, on May 30, IN formally opened an internal review of the May 11 incident. Harrigan and Wallace told us that once DEA made the decision to open this review, they deferred to IN to determine the investigative steps that should be taken.

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<sup>113</sup> As noted in previous chapters, Fitzpatrick denied our request for an interview. Because he is no longer a DOJ employee, the OIGs were unable to compel his interview.

IN's e-mail communication delegating the investigation of the May 11 incident to RD Evans did not provide direction or guidance regarding the investigative steps that the assigned SSA should take besides collecting and organizing the 12 categories of documentation into an abbreviated shooting package. In addition, it does not appear that IN gave the FAST Supervisor any other direction or guidance after he was selected. According to the FAST Supervisor, no one told him what to do regarding the steps that should be taken before submitting his shooting package to IN, and he relied instead on his own judgment. Further, the Inspector assigned to oversee the investigation and the Senior Inspector for the SIT told us that they had no discussions with the FAST Supervisor before or after he submitted the shooting package to IN. According to the Inspector, there was no special training or guidance given to an assigned SSA as a matter of general practice, except for the instruction in the teletype to compile the required documents in a shooting package.

#### **A. FAST Witness Statements**

On May 22, the team leader from FAST Team Bravo who led the May 10-11 interdiction for DEA (Bravo Team Leader) directed all █████ FAST members who participated in the interdiction to prepare witness statements. We were unable to determine whether this direction came before or after DEA officials decided to open an internal review or whether the statements were prepared in anticipation of or specifically intended for the internal review. Nevertheless, because the FAST Supervisor included the witness statements in the shooting package he prepared and told us that he relied on these statements in drafting his investigative report, we describe the witness statements below.<sup>114</sup>

According to the Bravo Team Leader and an e-mail sent to the FAST members present during the interdiction in Ahuas, on May 22, Administrator Leonhart requested the witness statements in order for DEA to prepare a response to negative press reports on the May 11 events in Ahuas. As noted above, this was the same day TCO provided IN with the teletype necessary to initiate the DEA internal review. On May 22, the Bravo Team Leader sent the following e-mail with this direction to all the members of FAST who were in Ahuas on May 11:

Just got off the phone with Rich [Dobrich]. Apparently the Administrator is pissed with the lack of response from the U.S. Embassy. In preparation for her counter attack she wants an email statement from ALL of us. So, start working on your statement in a word doc. This needs to be done by noon tomorrow. [FAST Member P] is forwarding AAR [After Action Report] and Critical incident to everyone. Use them for times only. Write everything you saw and heard from the time we launched from █████ until we RTB [returned to base] to █████ in your own words. Do NOT

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<sup>114</sup> As described in Chapters Eleven and Twelve, DEA officials also relied upon these statements in submitting information to DOJ leadership and Congress.

forward to me until someone has proof [sic] for you!!! The Administrator will see these! Start working on it.

On May 22, FAST Member P forwarded to all the FAST members the After Action Report, described in Chapter Three, which included a timeline of events from the start of the interdiction on May 10 and to the morning of May 11 when the helicopters returned to base.

The Bravo Team Leader told us that his role was to collect the statements from FAST members and submit them to the FAST Supervisor conducting the shooting review. He said that the guidance he received on the statements was that each FAST member should "state what you saw from your perspective." On June 11, he sent an e-mail to the Delta Team Leader, FAST Member G, and the FAST Medic, asking them to complete their statements using the same introductory synopsis on Operation Anvil and send them to him as soon as possible, as they were due to the FAST Supervisor that afternoon.

DEA documents reflect that during the first 2 weeks in June each of the █████ FAST members submitted a written statement to the Bravo Team Leader purporting to summarize what they witnessed on May 11.<sup>115</sup> These statements were submitted in a Word document as the FAST members were not able to access the DEA report forms from their base in █████ Honduras. The Bravo Team Leader told us that when he was able to access the DEA report forms after returning to the United States, he cut and pasted the statements into the proper form and submitted them to Dobrich and the FAST Supervisor.<sup>116</sup>

As a general matter, the FAST members prepared witness statements memorializing the events of May 10-11 from the perspectives of what they would have personally witnessed. Because the FAST members played differing roles during the interdiction, they all did not witness the same exact events. However, the witness statements were generally consistent with one another, and, collectively included the following points:

- The helicopters departed based and traveled to Ahuas to intercept a suspect plane arriving from █████.
- A surveillance aircraft witnessed the suspect plane land in a clandestine airfield and individuals offload packages into a truck that traveled to the Patuca River.
- The packages were unloaded from the truck onto a pipante, which drifted downstream when the helicopters arrived.

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<sup>115</sup> Wallace said he recalled that within a couple days of the incident he received from Harrigan's staff about six unsigned witness statements from the key participants, including the Delta Team Leader. We believe Wallace may have been mistaken as to the timing of these witness statements. As described above, DEA e-mail communications reflect that FAST personnel did not receive an instruction to prepare witness statements until May 22.

<sup>116</sup> The e-mails and records that we reviewed do not reflect when this was done.

- FAST and TRT teams from Helicopters ██████████ located the pipante loaded with the packages and attempted to transport the pipante upstream back to the nearby village with two TRT officers and the Delta Team Leader when the engine stopped working.
- While the Delta Team Leader attempted to restart the engine, a passenger boat traveled in a zig-zag pattern toward the pipante and made contact with the pipante.
- Muzzle flashes were seen at the time the boats made contact and seconds later one of the helicopters fired at the passenger boat.
- The pipante's passengers and the drugs were later recovered, and FAST and TRT returned to base.
- No local residents of the village were abused during the interdiction, and no injured or dead were located by law enforcement during the interdiction.
- No DEA personnel discharged a weapon.

As described below, we found some anomalies in the witness statements of three different FAST members. One FAST member supplied a statement that appears to have been copied nearly verbatim from another FAST member's statement and excluded important information. Another FAST member provided a statement describing several events that he did not witness. The Delta Team Leader submitted three different statements, all of which excluded material information he described to us during his OIG interview.

### **1. FAST Member G's Statement**

FAST Member G provided the OIGs with a detailed account of what he witnessed on May 11 that included facts he did not describe in his written statement. The most significant omissions were that FAST Member G was a percipient witness to the encounter between the two boats and that in reaction to what he saw he yelled, "Fuego, fuego, fuego!" or "Fire, fire, fire!" at the door gunner two times before the door gunner fired at the passenger boat.<sup>117</sup> FAST Member G also omitted from his statement the fact that he kicked in a shed door in the village to obtain gas for a boat that would take FAST members to the opposite side of the river to retrieve the Delta Team Leader and the two Honduran TRT officers from the pipante.

FAST Member G told us that he did not include in his statement the fact that he personally witnessed the encounter on the river, told the door gunner to fire, or

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<sup>117</sup> In addition, as we describe in Chapter Three, FAST Member E omitted from his witness statement that he yelled, "Shoot, shoot, shoot!" inside the helicopter and using his radio headset after he saw the initial muzzle flashes on the river. FAST Member E told us that he did not yell specifically to the door gunner or witness anyone else doing so.

that he kicked in a shed door to get gas because he “did not think they were pertinent at the time.”

One of the allegations that surfaced shortly after the May 11 incident was that a DEA agent kicked open or otherwise broke into a locked shed to obtain gasoline for a boat that FAST members used to rescue the officers in the pipante. The DEA’s then Acting Chief of Congressional and Public Affairs Eric Akers told us that DEA officials informed congressional committee staff that none of the participating officers had knocked down any doors. Dobrich told us that to his knowledge that did not occur. Further, DCI Foley told us that the allegation was “totally inconsistent with everything we learned” about the circumstances of how DEA personnel obtained gasoline for the third boat. Foley said his understanding, based on the FAST member’s statements, was that the shed was accessed by a young local resident who offered assistance to the officers.

In addition, the OIGs observed that, of the eight paragraphs in FAST Member G’s statement, six paragraphs matched eight paragraphs in FAST Member P’s witness statement word for word. Two other paragraphs were nearly identical to FAST Member P’s statement but for reflecting FAST Member G’s recovery of the Delta Team Leader and TRT from the disabled pipante.

When the OIGs asked FAST Member G if he wrote the statement himself, he told us “I honestly cannot say with 100% certainty that this is a statement that I wrote.” When asked by what percent he was certain he personally wrote this statement, he refused to answer stating that he already answered and would not answer whether or not the statement was his. He also refused to answer whether or not it was likely the account in the statement was his. FAST Member G would not commit to whether he wrote the statement or that it was his statement with any degree of certainty. The OIGs did not receive any other statement from DEA or FAST Member G that purported to be FAST Member G’s statement.

FAST Member P told us that he brought his laptop to Honduras for Operation Anvil and used it to write his statement at the hotel where FAST was staying. He said that not every FAST member brought a laptop, and he allowed other team members, including FAST Member G, to use his laptop to write their statements.

We believe it is likely that FAST Member G cut and pasted from FAST Member P’s statement instead of drafting his own. Moreover, the few sentences FAST Member G did draft on his own omitted significant information he admitted to the OIG that he had witnessed on May 11. We have found no evidence that anyone in DEA noticed that two FAST members submitted nearly identical sworn witness statements.

One of the sentences near the end of FAST Member P’s statement stated that he “did not observe any agents or officers kicking in doors or entering homes nor did [he] observe any mistreatment of civilians.” Near the end of FAST Member G’s statement, he stated that he did not “observe any FAST agents . . . breach or make entry into any home or mistreat any of the Ahuas villagers,” but said nothing about whether any agents kicked in doors. If FAST Member G derived this sentence from



FAST Member P's statement, we believe this would tend to show that FAST Member G deliberately omitted reference to his kicking in the shed door to obtain gasoline.

## 2. FAST Member D's Statement

FAST Member D's written statement was a short timeline of events, several of which he told us he did not personally witness. The statement provides, in part:

. . . a second boat on the river opens fire on the boat occupied by Honduran TRT and DEA FAST. The threat by the DTO members towards law enforcement was quickly and judiciously suppressed. **I did not, nor did I see any members of the United States Drug Enforcement Administration personal discharge their weapons.** (Emphasis in original.)

During his OIG interview, FAST Member D told us he was not able to see the river encounter between the pipante and the passenger boat because he was on the riverbank. The narration of events he provided during his interview included facts and details not included in his written statement, including everything he encountered and witnessed from the time he exited the helicopter until the time he reentered the helicopter to depart Ahuas hours later. When the OIGs asked why the information in his statement was what others observed and not his observations, FAST Member D he told us that although he was there, he was "limited" and not involved in any of the main events. He told us that the guidance he received on writing the statement was to "tell us what happened. Tell us what you remember." However, at the time of the OIG's interview, FAST Member D told us that he no longer recalled from whom he learned the information in his written statement.

## 3. The Delta Team Leader Prepares Three Different Statements

The OIGs received three different statements purportedly authored by the Delta Team Leader describing the events of May 11, only the third of which was included in IN's shooting investigation file. His first statement, a Word document e-mailed to Dobrich on May 25, briefly described the events of May 11 but omitted facts the Delta Team Leader told us during his interview.<sup>118</sup> During his interview, the Delta Team Leader told us that he heard and felt bullets go over his head coming from the direction of the passenger boat. He also told us that he drew his weapon when gunfire erupted on the river. In addition, he told us that he had lost radio contact with FAST and the helicopters once he boarded the pipante. None of these facts were memorialized in his first statement, which stated:

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<sup>118</sup> The OIGs did not find any e-mail communications showing that the Delta Team Leader or Dobrich sent this first statement to the Bravo Team Leader. On June 11, the Bravo Team Leader sent an e-mail to the Delta Team Leader, Fast Member G, and the FAST Medic asking them for their statements as they were due to the FAST Supervisor that day.

At approximately 0240 a second boat silently approached and attempted to seize the boat containing the cocaine, upon observing that the boat was occupied the second boat opened fire on the TRT team members and I. TRT members as well as the helicopter door gunners returned fire and neutralized the threat. The boat containing the individuals that attempted to seize the boat containing the cocaine fled the location up river in the direction of the village.<sup>119</sup>

The Delta Team Leader submitted his second statement, dated June 9, to the Bravo Team Leader on June 11, but it was not the same as the initial Word document report. This second statement submitted by the Delta Team Leader was longer than his first statement and appears to include information cut and pasted from the Bravo Team Leader's statement. The OIGs observed that after an introductory synopsis describing Operation Anvil, there are eight paragraphs in the Delta Team Leader's second statement describing the events that took place on May 11 that are nearly identical to those in the Bravo Team Leader's statement, with a few non-substantive changes. These paragraphs include the descriptions of what happened up to the point the Delta Team Leader got into the pipante with the TRT and the drugs, as well as what took place after the river encounter when the Delta Team Leader and two TRT officers were located and brought back to the village. Further indicating that he cut and pasted information from the Bravo Team Leader's statement, the Delta Team Leader did not change the name to reflect his own in the last sentence which read, "Finally, at no time did [Bravo Team Leader] witness any officer, FAST or TRT abuse any villager in any way." However, when the OIGs asked the Delta Team Leader whether he cut and pasted portions of the Bravo Team Leader's statement into his own, he said he had not but provided no further explanation as to why the Bravo Team Leader's name appeared in the first person narrative in his report.<sup>120</sup>

The Delta Team Leader's second statement described the encounter on the river in greater detail than his first:

[Delta Team Leader] removed his night vision goggles in an attempt to obtain a better understanding of how the fuel system was connected to the motor. A few minuetes [sic] later [Delta Team Leader] heard one of the TRT members yell out "Policia" and then gunfire erupted. [Delta Team Leader] dove forward in the boat for cover. The initial gunfire

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<sup>119</sup> The Delta Team Leader said in his OIG interview that he assumed that the second boat was attempting to seize the boat containing the cocaine based upon it being out on the water at that time of night without any other apparent explanation.

<sup>120</sup> Two days before the Delta Team Leader submitted this second statement to Dobrich, the Bravo Team Leader e-mailed his [the Bravo Team Leader's] report to the Delta Team Leader. The Delta Team Leader e-mailed Dobrich after receiving the Bravo Team Leader's report and said, "Just got my statement sent to me. Going to find a computer that has WORD, make a few changes and send to you." This further supports the conclusion that the Delta Team Leader cut and pasted multiple paragraphs from the Bravo Team Leader's statement.

lasted three to five seconds followed by gunfire from one of the [REDACTED] [helicopter] units which lasted less than five seconds.

The second statement did not mention either that the Delta Team Leader heard or felt bullets over his head from the direction of the passenger boat or that the Delta Team Leader drew his weapon, as he later told the OIG. The Delta Team Leader's second statement did mention that he lost radio contact for approximately 2 hours as the radio was wet, which differed from his explanation during his OIG interview that he inadvertently disengaged his radio while removing his bulletproof vest.

The third statement, dated June 12, 2012 and e-mailed to the FAST Supervisor on June 13, has several changes and sentences removed from the text of the second statement. Regarding the encounter on the river, this new statement stated:

[Delta Team Leader] removed his night vision goggles in an attempt to obtain a better understanding of how the fuel system was connected to the motor. A few minutes [sic] later [Delta Team Leader] heard one of the TRT members yell out "Policia" as gunfire erupted. [Delta Team Leader] dove forward in the boat for cover. The initial gunfire lasted five to seven seconds followed by gunfire from one of the [REDACTED] [helicopter] units which lasted less than five seconds.

As with the first and second statements, this one made no mention of bullets overhead or that the Delta Team Leader drew his weapon. The Delta Team Leader did explain that his radio was not working because it was wet, as he did in his second statement. The third statement changed the duration of the initial gunfire from 3 to 5 seconds to 5 to 7 seconds. It also described an event that was not in either of the first two statements. The statement explained that after the FAST and TRT officers located the pibante on the shoreline, but before the confrontation on the river, the following occurred:

[Delta Team Leader] boarded the boat and located the drugs. [Delta Team Leader] asked the male detainee if he could drive the boat back to the village, he replied no. When [Delta Team Leader] continued to ask the detainee to drive the boat, the detainee became very upset, began to cry and dropped to the ground on his knees to avoid getting into the boat. At this time [Delta Team Leader] instructed two members of the TRT to maintain custody of the male detainee. [Delta Team Leader] then examined the boat and determined that the motor on the boat was operable.

The Delta Team Leader provided the same explanation of his interaction with the detained teenage male in his interview with the OIGs as he provided in his third statement. In addition to the explanation of this interaction, a new final paragraph in the third statement stated:

There was no shot fired by any member of FAST DEA during this mission. During the incident on the river involving [Delta Team

Leader], there were no FAST personnel in position to provide fire support. At the time [Delta Team Leader's] boat was fired on he was attempting to re-start the motor and never heard the second boat approach.

DOG OIG was unable to determine the reason the Delta Team Leader prepared three separate witness statements, including whether his later statements incorporated edits or feedback from supervisors or colleagues. The Delta Team Leader told us that he never received feedback on his statements, but he said he could not explain why there were different versions of his statements. He said that for the first statement, he was just trying to "get some stuff on paper," and it was not intended as his official report. He also had no answer as to why, just 2 days after his last statement and more than a month after the incident, he would lengthen the reported period of gunfire from 3 to 5, to 5 to 7 seconds, and no recollection as to who might have suggested any such change or why he added the paragraph at the end about no shot having been fired by any FAST members during the mission. When the OIGs asked the Delta Team Leader if he was tasked with providing a more in-depth statement than the other FAST Members (as a possible reason for preparing later statements), he told us he was not specifically asked to explain what occurred in more depth.

The OIGs asked Dobrich if he knew why the Delta Team Leader had drafted three different statements, with one appearing to be cut and pasted from the Bravo Team Leader's statement. He told us that he was not certain why but that the purpose may have been to have a more "overarching . . . chronology." Dobrich told us that he never told the Delta Team Leader to delete anything for readability or for content. He said that he did not edit any of the FAST member's written statements. Further, he said that although he reviewed all the statements, he had not noticed that the Delta Team Leader substantially cut and pasted from the Bravo Team Leader's statement to make his own statement or that the statements of FAST Members G and P were almost identical, both of which he said would have been contrary to his guidance to the FAST Supervisor that each person draft their own individual statement. He said that he had stressed to the FAST Supervisor how important it was that everyone write their own statement.

## **B. The Abbreviated Shooting Package**

IN received the shooting package from the FAST Supervisor on June 26, 2012. The FAST Supervisor included the following documents and other items in the shooting package:

1. Copy of the May 11 video footage.
2. SEAR of the May 10-11 interdiction.
3. Teletype to IN describing the May 11 incident.

4. Witness statements of FAST personnel involved in the interdiction (including only the third of the Delta Team Leader's statements, as noted above).
5. DEA Operation Order for Operation Anvil.
6. Honduran Weapons Authorizations for FAST personnel involved in Operation Anvil.

The FAST Supervisor also included an approximately 4-page investigative report he prepared dated June 7, 2012, summarizing the interdiction and shooting incident and listing the above-referenced items.

In his investigative report, the FAST Supervisor provided the following information concerning the encounter between the two boats and the helicopter on the river:

The JIATF-S aircraft observed and recorded a second canoe of approximately nine unidentified individuals move upstream in a zig-zap search pattern. Nearly all of the occupants of the searching canoe were forward on the bow of this vessel.

Eventually the second canoe located the canoe containing the cocaine and three law enforcement officers and moved rapidly to intercept, ramming the vessel. Upon making contact, the two Honduran Police Officers observed weapons in the intercepting canoe and were fired upon, where the Honduran Police Officers returned fire to defend themselves. Each Honduran Police Officer fired approximately fifteen rounds. [The Delta Team Leader], still working on the motor, fled to the water for safety and did not fire his weapon.

Reacting to support and protect the law enforcement officers in the canoe with cocaine, a Honduran police officer on the DOS INL helicopter fired one burst from the [REDACTED] machine-gun at the attacking canoe of approximately fifteen rounds. The attacking vessel continued under power down-stream and departed the area. [Due] to the tactical situation and inability to do so, no medical assistance or arrests were affected on the attacking canoe that sped away.

No DEA agents fired their weapon during this incident.

The FAST Supervisor told the OIGs that he based his summary of the incident upon the witness statements he collected from the [REDACTED] FAST members and medic who participated in the interdiction. However, DEA e-mail communications reflect that the FAST Supervisor had not received all of the witness statements by the time he signed his report and submitted it to RD Evans.

Specifically, on June 7, the FAST Supervisor was still waiting for the witness statements of the Delta Team Leader, who was the FAST member in the pante with the Honduran TRT officers during the encounter with the passenger boat, and two FAST personnel who had flown on the helicopter that fired upon the passenger

boat. He did not receive these statements until June 11, 4 days after he signed his report. Further, some of the details he provided in his report do not appear in any of the witness statements that had been provided to him, such as the Honduran officers observing weapons in the second vessel, the number of rounds that they and the helicopter gunner fired, and that the Delta Team Leader had fled into the water for safety. The Delta Team Leader did not state in his witness statement that he went into the water, and, as described in Chapter Three, he told us that he remained inside the boat during the entire encounter with the passenger boat.

Further, we believe the FAST Supervisor's description of the passenger boat "ramming" the pipante was somewhat of an exaggeration. The May 11 video footage shows the passenger boat motor towards the stalled pipante, and its bow making contact near the rear engine of the pipante. However, the front right side of the passenger boat appears to skim the rear left side of the pipante, as opposed to ramming the boat. Also, the video footage does not show that "nearly all" of the occupants of the passenger boat were forward on the bow of boat. Although the May 11 video footage shows several people near the front of the passenger boat, it also shows several passengers near the rear, with possibly some type of cargo in the middle of the boat. The FAST Supervisor's description of the occupants' positions in the passenger boat and the passenger boat ramming the pipante is also not supported by any of the FAST witnesses' statements.

### **C. FAST Supervisor Did Not Conduct an Investigation**

IN's shooting investigation file shows, and the FAST Supervisor confirmed, that collecting the items for the shooting package and submitting them to IN were the only steps he took to investigate the May 11 incident. He did not interview the FAST personnel involved in the May 10-11 interdiction, which inspectors told us was within his discretion. He also did not seek to interview or obtain information from the other participants in the interdiction, including any of the helicopter pilots, the CBP flight crew members, or the Honduran officers.

Specifically regarding the Honduran TRT, the FAST Supervisor told us that he did not receive or seek out any TRT information, including the report submitted by the TRT Commander described in Chapter Three, because he did not believe any of the FAST members under his command would have lied to him about the events, and therefore there was no need to seek additional information.

The FAST Supervisor told us that he did not view his role in the internal review as an investigator. He told us that he viewed his role in a shooting review as "an administrative bean check." He said that his role was only to collect the documentation for the shooting package, not to conduct an investigation:

So, so Inspections in Headquarters, they do the review. So like, if I have to prepare a shooting package, I don't interrogate the agents. I go out of my way and I'll speak to them about it. I'll say, look, put your, you know, write the report. You're missing this form here. You're missing this. So I prepare the package. The Office of Inspections are the, it's, you're not going to have someone in the

same unit actually do a review, an inquiry, because he knows the personnel.

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If I prepare a shooting package, I am not the one that's asking the hard questions of the agents. I'm making sure that all of the I's are dotted, the T's are crossed, that they have the right form, that they wrote everything down, that it's complete, it's full, there are no typos in it. I sign it off, you know, as the supervisor. . . . And it's sent to the Office of Inspections at Headquarters.

The FAST Supervisor said that internal review of the May 11 incident may have been treated differently had a DEA agent discharged a weapon. However, because no DEA agents discharged their weapons, DEA did not conduct an investigation, but rather only collected witness statements for review within IN.

Because the conclusion that no DEA personnel discharged their weapons determined his approach to this assignment, we asked the FAST Supervisor to describe the evidence DEA had at the outset of the internal review that no DEA agent discharged his weapon. He told us that he relied upon DEA's initial reporting of the incident incorporating information from the Delta Team Leader that he did not fire his weapon. The FAST Supervisor said that he never saw any evidence that the Delta Team Leader "had a gun and fired it on that boat," and he had no reason to believe that the Delta Team Leader would have denied firing his weapon had he done so. He also told us that he did not know who may have told the Honduran door gunner to fire at the passenger boat from the helicopter or why, but that he was not aware that any U.S. personnel may have been involved in the decision to use force. He said he was not aware that a FAST member's witness statement stated that an INL contractor pilot may have ordered the use of force, as described in Chapter Three.

#### **D. Steps Taken During DEA Office of Inspections' Review**

As noted, the FAST Supervisor transmitted the completed shooting package to IN for review on June 26, 2012. Three SIT inspectors were responsible for handling the review: the line Inspector assigned to the matter, a Senior Inspector above him, and DCI Foley.

After receiving the shooting package, the Inspector told us that he reviewed the documentation to determine whether the package included all pertinent information. According to the Inspector, as well as the Senior Inspector, they did not ask the FAST Supervisor to gather any additional information after receiving the shooting package or conduct any additional follow-up.

Further, the inspectors told us, and the investigation file confirms, that no other steps were taken within IN to investigate the May 11 shooting, or the allegations of officers' mistreatment of local residents, besides obtaining certain

source information and the report of the Honduran investigation, as described below.

## **1. No Interviews Requested or Taken**

The inspectors did not ask the FAST Supervisor to interview any of the FAST personnel. When we asked for the rationale behind conducting interviews in connection with the investigations of the June 23 and July 3 shooting incidents (described in Chapter Eight) but not the May 11 incident, the Senior Inspector told us that he believed that the reason was because DEA personnel did not discharge a weapon during the May 11 incident. DCI Foley told us that he did not believe that he participated in any discussions about whether to conduct interviews, but he said he did not see a difference between sworn written statements and interviews and believed sworn statements were just as reliable.

The Inspector told us that although no one interviewed the FAST members about the May 11 incident, he had a conversation with the Delta Team Leader during which the Delta Team Leader described what happened that evening. The Inspector believed he had this conversation with the Delta Team Leader in July 2012 on the same day the Inspector attended interviews of the Delta Team Leader and others concerning the June 23 and July 3 shooting incidents.<sup>121</sup> He said that he recalled the Delta Team Leader stating that he was attempting to fix the engine on the pipante when he heard the Honduran officers say "Police" in Spanish, and then he dove to the bottom of the boat when shots were fired. The Inspector said that he did not recall all the details of what the Delta Team Leader told him occurred after this encounter, except that he recalled learning that the pipante's stalled engine was in need of gasoline and that after filling up the tank with gasoline the officers piloted the pipante back to the village. He said he believed he may have asked the Delta Team Leader whether anyone in the ground team forced a local resident to steal gasoline, and the Delta Team Leader responded that no one was forced and that he actually paid a local resident for the gasoline. The Inspector told us that he did not memorialize this conversation with the Delta Team Leader. He told the OIG that he was just clarifying facts from the file for the presentation he was preparing for the SAIRC.

The Inspector told us that he remembered talking to one other FAST member about the May 11 incident, also on the same day as the interviews regarding the June 23 and July 3 shooting incidents. He said that he did not recall to whom he spoke, and he had only a vague recollection that the FAST member said he heard over the radio that somebody was firing up at one of the helicopters. He did not memorialize this conversation with the FAST member.

The Inspector told us that he reviewed the video footage for the first time sometime after he had the conversation described above with the Delta Team

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<sup>121</sup> Although the Inspector told us this conversation took place during the interview, the Assigned SSA who conducted the interview regarding the June and July shootings told us that the May 11 shooting incident was not discussed.



Leader. As described in Chapter Four, all three inspectors who handled the internal shooting review, including DCI Foley, told us that they believed the May 11 video footage was unclear or inconclusive as to whether there was any visible gunfire from the passenger boat. The Inspector said that after he viewed the video footage he did not give any thought to or have any discussions within IN about contacting the Delta Team Leader or any of the other FAST members to elicit more details about what they observed that evening. Similarly, the Senior Inspector told us that he did not believe anyone in his office sought follow-up with any of the FAST members after reviewing the video footage.

## **2. Source Information**

In addition to the items the FAST Supervisor collected for the shooting package, the inspectors obtained the investigative reports summarizing the interviews of two sources of information (SOI) whom DEA developed in Honduras during the course of intelligence gathering for its ongoing counternarcotics investigations. As described in Chapter Five, a source previously known to DEA (SOI #1) approached DEA officials in Honduras and represented that he/she knew people who witnessed the events that took place on May 11. SOI #1 eventually brought DEA in contact with a second source (SOI #2) who claimed that he/she [REDACTED] at the time of the river encounter. According to an investigative report memorializing DEA's first interview with SOI #2 in June 2012, SOI #2 told FAST personnel that [REDACTED] the crew offloading cocaine at the landing strip on May 11 and later [REDACTED] the passenger boat with [REDACTED] offloaders when someone named "Emerson" fired up at a hovering helicopter, causing the firefight with law enforcement. IN included this investigative report, as well as the investigative report summarizing DEA's interview with SOI #1, in its investigation file.

The investigative file did not include the investigative reports of SOI #2's second and third interviews, during which SOI #2 admitted to lying to the investigators who conducted his/her first interview and provided information that contradicted his/her original account on materials facts. According to the inspectors, neither TCO nor FAST officials provided them with the investigative reports of the second or third interviews or told them about the source's varying accounts, even though the second interview occurred on July 23, 2012, well before October 10, 2012, when IN presented its findings regarding the May 11 incident to the SAIRC. DCI Foley recalled being generally aware from Dobrich or Deputy Chief of Operations Jay Fitzpatrick that they had plans to re-interview SOI #2 at some point, but he did not recall the reason for doing so or follow-up, and the record does not reflect why these critical follow-up interview reports were not made available to IN or the SAIRC.

DCI Foley told us that he would have changed what his office ultimately represented to the SAIRC about SOI #2 (described below) had his office known that the source had made conflicting statements. However, Foley said that reliance upon SOI #2's account was not necessary because he viewed the witness statements of the FAST personnel as the best evidence for determining the appropriateness of DEA conduct during the operation.

### **3. Honduran Special Prosecutor's Report**

The investigative file included the English translation of the Honduran Special Prosecutor for Human Right's Report (described in Chapter Six) setting forth the final findings of the Honduran investigation, which DEA officials received in October 2012. DCI Foley told us that IN waited for this report before presenting the three Anvil shooting incidents to the SAIRC. The information and conclusions from the report that DCI Foley highlighted in a memorandum to the SAIRC included:

- Four individuals were killed during this incident.
- Before the use of deadly force the Honduran TRT officers had a rational belief that the people in the approaching boat were criminals and feared for their lives.
- No individuals were killed by the Honduran door gunner's use of deadly force from an INL helicopter.
- The witness statements from surviving members of the passenger boat were inconsistent with statements from law enforcement personnel and with visual and scientific analysis by forensic personnel.

DCI Foley told us that they relied exclusively on the Special Prosecutor's Report for information from the Honduran officers who participated in the interdiction. IN did not attempt to obtain the written statements of, or request interviews with, the Honduran officers. Foley said that DEA had limited ability to talk to host nation citizens, and regardless he believed it would be difficult to determine the credibility of the information provided by the Honduran officers. The Inspector said that Honduras as a sovereign country was responsible for conducting its own investigation and speaking to its own citizens, and IN was satisfied with the information it had gathered to allow the SAIRC to make a determination regarding the conduct of DEA personnel.<sup>122</sup>

## **V. Findings of DEA's Shooting and Assault Incident Review Committee**

### **A. Memorandum to the SAIRC**

After receiving the Special Prosecutor's Report, on October 10, 2012, DCI Foley sent a memorandum to the SAIRC summarizing the May 10-11 interdiction and shooting incident. At that time, the SAIRC's three voting members were James Kasson as Chief Inspector, Thomas Harrigan as Chief of Operations, and James Gregorius as SAC of DEA's Office of Training. According to the Senior Inspector, the memorandum from Foley was the only document presented to the SAIRC members before the SAIRC met to discuss the May 11 incident. DCI Foley said that

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<sup>122</sup> We note, by contrast, that the Assigned SSA who gathered information regarding the June 23 shooting incident included a copy of the TRT Commander's incident report in the shooting package, as discussed in Chapter Nine.

his office also provided Kasson, and possibly Harrigan, with an advance copy of the shooting investigation file.<sup>123</sup>

Of particular note, the memorandum to the SAIRC included the following information about the encounter on the river with the passenger boat:

- The passenger boat approached the pipante containing the law enforcement officers in a zigzag search pattern and physically “rammed” the pipante.
- After observing weapons on the approaching canoe and after being fired upon, the two TRT officers in the pipante returned fire to defend the law enforcement team.
- A Honduran officer aboard an INL helicopter fired one burst from a mounted machine gun.
- Source information from TCO stated that drug trafficking organization (DTO) members fired weapons towards the INL helicopter and were then fired upon from the pipante and helicopter.
- The Delta Team Leader aboard the pipante did not fire his weapon during the encounter.
- The FAST Supervisor confirmed all facts previously reported. The witness statements from the ■ participating FAST members were consistent on the facts, including that no FAST agent fired a weapon at any time during the interdiction.

We were unable to determine IN’s source for the statement that the TRT officers in pipante observed weapons in the approaching canoe. This information does not appear in any documents contained in IN’s shooting investigation file, including the FAST witness statements and the Special Prosecutor’s Report.

As noted above, Foley’s memorandum presented to the SAIRC also summarized the results of the Honduran investigation.

## **B. Presentation to the SAIRC**

On October 10, 2012, the same date as the memorandum, the SAIRC met to discuss all three Anvil-related shooting incidents – May 11, June 23, and July 3 – as well as five other unrelated incidents. DCI Foley estimated that the meeting took 1-to-2 hours to cover all eight shootings; the Senior Inspector estimated 1 hour. According to Foley, the inspectors had an “educated audience,” with Kasson and

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<sup>123</sup> Harrigan told us that he did not recall receiving a copy of the investigative file, but he did receive and review the witness statements of the FAST members sometime in the summer of 2012 and recalled being very satisfied with them. DCI Foley told the OIG that all SAIRC members did not always receive the full shooting package to review in advance of the SAIRC meetings because some shootings were straightforward.

Harrigan very familiar with the circumstances of the Anvil shootings in advance of the meeting.

In addition to the three voting SAIRC members, DCI Foley, the Senior Inspector, the Inspector, a representative from DEA's Chief Counsel's Office, and possibly several executive assistants attended the meeting. Deputy Chief of Operations James Soiles told us that he also attended the meeting but did not participate. Deputy Chief Counsel John Wallace did not attend the meeting but said that the inspectors gave him a briefing beforehand.

During the meeting, the Inspector gave a slide presentation of each of the shootings, as was common practice during such shooting review boards. The presentation of the May 11 incident included nine slides that the Inspector prepared using the documents collected for the investigation file. DCI Foley and the Senior Inspector reviewed and edited the slides in advance of the meeting. In addition, Wallace told us that he reviewed the slides when the inspectors briefed him 2 or 3 weeks before the SAIRC meeting. He said that he corrected a factual error on one of the slides but did not recall what the error concerned.

The slides included the following information:

- Video shows second boat zigzag toward pipante.
- Delta Team Leader hears TRT shout "Policia" as gunfire erupts, he dives for cover in the boat, never fired a weapon.
- No FAST team member fired a single round.
- FAST received willing assistance from a local male resident to recover the pipante.
- SOI #2 stated that [REDACTED] someone named Emerson fired upon the hovering helicopter after which TRT returned fire, Emerson and a female passenger were killed, four others wounded, and all local residents were forced to work for the DTO.
- The Honduran investigation determined that one person was confirmed killed by a Honduran weapon, the women killed were not pregnant, Honduran officers rationally believed that they were in imminent danger, no rounds from helicopter impacted the boat, and witness statements from local residents were not consistent with technical and scientific analysis.

The presentation did not rely upon the video footage to assert that individuals on the passenger boat fired first or fired at any time during the encounter. On this factual question, the presentation stated only that SOI #2 told DEA officials that Emerson fired at the hovering helicopter before the TRT fired their weapons. DCI Foley told us that he was personally "very hesitant to put a lot of weight" on the video footage to describe who fired and in which direction.

Harrigan told us that although he did not recall this particular SAIRC meeting, he remembered having a general impression that the information IN presented to the Committee was not new to him, that it was information he was aware of within a day or two of the incident. He said the one exception may have been the information concerning SOI #2. He said it was possible he learned at this meeting that SOI #2 said that Emerson fired up at a helicopter.

The representations the Inspector made to the SAIRC about SOI #2 appear consistent with the statements the source made during his/her first interview with DEA officials, which, as described earlier, was the only SOI #2 interview contained in IN's investigation file. The Inspector told us that he was not aware before his interview with the OIGs that DEA had interviewed SOI #2 on three occasions or that the source had provided varying and inconsistent accounts. In particular, he said he was not aware of and had never seen the written report of SOI #2's second interview, which took place in July 2012 well before the SAIRC meeting. He said that he therefore did not raise or discuss with the SAIRC members any credibility issues related to this source. Further, DCI Foley and the Senior Inspector similarly told us that they had no knowledge of SOI #2's second interview at the time of this SAIRC meeting.

Although Wallace had reviewed the slides in advance of the presentation and corrected at least one error, it does not appear that he suggested edits to the SOI #2 information or advised the inspectors that SOI #2 had changed parts of his/her account during a second interview. Wallace said that he thought that the difficulty DEA was having with SOI #2 may have been a function of the skills of the interviewer more than the veracity of the source. Wallace told us that he believed both Kasson and Harrigan were already aware of the source's conflicting statements because the topic came up during routine executive staff meetings. However, Harrigan told us that he did not recall being aware that SOI #2 had made inconsistent statements during multiple interviews.

As previously noted, DCI Foley told us that he would have changed what his office ultimately represented to the SAIRC about SOI #2 had he known that the source had made conflicting statements. However, Foley said that reliance upon SOI #2's account was not necessary because he viewed the witness statements of the FAST personnel as the best evidence for determining the appropriateness of DEA conduct during the operation. The Senior Inspector told us that IN's reliance upon the information SOI #2 provided was only meant as corroboration for what DEA already knew, which was that the local residents of the village were involved in the network of transporting drugs for the DTOs. He said that SOI #2 was otherwise insignificant to the internal review because the inspectors were very comfortable relying upon the information contained in the █████ FAST witness statements to determine what happened during the May 11 incident. However, as noted above, SOI #2's account was the only evidence in the presentation to the SAIRC that anyone in the passenger boat fired any shots.

The Inspector's presentation did not include other information relevant to the May 11 incident, including:

- State's Bureau of Diplomatic Security (DS) had conducted an analysis of the May 11 video footage and that DS's video analyst did not identify any flashes of light originating from the passenger boat. As described in Chapter Eleven, DS investigators had previously discussed the analysis with DCI Foley and Wallace in September 2012. Harrigan told us that although he was puzzled as to why the inspectors did not incorporate the findings into the SAIRC presentation if they had access to them, the analysis would have had no effect on the SAIRC findings regarding DEA conduct, which was based on the conclusion that no DEA agents fired their weapons during the incident, not the reasonableness of any Honduran use of force.
- The TRT Commander, who was one of the TRT officers in the pibante with the Delta Team Leader, submitted a report dated May 11, 2012 to DEA's TCO agents. This report stated that armed individuals fired weapons at the helicopters from the river bank before the river encounter, which was not described in any DEA or State reporting or by any of the participating U.S. personnel. As noted earlier, the FAST Supervisor did not make any requests for reports from the TRT (and the Special Prosecutor's Report that DCI Foley summarized did not include the TRT Commander's report).
- During the Honduran investigation, the Honduran Public Prosecutor's Office's ballistics tests on TRT firearms did not match a bullet reportedly recovered from the May 11 incident to a TRT firearm. Foley told us that he was aware that the Honduran authorities could not confirm the origin of every bullet that was recovered, but he thought that the reason was that the Hondurans did not have the capability to do sufficient work on the bullets. Harrigan told us that he was aware that the origin of one bullet was not determined. However, he and Foley were satisfied with the FAST witness statements, including the Delta Team Leader's statement that he did not discharge his weapon.

### **C. SAIRC Findings**

On November 6, as SAIRC Chairman, Kasson issued a short statement on behalf of the SAIRC providing the Committee's findings. According to the statement, the SAIRC determined that:

The facts and circumstances surrounding the event have been accurately and completely reported and established that the DEA employees were acting within the scope of employment and authority. Further, the independent investigation conducted by the Government of Honduras through the Office of Special Prosecutor for Human Rights concluded that the Honduran Tactical Response Team members acted under the rational belief that they had been fired upon; therefore, in fear for their lives returned fire. Based on the above circumstances, the SAIRC considers this matter closed.

The memorandum also reflected that the SAIRC determined that the incident should not be referred to the Office of Training for an examination of lessons learned.

DCI Foley told us that the SAIRC findings covered the conduct of the Delta Team Leader as well as all other FAST personnel who participated in the May 10-11 interdiction. Harrigan told us that the basis for the findings was that no DEA employees or task force officers fired their weapons. Although the findings did not specifically mention the allegations concerning DEA employees abusing local residents or ignoring injured people, Harrigan told us that he was not aware of any evidence tending to suggest that any of these allegations were true. He also said that he believed FAST made the "absolute right decision" to leave the village, once they were able, for the safety of all law enforcement personnel.

## **VI. DOJ OIG Observations**

As we fully describe later in our analysis and findings in Chapter Fourteen, the DOJ OIG concluded that DEA's post-shooting incident procedures and decision-making failed to ensure that DEA initiated a timely internal review and thoroughly investigated the May 11 incident. Had they done so, we believe DEA officials would have learned that their own personnel did, in fact, exercise deadly force when at least one of them specifically directed a Honduran door gunner on a helicopter to fire his machine gun at the passenger boat. They may have also learned other relevant facts that would have given them some appreciation for the allegations of local residents regarding the forcefulness of law enforcement conduct in the village.

Instead, overconfidence in, and a failure to reexamine, prematurely reached conclusions led to a delayed and inadequate DEA reaction to the incident – first deciding that the incident did not warrant a DEA investigation and then, after mounting pressure, deciding to open an abbreviated internal review that was little more than a paper exercise. For these reasons, and others more fully described in Chapter Thirteen, we recommend that DEA revise its post-shooting incident procedures to ensure that DEA timely and adequately investigates incidents like May 11, regardless of whether it was DEA personnel or DEA's foreign LEO partner who physically pulled the trigger. Further, we recommend that the post-shooting incident procedures of DOJ's law enforcement components be considered more broadly by the Deputy Attorney General to determine whether revisions should be made across the Department to ensure that shooting incidents outside the United States by foreign LEOs working on a joint law enforcement operation with a DOJ component are handled in a consistent and appropriate manner.

In addition, we found that DEA's procedures do not provide delegation guidelines for foreign incidents or, in the case of domestic incidents, state whether such incidents will be investigated directly by IN or delegated to the field when the incident involves significant injuries, death, or other significant potential sources of liability. We recommend that DEA's post-shooting procedures be revised to clarify the circumstances under which shooting incidents are to be investigated directly by IN and the circumstances under which investigations will be delegated to the field.

We also recommend that revisions to the procedures include a requirement that will ensure that, when delegated to the field, the supervisory agent assigned to conduct the investigation will be someone outside the supervisory chain or program of the shooter and relevant witnesses.

In the next chapters, we describe the circumstances of the June 22-23 and July 2-3 interdictions, as well as DEA's internal reviews of the use of deadly force by FAST personnel during those interdictions.



## **CHAPTER EIGHT: CHRONOLOGIES OF THE JUNE 22-23 AND JULY 2-3, 2012 INTERDICTIONS**

In this chapter, we describe the Anvil interdictions that took place on June 22-23 and July 2-3, 2012, both of which involved the use of deadly force by DEA FAST personnel.

### **I. June 22-23 Interdiction**

The shooting incident that took place during the June 22-23 interdiction occurred in the early morning hours of June 23, while FAST and Honduran TRT officers were attempting to apprehend suspected drug traffickers in a wooded area and field near Brus Laguna, Honduras. Most of the suspects fled the immediate area of the officers, but one individual remained behind and crouched beside a tree. An INL helicopter pilot overflying the area guided a nearby FAST member toward the location of the tree, after which the FAST member encountered a male subject face-down near the tree's base. According to the FAST member, the male subject refused to comply with verbal commands and moved his hand toward a handgun holstered on his hip. The FAST member then fired two rounds at the subject with his [REDACTED] mm rifle, killing the suspect.

In Section I.A. below, we provide the chronology of events that took place during the June 22-23 interdiction. Except as otherwise noted, the following sequence of events comes from the infrared video footage the CBP flight crew recorded from the surveillance plane, operation-related documents maintained by DEA and State, and witness interviews of U.S. personnel who participated in the interdiction. In Section I.B., we describe the initial reporting of the June 23 shooting incident in the first hours and days after the incident took place.

#### **A. Events on the Ground**

##### **1. The Surveillance of the Suspect Plane and Communications Between Law Enforcement**

On June 22, 2012, the Joint Inter-Agency Task Force-South (JIATF-South) notified CBP of a suspect plane traveling from [REDACTED] toward the eastern region of Honduras and tasked a CBP surveillance aircraft to identify and follow the plane. The CBP flight crew identified the suspect plane flying in the air at [REDACTED] (Honduran Local Time) on June 22 and began recording it in flight at [REDACTED]

According to DEA documents and OIG witness interviews, at [REDACTED] on June 22, FAST and TRT officers departed on [REDACTED] helicopters from [REDACTED]. Based on information provided by the CBP plane, the helicopters traveled to Brus Laguna in the eastern region of Honduras. The helicopters carried a total of [REDACTED] FAST members, all of whom were from FAST Team Delta. (Team Bravo had left Honduras to prepare for its next deployment to Afghanistan.) As with the May 10-11 interdiction, each helicopter carried a pilot, co-pilot, [REDACTED] FAST members, [REDACTED]

████ TRT officers, and a Honduran door gunner. Helicopter █████ also carried a FAST medic.

While the helicopters traveled toward Brus Laguna, the CBP flight crew periodically updated the FAST team on the suspect plane's landing, the offloading of the drugs, the size of the group of offloaders, and their movement in the direction of a nearby river system, as detailed below.

## **2. The Offloading of the Plane and Attempted Transport of Drugs to a River System near the Village of Brus Laguna**

According to CBP documents and video footage, the suspect plane landed at approximately 11:30 p.m. on an illuminated runway of a remote landing strip in Brus Laguna. Within 5 minutes of the plane coming to a stop, five individuals approached the aircraft and began offloading bales of cocaine. Within 10 minutes, the number of individuals to approach the plane and help with offloading increased to approximately 40 people. At 11:37 p.m., approximately five offloaders walked away from the plane in the direction of a hiking trail, while the rest of the group remained behind with the plane. Over the next 10 minutes, approximately 20 additional offloaders walked away from the plane toward the hiking trail where a large group of individuals was standing. It appears on the video footage that at least some of the offloaders walking towards the trail were carrying bales of cocaine. At this time, the CBP camera operator shifted the focus away from the plane and toward the offloaders walking on the hiking trail.

According to FAST members, the CBP flight crew reported the offloaders' activities over the radio to the FAST members who were in route to Brus Laguna on the helicopters. Three FAST members told us that the CBP flight crew described the offloaders to them as approximately 40 individuals and a 5-man armed security detail, without any vehicles to transport the drugs to the nearby river. The CBP flight crew suggested the helicopters drop the ground team in a location in between the offloaders and the river to give the FAST and TRT personnel an opportunity to intercept the offloaders carrying the cocaine en route to the river system.

Video footage shows that before the █████ helicopters reached Brus Laguna the offloaders continued to move the cocaine along the hiking trail.

## **3. The Arrival of FAST and TRT Officers to Brus Laguna and Their Initial Pursuit of the Offloaders**

At 12:02 a.m., Helicopters █████ dropped █████ law enforcement officers in an area between the offloaders and the nearby river. According to FAST members, █████ FAST and █████ TRT officers got off Helicopter █████, and █████ FAST and █████ TRT officers got off Helicopter █████, while Helicopter █████ hovered above to ensure officer safety. When the helicopters arrived at the area shortly before midnight, the offloaders left the trail and scattered into the adjacent woods.

Once on the ground, FAST and TRT officers assumed two standard line formations, one behind the other, and began walking toward the offloaders (many

of whom had already scattered when the helicopters arrived) with navigation assistance from the CBP flight crew. According to a FAST member, FAST members took positions at each end of the line formations, while TRT officers took the middle positions. Approximately, 15-20 feet separated the FAST and TRT officers from one another within these line formations. Given this spacing and the high and thick vegetation of the woods, the FAST members could not consistently maintain visual contact with one another.

FAST Member G, who encountered the armed suspect as described below, told us that “pitch-black” conditions and the offloaders’ lack of night vision capabilities allowed the FAST and TRT officers to approach the offloaders undetected. He said that when they found offloaders and began shouting commands at them to surrender, the offloaders again began to scatter in different directions. In response, the law enforcement officers abandoned their standard line formation in pursuit of the scattering offloaders. FAST Member G told us that he and another FAST member took [REDACTED] TRT officers each and split into two groups going in separate directions. Having split up, they relied on an English-speaking helicopter pilot overflying the area for information on the whereabouts of the offloaders.<sup>124</sup>

#### **4. The Encounter between FAST Member G and the Armed Suspect**

The video footage of the June 22-23 interdiction does not show the fatal encounter in the woods between FAST Member G and the armed subject. Instead, during the time between the helicopters dropping off law enforcement personnel at 12:02 a.m. and the shooting incident, which we estimated occurred sometime before 1:45 a.m., the focus of the video footage shifts among many different groups of individuals and appears to scan the surrounding area. Most individuals appear to be offloaders walking through the woods, while others are believed to be FAST members, either walking in line formations prior to the shooting or standing in a security perimeter in its aftermath. The following description of the encounter is based exclusively on the accounts of FAST Member G, the pilot of Helicopter [REDACTED], and, to a lesser extent, the Delta Team Leader and other FAST members.

##### **a. FAST Member G (the Shooter)**

According to the account FAST Member G provided the OIG, after he split from the other FAST members in pursuit of the offloaders, a helicopter pilot alerted him to an individual nearby, who unlike the rest of the offloaders, had not retreated deeper into the woods and instead crouched next to a tree approximately 100 yards away. The tree was in the middle of a field of banana grass in an open space adjacent to the woods. FAST Member G said the helicopter pilot identified him (FAST Member G) by his strobe light and guided him toward the tree where the

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<sup>124</sup> As discussed in Chapter Three, the INL helicopters did not have search lights and operated using infrared lighting.

suspect was hiding. FAST Member G said he moved toward the tree with three TRT officers behind him.

FAST Member G told us that as he approached the tree, he noticed two feet extending out from the natural cover of the banana grass, tipping him off to the precise location of the suspect, who was lying face down. He said he approached that spot in the grass and shouted commands in Spanish and English including "roll over" and "put your hands up," kicking the suspect twice in the leg as he stood over him. He said the suspect did not respond to his commands or his kicks to the leg. He said that after the second kick, the individual began to roll onto his side, and his hand reached for a silver handgun holstered to his right hip. FAST Member G said that at that moment he deemed this arm movement as a threat to his life and to the TRT officers, and he fired two or three shots into the individual's head.

FAST Member G told us that after checking for a pulse and determining that the suspect died on scene, he retrieved the suspect's handgun and placed it in a bag. He also communicated the shooting over the radio to the other FAST members, alerting them to the dead suspect and his location. He said that in response to this radio communication, the Delta Team Leader arrived on scene and accepted possession of the seized handgun from FAST Member G.

#### **b. Helicopter Pilot**

The pilot of Helicopter [REDACTED] told us that he observed an individual run toward one of the FAST helicopters on the ground and crouch behind a nearby tree. The pilot said that he warned FAST Member G of the individual's movements and location over the radio as FAST Member G approached the area. Because FAST Member G did not see the individual, the pilot provided directions to guide him to the individual's location. According to the helicopter pilot, he believed the individual was a threat to the FAST and TRT officers on the ground and therefore warned FAST Member G to be careful when approaching the individual. He said he did not witness the shooting incident because at that moment he had focused his attention on the cockpit to ensure he was maintaining an appropriate hovering position above the area.

#### **c. Delta Team Leader**

According to the Delta Team Leader, he was part of the ground team searching for offloaders, but in a separate location from FAST Member G. He told us that before the shooting, he had been listening to the radio communications between the helicopter pilot and FAST Member G regarding the location of the suspect hiding by a tree. He said that the next thing he remembered was hearing a radio communication from FAST Member G requesting that the Delta Team Leader come to his location because a shooting had occurred. The Delta Team Leader said that he did not hear any shots fired before receiving this communication.

#### **d. Other FAST Members**

The OIG interviewed three other FAST members who participated in the June 22-23 interdiction, all of whom told us they did not witness or hear the shooting. The FAST member who had paired in a line formation with FAST Member G before splitting off from him told us he did not observe the encounter because of the physical distance separating them and the tall, thick grass impairing his ability to maintain visual contact with FAST Member G. Another FAST member who was on the ground at the time of the shooting told us he did not hear any shots fired because of the noise from the helicopter. The medic from Helicopter [REDACTED] who was in the air at the time of the shooting said he did not observe any gunfire on the ground from his limited field of view and that he was unable to hear any shots fired due to the noise of the helicopter.

These FAST members said that FAST Member G reported over the radio that he encountered an individual and shot him after perceiving him as a threat.<sup>125</sup> The FAST members on the ground at the time of the shooting told us that they learned about the shooting incident from FAST Member G's radio communication. The medic, who was in the air at the time of the shooting, told us he first learned of the incident when he received orders to get off his helicopter in its aftermath.

#### **5. The Formation of a Security Perimeter and Waiting Period Before the Honduran Prosecutor's Arrival at the Scene**

After the shooting occurred, FAST Member G reported over the radio that he shot an armed suspect and requested that his FAST teammates report to the shooting location. The Delta Team Leader said that once he reported to the scene, he took custody of the handgun seized from the shooting victim and sat down with FAST Member G to discuss what happened and assess his psychological state and physical well-being. He said that after talking with FAST Member G and determining he was okay, he took photographs of the scene, directed a FAST member to watch over the dead suspect, and continued searching for additional offloaders.

We received conflicting accounts about whether the Delta Team Leader performed a weapons check on FAST Member G's weapon to confirm how many rounds he fired. The Delta Team Leader told us that while they were on scene he asked FAST Member G how many rounds he fired and then verified the information by inspecting his weapon. According to the Delta Team Leader, he inspected the weapon's magazine and then handed it back to FAST Member G. We found no contemporaneous record of such a weapon's check, and FAST Member G told us that no one asked to inspect his weapon.

FAST Member G told us that at the time of the shooting FAST personnel were "all over the place" searching for offloaders, including at positions far away from his

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<sup>125</sup> As discussed in Chapter Three, State OIG was told that DynCorp did not have any audio recordings from the helicopters.

location. A FAST member told us that en route to the shooting location a group of FAST and TRT officers encountered and arrested one or two armed suspects and seized their weapons. In addition, the Delta Team Leader said that FAST and TRT personnel arrested approximately six people and seized roughly 300 kilograms of cocaine in their initial pursuit of scattering offloaders and search of the immediate area around the scene.

The Delta Team Leader told us that once all FAST personnel performed their initial searches of the immediate area and gathered at the shooting location, he advised his FAST counterparts of a provision under Honduran law requiring all host-nation law enforcement personnel involved in firearms-related deaths to remain at the scene until a Honduran prosecutor processes the scene and examines the shooting victim. The Delta Team Leader said that he then advised FAST to contact the operation command center to request that a Honduran prosecutor be deployed to the scene.

FAST Member G told us that prior to the Delta Team Leader informing him of the Honduran law, he was unaware of any requirement mandating host-nation law enforcement personnel remain at the scene until the arrival of a Honduran prosecutor, and was unaware of any U.S. protocol requiring FAST to cooperate. Nevertheless, he said that he contacted the command center as his team leader directed and reported the incident to an INL official.

After FAST Member G notified INL, the Delta Team Leader ordered FAST to establish a security perimeter around the dead body and the seized drugs to preserve the scene and protect against re-seizure by drug traffickers or Honduran police officers working for the drug traffickers.

FAST Member G said that soon after they established a security perimeter, he contacted JIATF-South to inquire about deploying a Quick Reaction Force (QRF), a unit that could deploy quickly and provide additional protection against attack from armed individuals in the surrounding area. [REDACTED]

[REDACTED]. According to FAST Member G, lacking access to QRF support or a sufficient number of ground personnel to both maintain a secure scene and allow for a search of offloaders and cocaine, FAST and TRT personnel remained within the established security perimeter until daybreak.

FAST Member G told us that FAST and TRT officers realized they became "completely compromised" around daybreak as their precise location became more easily identifiable to the offloaders in the surrounding area. Further, the Delta Team Leader said the TRT Commander expressed concern about a potential confrontation with members of the Honduran National Police bribed by drug traffickers to protect the handling of the drug load.

After daybreak, a group of FAST members resumed looking for more drugs and additional armed suspects, while the remainder of law enforcement personnel maintained the security perimeter. FAST members told us that throughout the day, FAST and TRT officers exploring the surrounding area recovered more cocaine and

weapons, and arrested the two pilots of the suspect plane and a few other individuals.

As detailed in Chapter Six, the State Department had provided an Embassy representative to advise and assist Honduran authorities in the task force investigation of the May 11 shooting incident. The Embassy representative was a State Department contractor, previously hired as an advisor by the Bureau of Conflict and Stabilization Operations (CSO) to provide expert advice to Honduran police agencies. According to State documents and OIG witness interviews, this CSO Advisor arrived at the scene of the June 23 shooting at approximately 10:15 a.m. along with a Honduran medical examiner, prosecutor, and police officer. The CSO Advisor told us that because the responsibilities of the prosecutor and police officer with him did not encompass investigating officer-related shootings, they notified the Honduran National Police Chief and requested that he come to the scene with a Honduran prosecutor responsible for investigating officer-related shootings. The CSO Advisor told us that the Delta Team Leader briefed him about what happened while waiting for the police chief and the other prosecutor to show up on scene.<sup>126</sup>

FAST members told us that they provided security to the Honduran investigative team at the scene. FAST Member G said that, on the order of the Delta Team Leader, he positioned himself at the outermost edge of the security perimeter as far away from the Honduran authorities as possible to avoid speaking with them. The Delta Team Leader told us the Honduran investigative team never tried to speak with him or FAST Member G about the shooting. He said the Hondurans did not ask for the weapon FAST seized from the deceased, and he did not offer the weapon to them out of concern the weapon would disappear in Honduran possession.

FAST and TRT remained on scene through the day while the Honduran investigative team continued to wait for the police chief and other prosecutor to arrive. FAST members described to us a growing sense of vulnerability and concern for their safety as they waited. A FAST member told us that, adding to their concerns, on more than one occasion helicopters of unknown origin flew over the area, and an unmarked airplane landed on a nearby landing strip to unload passengers.

According to the CSO Advisor, at approximately 5:30 p.m., a Honduran military helicopter landed at the scene and dropped off Honduran soldiers to provide security for the CSO Advisor and the Honduran investigation team he accompanied.

As dusk started to approach, the FAST members were still waiting for the police chief and second prosecutor to arrive on scene. The Delta Team Leader told us that because nightfall was approaching, he requested an airlift to pick up the

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<sup>126</sup> The CSO Advisor's account of what the Delta Team Leader told him about the shooting was consistent with what the Delta Team Leader recounted to the OIGs during his interview.

ground team and instructed FAST and TRT officers to package the deceased and the seized weapons in preparation for departure. However, the Delta Team leader and CSO Advisor told us the Honduran investigative team thereafter unpackaged the deceased and returned him to the shooting location on the orders of the other Honduran prosecutor who was in route to the scene.

Before FAST and TRT's airlift arrived, the Honduran National Police Chief and second prosecutor arrived at the scene. According to the CSO Advisor, the police chief and prosecutor arrived at 7:30 p.m. with a team of 8-10 personnel charged with providing them protection and investigative support. FAST members told us that no one told them the reason for the police chief's and prosecutor's delayed arrival. After arriving, the police chief and the prosecutor examined the dead body and processed the scene. The CSO Advisor told us that the police chief, the prosecutor, and their team departed from the scene at 12:30 a.m. the next day.

FAST members as well as the CSO Advisor said they departed the scene at or near the same time that the police chief and second prosecutor arrived at the scene. FAST reported that during this interdiction, law enforcement seized 390 kilograms of cocaine, 2 M-4 rifles, 1 AK-47, and 1 Glock pistol, and arrested 10 individuals, including 8 offloaders and the 2 pilots of the suspect plane. None of the witnesses we interviewed reported any other discharges of weapons during the operation.

## **6. Debrief at Base and Overview of the Interdiction Results**

FAST members told us that a short debrief took place after the ██████ helicopters returned to base on the night of June 23. Attendees of the debrief included the Delta Team Leader, two FAST members, the Guatemalan helicopter co-pilots, the Honduran door gunners, INL contractor pilots, and a senior TRT officer. FAST Member G said given the traumatic experience of the shooting he did not attend the debrief afterwards.

FAST members did not recall what they specifically discussed during the debrief, except that it took too long for the Honduran prosecutor to respond, and that the prolonged delay left the ground team in a vulnerable situation for the entire day following the shooting.

### **B. Initial Reporting**

#### **1. DEA Reporting**

A few days before the June 22-23, 2012 interdiction, the DEA Country Attaché left Honduras for a new assignment. In his place, the Delta Team Leader contacted the DEA Assistant Regional Director the night of the interdiction to alert her to what was happening on the ground. After receiving this status update, the Assistant Regional Director reported the shooting incident to DEA Headquarters at 3:30 a.m. Almost immediately thereafter, the DEA Headquarters Command Center



disseminated a Significant Incident Report to senior DEA officials summarizing the incident as reported by the Assistant Regional Director.<sup>127</sup> The report stated:

Tegucigalpa Country Office received [information about an airplane] from ██████ entering Honduras. The plane landed in Arhaus [sic] and was met by 40 persons whom proceeded to unload bales of cocaine and provide security for the plane.

Subsequently, FAST and Honduran police inserted and encountered an armed suspect who failed to drop his weapon after being ordered to comply. The suspect was subsequently shot and killed by a FAST team member, not yet identified at this time, and ten bales of cocaine were recovered at the scene.

At this time the gender and nationality of the deceased suspect is unknown.

On the following day, June 24, an Assistant Country Attaché in the Tegucigalpa Country Office (TCO) disseminated a Significant Enforcement Activity Report (SEAR) to DEA officials at Headquarters, regional officials, and the DEA Headquarters' Command Center summarizing the June 22-23 interdiction. The report, which the Assistant Attaché said he based on reports he received from the FAST team, stated:

On June 22, 2012, at approximately ██████, the Tegucigalpa CO and FAST received information from the tactical analysis team regarding an ██████ ██████ that was enroute from ██████ to Honduras. The JIATF South Marine Patrol Aircraft (MPA) identified the ██████ as a twin engine Cessna 421 aircraft with winglets.

At approximately 9:30 p.m., FAST and the TRT departed ██████ in █ INL helicopters and landed in ██████ ██████ and assess the intelligence from the MPA. After ██████ the ██████ INL helicopters departed enroute to eastern Honduras.

At approximately ██████, the MPA reported that the ██████ landed at the following GEO coordinates 1537N 08434W which is located south of Brus Laguna. At approximately ██████, the MPA stated that approximately 40 people were off-loading bales of cocaine from the ██████. The MPA observed the ground crew move the bales north of the landing strip.

On June 23, 2012, approximately 12:15 a.m., the █ INL helicopters arrived in the area and observed the ground crew flee on foot in

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<sup>127</sup> As we described in previous chapters, DEA reporting procedures required that personnel immediately notify the Command Center at DEA Headquarters in the event of a critical incident, shooting, threat or assault, or significant enforcement activity. Upon receipt of this notification, the Command Center was responsible for notifying the managers of the appropriate DEA HQ components.

several different directions. The MPA and █ INL helicopters remained overhead to assess the area. At approximately 12:29 a.m., █ INL helicopters landed and inserted FAST and the TRT in the area while the █ INL helicopters provided overhead support. During a search of the area, FAST and TRT members encountered an armed suspect. After a brief confrontation the armed suspect was shot and killed by a FAST agent. 3 Honduran ground crew members and 1 Colombian pilot were taken into custody by FAST and TRT. The scene was then secured for the night by FAST and TRT members. The following morning, a further search of the area revealed 15 bales containing approximately 390 kilograms of cocaine (drug exhibit #1) and other items on non-drug evidentiary value.

At approximately 5:30 p.m., the █ INL helicopters departed the area with FAST and TRT members. At approximately █ the █ INL helicopter[s] landed in █ and the operation was terminated. There were no other injuries reported for the FAST agents, TRT, or other ground crew members.

At approximately 7:30 p.m., a Honduran investigative team consisting of Honduran national police, prosecutors from the Honduran Attorney Generals [sic] Office, a national jurisdiction judge and medical forensics personnel arrived at the scene to conduct an investigation. During the investigation they located and arrested 6 more suspects to include one more pilot who were involved in the operation. In all there were 10 people arrested in connection with the seizure of drug exhibit #1. At approximately 9:00 p.m., a JTF Bravo █ helicopter transported the 10 defendants and the Honduran investigative team to █ to begin processing and interviews. Drug exhibit #1 was transported to Tegucigalpa by an INL █ aircraft. The Honduran national police processed, tested, and stored it in accordance with their standard operating procedures.

We found two inconsistencies between the SEAR's recount of events and other evidence we received. First, the SEAR stated that the INL helicopters arrived in Brus Laguna at 12:15 a.m. and landed at 12:29 a.m., while the video footage indicates that this occurred around midnight. The other inconsistency concerns whether FAST and TRT departed the scene before or after the Honduran investigative team arrived. The SEAR stated that FAST personnel left the area at 5:30 p.m. and the Honduran investigative team arrived at 7:30 p.m., whereas FAST members and the CSO Advisor told us that they were there when the Honduran investigative team began its investigation and assisted with security.

## **2. State Reporting**

On June 25, 2012, Ambassador Kubiske e-mailed a summary of Operation Anvil to Principal Deputy Assistant Secretary (PDAS) for the Bureau of Western Hemisphere Affairs (WHA) John Feeley and WHA Director of Central American Affairs Gonzales Gallegos that described the June 23 incident as a "very good news

story, but 1 dead (shot in self defense) . . . after a local went for his gun instead of surrendering to police. Authorities tried to treat his wounds, but he died.” The description, which the Ambassador had originally received from INL, also noted that the Honduran government sent investigators to the scene within 12 hours and that a CSO detective “has been observing the work since Saturday afternoon to ensure professionalism.”

The same day, the Ambassador asked INL whether DEA personnel could be subject to criminal or civil liability in Honduras. This question was eventually forwarded to an attorney in State’s Office of the Legal Adviser who responded that they likely have full criminal immunity and civil immunity for their official actions (and possibly full civil immunity depending on their diplomatic status).

Also on June 25, WHA developed press guidance and background information regarding the June 23 incident stating:

- On June 23, a Honduran police operation with embedded DEA advisors conducted a successful counternarcotics interdiction that resulted in the arrest of four suspected narcotics traffickers and the recovery of approximately 360 kilos of cocaine.
- During the operation, a fifth suspect attempted to engage the police team with a firearm. When the suspect refused to surrender and instead attempted to draw his weapon, a DEA agent then fired in self-defense, as permitted under DEA rules and those of the host country, and the suspect subsequently died at the scene.
- The Government of Honduras sent a team to the site of the incident and is conducting a thorough and transparent investigation. The team consists of police investigators, a prosecutor, a judge of national jurisdiction, and a medical examiner with technical and logistical assistance provided by the United States.

### **3. TRT Reports**

The Honduran TRT Commander submitted a report dated June 24, 2012, to DEA TCO personnel describing the events that took place during the June 22-23 interdiction. This TRT Commander was the same TRT Commander who had been in the pipante with the Delta Team Leader during the May 10-11 interdiction. His report of the June 22-23 interdiction stated:

While flying over the airstrip we observed approximately forty (40) armed individuals, some of which were also carrying bundles of possible drugs (cocaine). The helicopters landed approximately 800 meters from where the suspicious airplane stopped. We then began our movement from the helicopters toward those individuals who were carrying the bundles. The individuals proceeded to hide in the grassy areas and behind the trees. Once the TRT got close to the suspects and identified themselves as police, the delinquents began to fire at the TRT; the TRT then returned fire for a few minutes.

The TRT Commander submitted a similar description of the interdiction in another report that Andrea Lewis, INL Director at the U.S. Embassy, received from Juan Bonilla, the Director General of the Honduran National Police. This report stated:

We want to inform about the mission that took place Saturday, June 23, 2012 approximately at 01:00 hours, a Special team from the National Police, conformed by members of different special units, conducted an airborne interdiction operation on an aircraft suspicious of drug trafficking coming from South America, which landed on a clandestine airstrip in the coordinates N15 37.541, W 084 33.496 south of the Municipality of Brus Laguna, Department of Gracias a Dios, observing from the helicopters approximately 40 armed people and some of the subjects transporting several packages of supposed cocaine, approximately 800 meters from where the suspect airplane had landed, we proceeded to exit the helicopters to pursue the subjects that were transporting the packages, these subjects hid in the bushes, behind some trees. The ground teams identified themselves as Police and it was then when the criminals fired upon the ground teams, the ground teams repelled the attack in the same way for several minutes, moment when several of the subjects abandoned the packages and fled the area, but some subjects were apprehended while they were hiding from the Police presence.

These reports from the TRT Commander made no mention of the fatal encounter in the field between FAST Member G and the armed suspect. Further, the report of a firefight between the ground team and suspected traffickers that lasted several minutes is unsupported by the reporting from U.S. personnel. None of the documents the OIGs have reviewed make mention of a firefight, and the Delta Team Leader told us that the firefight described in the TRT Commander's reports did not occur. According to the team leader and other FAST personnel, the only discharges of a firearm of which they were aware were the shots fired by FAST Member G that killed the armed suspect behind the tree.

According to FAST Member G, "there's [sic] sprinkles of truth in both of these statements, but the main parts are pretty far off." He said "there was no mass firefight for a few minutes that they're talking about. That didn't happen." He added "[f]irst of all, there wasn't [sic] 40 armed individuals. I can tell you right now, even just based off what the [REDACTED], what we found on the ground, what the [REDACTED] gave us, they said there were anywhere from six to eight. . . . I think six to eight armed individuals on the ground. . . . There was no 40 people on the ground with guns." He said, "the only shot fired was the ones I fired."

## **II. July 2-3 Interdiction**

The shooting incident that took place during the July 2-3 interdiction occurred in the early morning hours of July 3, after FAST and Honduran TRT officers responded to a suspect plane that crash-landed near Catacamas, Honduras. When

FAST and TRT arrived at the scene, a pilot who sustained injuries in the crash surrendered to law enforcement. When a second pilot did not comply with commands from two FAST members and instead turned in an apparent attempt to reenter the suspect plane, two FAST members fired multiple rounds, which ultimately killed the pilot.

In Section II.A. below, we provide the chronology of events that took place during the interdiction. The following sequence of events comes from the witness statements of U.S. personnel who participated in the interdiction and documents maintained by DEA and State.<sup>128</sup> In Section II.B., we described the initial reporting of the July 3 shooting incident in the first hours and days after the incident took place.

## **A. Events on the Ground**

### **1. Surveillance of the Suspect Plane**

According to a JIATF-South timeline, ██████████ on July 2, a suspect plane was detected in ██████████ traveling toward Honduras. A Columbian Air Force plane obtained visual identification and a U.S. Air Force surveillance plane tasked by JIATF-South located and monitored the suspect plane. The Delta Team Leader told us that FAST received information from JIATF-South about the suspect plane and made a predictive analysis as to where the suspect plane would land in eastern Honduras.

At approximately ██████████ FAST and TRT departed ██████████ on ██████████ helicopters and ██████████ before traveling to Catacamas. Each of the helicopters carried ██████████ FAST members, including a medic and an Intelligence Research Specialist (IRS), and ██████████ TRT members.

### **2. The Crash of the Suspect Plane and the Arrival of FAST and TRT**

At approximately 11:45 p.m., the suspect plane crashed while attempting to land at a clandestine landing strip 13 miles south of Catacamas. FAST Member T told us that from Helicopter ██████████, he saw the suspect plane slide off the runway into an area of heavy vegetation. The Delta Team Leader told us that the traffickers did not have the landing strip lit and that may have been a reason the suspect plane crashed. The FAST members told us that Helicopters ██████████ were the first ones on the ground after the suspect plane crashed, while at ██████████ of the remaining helicopters stayed in the air to provide support.

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<sup>128</sup> The OIGs learned that there is no video recording of this interdiction because a U.S. Air Force plane, rather than a CBP plane, conducted surveillance during the interdiction.

### 3. FAST's Encounter With the Suspect Plane's Pilots

The Delta Team Leader and FAST Member T discharged their weapons during the shooting incident on July 3. We summarize their accounts of the incident, as well as the account of FAST Member V below.

#### a. The Delta Team Leader

The Delta Team Leader told us that he was on Helicopter [REDACTED], which landed near the crash first followed by Helicopter [REDACTED]. He said that almost immediately after landing, he saw a pilot coming out of the suspect plane with visible injuries, and that the TRT took the injured pilot into custody away from the plane. He told us that he called for Helicopter [REDACTED] to land so a medic could treat the pilot's injuries. He said that at that time, he did not think anyone else was in the suspect aircraft because in his experience most of the trafficking planes had only one pilot.

**Figure 8.1: Photograph of the Crashed Plane**



The Delta Team Leader said that he and FAST Member T approached the plane, followed by members of the TRT. He told us that when he approached the plane, he saw someone else inside the plane, later determined to be a second pilot. He immediately backed away from the plane and alerted FAST Member T that there was someone in the plane. He told us he remembered FAST Member T "barking out orders" to the TRT to move back. The Delta Team Leader told us he gave commands to the pilot in the plane repeating, "put your hands up" in Spanish. At that point, the Delta Team leader was standing some distance away from the doorway, looking toward it.<sup>129</sup> He said that initially the pilot looked out the door of the plane, then went back in before coming to the door of the plane again. The Delta Team Leader told us that he did not see a weapon in the pilot's hands. He told us that when the pilot made a move back inside again toward the front of the plane, he fired his weapon. He said he was not certain how many times he fired his weapon at the pilot. When the OIGs asked if he knew if anyone else fired, he told

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<sup>129</sup> The Delta Team Leader was not certain how far he was from the plane at this time.

us that at that moment he did not but learned shortly after that FAST Member T fired at the same time.

The Delta Team Leader told us he fired his weapon at the pilot in the suspect plane because he believed the individual was possibly going for a weapon and was not following the commands when he had plenty of time to do so. He said he believed that the individual knew they were the police because the Delta Team Leader was yelling "Police," "get your hands up" and "come out" in Spanish.

According to the Delta Team Leader, as he and FAST Member T pulled the shot pilot from the plane's doorway and dragged him away from the plane, the pilot did not say anything but was moaning. After they moved the pilot 15 to 20 feet from the aircraft, the Delta Team Leader called for medics to treat the shot pilot's gunshot wounds. He said that he recalled the shot pilot's wounds were located in the front of his body. Photographs of the shot pilot taken at [REDACTED], a nearby Honduran base, show what appear to be gunshot wounds on the right side of the pilot's torso and both legs bandaged.

#### **b. FAST Member T**

FAST Member T told us that he and the Delta Team Leader approached the suspect plane in [REDACTED] with TRT officers from Helicopters [REDACTED].<sup>130</sup> He said that as they approached the suspect plane, one of the pilots exited the plane and was visibly injured. He said that at that time, the Delta Team Leader alerted him that there was another individual in the suspect plane. FAST Member T told us that as he approached the suspect plane, he could see a person inside the door of the plane who moved toward the cockpit when the Delta Team Leader yelled "police." FAST Member T said that at that moment, both he and the Delta Team Leader fired their weapons at the pilot. He said that he did not observe a weapon on the pilot. FAST Member T said that he fired in self-defense based on the movements of the pilot as he turned to reenter the plane.

FAST Member T and the Delta Team Leader entered the plane, where they could see fuel leaking into the cockpit, and dragged the shot pilot out and away from the plane. FAST Member T told us the shot pilot's breathing was very labored and "did not last very long." Once the pilot was away from the plane, FAST Member T called one of the medics to aid the shot pilot. FAST Member T told us that he never examined the pilot's gunshot wounds and therefore did not know where the pilot had been hit.

#### **c. FAST Member V**

FAST Member V was also a team medic and had prior EMT training. He told us he was on Helicopter [REDACTED] when he learned that the suspect plane had crashed.

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<sup>130</sup> [REDACTED]



He told us that he and another FAST member flanked the Delta Team Leader and FAST Member T's group in a [REDACTED] security perimeter as they headed toward the suspect plane. Although he was aware a pilot was injured from the crash, he did not initially provide medical aid to the injured pilot.

FAST Member V told us that he did not witness the shooting of the second pilot but did hear elevated voices giving commands in Spanish and English prior to the gunshots. He said he did not recall whether he determined from the gunshots that law enforcement officers had fired or if it was announced over the radio as such. He told us that his group remained on the perimeter until the suspect plane was clear and Helicopter [REDACTED] radioed that the area was free of offloaders. He also said approximately 15-20 minutes passed between setting up the security perimeter and hearing the "all clear" call on the radio.

#### **4. FAST and TRT Depart the Crash Site**

After they dragged the shot pilot from the suspect plane, the Delta Team Leader and FAST Member T turned their attention to the plane's engine, which was still running. The Delta Team Leader told us that he was unable to turn off the engine because cocaine bales had slid forward into the cockpit during the crash. After several unsuccessful attempts, the Delta Team Leader requested assistance from the Helicopter [REDACTED] pilot who landed his helicopter and attempted to enter the cockpit. The Helicopter [REDACTED] pilot was also unable to turn off the engine and told the Delta Team Leader to shoot the engine to disable it or otherwise it could run for hours. FAST Member T said that upon this advice, he and the Delta Team Leader fired multiple rounds at the engine until it stopped running. Because of concern that the plane could still catch fire, FAST searched the plane quickly and recovered a sword, GPS, and a satellite telephone in addition to the bales of cocaine.

According to the Delta Team Leader, after stopping the suspect plane's engine, he made the decision to evacuate the area with the drugs and injured pilots, rather than wait for Honduran authorities to arrive and process the scene.<sup>131</sup> He said that the helicopters were [REDACTED], and he received information that there were unidentified individuals "amassing" in the area. He also said that after he learned that the helicopters [REDACTED], he had requested QRF support from Joint Task Force-Bravo (JTF-Bravo) but was told that JTF-Bravo could not airlift to his location because of expected inclement weather.<sup>132</sup>

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<sup>131</sup> As we described earlier, after a FAST member shot and killed a suspect during the June 22-23 interdiction, the FAST and TRT ground team remained on scene in a hostile environment for approximately 18 hours while they waited for Honduran authorities to arrive. According to the Delta Team Leader, Honduran law required host nation law enforcement personnel involved in a firearms-related death to remain at the scene until a Honduran prosecutor processed the scene and examined the shooting victim.

<sup>132</sup> The Delta Team Leader told the OIGs it was his understanding that a QRF composed of [REDACTED] was available to assist FAST and the TRT during Operation Anvil.



The Delta Team Leader told us that with the helicopters [REDACTED] and the report that people were amassing nearby, he made the decision to fly the drugs and suspect pilots to [REDACTED], a nearby Honduran base where the [REDACTED]. He said that he could have had the [REDACTED] without the ground team, but then the ground team would have had [REDACTED], and the injured pilots were in need of medical attention. For these reasons, [REDACTED] helicopters left with some of the drugs, the two pilots, the Delta Team Leader, a few TRT, and the medics, while the remainder of the drugs and law enforcement officers left shortly thereafter. He estimated that the [REDACTED] helicopters departed the area about 45 minutes after they had arrived on scene and about 30 minutes after the shooting of the second pilot.

FAST Member T told us that he was part of the last group to leave the crash site. He gave an order for the suspect plane to be destroyed so that the plane could not be used again. He said that after FAST destroyed the suspect plane by throwing a thermite grenade in it, the [REDACTED] helicopters joined the others at [REDACTED]. FAST Member T told us that although he was not certain how long he remained at the crash site during this interdiction, he estimated that he was on the ground about 2 hours. He told us that the Delta Team Leader made the decision to leave and not wait for Honduran prosecutors after discussing the issue with the TRT. He told us that both FAST and the TRT believed that the safest location for them was at [REDACTED].

## **5. Medical Status of the Shot Pilot**

The OIGs received varying information about the medical status of the shot pilot while the ground team was at the scene of the plane crash. The differences in these accounts is relevant because the need to provide treatment to both pilots was cited as one of the reasons to transport them both away from the scene rather than leave some personnel at the scene with the dead pilot to wait for a Honduran prosecutor. In addition, as described later, allegations were made in 2013 that an INL contractor had directed DEA personnel involved in the July 2-3 interdiction to make false statements about the status of the shot pilot.

### **a. Witness Accounts**

According to the FAST medics – the primary FAST Medic, as well as FAST Member V who had emergency response training, and the IRS – the shot pilot was already dead when they first assessed him at the scene. They said that they believed it was understood by everyone on scene that he had died and because he was dead, they turned their attention to the other pilot who suffered injuries in the crash but was still alive. In particular, the IRS told us that after he got off Helicopter [REDACTED]:

I started walking from where I landed to the plane. I pass, and I look. I saw one of the pilots, and I knew he was dead. I walked to him and looked at him. I know he was dead. From there, I went to, they point me out where the second pilot was, and I went there. And that's [where] I went and I rendered him medical aid.

. . . .

. . . [the injured pilot] thought that his buddy was still alive, because at no time I want to tell him his buddy [was] dead because psychologically you don't want to do that. And at no time, I mean, he found out at the very end that the guy was dead. We went ahead and gave him first aid and put him in a stretcher. They moved the narcotics out first. Then the helo came back, and we go ahead and move him and his, the other guy that was dead, moved them out.

When we asked him how he determined that the shot pilot was dead, he said that it was "pretty obvious" that the pilot was dead, explaining that the shot pilot was laying on his back, with his eyes wide open, and his arms up over his head – "nobody can stay like that." This description was consistent with a photograph of the individual taken at the scene.<sup>133</sup> In addition, the IRS said that he never saw anyone providing medical treatment to the shot pilot once he came on scene and that everyone around him knew the shot pilot was dead.

The IRS told us that he did not tell anyone on scene, including the team leaders, that the shot pilot was dead, nor did he hear anyone else tell anyone on scene that the shot pilot was dead. However, the IRS was on the same helicopter with the injured and shot pilots and told us that the shot pilot was in a body bag when he was loaded onto the helicopter.

Similarly, FAST Member V told us that the shot pilot did not have a pulse or any other signs of life, and his injuries "did not support life." He said that it became a triage situation in which he decided to treat the other pilot who had been crushed inside the airplane during the crash but was still alive. He said that no lifesaving measures were performed on the shot pilot.<sup>134</sup> FAST Member V told us he did not recall reporting to anyone on scene that the shot pilot was dead. He said that he did not believe a report was necessary because he believed it was known among the individuals on the ground that the shot pilot had died.

The Delta Team Leader told us that he did not see the shot pilot when the team loaded him onto the helicopter about 30 minutes after the shooting. He said he was not aware that the shot pilot had died on scene because the medics were treating him at the crash site and continued to do so after they arrived at the base at [REDACTED]. However, when we asked him whether he had reason to doubt the accounts of the medics who determined that there was nothing they could do for the shot pilot and therefore directed medical attention to the injured pilot, he said

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<sup>133</sup> FAST members said they did not recall who took the photographs referenced in this chapter or the exact time that they were taken.

<sup>134</sup> As noted previously, photographs taken at [REDACTED] showed the shot pilot with bandages around his legs. FAST Member V told us that he had applied bandages to the deceased pilot's gunshot wounds at [REDACTED] because he continued to bleed and "out of common decency" given the traumatic appearance of the deceased's wounds.

that he did not because he did not focus his attention on the medical treatment that the medics were providing.

FAST Member T told us that after he and the Delta Team Leader dragged the shot pilot away from the airplane, the pilot's labored breathing stopped, and he was nonresponsive. However, he said that he was not in a position to determine whether the pilot had died at that time. He said he also did not know whether the pilot died before or after the team loaded him onto the helicopter. He said that after arriving at [REDACTED], one of the medics told him that he believed the shot pilot was dead. However, according to FAST Member T, before he spoke to the medic at [REDACTED], he did not know the status of the shot pilot.

Later that morning, on July 3, the INL Senior Aviation Advisor in [REDACTED] e-mailed a report to State and DEA officials, including the Delta Team Leader and Dobrich, stating that one of the pilots had died after transport to [REDACTED] (as opposed to at the scene of the crash site):

Both pilots of the [REDACTED] were severely injured and were transported to a secure location on Task Force helicopters (INL/A) where one of them died from his injuries.

As discussed below, the Delta Team Leader told the OIGs that he had spoken with the INL Senior Aviation Advisor and likely was the source of the information contained in the latter's report. Later in the day, the INL Senior Aviation Advisor re-forwarded this report to the Delta Team Leader who responded, "Thx [INL Senior Aviation Advisor], well written!" The Delta Team Leader told the OIG that the INL report was in line with what happened.

#### **b. Special Investigations Division (SID) Investigation**

The OIGs learned that in April 2013, the Special Investigations Division (SID) of State's Bureau of Diplomatic Security opened an investigation into allegations that this INL Senior Aviation Advisor (a State contractor) had directed DEA personnel involved in the July 2-3 interdiction to make false statements about the status of the shot pilot. This investigation was opened in response to allegations made by another State contractor working for INL during Operation Anvil that the shot pilot had died at the scene of the crash site but that the INL Senior Aviation Advisor directed DEA personnel to say that the pilot died in transport, rather than at the scene. This allegedly enabled the ground team to evacuate the area instead of waiting in a hostile environment for Honduran authorities to arrive, as protocol would have dictated. The contractor making the allegation stated that the INL Senior Aviation Advisor may have made the decision to lie about the pilot's status jointly with the FAST team leader on the ground.

After an investigation during which SID agents interviewed State officials and several INL contractors about the allegation, SID determined that the allegation was unsubstantiated and closed its investigation. According to the final report, the complainant did not have first-hand knowledge of the alleged instruction from the INL Senior Aviation Advisor, and the INL Senior Aviation Advisor and State

witnesses denied the allegation during their interviews. The report also stated that at the time the complainant made the allegation, he was under the belief that his employment was about to be terminated, and that he backed off his allegations somewhat when he learned that he was being retained. SID did not seek to interview the Delta Team Leader or other DEA participants, or refer the matter to DEA.

The Delta Team Leader told us that while he was at the scene of the crash site and later at [REDACTED], he had been in communication with the INL Senior Aviation Advisor. He said that the information about the shot pilot in the INL Senior Aviation Advisor's July 3 report was consistent with what he understood at the time, which was that the shot pilot subsequently died at [REDACTED]. The Delta Team Leader told us that he did not make a false statement about the medical status of the shot pilot, was not aware of the INL Senior Aviation Advisor making a false statement, and did not discuss making a false statement with the INL Senior Aviation Advisor. According to the Delta Team Leader, even if the pilot had died on scene, he (the Delta Team Leader) was authorized to make a decision to leave the area if he determined that the team needed to evacuate for their own safety. Similarly, FAST Member T said that he was not aware of anyone making a false statement about the shot pilot in order to avoid waiting for the arrival of Honduran authorities.<sup>135</sup>

Regardless of whether the INL Senior Aviation Advisor knowingly made a false statement to State and DEA officials that the pilot had died during transport or at a secure location, and whether he did so jointly or in agreement with the Delta Team Leader, it does appear that the information he reported on July 3 was inaccurate. All three DEA officers who served as medics during this interdiction told us that the pilot was already dead when they initially assessed him on scene, causing them to direct their attention to the other pilot at the scene who had significant injuries from the crash. The dead pilot reportedly suffered six gunshot wounds, most on the right side of his torso. A photograph of the shot pilot taken by the TRT at the crash site shows the pilot as described by the IRS – alone on the ground, eyes and mouth wide open, arms over his head, with no visible signs of life.

## **6. As the Helicopters Wait To [REDACTED] [REDACTED], Honduran National Police Arrive To Retrieve the Drugs**

The FAST and TRT officers remained at [REDACTED] overnight and into the late morning while they [REDACTED] to arrive for the helicopters. According to the FAST members and the Delta Team Leader, the helicopters were on the ground a few hours at [REDACTED] when trucks carrying Honduran National Police officers approached the gate in tactical gear. FAST members told us that the police at the gate said they wanted the cocaine seized from the crashed suspect plane. The

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<sup>135</sup> As noted in previous chapters, the INL Senior Aviation Advisor is no longer a contract employee for the Department of State, and he failed to respond to State OIG's requests for an interview.

Delta Team Leader and FAST Member T told us they had the machine guns removed from the helicopters and placed them into position in case the police initiated a fight for the drugs.

An e-mail sent by the Delta Team Leader at 6:09 a.m. on July 3 to the INL Senior Aviation Advisor, the INL Director at the Embassy, the Assistant Regional Director, FAST Section Chief Richard Dobrich, and others described the confrontation with Honduran police as follows:

I know there will be a through [sic] inquiry into what happened here tonight. Just so everybody knows, this is not over yet.

We are here in [REDACTED] [sic] with 1 ton of cocaine that belongs to someone in this area. A large police contingency has already attempted to gain access to the base.

If they know we are here so do the NARCOS!

JTFB has been turned off due to weather and the other pilot is in grave pain from the crash landing.

We are positioned to defend our self [sic] if needed. Isolated with this much cocaine puts us in a very dangerous position. It is my hope that we receive transportation and/or reinforcements soon.

FAST members told us that the TRT Commander and another TRT officer approached the gate to talk to the police officers in the trucks. FAST members said that a call came in from the head of the Honduran National Police to the police outside the gate, and they left without incident. The Delta Team Leader told us that although the police drove away from the gate, they did not leave the area completely but remained at a location down the road. He told us that he requested but received no reinforcements while the team waited for [REDACTED] overnight and into the next day. After [REDACTED] the helicopters, the team took the injured pilot to Tegucigalpa for further medical treatment and then returned to their base in [REDACTED]

## **7. The Debrief Back at Base and Overview of the Interdiction Results**

FAST members and the Helicopter [REDACTED] pilot told us that a short debrief took place after all of the helicopters returned to base in [REDACTED]. FAST Member T told us that he did not recall anything specific that occurred during the debrief other than a discussion about air support and communications. He told us that a second discussion with just FAST members focused on the success of the operation and that no one was injured from the group.

FAST Member T told us he and the Delta Team Leader did not do anything differently when they returned to base even though they had fired their weapons, but both told us that they conducted their own individual weapons checks at the base to determine the number of rounds they fired. We found no evidence documenting any such weapons checks. FAST Member T told us that it was "simple

arithmetic” because they load their own magazines with “so many rounds.” According to the Delta Team Leader, each magazine has a capacity of 30 rounds, but his own magazines were not necessarily fully loaded. He said that all he knew was that he fired two magazines at the suspect plane (because he emptied one magazine and loaded another), but he did not know the number of rounds he fired at and struck the pilot.

As detailed in Chapter Nine, according to DEA’s Office of Inspections, both FAST members fired a total of seven rounds at the pilot, hitting him six times. The Delta Team Leader reportedly fired 58 rounds into the engine of the suspect plane and FAST Member T fired 27 rounds into the engine. The Delta Team Leader told us that he did not know how DEA calculated these numbers.<sup>136</sup>

## **B. Initial Reporting**

### **1. DEA Reporting**

An Assistant Attaché at TCO told us he received text messages and e-mails throughout the evening of July 2 from the Delta Team Leader with updates on the interdiction. He also received a phone call from the Delta Team Leader advising him that FAST members shot and killed one of the pilots. The Assistant Attaché reported the events of the evening to the Assistant Regional Director and Deputy Chief of Mission (DCM) Mattias Mitman. After receiving the update, the Assistant Regional Director reported the shooting incident by telephone to the DEA Headquarters Command Center at 4:00 a.m. on July 3. Based on information provided by the Assistant Regional Director, the DEA Headquarters Command Center duty agent disseminated a Significant Incident Report to senior DEA officials summarizing the incident. The report stated:

At approximately [REDACTED] the Tegucigalpa Country Office received an airplane [REDACTED] of a suspected plane transporting cocaine to an unknown location in Honduras. The above aircraft later entered Honduran airspace at which time it was followed by members of the Honduran Tactical Response Team (TRT) and members of FAST, utilizing a NAS helicopter.

At approximately 1:30 am the above plane conducted a hard landing at an airstrip in the vicinity of Catacamas, Honduras. One of the pilots sustained injury to both legs as a result of the hard landing; the second pilot was subsequently shot and killed by a FAST team member, yet to be identified.

Members of TRT and FAST attempted medical intervention on the pilot who had been shot but were unable to revive the pilot prior to the pilot

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<sup>136</sup> As described in Chapter Nine, the DEA supervisory agent assigned to investigate the July shooting determined that the Delta Team Leader fired three rounds at the male subject and that FAST Team Member T fired four rounds. The assigned agent told us that he made this determination relying upon what they told him when he interviewed them in connection with the internal shooting review.

being transported to a nearby Hospital. The second pilot who had sustained injury to both legs was stabilized and transported to a Hospital.

The TRT/FAST team recovered approximately 500-600 kilograms of cocaine from the above plane. At this time the gender and nationality of the deceased suspect is unknown.

The Assistant Attaché prepared a Significant Enforcement Activity Report (SEAR) based on information he had received from the Delta Team Leader and disseminated the SEAR to senior DEA officials on July 5. The SEAR provided a timeline of the event, limited information about the injured and killed pilots, and the amount of the drug seizure associated with the interdiction. The report stated:

On July 2, 2012, at approximately [REDACTED] Joint Interagency Task Force South (JIATFS) and the Tactical Analysis Team (TAT) declared [REDACTED] departing [REDACTED] headed for Honduras. The aircraft was identified as a PA-31T Cheyenne by a JIATFS Maritime Patrol Aircraft (MPA). Honduran TRT and FAST prepared to launch based on this information.

On July 2, 2012, at approximately [REDACTED] Honduran TRT and FAST departed [REDACTED] in [REDACTED] INL helicopters and landed in [REDACTED] to [REDACTED] assess the intelligence provided from the MPA. After [REDACTED] the INL helicopters departed [REDACTED] enroute to Catacamas in the Department of Olancho.

At approximately 11:45 p.m., the INL helicopters saw the [REDACTED] crash land near GEO coordinates 1438N 08550W, approximately 13 miles south of Catacamas. Shortly thereafter, [REDACTED] INL helicopters landed near the crash site and inserted TRT and FAST personnel while the remaining [REDACTED] INL helicopters provided overhead support.

As TRT and FAST agents approached the aircraft they observed the co-pilot crawling away from the aircraft. TRT took the co-pilot into custody without incident and the co-pilot was treated for injuries as a result of the crash. TRT and FAST members then approached the cockpit announcing their presence in Spanish. TRT and FAST members looked into the windows of the cockpit and saw nobody in the cockpit. TRT and FAST members then made their way to the fuselage door when they encountered the pilot inside the aircraft. The pilot was ordered in Spanish to comply with TRT and FAST agents' commands to exit the aircraft. The pilot disobeyed the commands and instead made a furtive movement and was subsequently shot by two FAST agents. The pilot was treated, but later died of his injuries. Initial information indicates that both pilots are Brazilian, but neither has been positively identified.

A search of the aircraft resulted in the seizure of two GPS units, one phone and approximately 968 kilograms of cocaine (Exhibit 1). The aircraft was then destroyed by TRT/FAST personnel. Shortly



thereafter, TRT, FAST, both pilots and the evidence were transported from the crash site via the INL helicopters to a nearby Honduran base in [REDACTED]

At approximately 7:00 a.m., an INL [REDACTED] aircraft arrived at [REDACTED] to [REDACTED] the [REDACTED] INL helicopters. After the [REDACTED] INL helicopters were [REDACTED], the evidence and TRT/FAST personnel were transported to [REDACTED]. At approximately 9:00 a.m., an INL [REDACTED] aircraft flew the injured pilot and deceased pilot to Tegucigalpa where they were turned over to Honduran authorities.

At approximately 11:30 a.m., a Joint Task Force Bravo helicopter transported TRT personnel and Exhibit 1 from [REDACTED] to Tegucigalpa for analysis and safekeeping as per Honduran National Police standard operating procedure (SOP).

We did not find any significant inconsistencies between the SEAR's description of events and the accounts of the FAST members and the pilot of Helicopter [REDACTED], except that it does not appear the shot pilot received medical attention and we received varying accounts regarding when he died.

## **2. State Reporting**

On July 3, Embassy officials circulated to WHA and INL staff press guidance on the July 3 incident describing that "a Honduran police operation with embedded DEA advisors conducted a successful counternarcotics interdiction that resulted in the seizure of nearly 1,000 kilograms (more than one ton) of cocaine and the arrest of one suspected narcotics trafficker." The guidance described the encounter between police and the two pilots from the aircraft as "one was badly injured in the crash and was arrested at the scene. The other was still in the plane. He ignored orders to surrender and was shot after making a threatening gesture. Both suspects were given first aid and transported via helicopter to a secure location. The pilot who resisted arrest died of his injuries." The guidance stated that "[t]wo DEA agents were involved in the shooting," and "[n]o weapons were found in or near the vicinity of the plane."

DEA's Chief of Public Affairs requested that the guidance omit the final two details because the circumstances of the shooting were still under investigation. In a discussion over these two details, the Embassy's Public Affairs Counselor sent an e-mail to other State officials and this DEA official stating that he believed the information should remain in the guidance even though "this incident is not as clear cut as last time." Although he did not specify what he believed was unclear about the incident during the immediate aftermath, the e-mails exchanged between the officials noted the absence of a weapon found at the scene, as well as rumors that Honduran authorities were reporting that the shot pilot had fired a weapon at FAST and TRT. The DEA official agreed to leave the guidance as-is, and the final press guidance included that no weapons were found near the plane and DEA agents were involved in the shooting.



### **3. TRT reports**

For reasons we have not been able to determine, the Honduran TRT Commander submitted two reports describing the events that took place during the July 2-3 interdiction – both of which conflicted with DEA’s and State’s reporting of the interdiction and also contradicted each other on key facts. In addition, DEA officials received allegations that a TRT officer planted a gun into evidence and reported it as a weapon found at the scene.

#### **a. The TRT Commander’s Report to the Tegucigalpa Country Office**

The Honduran TRT Commander submitted a report dated July 3, 2012 to the DEA personnel at TCO describing the events that took place during the July 2-3 interdiction. The TRT Commander who submitted the report was the same TRT Commander who submitted the prior TRT reports on the May 10-11 and June 22-23 interdictions. He was also one of the two TRT officers in the pipante with the Delta Team Leader during the May 11 incident. His July 3 report to TCO stated, in pertinent part:

At [REDACTED], an aircraft was located (and) as a result of (its) impact with the ground (while) landing, (it contained) some physical damage. When the drug dealers saw the presence of the National Police in the helicopters, they fled the scene in different directions toward wooded areas while shooting at the helicopters. It was early in the morning and very dark, so they could not see us from the ground (and as a result), no helicopters were struck by bullets. In the (aforementioned) location, (the following) was found: an aircraft with twin-engines, color; white with blue and yellow stripes, (bearing tail number: PT-OFH), which showed signs of catching fire.

As we proceeded to (evaluate and) search the aircraft, a male subject who was injured with fractures to his body, pursuant to the aircraft’s impact with the ground, exited the aircraft. He was attended to by a DEA ‘FAST’ doctor (medic) but died at the moment. Outside the aircraft, another injured male person, who said he is [Jorge], a 45-year old possible Brazilian National, was discovered. He also had internal fractures caused by the impact of aircraft with the ground. He was also assisted by a DEA ‘FAST’ physician (medic). Also, near the scene (of the aircraft), a weapon with the following features was found: Brand: Girson; Caliber 9mm; Serial number: T6368-07A01325; which had a magazine that contained 12-rounds.<sup>137</sup>

The report’s description of the dead pilot having injuries from the crash and exiting the aircraft before he died is inconsistent with all of the reporting by U.S. personnel. Moreover, this report made no mention of FAST’s use of deadly force or

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<sup>137</sup> All of the reports submitted by the TRT were written in Spanish, and translations were obtained by the DOJ OIG. The information in parentheses was inserted by the translator.

that the dead pilot had gunshot wounds. Although the team medics did not know what specific injuries resulted in the death of the shot pilot, they all told us that he had gunshot wounds, and the Delta Team Leader and FAST Member T told us they fired multiple rounds at the pilot. Further, the report that offloaders fired at the helicopters is not supported by any reports made by U.S. personnel, and, according to FAST members, it did not happen. The Delta Team Leader, FAST Members T and V, the FAST IRS, and the FAST Medic all told the OIGs that they did not see any gunfire fired at the helicopters, hear any discussion over the radio about gunfire at the helicopters, or learn from any other law enforcement officer that offloaders had fired at the helicopters during the interdiction. The Helicopter [REDACTED] pilot also told us that the helicopters were not fired upon during the July interdiction. Finally, despite the report's reference to a 9mm handgun found at the scene, the Delta Team Leader and FAST Member T told us that they never saw a handgun at the scene.<sup>138</sup>

**b. The TRT Commander's Report to the Ministry of Security**

The Honduran TRT Commander submitted a second report dated July 3, 2012 describing the July 2-3 interdiction, this time addressed to the Honduran Ministry of Security, Staff District Attorney. As described in Chapter Ten, an investigator from State's Bureau of Diplomatic Security obtained the report from a Honduran prosecutor in August 2012.<sup>139</sup> The report stated, in pertinent part:

Today, Tuesday, July 3, 2012, at approximately [REDACTED], there was air patrol done by a combination of Honduran police forces and DEA members at the coordinates N 14° 38.061 and W 085° 52.502, Jurisdiction of the Olancho Department, where a light aircraft was found, which had supposedly made an emergency landing on some land used for grazing cattle, finding the following:

One twin engine light aircraft, white with blue and yellow stripes, serial number: PT-OFH which showed signs of being on the verge of catching on fire. Said aircraft was then searched and a male subject came out of the aircraft carrying a firearm in his hands, at whom was yelled, "WE ARE POLICE, PUT THE WEAPON DOWN." Ignoring the authority's instructions, he aimed and fired at the police, and so the legitimate use of defense was used, fending off the attack, and this person ended up dead, his identity and origin unknown. A 9 millimeter Girson pistol, serial number: T6368-07A01325, with a magazine containing 12 bullets, was found on him.

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<sup>138</sup> As detailed below, the OIGs were not able to independently determine whether a gun was physically planted into evidence, or the records simply altered to reflect one, because the gun would have been in the Honduran evidence or records thereof and beyond our ability to investigate. Both of the Assistant Attachés told us that they confirmed with the TRT Commander that he physically placed a handgun into evidence that matched the description in his report to the Ministry of Security.

<sup>139</sup> DOJ OIG did not find any information indicating that DEA had also obtained or received this report. The Delta Team leader and Dobrich told us that they never saw this report before their OIG interview.

Unlike the other July 3 report from the Honduran TRT Commander, this report stated that law enforcement officers exercised deadly force. However, the report also stated that before the use of deadly force, the pilot aimed and fired a handgun at the officers – a reported fact that does not appear in his other report of the same date, or in any DEA or State reporting of the incident. Contrary to this second report, the Delta Team Leader and FAST Member T told us that they determined that the pilot was unarmed and that a 9mm handgun was not found at the scene.

**c. The TRT Allegedly Planted a Gun and Inaccurately Reported That a Firearm Was Recovered at the Scene**

One of the assistant attachés told us that the morning after the interdiction, several TRT officers reported to him that the Director General of the Honduran National Police was concerned about the shooting and ordered the TRT Commander to “plant a gun.” The Assistant Attaché said that he explained to the TRT officers that DEA was permitted to shoot an unarmed individual under the circumstances and asked them not to plant a gun. The Assistant Attaché told us that following this discussion, he believed that TRT would not plant a gun because one of the TRT officers agreed with him that they would not.

Both assistant attachés at TCO said that although they received one of the TRT’s July 3 reports, which referenced the seizure of a 9 mm handgun from the scene, they did not review the report until early August 2012. They said that after they reviewed it, they asked one of the TRT Commanders about the reported weapon because they knew from FAST that the TRT had not recovered a handgun during the interdiction. The attachés said that the TRT Commander told them that his Director General wanted to “help” DEA and ordered them to plant a gun at the scene. One of the attachés told us that he confirmed that calls took place between the Director General and the TRT Commander during the relevant time period by reviewing the phone records for the cell phone that INL provided the TRT Commander.

When the OIGs asked the attachés whether the TRT believed the DEA shooting was not justified, one of the attachés told us that under the Honduran deadly force policy, you cannot shoot an unarmed person because the policy does not recognize imminent threat of serious bodily injury or death. According to the Assistant Attaché, the TRT told him that pursuant to their policy, if you shoot someone who is unarmed, “you will go to prison.” When the Assistant Attaché asked the TRT Commander what would happen if he did not plant a gun, the TRT Commander drew his finger across his throat and said “me and my family.” The other Assistant Attaché told us that the TRT Commander said that he would be killed if he refused the Director General’s order, and because he feared for his life, he did what he was told.

The assistant attachés told us that they were not instructed to, and did not draft, a report documenting their conversation with the TRT Commander, but that they notified the Country Attaché and the Assistant Regional Director about it.

Additionally, one of the attachés told us that he discussed the incident with the Assistant Regional Director and Regional Director (RD) Joseph Evans over lunch when they both came into Tegucigalpa for a meeting in August or September 2012. According to the Assistant Attaché, RD Evans said that the gun planting was wrong and would never be acceptable in the United States, but that this was how things often worked in other countries. The Assistant Attaché said that RD Evans also told him that he did the right thing by reporting the incident to his supervisors.

When the OIGs asked the Country Attaché if he was aware of any inaccurate statements in the TRT reports, he told us he was not aware of any accuracy issues with TRT reporting and was never told by either of the assistant attachés about inaccurate TRT statements. The Country Attaché told us that he had a discussion with one of the assistant attachés about the TRT planting a gun, but he considered it a “rumor” and never verified it because there was “nothing definitive” about it, nor had he seen any reports about it. The Country Attaché said he did not discuss the gun planting incident with RD Evans but may have mentioned it to the Assistant Regional Director.

The Assistant Regional Director told us that she had a discussion about the gun planting incident with the TCO attachés sometime well after the fact. According to the Assistant Regional Director, RD Evans and “everyone” at DEA Headquarters knew about the incident. She said that she specifically recalled a conversation with Deputy Chief Counsel John Wallace during which Wallace mentioned that a TRT officer had planted a gun. The Assistant Regional Director did not know whether DEA had taken any steps to address the gun-planting incident. She said that “even if we had tried to address it, [the TRT Commander] was very scared. He . . . wasn’t going to listen to anything we had to say.”

When the OIGs asked RD Evans if he learned about the TRT planting a handgun into evidence, he told us it was never reported to him, and he had no knowledge of the incident. He said specifically that he did not recall a conversation between the Assistant Regional Director, any of the country attachés, and himself during which this topic was discussed. He told us that if it had been reported to him, he would have considered it a “very serious thing” and would have reported it up his chain of command and to the host country.

Wallace told us that he was aware of the gun planted by TRT but did not consider it significant from a U.S. standpoint because the FAST members involved immediately acknowledged that they used deadly force and the principal sources of information for DEA were its own personnel. He said that DEA was very cautious about relying too heavily on information from the TRT. He said that particularly with respect to any U.S.-based criminal prosecutions, DEA officials did not envision a situation in which they would ever use a TRT officer as a witness in court proceedings.

FAST Member T said that when he returned to the United States, he learned that TRT recovered a gun at the scene of the interdiction, but never heard they actually planted a gun. FAST Member V and the FAST Medic told us they never heard that the TRT planted a gun at the scene of the interdiction. The FAST IRS

told us that he learned the TRT planted a gun at the July interdiction when he was back in the United States from other FAST members in the office. He said it was a "hot item" and that the TRT statement about a gun was not consistent with FAST's reporting.

One of the assistant attachés notified the Delta Team Leader that the TRT had planted a handgun into evidence after he learned about it. He told us that the Delta Team Leader said the TRT Commander told him "something about that," but he disregarded it and told the TRT Commander not to plant a gun. According to the Assistant Attaché, the Delta Team Leader told him that he was unaware that the TRT Commander had actually planted a gun into evidence.

The Delta Team Leader said that a couple of months after the July 2-3 interdiction he learned from the TCO attachés that TRT reported they had recovered a weapon at the scene. He said that he did not talk to the TRT Commander after learning about it. He said that he had a conversation with Dobrich about it in which Dobrich asked him if he knew that the TRT had reported that they found a weapon. According to the Delta Team Leader, Dobrich did not ask him to do any follow-up based upon the information.

Dobrich told us that he was never informed that the TRT planted a gun. Dobrich said that he never received the TRT reports from the Tegucigalpa Country Office, which referenced the gun TRT purportedly recovered at the scene of the July interdiction.

Deputy Administrator Thomas Harrigan also told us that he did not recall ever being informed that the TRT planted a gun. Administrator Leonhart told us that she had not heard anything about the TRT planting a gun or indicating that TRT had misreported what occurred during any of the Anvil shooting incidents. DEA Deputy Chief of Operations James Soiles told us that he did not know whether TRT planted a gun, but he generally recalled learning from Deputy Chief of Operations Jay Fitzpatrick that there was "an issue with a gun" after the July interdiction.

Wallace told us that he believed "everyone" knew about the gun-planting incident. He said that he specifically recalled a discussion about the incident in which Harrigan, Fitzpatrick, Soiles, Dobrich, and Wallace participated. Wallace said that it was possible that Fitzpatrick was the person who informed the group of the gun-planting, but his memory was that it was Dobrich who told the group that TRT had planted a gun into evidence and advised them to therefore be skeptical of everything the TRT said. DOJ OIG found no evidence that DEA Headquarters undertook any actions in response to the gun-planting allegations or inaccurate reporting by the TRT.<sup>140</sup>

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<sup>140</sup> On October 1, 2015, upon learning that DEA officials did not disclose to the prosecutors this potentially discoverable information, the DOJ OIG sent a memorandum to the U.S. Attorneys in the Eastern District of Virginia and the Southern District of New York where several individuals were indicted based on the seizures in Operation Anvil. This memorandum was provided to notify the U.S.

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DCM Matthias Mitman recalled there was an allegation made by a TRT officer that he was told to plant a weapon after the July 3 shooting. Mitman could not recall how he learned of the allegation; however, he believed that this allegation and the facts surrounding the July 3 shooting should have been thoroughly investigated. He said that this is why he wanted DEA to provide the State Department's Bureau of Diplomatic Security with photographs, witness statements, and all other evidence it had accumulated from the scene. Mitman told the OIGs that he was not aware of any actions taken by the U.S. Government or Government of Honduras regarding the allegation. Although then INL's Director of Western Hemisphere Programs Mark Wells said he was generally aware that the TRT gave varied accounts regarding the shooting incidents, he said he did not remember any allegations that the TRT had planted a gun into evidence.

### **III. DOJ OIG Observations**

As described in the next chapter, following internal investigations into the circumstances of the June 23 and July 3 shootings, DEA's Shooting and Assault Incident Committee concluded that the actions taken by the FAST members who discharged their weapons were in compliance with DEA policies and procedures and that the use of deadly force in each incident was justified. During our review of DEA's responses to these shooting incidents, we did not obtain evidence establishing otherwise.

However, as we describe in our findings and analysis in Chapter Thirteen, DOJ OIG found that the facts of the June 22-23 and July 2-3 interdictions demonstrate that DEA did not adequately plan for shooting events before Operation Anvil began, despite the expectation that such events would occur. The June 23 incident revealed inadequate pre-operational planning regarding scene management, which dangerously prolonged law enforcement personnel's presence at the shooting location. We believe the prolonged wait for the Honduran investigation team to arrive may have provided motivation 10 days later on July 3 for the Delta Team Leader to misreport the medical status of the pilot shot in order to ensure law enforcement's safety by departing the area immediately, as opposed to waiting in another dangerous situation. Further, during the mission on June 23, and again following the mission on July 3, FAST requested additional forces to assist the outnumbered law enforcement team, who in both instances were in a dangerous tactical situation, but QRF support was not available.

Although we believe that all of the U.S. and Honduran partners in this operation bear some responsibility for these failures, we believe DEA, in particular, given its key role during the planning phase and operation, should have ensured before interdiction missions began that mechanisms were in place in the event of a critical incident to support the law enforcement personnel on the ground and

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Attorney's Offices of the TRT statements and the gun-planting incident for evaluation as potential *Brady* or *Giglio* material.

provide for the processing of the scene without prolonged delay. We make a recommendation at the end of this report to address this issue.

Further, we believe that a misunderstanding of the deadly force policy applicable to FAST likely contributed to the Honduran police's reported planting of a gun into evidence to justify DEA's use of deadly force on July 3. As described in Chapter Thirteen, we found that TRT and FAST did not have a clear understanding of each other's deadly force policies, a situation that could have led to errors in coordination between U.S. and Honduran forces and avoidable risks of harm.

Finally, DOJ OIG found that DEA officials did not respond to reports that the TRT planted a gun into evidence to justify DEA's use of deadly force on July 3, or respond to the inconsistent and inaccurate Honduran police reports regarding all three shooting incidents.

## **CHAPTER NINE: DEA'S POST-INCIDENT SHOOTING REVIEWS OF THE JUNE 23 AND JULY 3 SHOOTING INCIDENTS**

In this chapter, we describe DEA's internal reviews of the June and July shooting incidents and the findings of DEA's Shooting and Assault Incident Review Committee (SAIRC).

### **I. DEA Initiates a Shooting Review of the June 23 Shooting Incident**

#### **A. The Opening and Delegation of the Post-Incident Shooting Review**

As described in Chapter Eight, during the June 22-23 interdiction, a FAST Member shot and killed an armed suspect hiding behind a tree who refused commands and made what was described as a furtive movement towards a firearm in his hip holster. DEA's Assistant Regional Director notified DEA's Command Center at Headquarters within hours of the shooting on June 23, and, almost immediately thereafter, the Command Center disseminated a Significant Incident Report to senior DEA officials, including officials in DEA's Office of Inspections (IN). The following day, DEA's Tegucigalpa Country Office (TCO) disseminated a Significant Enforcement Activity Report (SEAR) summarizing the June 22-23 interdiction and shooting incident to DEA officials at Headquarters, regional officials, and DEA Headquarters' Command Center. In addition, on June 27, TCO sent a teletype detailing the shooting incident to IN, as required by DEA's post-shooting incident procedures.<sup>141</sup>

Before receiving the teletype, on June 26, 2012, IN opened an internal review of the June 23 shooting incident based upon the initial reporting that a DEA employee discharged a firearm. As described in Chapter Seven, any discharge of a firearm by a DEA employee triggers DEA's post-shooting procedures, which require that such shooting incidents be reported, documented, and investigated. In this instance, the investigation focused on evaluating the conduct of FAST Member G who shot the armed suspect.

Similar to the May 11 internal review, IN delegated this internal review to TCO under the direction of the Regional Director (RD) Joseph Evans and the Assistant Regional Director. According to OIG witness interviews, delegating the review to the field occurred because the shooting took place in a foreign country, where, as a general practice, IN did not deploy its own investigators for logistical reasons. Further, as described in Chapter Seven, Deputy Chief Inspector (DCI) Kevin Foley told us that IN did not deploy inspectors to foreign locations like Ahuas because of the potential that the inspectors could face safety and security problems, corruption issues, and have a limited ability to talk to host nation citizens. In this instance, although DCI Foley decided not to deploy inspectors to

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<sup>141</sup> Chapter Seven contains a more detailed description of DEA's post-shooting procedures.



Honduras, he assigned the same Inspector and Senior Inspector who oversaw the internal review of the May 11 incident to oversee the review of the June 23 shooting.

With approval from RD Evans, the Assistant Regional Director assigned the Country Attaché in DEA's San Salvador Country Office to lead the review because, in addition to his supervisory status, the Attaché was available to conduct the review and in a different country close to Honduras. This Assigned SSA said that on June 26, the Assistant Regional Director informed him that she had selected him for the review because of his status as a neutral party in a supervisory position. The Assigned SSA did not participate in DEA's internal review of the May 11 incident. As described in Chapter Seven, a supervisor from the FAST program was selected for that review. The Assistant Regional Director told us she selected the Assigned SSA for the June 23 shooting review after deciding that she wanted to assign someone outside FAST to conduct the review and after assessing the availability of her staff.<sup>142</sup>

As with the May 11 review, IN sent an e-mail communication to RD Evans and the Assistant Regional Director directing that the Assigned SSA prepare an "abbreviated" shooting investigation report package for the June 23 shooting review containing the 12 categories of forms, reports, and documents that DEA's post-shooting procedures require for shooting incidents in uncontrolled areas. These categories included the initial internal notification reporting the incident to the Command Center and relevant DEA offices, an investigative report prepared by the Assigned SSA summarizing the relevant events, witness statements, operational plan, diagrams, photographs, maps, the current Firearms Qualification Form (DEA-279) for the shooter, a Report of Shooting Form (DEA-485), and "other relevant memoranda documents."

The Assigned SSA told us that when the Assistant Regional Director assigned him the shooting review, she did not discuss the facts of the incident with him but requested that he conduct witness interviews and prepare an abbreviated package for IN. The Assigned SSA told us that he did not have any prior experience conducting shooting reviews. He told us that as a first-time shooting investigator, he read the post-shooting incident procedures in the DEA Agent Manual to familiarize himself with how to conduct an abbreviated shooting investigation in accordance with DEA policy. The Assigned SSA said that after consulting the guidelines in DEA's post-shooting procedures and receiving instructions from the Assistant Regional Director, he understood his responsibilities included to: (1) interview all affected persons, including the shooter, witnesses, and team members; (2) gather all applicable documents, including pictures, operational plans, weapons authorization forms, and teletypes; (3) accurately portray what the

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<sup>142</sup> As described in Chapter Seven, the Assistant Regional Director told us that although she assigned the FAST Supervisor to the May 11 internal review, her preference would have been to assign someone outside the same chain of command. She said that she did not recall the reason she assigned the FAST Supervisor to the May 11 review but speculated that she may have done so because her region was very understaffed at the time.

shooter and witnesses told him about the shooting; (4) and submit a package with that information to IN.

## **B. Investigative Steps Taken During the Internal Review of the June 23 Shooting Incident**

Shortly after receiving his assignment and consulting the DEA Agent Manual, the Assigned SSA contacted the Inspector assigned to oversee the shooting review to discuss his plans to interview the FAST members involved in the June 23 shooting incident. According to the Assigned SSA, he did not receive any guidance or special instruction from the Inspector regarding how to conduct his investigation, except to ensure that he collected all the documentation specified in the delegation notification and compiled the documents into an "abbreviated shooting report package" for IN.

### **1. Interviews of FAST Personnel and INL Pilot**

As the Assistant Regional Director requested, the Assigned SSA traveled to Stafford, Virginia, in mid-July to interview the FAST members involved in the June shooting incident.<sup>143</sup> On July 16, he interviewed three FAST members regarding this incident, including FAST Member G (shooter), the Delta Team Leader, and FAST Member V who served as one of the FAST team medics during the June 22-23 interdiction. The next day, he interviewed the INL pilot of Helicopter [REDACTED].

The Inspector attended each of the interviews of FAST personnel. DEA e-mail communications reflect that FAST Section Chief Richard Dobrich and Deputy Chief of Operations Jay Fitzpatrick had suggested to DCI Foley that an inspector serve as a "second-seater" for the interviews. According to Dobrich, he believed "in the spirit of thoroughness that [the attendance of] someone from the Office of Inspections, who does it for a living, would be a best case scenario."

The Assigned SSA memorialized each interview in an investigative report. We determined that the reports did not vary materially from the accounts the witnesses provided in their OIG interviews, as described in Chapter Eight. The Assigned SSA told us that he believed FAST personnel were truthful and candid in their recounting of what happened and determined that there were no unresolved issues to address. He also told us that he found no basis to question FAST Member G's decision to use deadly force.

### **2. The Abbreviated Shooting Package**

IN records reflect that IN received the shooting package from the Assigned SSA on August 13. The Assigned SSA included all of the 12 categories of forms, reports, and documents that DEA's post-shooting procedures require for shooting

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<sup>143</sup> The Assigned SSA told us that he initially planned to travel to Honduras to conduct the interviews there. He said that after the logistics of traveling to the location of the FAST team became too difficult to arrange, and after learning the FAST team would be returning home in mid-July, the Assigned SSA made plans to conduct the interviews at FAST's headquarters in Stafford, Virginia.

incidents in uncontrolled areas. The Assigned SSA included a 5-page investigative report he prepared dated July 23, 2012, summarizing the interdiction and shooting incident. The Assistant Regional Director countersigned the investigative report on July 30.

In his investigative report, the Assigned SSA provided the following summary of the encounter between FAST Member G and the armed suspect:

[FAST Member G] learned, via one of the contract helicopter pilots who was providing "overwatch" from the air, that a male subject had taken cover behind a tree that was located in his vicinity. [FAST Member G] subsequently encountered the male subject, who was discovered lying face down curled-up around a tree, in a nearby area. The male subject refused to comply with verbal commands thus, on two distinct and separate occasions, [FAST Member G] struck the subject in the thigh area with his foot. As the male subject rolled over on his side, [FAST Member G] observed the subject's hand move toward a silver-colored semi-automatic handgun that was being contained within a black, leather holster that was attached to his belt and hung near his right hip. In self-defense, as the male subject attempted to draw the handgun from the holster, [FAST Member G] fired two (2) rounds into the head area of the subject with his DEA-issued rifle, a [sic] M-6 [REDACTED] mm weapon bearing serial number: [REDACTED]. After the shooting, [FAST Member G] secured the silver-colored handgun inside a bag/pouch that he wore as part of his tactical gear.

The Assigned SSA said that he based his synopsis of the incident on the interviews he conducted of FAST personnel who participated in the interdiction. Further, he told us that the basis for his factual finding that FAST Member G fired two rounds into the armed suspect was not the result of a weapons check but rather his interview of FAST Member G, as well as a Honduran medical examiner's report. The Assigned SSA said he did not ask and did not know whether FAST Member G's firearm was ever subject to a weapon check.

### **3. TRT Report**

Unlike the May 11 shooting package, the shooting package prepared by the Assigned SSA for the June 23 incident included the investigative report that the TRT Commander submitted to DEA officials at TCO. As described in Chapter Eight, the TRT commander submitted a report on June 24, the day after the shooting, describing the interdiction.<sup>144</sup> His report regarding the June 22-23 interdiction described a sustained firefight between the TRT and drug traffickers upon the helicopters arriving at the location near the landing strip. FAST personnel told the OIGs that this firefight did not happen. Further, the TRT report made no mention of

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<sup>144</sup> This was the same TRT Commander who submitted the TRT report regarding the May 10-11 interdiction and was one of the two TRT officers in the pipante who used deadly force on May 11.

a FAST member shooting an armed suspect, the only use of deadly force FAST members told us had occurred that evening.

DEA e-mail communications reflect that TCO provided a copy of the original Spanish version of the TRT report to the Assigned SSA on July 6, after the Assigned SSA requested copies of any host nation incident reports. The investigative reports memorializing the interviews do not reflect whether the Assigned SSA asked FAST personnel or the INL pilot about the reported firefight between the TRT and drug traffickers. The Assigned SSA said that he did not recall asking FAST personnel about the reported firefight during their interviews. He said that although he understood Spanish, he did not recall whether he read the TRT statement before he conducted the interviews. He said that it was possible he had difficulty reading the Spanish version and did not note the discrepancy in the reporting until he received the English translation 3 days after the interviews. However, he said that he did not follow-up with FAST personnel at any time after their interviews.

The Assigned SSA did not note the discrepancies between TRT and DEA reporting in his investigative report summarizing his investigation. He told us that he was unsure whether he discussed them with the Inspector. He said that his responsibility was to give the TRT report to IN for their review and consideration, which he did in the shooting package.

The Assigned SSA said that a couple of months after submitting the shooting package, he had a brief discussion with the Assistant Regional Director during which they both briefly shared their observations that the TRT report contained discrepancies. He said that they did not discuss or take any steps in response.

#### **4. Written Witness Statement of FAST Member G**

DEA documents reflect that FAST Member G drafted a witness statement on or about July 11 documenting the events of the interdiction. This statement was not included in the investigation package the Assigned SSA prepared or in the investigation file IN maintained.<sup>145</sup> The witness statement's description of the shooting did not vary materially from the account memorialized in the Assigned SSA's investigative report, or with the account FAST Member G provided to the OIGs.

On July 11, FAST Member G sent an e-mail to the Delta Team Leader and FAST Member T with his draft witness statement attached. Later that day, the Delta Team Leader replied to FAST Member G's e-mail acknowledging that he received the statement. Although we found no record of FAST Member G providing his witness statement to the Assigned SSA or the inspectors, on July 16, he e-mailed his witness statement to FAST Member Y, who used it to complete the

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<sup>145</sup> DEA did not provide FAST Member G's witness statement to the OIGs before we interviewed FAST Member G. FAST Member G told us that he was unable to locate it in his files. The OIGs later obtained the statement from DEA in response to a request for bulk e-mails from the accounts of certain FAST members, including FAST Member G.

Report of Shooting (Form [REDACTED]) included in the shooting package. The narrative incorporated in the Report of Shooting did not vary in content from FAST Member G's statement but was considerably shorter.

## **5. Inspections' Review of the Shooting Package**

DEA documents reflect that the Inspector received the shooting package from the Assigned SSA on August 13. The Inspector said he reviewed the abbreviated package and determined it was complete. He said that the Assigned SSA and he took no other investigative action.

### **C. Findings of DEA's Shooting and Assault Incident Review Committee**

#### **1. Memorandum to the SAIRC**

On October 10, 2012, DCI Foley sent a memorandum to the SAIRC summarizing the June 22-23 interdiction and shooting incident. Of particular note, the memorandum to the SAIRC included the following information about the encounter between FAST Member G and the armed suspect:

- FAST Member G learned of the suspect from the INL Helicopter Pilot.
- FAST Member G and [REDACTED] TRT officers searched for the suspect and found him face down and curled up around a tree.
- FAST Member G struck the suspect on the thigh on two separate occasions after the suspect was non-compliant with verbal commands.
- He observed the suspect's hand move toward a handgun carried in a holster attached to his right hip.
- He fired two rounds into the suspect in self-defense in reaction to the suspect attempting to draw a handgun from his holster.

The memorandum presented to the SAIRC also made mention of the arrests, weapons seizures, and drug seizures related to the interdiction, the post-incident response by DEA to secure the scene, and IN's review of the shooting package and finding of no conflicting information therein. In particular, the memorandum stated that no inconsistencies were noted in the TRT report summarizing the incident – despite the TRT report's description of a sustained firefight between the TRT and drug traffickers that FAST personnel said did not occur and its omission of DEA's use of deadly force.

#### **2. Presentation to the SAIRC**

As described in Chapter Seven, the SAIRC met to discuss all three Anvil-related shooting incidents on October 10. According to estimates, the meeting covered the three Anvil incidents, as well as five unrelated incidents, in 1-to-2 hours. During the meeting, the Inspector gave a slide presentation regarding the June 22-23 interdiction. DCI Foley and the Senior Inspector reviewed and edited the slides in advance of the meeting.

The slide presentation contained the same points about the shooting that were provided in the memorandum to the SAIRC, as described above. Like the memo to the SAIRC, the Inspector's slide presentation stated that "no inconsistencies were noted" in the TRT report. The Inspector who prepared the presentation told us that he was unable to explain why his presentation noted no inconsistencies. He said he did not recall what he may have thought about the TRT report at the time. The Assigned SSA, who had not assisted in the preparation of the presentation, told us that this particular statement did not align with the facts he gathered during the course of his witness interviews because, as noted above, the TRT report did not document the DEA shooting and instead reported that there had been a sustained firefight between the TRT and suspected traffickers.

#### **D. SAIRC Findings**

On November 6, Committee Chair Kasson issued a short statement on behalf of the SAIRC providing the Committee's findings. According to the statement, the SAIRC determined that:

The facts and circumstances surrounding the event have been accurately and completely reported, the DEA employee was acting within his scope of employment and authority, the actions taken by the DEA employee were in compliance with DEA policies and procedures, the use of force was justified, and the use of force did not violate the law and/or policy.

The Foreign-Deployed Advisory Support Team Member was justified in his use of force. The SAIRC considers this matter closed.

The Inspector told us that the factual basis for the findings was the statement made by FAST Member G in his interview about feeling threatened by the armed suspect when the suspect reached for his weapon.

## **II. DEA Initiates Review of the July 3 Shooting Incident**

As described in Chapter Eight, during the July 2-3 interdiction, FAST and Honduran TRT officers responded to a suspect plane that crash-landed near Catacamas, Honduras. When FAST and TRT arrived, a pilot who sustained injuries in the crash surrendered to law enforcement. When a second pilot did not comply with commands from two FAST members and instead turned in an apparent attempt to reenter the suspect plane, two FAST members fired multiple rounds, which ultimately killed the pilot. The Assistant Regional Director notified DEA's Command Center at Headquarters within hours of the shooting, and the Command Center disseminated a Significant Incident Report to senior DEA officials and IN.

### **A. The Opening and Delegation of Post-Incident Shooting Review**

Because the discharge of a firearm by a DEA employee triggered DEA's post-shooting incident procedures, on July 6, 2012, IN opened an internal review of the

July 3 shooting incident. The July review focused on assessing the conduct of the two FAST members who fired their weapons during the incident.

Similar to the May 11 and June 23 internal reviews, IN delegated the July 3 review to TCO under the direction of RD Evans and the Assistant Regional Director. DEA documents reflect that after consulting Dobrich and IN, on July 12, the Assistant Regional Director assigned the investigation of the July 3 shooting to the same Assigned SSA investigating the June 23 shooting.<sup>146</sup> Further, IN assigned the same Inspector and Senior Inspector overseeing the May 11 and June 23 internal reviews to oversee the July 3 review.

IN's investigation file for the July 3 review does not reflect that IN sent RD Evans and the Assistant Regional Director directions for the Assigned SSA to prepare an abbreviated shooting investigation package. The Assigned SSA said he did not recall any such directions. However, he said that in conducting the July 3 investigation he followed the same direction he received for the June 23 investigation, which was to prepare a shooting package containing the 12 categories of forms, reports, and documents that DEA's post-shooting procedures require for shooting incidents in uncontrolled areas.

## **B. Investigative Steps Taken During the Post-Incident Shooting Review**

### **1. Interviews of FAST Personnel**

On the same day the Assigned SSA was in Stafford, Virginia conducting interviews of FAST personnel involved in the June 23 shooting incident, he also conducted interviews of FAST personnel concerning the July 3 incident, including the Delta Team Leader (shooter), FAST Member T (shooter), FAST Member V, the FAST Intelligence Research Specialist (IRS), and the FAST Medic. The Inspector attended each of these interviews. The next day, the Assigned SSA interviewed the INL pilot of Helicopter [REDACTED] concerning the July 3 incident. The Assigned SSA memorialized each interview in an investigative report. We determined that the investigative reports did not vary materially from the accounts the witnesses provided in their OIG interviews concerning the circumstances of the shooting.

As described in Chapter Eight, the OIGs received conflicting information regarding the medical status of the shot pilot while the ground team was still at the scene of the plane crash and shooting: the FAST Medic, IRS, and FAST Member V, told us that the shot pilot was already dead when they first assessed him at the scene, whereas Delta Team Leader and FAST Member T told us that they believed the shot pilot died en route to a nearby base at [REDACTED]. The Assigned SSA told us that his impression from the witness interviews he conducted was that the shot pilot had died at the scene. Handwritten notes he made during his interviews with

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<sup>146</sup> On July 12, 2012, the Assistant Regional Director sent an e-mail communication to the Assigned SSA stating, "I was told by FAST Rich Dobrich [that] IN does not have any problem with you conducting both investigations."

FAST personnel reflect that FAST Member V, who was a trained medic, told him that the shot pilot was pulseless at the time he attempted to render medical aid on scene. The Assigned SSA said the FAST Medic and the FAST IRS told him they determined the shot pilot died on scene. The Assigned SSA said that he recalled that everyone he interviewed, including the Delta Team Leader and FAST Member T, were consistent in stating that the pilot died on scene. He said that no one ever represented to him that the pilot had died in transport after departing the scene.

However, the Inspector said he had the opposite recollection from the Assigned SSA about the pilot's death, having the impression that the shot pilot died while in transport. The Inspector told us he did not recall the factual question of whether the pilot died on scene or in transport ever coming up when interviewing FAST personnel about the incident.

The Assigned SSA told us, and his interview notes reflect, that FAST Member T described the Honduran TRT as "not competent, very hesitant." The Assigned SSA said that FAST Member T told him that based on certain intelligence known at the time of the interdiction the TRT feared that pilots flying suspect planes into Honduras would be aggressive against law enforcement and use deadly force to defend their drug loads.

The Assigned SSA told us that he was not aware of the allegations that a TRT officer planted a gun into evidence to bolster the justification for DEA's use of deadly force. He said that the allegations were never reported to him by any of the witnesses he interviewed or any DEA officials during his investigation.<sup>147</sup> Similarly, the Inspector told us that he never heard anything about a planted gun. He said he would have contacted TCO for further information, but no one ever reported it to him.

## **2. The Abbreviated Shooting Package**

IN records reflect that IN received the shooting package from the Assigned SSA on August 13. The Assigned SSA included all of the required documents in the shooting package. He provided a report of approximately four pages dated July 25, 2012, summarizing the July 2-3 interdiction and shooting incident. The Assistant Regional Director approved the investigative report on August 3.

In his investigative report, the Assigned SSA provided the following overview of the encounter between Delta Team Leader, FAST Member T, and the subject:

The inside of the suspect aircraft still had to be "cleared", so FAST personnel already on the ground determined that the only point of entry into the aircraft was a door that is located on the left side of the fuselage. FAST members observed empty fuel containers and smelled

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<sup>147</sup> As described in Chapter Eight, the Country Attaché, both Assistant Attachés, the Assistant Regional Director, CDC Wallace, the Delta Team Leader, FAST Member T, and the IRS said that they were aware of the allegations that the TRT had planted a gun into evidence following the July 3 interdiction.



a strong odor of fuel outside the aircraft that had spilled from the wings onto the ground as a result of the crash. Movement was observed in the cockpit area of the suspect aircraft thus, as [Delta Team Leader] and [FAST Member T] proceeded forward toward the door area of the aircraft, [Delta Team Leader] and the Honduran TRT members who accompanied him and [FAST Member T], gave verbal commands, in Spanish. Specifically, they shouted "Policia" (Police) and "Manos Arriba" (Hands Up).

A male subject came to the door of the suspect aircraft and looked outside but refused to exit. [Delta Team Leader] yelled again for the man to come out of the aircraft and then gave him a second set of verbal commands, in both English and Spanish, shouting "Policia" (Police) and "Manos Arriba" for the male subject to put his hands up. The male subject was non-responsive to the verbal commands that were given in both the English and Spanish languages, and he refused to comply with the FAST members. The male subject kept looking out of the door of the aircraft as the FAST members closed the distance during their approach to his area; however, the subject then removed his hands from the door and abruptly turned to re-enter the back cargo area of the aircraft. Pursuant to this action by the subject, [Delta Team Leader] fired three (3) rounds at the male subject with his DEA-issued rifle, a M-6 [REDACTED] mm weapon bearing serial number: [REDACTED]. [FAST Member T], who could see the left, rear side of the male subject as he began to re-enter the cockpit/cargo area of the aircraft, also simultaneously fired four (4) rounds at the male subject with his DEA-issued rifle, a M-6 [REDACTED] mm weapon bearing serial number: [REDACTED]. Once it was determined that the suspect aircraft was "clear" of any additional suspects, the male subject who had been shot was removed from the suspect aircraft and immediately taken to the rear of the aircraft. FAST medic, [FAST Member V], then rendered medical assistance to the male subject who had been shot.<sup>148</sup>

The investigative report also included explanations for two actions FAST personnel took immediately after the shooting transpired: (1) that FAST shot at the aircraft to disable the engine, and (2) FAST's decision to depart from the scene immediately after the shooting took place was due to the [REDACTED] of the helicopters.

### **3. TRT Report**

The shooting package prepared by the Assigned SSA for the July 3 incident included the investigative report that the TRT Commander submitted to DEA officials at TCO. The Assistant Attaché who sent the report to the Assigned SSA stated in his e-mail that the TRT report was a "low level report at best." As

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<sup>148</sup> The report later identified the shot pilot and stated that he "subsequently died."

described in Chapter Eight, the TRT report contained multiple factual statements that were materially inconsistent with DEA's account of the incident, including that the INL helicopters were fired upon when they attempted to land, the second pilot died from injuries resulting from the crash, and a handgun was found at the scene. In addition, the TRT report omitted that the FAST personnel used deadly force and shot the second pilot. The Assigned SSA did not note these inconsistencies in the investigative report summarizing his investigation of the July incident. He said he received the TRT report after he submitted the shooting package and that he was unsure whether he discussed the inconsistencies with the Inspector after submitting the package. He said he believes the only time he discussed the inconsistencies was after Inspections received the shooting package, and with the Assistant Regional Director and not the Inspector.

The shooting package did not include the second report of the July 3 incident prepared by the same TRT Commander, and the Assigned SSA told us that he was not aware of it during his investigation.<sup>149</sup> As described in Chapter Eight, the second report stated that before the use of deadly force, the pilot aimed and fired a handgun at the officers – a fact that does not appear in any DEA or State reporting of the incident.

Although the Assigned SSA said he was not aware of this second report, he told us during his OIG interview that all of the inconsistencies found in the TRT's investigative reports regarding the July 3 shooting would have been a justifiable reason to question the accuracy of the Honduran narrative of what happened during this specific incident and to question the reliability of TRT's reporting in general.

The TRT investigative reports both reference the recovery of a handgun at the scene of the July incident. As noted above, the Assigned SSA told us that during the course of his investigation no one ever reported to him that the TRT had planted a gun into evidence or had any plans to that effect. He said that had he learned about this allegation sometime after completing the shooting package, he would have immediately informed the Assistant Regional Director.

#### **4. Written Witness Statement of FAST Member T**

DEA documents reflect that FAST Member T drafted a witness statement on or about July 5 documenting the events of the interdiction, which was not included in the shooting investigation package the Assigned SSA prepared or in the investigation file IN maintained.<sup>150</sup> The Assigned SSA told us that he never saw the

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<sup>149</sup> As described in Chapter Ten, an investigator from State's Bureau of Diplomatic Security Special Investigations Division obtained the second report from a Honduran prosecutor in August 2012. DOJ OIG did not find any information indicating that DEA had also obtained or received this report.

<sup>150</sup> The OIGs received this witness statement from DEA in response to DOJ OIG's initial request for documents, which included documents from FAST Member T's files.

statement or became aware of its existence through his witness interview with FAST Member T.<sup>151</sup>

FAST Member T told us that no one asked him to submit a witness statement but that he prepared one because he believed it was something he should do. The witness statement's description of the shooting did not vary materially from the account memorialized in the Assigned SSA's investigative report, or with the account FAST Member T provided during his interview with the OIGs. Further, similar to the account he provided to the OIGs, his witness statement stated that he learned after his arrival at the base at ██████████ that the shot pilot had died.

In addition, the witness statement included the following description of the circumstances that led to FAST personnel, rather than TRT officers, clearing the aircraft:

[FAST Member T]'s decision that he and [Delta Team Leader], rather than TRT, secure any remaining personnel inside the aircraft was based on multiple factors that posed potentially grave threats to the ground force. First, TRT were minimally capable of operating during darkness. In fact, TRT personnel co-located with [FAST Member T] and [Delta Team Leader] were apprehensive and uncertain about approaching the aircraft. [FAST Member T] assessed that the ground force needed to act quickly in order to minimize the opportunity for an unsecured person inside the aircraft to become an armed barricaded subject on one front, while the imminent arrival of armed narco-traffickers to secure their multi-million-dollar illicit cargo threatened a second front. Further, previously-obtained information ██████████ ██████████ to Honduran drug trafficking activities revealed that narco-traffickers had been ordered to violently resist law enforcement interdiction efforts or face deadly retribution by the drug trafficking organization for a willing forfeiture of a shipment of illicit narcotics.

FAST Member T told the OIGs that at the time he and the Delta Team Leader decided to clear and secure the aircraft, the TRT officers beside them did not orally communicate their hesitation to approach the plane. He said that he could just sense their hesitation, and within seconds he decided to approach the plane himself. According to FAST Member T:

So speed was of the essence. And to, we weren't going to have deliberations with the TRT to make sure everything [sic]. We knew what the problem was. We knew how to handle the problem, and that's how we, we approached clearing the aircraft.

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<sup>151</sup> The Delta Team Leader told the OIGs that he believed he had prepared a witness statement regarding the July 2-3 interdiction and shooting incident. However, DEA documents and e-mail communications do not reflect that he prepared one, and he did not produce a witness statement to the OIGs after we requested it.

Although we found no record of FAST Member T providing his witness statement to the Assigned SSA or the inspectors, e-mail communications reflect that he provided a narrative of what occurred on July 3 to one of his FAST team members who used the statement to complete the Report of Shooting Form [REDACTED] included in the shooting package. The Report of Shooting form did not vary materially from FAST Member T's statement. The one notable exception was the omission of the description of the TRT's operational capabilities and explanation for why FAST personnel decided to clear the aircraft instead of TRT.

## **5. Inspections' Review of the Shooting Package**

DEA documents reflect that the Inspector received the abbreviated shooting package from the Assigned SSA on August 13. The Inspector said he reviewed the shooting package and determined it was complete. He said that the Assigned SSA and he took no further investigative action.

The Inspector told us that in the course of his reviewing the shooting package, he noted that the description of the incident in the TRT report contained multiple inconsistencies with DEA's account of the event. After refreshing his recollection by reviewing the TRT report, he told the OIG that he believed that "[the TRT] were fibbing about the aircraft catching on fire" and "they were mistaken about a lot of things." He said because of those factual inaccuracies and others he "didn't take too much credence in what they [TRT] said" at the time he reviewed the shooting package, as compared with what the FAST personnel's statements told him about the incident. According to the Inspector, he believed at the time that the information from the TRT had to be taken with a "grain of salt," but he did not think their reliability mattered in terms of the three DEA shooting reviews because IN did not attempt to determine or evaluate TRT conduct.

### **C. Findings of DEA's Shooting and Assault Incident Review Committee**

#### **1. Memorandum to the SAIRC**

On October 10, 2012, DCI Foley sent a memorandum to the SAIRC summarizing the July 2-3 interdiction and shooting incident. The memorandum to the SAIRC included the following information about the encounter between FAST personnel and the two subjects.

- FAST personnel observed a pilot outside the aircraft upon arrival to the scene. The injured pilot complied with verbal commands to surrender to law enforcement.
- FAST personnel observed movement within the cockpit of the aircraft in their approach to the plane. They observed a second pilot come to the door of the aircraft, look outside, and refuse to comply with verbal commands to exit the aircraft and surrender to law enforcement.

- The non-compliant pilot removed his hands from the door of the aircraft in an abrupt turn to re-enter the cargo area of the aircraft, which FAST personnel interpreted as an attempt to retrieve a weapon.
- The Delta Team Leader fired three rounds at the pilot with his DEA-issued rifle.
- FAST Member T simultaneously fired four rounds at the pilot with his DEA-issued rifle.
- The non-compliant pilot was struck by six of the seven bullets.
- FAST Member V rendered medical assistance to both the shot pilot as well as the pilot injured in the crash.

The memorandum presented to the SAIRC also identified three factual inconsistencies between the investigative report submitted by the TRT Commander and the Assigned SSA's investigative report summarizing his interviews of FAST personnel:

- The TRT report stated that a pilot died on scene after exiting the aircraft but does not specify that he died from sustaining gunshot wounds from FAST personnel. The Assigned SSA's investigative report provided that specific, key detail surrounding the subject's death.
- The TRT report stated that a Girson 9mm handgun was found near the crash site. The Assigned SSA's investigative report made no mention of this weapon recovery in the course of securing the scene.
- The TRT report stated that the suspect aircraft caught fire and burned, but did not mention that FAST personnel intentionally destroyed it to prevent drug traffickers from reusing its parts.

## **2. Presentation to the SAIRC**

As described earlier, the SAIRC convened to discuss all three Anvil-related shooting incidents on October 10. During the meeting, the Inspector gave a separate slide presentation regarding the July 2-3 interdiction. The 11-slide presentation included generally the same information provided in the memorandum to the SAIRC. In addition, the slides acknowledged that the pilot who was shot in the doorway of the plane died from his wounds.

The Inspector's slide presentation to the SAIRC also identified two of the three factual inconsistencies between the TRT report and the Assigned SSA's investigative reports of the incident – that the TRT report stated that law enforcement recovered a 9mm handgun near the scene and that the TRT report omitted any mention of FAST's use of deadly force.

## **3. SAIRC Findings**

On November 6, the same date as the determinations concerning the May and June shooting incidents, Committee Chair Kasson issued a memorandum on behalf of the SAIRC concerning the July 3 incident stating that:

The facts and circumstances surrounding the event have been accurately and completely reported, the DEA employees were acting within their scope of employment and authority, the actions taken by the DEA employees were in compliance with DEA policies and procedures, the use of force was justified, and the use of force did not violate the law and/or policy.

The Foreign-Deployed Advisory Support Team Member was justified in their use of force. The SAIRC considers this matter closed.

The Inspector told us that the factual basis for the SAIRC's findings was the Assigned SSA's investigative reports summarizing his interviews of the FAST personnel involved in the incident, including that the Delta Team Leader and FAST Member T stated that they feared under the circumstances that the non-compliant pilot moved to re-enter the aircraft in an attempt to retrieve a weapon.

### **III. DOJ OIG Observations**

As we describe more fully in Chapter Thirteen, the DOJ OIG found that both the June 23 and July 3 shooting reviews complied with the procedures as outlined in the DEA Agent Manual and were opened immediately after each shooting.<sup>152</sup> We believe DEA appropriately assigned the investigations of these shootings to a supervisory agent outside the FAST program and with no ties to Operation Anvil in Honduras. We also found that the Assigned SSA's investigations were more thorough than the steps taken for the May review.

However, we found that the presentations to the SAIRC regarding the June 23 and July 3 shooting incidents omitted significant details, including the inconsistencies between the TRT reports and the reports made by FAST members involved in the interdictions. We believe that there was a missed opportunity for a more thoughtful examination of the TRT's pattern of inaccurate reporting, which could have led DEA officials to look more critically at the TRT's May 11 narrative. We agree with the Assigned SSA that all of the inconsistencies found in the TRT Commander's investigative reports should have been a reason to question the accuracy and reliability of the TRT's narratives.

Finally, as with the May incident, during the reviews of the June and July incidents, the Assigned SSA made no determination as to whether a weapons check was conducted after each shooting.

In the next chapter, we describe the investigations of the three Anvil shooting incidents conducted by the State Department's Bureau of Diplomatic

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<sup>152</sup> However, we did not believe that the FAST Section Chief should have been involved in discussions between IN and DEA regional leadership over whether the Country Attaché in San Salvador should be assigned to the July investigation or in the decision about whether an inspector should second chair interviews. Such involvement, even when benign, can compromise the integrity and independence of the investigation or give the appearance of such.

Security, which led to disputes between DEA and some components of the State Department regarding investigative jurisdiction, access to evidence, and certain factual conclusions.

## **CHAPTER TEN: POST-INCIDENT INVESTIGATIONS BY THE DEPARTMENT OF STATE**

In this chapter we address the investigations of the three Anvil shooting incidents conducted by the State Department's Bureau of Diplomatic Security (DS), which led to disputes between DEA and some components of the State Department regarding investigative jurisdiction, access to evidence, and certain factual conclusions.

As detailed below, DS initially did not open an investigation of the May 11 incident, apparently because early reports indicated no U.S. personnel discharged weapons. With the approval of the Ambassador, DS opened investigations of the June 23 and July 7 incidents to determine whether U.S. personnel had complied with the COM's Firearms Policy. Subsequently, the Ambassador authorized DS to investigate the May 11 incident as well, in part because of her inability to obtain information from DEA and her concerns about the adequacy of the Honduran investigations. However, DEA refused to participate in joint investigations of the three incidents with DS, to make FAST members available to DS for interviews, or to freely share the evidence DEA collected as part of its own separate investigations. INL was not supportive of DS, and suggested as an alternative to DS conducting investigations that DEA share its final report with State. The State Department eventually agreed that DEA would provide a summary of its findings to the Ambassador and DS upon completion of its investigations of the three Anvil incidents.

DS nevertheless continued with its own investigations, and issued reports on all three incidents. DS's investigation of May 11 included a review of the video, which found no contrasts of light (indicative of gunfire) originating from the passenger boat. DS's report stated that it was unable to make any "definitive findings" because of DEA's refusal to provide access to evidence. In addition, INL did not allow DS access to evidence regarding the INL helicopters, and therefore the DS report did not address that issue. DS likewise reached "inconclusive" findings in its reports on the June 23 and July 7 incidents, citing lack of access to DEA evidence and shortcomings in the Honduran investigations.

### **I. State Department Authority to Investigate the Actions of COM Personnel**

As described in Chapter Two, Operation Anvil activities in Honduras were subject to oversight through the U.S. Embassy. Section 207 of the Foreign Service Act of 1980, 22 U.S.C. § 3927, provides that the Ambassador as Chief of Mission (COM) has "full responsibility for the direction, coordination, and supervision of all Government executive branch employees in that country," subject to exceptions not applicable here. The law further provides that "[a]ny executive branch agency having employees in a foreign country shall keep the chief of mission to that country fully and currently informed with respect to all activities and operations of its employees in that country . . . ." The President's Letter of Instruction to all



COMs and the Foreign Affairs Manual (FAM) acknowledges this authority. The Foreign Affairs Handbook (FAH) similarly states that “all executive branch agencies under COM authority are required to keep him or her informed of their current and planned activities in country.”

On April 18, 2012, the U.S. Ambassador to Honduras formally approved the U.S. Embassy’s Chief of Mission Firearms and Use of Deadly Force Policy (COM Firearms Policy). This policy applies to all U.S. Government personnel “of any agency” under chief of mission authority in Honduras. It also applies to “third country nationals present in Honduras as the result of a contractual relationship with any agency of the U.S Government.”

During all times relevant to Operation Anvil, the COM Firearms Policy required that all firearm discharges by personnel acting under COM authority (COM personnel), including TDY personnel such as the FAST teams, be reported to the Ambassador, through the Regional Security Officer (RSO), a DS employee at the Embassy. In addition, the COM Firearms Policy provided for a Firearms Review Board to review cases of possible employee misconduct involving firearms. Under the policy, after notification of a firearms discharge to the RSO, the COM’s Firearms Review Board was directed to review the circumstances under which the discharge occurred and recommend appropriate action to the COM. The COM Firearms Policy did not specify who should investigate the circumstances of the discharge, and a supervisor in DS’s Special Investigations Division (SID) told us that the wording of the policy was not as “solid” as it could have been in that regard. However, an Employee Certification and Acknowledgement form attached to the COM Firearms Policy stated that the RSO would investigate any discharge of firearms by COM personnel and that the discharge could be grounds for disciplinary action.<sup>153</sup>

In 2012, the Foreign Affairs Manual assigned the duty to investigate situations involving “discharge of a firearm and/or use of force” to SID.<sup>154</sup> On August 17, 2012, a month after the last Anvil shooting incident, the Department of State issued a cable stating that “[a]ll incidents in which deadly force was used by [U.S. Government] employees or contractors falling under the authority or direction of the COM must be thoroughly and transparently investigated to determine whether the use of deadly force complied with applicable policies and laws.” The cable identified SID as the DS office responsible for working with the local authorities and the employee or contractor’s agency to conduct a deadly force investigation. This responsibility was not new to SID, which had long been responsible for deadly force investigations and other special investigations involving Chief of Mission employees, contractors, and dependents.

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<sup>153</sup> As described in Chapter Two, the U.S. Embassy advised the OIGs that the RSO’s files at the U.S. Embassy did not have any record that the FAST personnel who participated in Operation Anvil signed this acknowledgment form. Nevertheless, under the express terms of the COM Policy, its provisions applied to all U.S. personnel assigned to the Embassy, regardless of employing agency.

<sup>154</sup> See 1 FAM 262.3-1.

## **II. Immediate Embassy Response to May 11 Incident and Frustrations of U.S. Ambassador Over DEA's Failure to Provide Information**

During all times relevant to Operation Anvil, Lisa Kubiske was the U.S. Ambassador to Honduras and Chief of Mission, and Matthias Mitman was the Deputy Chief of Mission (DCM). In addition, the INL Director at the U.S. Embassy was responsible for overseeing all INL programs and activities in Honduras. Also present at the Embassy was the RSO, several Assistant RSOs, and a few non-agent support employees. The RSO's primary responsibility was to ensure the safety and security of COM employees assigned to Honduras as well as serving as the U.S. Ambassador's primary security and law enforcement advisor. The RSO's responsibilities also included investigating misconduct allegations involving COM personnel, in cooperation with SID. The RSO had a dual reporting chain both to the Ambassador and DS Headquarters in the United States.

As described in previous chapters, DEA maintained an office at the U.S. Embassy known as the Tegucigalpa's Country Office (TCO). In 2012, TCO had three DEA agents permanently assigned to that office. The head agent was the DEA Country Attaché (CA), who began his assignment in 2009. The Country Attaché left Honduras for another assignment in June 2012, and he was replaced by a new Country Attaché. Both Country Attachés were assisted by two other TCO agents who were assistant country attachés, as well as a small number of non-agent DEA employees. TCO represented the interests of DEA and carried out DEA's counternarcotics responsibilities in Honduras. TCO had a dual reporting chain to both Ambassador Kubiske and DEA Regional Leadership, including Regional Director (RD) Joseph Evans and the Assistant Regional Director.

Ambassador Kubiske was out of the country when the May 10-11 interdiction took place. In her absence, DCM Mitman received the initial reporting on the interdiction, including a report from the Country Attaché on the morning of May 11 that there was a drug seizure during the overnight hours involving an exchange of gunfire but no reported injuries and everyone returned safely. DCM Mitman told the OIGs that at this early stage it looked like a "normal, successful interdiction." Further, he said that the Country Attaché had made clear that none of the FAST personnel involved in the operation had fired a weapon.

DCM Mitman told us that later in the morning he received reports of allegations that innocent people had been shot during the interdiction. DCM Mitman and others received the e-mail communication, described in Chapter Three, from an official from the Embassy's Office of Regional Affairs stating that complaints had been filed with the Honduran Human Rights Commission and the local police station in Puerto Lempira alleging that innocent people had been killed and wounded during a confrontation between police officers and drug traffickers.

DCM Mitman told us that in response to the negative reports, he instructed an Embassy employee to send a cable to the State Department describing everything the Embassy knew about the May 10-11 interdiction and an e-mail communication to State Department officials requesting press guidance from the Department. He said that he also asked that the Government of Honduras (GOH)

find out the facts relative to the human rights allegations and develop their own press guidance.

Embassy officials told us that in the days that followed, the U.S. Embassy tried to manage an increasing amount of negative public attention that raised questions about possibly innocent Hondurans having been killed in the operation. Ambassador Kubiske and other officials told us that upon her return to Honduras on or about May 20, the Ambassador took charge of the Embassy efforts to address questions and concerns about the May 10-11 interdiction. She and others told us that she soon became concerned and frustrated by her inability to obtain information from DEA to rebut the negative press coverage or to respond to questions from Congress.

Embassy and DEA officials told us that there were two important factors that contributed to Ambassador Kubiske's concerns and exacerbated tensions between DEA and State at the Embassy. The first was the planned departure from the Embassy of the DEA official serving as the Country Attaché, who left in mid-June 2012 and was later replaced by another DEA official. By all accounts, this Country Attaché had established a good working relationship with the Ambassador since her arrival in Honduras in 2011. As a result of the Country Attaché's departure, the Ambassador could no longer rely on this Country Attaché, whom she trusted. The second factor was that, as described later in this chapter, after the Country Attaché's departure, DEA Headquarters ordered TCO and other DEA personnel not to provide additional information about the May 11 incident to those outside DEA, including the Ambassador.

### **III. Diplomatic Security's Initiation of Investigations of the June 23 and July 3 Shooting Incidents**

#### **A. Ambassador Authorizes Diplomatic Security to Investigate the June 23 and July 3 Shooting Incidents**

According to DCM Mitman, after the June 23 and July 3 shooting incidents, the Embassy was timely notified that DEA agents had exercised deadly force and that there was a fatality. Shortly thereafter, on June 25, 2012, a DS Special Investigations Division supervisor (SID Supervisor) contacted the Acting RSO at the U.S. Embassy to inquire about the incident.<sup>155</sup> According to the SID Supervisor, he became aware of the June 23 shooting incident through a media report stating that a DEA agent shot and killed someone in Honduras and shortly thereafter contacted the RSO to make sure that the RSO was taking action to investigate the matter pursuant to the COM Firearms Policy.

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<sup>155</sup> SID, formerly the DS's Office of Professional Responsibility and now the Office of Special Investigations (OSI), investigates allegations of misconduct involving U.S. Department of State employees serving both inside the United States as well as overseas. According to SID officials, SID also conducts misconduct investigations of COM employees serving overseas who are employed by other U.S. Government agencies. At the time, SID was a division within DS's Office of Investigations and Counterintelligence (ICI).

The official who served as Acting RSO in June 2012 told us that he advised SID that he did not have adequate resources to conduct a thorough investigation of the June 23rd shooting incident and consequently requested the assistance of SID. E-mail communications reflect that shortly after discussing the matter with the Acting RSO, SID management assigned the investigation to a SID agent from the Violent Crimes Unit in SID at DS Headquarters.

On June 28, 2012, the SID Division Chief (DC) Kimber Davidson sent an e-mail communication to Ambassador Kubiske offering SID's assistance to "facilitate an investigation" of the June 23, 2012 shooting incident. Davidson told the Ambassador that SID could investigate the incident under the Ambassador's statutory authority as Chief of Mission. As described in Chapter Two, Section 207 of the Foreign Service Act of 1980, 22 U.S.C. § 3927, provides that the Chief of Mission has "full responsibility for the direction, coordination, and supervision of all Government executive branch employees in that country." Davidson advised the Ambassador that it was the policy of DS since the Nizoor Square shootings in Iraq in 2007 to "thoroughly and transparently investigate all deadly force incidents by individuals armed under the authority of COM." Davidson advised the Ambassador in an e-mail that the objectives of the DS investigation of the June 23 shooting incident would be to "determine and document that no Federal laws were violated and that the incident complied with your deadly force and firearms policy." The Ambassador accepted Davidson's offer of assistance, and the assigned SID Agent began his investigation.

According to State documents, following the July 3 shooting incident, the Acting RSO immediately notified SID. SID, with the concurrence of the Ambassador, opened an investigation into the July 3 shooting incident, assigning the same SID Agent who was handling the June 23 shooting incident. The SID Agent told us that the Ambassador looked to SID to investigate these incidents because "she asked DEA for information. Get nothing. She asked INL for information. Get nothing. So she asked that we look into it and give her . . . what transpired."

By contrast with the handling of the June 23 and July 3 incidents, SID did not immediately open an investigation into the May 11 incident. The SID Supervisor told us that he did not recall when or how he learned of the May 11 incident, and State OIG found no information that the RSO notified SID. The SID Supervisor said it was possible that he saw the incident reported in the press and thought that SID did not need to become involved because no COM personnel discharged a weapon.

## **B. Diplomatic Security's Investigations Spark a Jurisdictional Dispute with DEA**

Shortly after opening the DS investigation into the June 23 shooting incident, the SID Supervisor contacted DEA Headquarters proposing that SID and DEA work together on a joint investigation "to pool resources and prevent us from tripping over each other." The SID Supervisor advised DEA that his office routinely conducted use of force investigations with the parent agency and gave as an example a shooting investigation conducted jointly with another agency the year

before involving an incident in Pakistan.<sup>156</sup> However, according to State and DEA documents, as well as OIG interviews with relevant officials, after discussions between SID and DEA in late June 2012, DEA did not accept SID's offer to work on a joint investigation.

SID's proposal of a joint investigation led to several internal discussions within DEA involving DEA's Deputy Chief Inspector (DCI) Kevin Foley, Deputy Chief Counsel John Wallace, and Deputy Administrator Thomas Harrigan about whether DS had authority to investigate DEA's conduct during the June 23 shooting incident. According to DCI Foley, he had no prior experience working with DS on a joint investigation, and this was the first time he was aware of DS ever approaching his office to investigate a DEA shooting incident. He therefore turned to Wallace for advice.

Wallace told us that he advised DCI Foley that DEA had an obligation to cooperate with the COM under the Chief of Mission statute (22 U.S.C. § 3927), but that he was not aware of any legal authority that granted DS the right to conduct an investigation of DEA personnel's use of deadly force during an operation. He said that he recommended that Foley contact DS officials to determine what legal authorities DS believed gave them such authority.

DCI Foley said that after receiving this advice from Wallace, he contacted SID and spoke with SID DC Davidson. According to Foley, he told Davidson that he had never had an experience working with DS on a joint shooting investigation and that even if DS routinely conducted these types of joint investigations, DEA had not. Foley told us that he discussed with Davidson what a joint investigation would look like, and, according to Foley, Davidson was very firm that DS would be in charge of the joint investigation – it would be DS conducting the interviews, making the findings, drafting the written report, and deciding whether to refer the matter to a prosecutor. Foley said he found these terms unacceptable and asked Davidson to send the legal authorities upon which DS was relying so that he could review them with DEA's Chief Counsel's Office.

Shortly thereafter, on June 26, DC Davidson sent DCI Foley a list of federal statutes, the most pertinent of which he said was the authorities granted to the COM under the Chief of Mission statute. However, DEA documents reflect that DEA officials perceived the DS investigation as an attempt by SID to expand DS's jurisdiction into a new area of responsibility. With respect to DS's jurisdiction, DEA officials drew a distinction between acts of misconduct by COM personnel and the application of deadly force by COM personnel during the course of an authorized

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<sup>156</sup> The example given involved a U.S. contractor who was a victim of attempted robbery in Lahore, Pakistan. According to reports, after withdrawing cash from a bank machine, the U.S. contractor shot and killed two armed men who had attempted to rob him.

operation. DEA officials recognized DS's jurisdiction to investigate the first but believed DS had not presented any precedent for investigating the second.<sup>157</sup>

Wallace told us that he advised DEA leadership that he could craft a way in which DEA could proceed jointly with DS while protecting DEA equities, including having DS present during DEA-led interviews of the DEA agents involved in the shooting. However, he said that Harrigan and Chief Inspector James Kasson ultimately approved DCI Foley's recommended position that DEA not attempt a joint investigation. According to Foley, he had offered to work jointly with SID as long as DEA conducted the interviews and wrote the report, but DC Davidson rejected that idea and said that SID had to lead those efforts. Foley said that because DEA needed to do its own internal review of the shooting incident, the notion that DS would duplicate interviews and reports created a variety of legal complications that he could not recommend, including the potential for creating *Jencks* and *Giglio* material for the underlying Anvil counternarcotics investigations.<sup>158</sup>

Former DEA Administrator Michele Leonhart told the OIGs that she had been briefed on the disagreement with DS and concurred in the decision not to do a joint investigation with DS or provide DS with access to DEA personnel. She said that Harrigan had advised her that there was no precedent or protocol for DS to investigate a DEA shooting incident when the shooting occurred during an authorized operation, and DEA's Chief Counsel's Office had concerns that a DS investigation might compromise the underlying narcotics investigations.

Accordingly, on June 29, Wallace sent an e-mail communication to his legal counterpart at INL, Thomas Heinemann, stating DEA's position at that time:

[B]ased on conversations between DS and DEA Deputy Chief Inspector Kevin Foley I'm afraid we're going to have serious legal and policy concerns with DS' proposed course of action. I am told that INL shares at least some of our concerns and that INL is in the process of discussing its concerns with DS senior management. We are not aware that DS routinely participates in shooting reviews. In fact, such

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<sup>157</sup> The SID Supervisor told us that when he joined SID's Violent Crimes Unit in 2008, the office was "horribly under-resourced" and did not have the capacity to involve itself in many use-of-force investigations. He said that as the office grew over time (from approximately 10 employees in 2008 to 30 employees in 2015), his unit developed the capabilities to do robust, independent investigations. According to the SID Supervisor, the authority of DS to do use-of-force investigations, including the use of deadly force during authorized law enforcement operations, was not new, but SID's ability to do them had definitely improved.

<sup>158</sup> As we described in previous chapters, as a result of the interdictions in Operation Anvil, several drug traffickers have been indicted in federal district court, creating *Jencks and Giglio* obligations for the prosecutors. More specifically, the Jencks Act, Title 18 U.S.C. § 3500, generally requires that government prosecutors provide all statements or reports made by a government witness after the witness has testified. Pursuant to *Giglio v. United States*, 405 U.S. 150 (1972), prosecutors are required to disclose any promises made to a witness in exchange for his testimony, and this has been expanded to include a further duty to disclose to the defense exculpatory information including credibility issues with law enforcement officers.

a role by DS appears to be inconsistent with the review mechanism set forth in the COM use of force policy for Honduras. In addition, in the most recent 20 or so events in which a DEA Special Agent was operationally required to discharge a firearm overseas in the line of duty, DS has played no apparent role in the post event review.

DEA, like other DOJ criminal investigative components, is required to conduct a formal post event review of all shooting events involving DEA employees. Such a review is currently underway with respect to the event of 6/23 in Honduras. We certainly recognize the interest of DS in these events. Our Chief Inspector has indicated that he will be happy to share the substance and result of that review with appropriate DS representatives upon its conclusion.

Heinemann responded to Wallace stating that it "sounds like we need to do a bit more digging over here to understand what various parts of State are saying and doing and what our practice has been in the past." Wallace said that he did not recall any further discussions with Heinemann on this issue.

After the shooting incident on July 3, DEA did not change its position against conducting joint investigations with DS, and DS proceeded to investigate the June 23 and July 3 shooting incidents separately from the DEA internal review.

### **C. INL Sides With DEA in Jurisdictional Dispute**

State documents reflect that upon learning that DS had opened its own investigation into the June 23 shooting incident, INL leadership was not fully supportive of DS's involvement. On June 28, 2012, INL Principal Deputy Assistant Secretary (PDAS) Carol Perez sent an e-mail communication to INL Assistant Secretary (AS) William Brownfield stating that DEA had "squawked" to INL about the DS investigation in Honduras and that she thought the "DS Office of Special Investigations got out a bit too far on this." On the same day, PDAS Perez sent another e-mail communication stating that she had been provided good information to "buttress our arguments that DS has no role in this except at post at the direction of the COM." An e-mail communication the same day from another INL official to the INL Director at the U.S. Embassy stated that DS had launched an investigation of the June 23 shooting but that "INL/FO called DS to turn the investigation off."

On June 29, after Wallace provided Heinemann with DEA's position at that time on the DS investigation, noting that "INL shares some of our concerns and that INL is in contact with DS senior management" on the issue, Heinemann contacted a DS attorney requesting information on "what has been happening between INL and DS." In response, the DS attorney told Heinemann:

I learned that Carol Perez in INL contacted DS Director Bultrowicz about this and said that INL's position is that DS doesn't have the authority to conduct an investigation of this DEA shooting.

The same day, AS Brownfield sent an e-mail communication to Harrigan stating:

I understand State DS has been sniffing around DEA on the shooting. I think we are pushing that back into the box by offering to share the after action report. Let me know if you hear differently.”

When we asked AS Brownfield and PDAS Perez about these discussions in late June 2012, they told us that INL had not attempted to stop the DS investigation. They did, however, acknowledge raising some concerns about the authority of DS to investigate and their belief that the investigation should be handled by the Embassy rather than DS Headquarters in Washington, and stated that they were simply trying to resolve the dispute without it becoming a problem for INL. According to one former INL official, Brownfield did not think that the DS investigations into the Anvil shootings were necessary because DEA was already handling these matters through its own internal investigations.

Harrigan told us that he had informal discussions with AS Brownfield about the DS investigation in order to understand INL’s position on the issue. Harrigan said that because DEA had a good partnership with INL, he wanted to make sure that DEA was responsive to any concerns or recommendations INL might have. According to Harrigan, during these discussions, AS Brownfield did not take sides but expressed a desire to have the disagreement between DEA and DS resolved amicably. Harrigan told us that ultimately he understood that Brownfield agreed that the best way to move forward was to allow DEA to complete its investigation and, upon completion, provide a copy of DEA’s final report to DS.

Several DS officials told us that it was obvious to them that INL was hostile to the DS investigations and voiced frustration that it was much harder to convince DEA to come to an agreement with DS when DS lacked support from other State bureaus on this matter.

#### **IV. Diplomatic Security Conducts its Investigations**

##### **A. DEA Refuses Diplomatic Security’s Requests for Information**

The SID Agent told us that during the course of his investigations into the June 23 and July 3 shooting incidents, he contacted DEA personnel at TCO repeatedly seeking their cooperation with the SID investigation, but TCO declined to provide assistance or information. Two TCO agents told us that they refused to provide information to the SID Agent because they were under instructions from DEA leadership not to cooperate or assist the SID investigation – instructions that one of the TCO agents said the Assistant Regional Director received from Headquarters and passed on to them. One of the TCO agents described his interactions with the SID Agent in this manner: “He was told from the get-go. Yes, we have information. Yes, we have reports. We've been told not to turn it over.” The SID Agent and a TCO agent told us that at one point the TCO agent lost his



temper after the SID Agent requested information from him. The TCO agent said that he simply had had enough of the DS requests for information.

DEA e-mail communications reflect that before these discussions between SID and TCO, on June 26, 2012, RD Evans advised the Assistant Regional Director that DS wanted to lead the investigation into the June 23 shooting incident and that DEA leadership would be meeting soon with State officials to discuss the issue. Evans told the Assistant Regional Director to “[l]et the guys in the office and FAST know that if they are approached by RSO to conduct an interview, have them politely respond they need approval from [Chief Counsel].” Shortly after this instruction from Evans, the Assistant Regional Director sent the Delta Team Leader an e-mail communication stating, “If you are contacted by DS/RSO to be interviewed you are to decline and let me know. . . . If need be refer to [Chief Counsel].”

RD Evans told us that he intended his instruction to the DEA personnel in Honduras to serve as a reminder on the prohibition in the DEA Agent Manual against giving statements to other law enforcement agencies until DEA’s Office of Inspections (IN) directs the employee to do so. He said that because he knew that there were ongoing discussions at DEA Headquarters about how the investigation was going to be conducted, he wanted to remind the agents in Honduras that they should not make any statements until Chief Counsel or IN gave them clearance to do so.<sup>159</sup>

The instructions from RD Evans and the Assistant Regional Director may have originated from IN. While we did not find any e-mails or documents confirming this, DCI Foley told us that after the decision was made not to work jointly with DS on the investigations, his office would have given “situational advice” to the regional officials that if the SID Agent or anyone from DS made a request to talk to DEA personnel, any DEA personnel approached should decline.

## **B. DEA Declines Ambassador’s Request for Information**

Frustrated with the inability to obtain information from DEA, in July 2012, the SID Agent discussed with Ambassador Kubiske the information he needed from DEA

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<sup>159</sup> With limited exceptions not applicable here, Section 6114.42 of the DEA Agent Manual provides that the relevant Special Agent-in-Charge, Regional Director, or Headquarters supervisor will be fully informed and concur prior to the interview of any DEA employee by any outside investigative authority. This section also provides that generally affected DEA employees will be available for interviews with investigative authorities; however, whenever possible, no interviews will be permitted until the employee has been removed from the shooting scene, met with DEA management, and has a DEA management representative present during the interview. Finally, the section provides that DEA employees must cooperate fully with DEA and/or any other enforcement agency with jurisdiction in the investigation of the shooting incident. Declining an interview request from another investigative agency would not necessarily appear to be consistent with this section of the DEA Agent Manual. The Senior Inspector who supervised DEA’s reviews of the three Anvil shooting incidents told the OIGs that IN did not believe DS had jurisdiction to investigate the shootings because they occurred during an authorized operation, and therefore DS was not an “enforcement agency with jurisdiction” within the meaning of Section 6114.42.

to move his investigations forward, and eventually SID drafted a memorandum for the Ambassador's signature formally instructing DEA to provide the necessary information regarding the June 23 and July 3 shooting incidents. The Ambassador signed this memorandum on July 17, 2012, and gave it to the Assistant Regional Director during a visit the Assistant Regional Director made to the U.S. Embassy in mid-July. The memorandum instructed the Assistant Regional Director to provide the Ambassador and the Acting RSO with specific documentation, including witness statements, photographs, videos, and all documentation generated by DEA regarding these incidents. The memorandum stated that the COM's Firearms Review Board would review the requested documentation during its upcoming meeting to examine the two shooting incidents.

According to the Assistant Regional Director, upon receiving this memorandum, she advised Ambassador Kubiske that she did not have, nor could she obtain, much of the requested information. Further, she told the Ambassador that DEA could not release any further information while DEA Headquarters was in discussions with State officials in Washington over the investigative process. According to the Assistant Regional Director, there was a consensus among DEA officials, including DCI Foley, Wallace, and RD Evans, that DEA should not provide the requested information to the Ambassador until DEA and DS worked out their differences at the Headquarters level. The Assistant Regional Director said Ambassador Kubiske was visibly frustrated with her and DEA over DEA's withholding of information at that time.

### **C. COM's Firearms Review Board Is Unable to Reach Conclusions**

On July 29, 2012, DCM Mitman convened the COM's Firearms Review Board to examine the June 23 and July 3 shooting incidents. According to a memorandum dated September 6, 2012, the Board was unable to render judgment or offer recommendations regarding these shooting incidents because of "the lack of physical evidence and appropriate witness statements (as outlined in the Ambassador's Memo to the DEA Assistant Regional Director dated July 17, 2012)."

Mitman told us that the June 23 and July 3 shooting incidents did not raise the same concerns that the May 11 incident had generated because there were no allegations that innocent civilians had been killed. Nevertheless, the Embassy convened a Firearms Review Board to review the circumstances of the June 23 and July 3 shooting incidents, but not the May 11 incident. According to Mitman, the Firearms Review Board did not convene a review of the May 11 incident because DEA represented that none of their agents fired a weapon, and there was no conclusive evidence establishing otherwise.

### **V. U.S. Ambassador Authorizes Diplomatic Security to Investigate the May 11 Incident**

During the SID Agent's first visit to Honduras in late July 2012, Ambassador Kubiske asked him to "look into" the May 11 incident. State documents reflect that at the time the Ambassador made this request, on or about July 25, the Embassy

was assisting State officials with responding to continued congressional inquiries about the May 11 incident. According to the Ambassador, as the Embassy received requests for more information about May 11, she had to rely upon DEA, which was not providing information, and the Honduran investigation, which she was concerned would not meet U.S. standards. She said that because of these limitations, and despite the original guidance she received from WHA and INL that the Hondurans should investigate the May 11 incident, her thinking ultimately shifted to requesting that the SID Agent investigate the conduct of COM personnel during the May 10-11 interdiction.

The SID Supervisor told us that SID typically would not have looked into the May 11 incident because the information reported was that no COM employees had discharged their weapons. However, at the Ambassador's request, SID decided to "help out" the Ambassador to the greatest extent possible by trying to obtain information and answers about what happened during the interdiction. The SID Supervisor said that after learning about the unresolved allegations of DEA misconduct in the village, he believed that SID had jurisdiction to investigate. The official report SID later prepared regarding the May 11 incident stated that SID opened the investigation at the request of the Ambassador and because of "the lack of credible information regarding the events on May 11."

The SID Agent encountered a problem very early in his work. On July 30, 2012, he e-mailed the Ambassador to inform her that the TRT officers refused to speak to him regarding the three incidents and referred him to DEA because TRT submitted reports on the incidents to DEA's TCO agents. According to his e-mail, when he asked a TCO agent for such reports previously, the TCO agent led him to believe that TCO did not have any. The SID Agent also advised the Ambassador that it "appears that someone coached the TRT prior to their arrival because their response is not consistent with any other Honduran officials I have had contact with." When we asked about this e-mail, the SID Agent elaborated: "I talked to [the TRT] the day before [the interviews] and they were all about talking and coming in and giving their side of the story." But after DEA was told about the upcoming interviews, the TRT "come in 24 hours later singing a completely different song" and were refusing to answer basic questions. When we asked one of the TCO agents about this, he said that at no time did TCO tell or advise the TRT officers not to cooperate with the SID investigation. According to the TCO agent, they advised the TRT that the SID may approach them for an interview and that it was their choice whether to cooperate.<sup>160</sup>

As part of the investigation, DS tasked its own Computer Investigations and Forensics Division with analyzing the initial video provided by CBP. This request was tasked to a contractor computer forensic analyst who specialized in forensic video analysis. The analyst prepared a memorandum that was reviewed and signed by the Division Chief of the Computer Investigations and Forensics Division, dated August 31, 2012. The memorandum's conclusions included that: "All changes in

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<sup>160</sup> The DOJ OIG did not find any e-mail communications or other DEA documents relevant to whether DEA advised TRT on whether or not to cooperate with SID on its investigations.

contrast (flashes) appear to originate from one Boat [the pipante].”<sup>161</sup> The memorandum stated that these flashes originated from the individual closest to the bow of the pipante and the individual closest to the stern of the pipante. The memorandum also concluded that: “No conclusions can be drawn as to whether any flashes originated from [the individual in the middle of the pipante].” The memorandum included over 150 still frames from the video with notes and color codes to show individuals and flashes. A copy of this analysis was included with the final report.

The SID Agent, who told us he was very familiar with the capability of infrared video and had used it extensively in the past, came to the same conclusion after reviewing the video. In particular, he said that “[t]here is no indication that I can find that shows that [the officers in the pipante] were ever fired upon from the [other] boat [because] there’s only one heat source that originates from that boat, and it’s consistent with a bullet striking the engine,” which he said was also consistent with his subsequent personal observation of the engine.<sup>162</sup>

In addition to the video analysis, the SID Agent reviewed the forensic medical reports for the wounded individuals, visited the scene of the incident and accompanied Honduran prosecutors for interviews of witnesses, and reviewed interviews of the TRT by the Honduran Special Prosecutor for Human Rights and witness statements and the ballistics report provided by the Honduran Office of the Public Prosecutor.

The SID Agent asked INL if he could speak with the helicopter pilots and door gunners, but INL declined to make them available. The Agent made the initial request to the INL Director at the Embassy, who put him in touch with the head of INL’s AirWing program. The AirWing head told the Agent that since a foreign military was involved, he could not approve the request.<sup>163</sup> The Agent also asked him for other information, but the AirWing head said he could not provide any relevant information. According to the Agent, “INL couldn’t tell us for sure which weapon, how many rounds were expended. They could tell us what helicopter, and then it went back and forth on who the actual gunner was.”<sup>164</sup>

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<sup>161</sup> The conclusions in the forensic analyst’s memorandum referred only to changes in contrast, or flashes, visible in the video footage, and not the causes of those changes and flashes. The forensic analyst told the OIGs that she did not have experience with firearm discharge analysis and therefore could not opine as to whether the changes in contrast, or flashes, she identified in her analysis represented firearm discharges.

<sup>162</sup> The SID agent said that there was no chain of custody for the engine, so he could not be absolutely certain that it was the same engine.

<sup>163</sup> The Agent does not recall being informed that the helicopter crews also consisted of DynCorp employees.

<sup>164</sup> The INL Director in Honduras told us that she was surprised that INL did not do a written after action report for its Honduras helicopter fleet after the May 11 shooting. She stated, “I was astonished that nothing had been written down.” Instead, she was told in an e-mail from an INL AirWing official that he had done an oral debriefing with the aircrew of the INL helicopters involved in the May 11, 2012 shooting incident as required by the INL contract and was told that the official

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Although the INL Director at the Embassy tried to assist with the Agent's request to speak to the helicopter crew, INL leadership did not approve of his request. The Agent raised the denial of access up his chain of command, but AS Brownfield objected to providing access to the crews. In an August 10, 2012 e-mail to INL officials, Brownfield stated that although the Ambassador was exercising her Chief of Mission authority, INL was to "stay squarely out of this [which] includes us NOT being tasked to produce the [TRT] shooters or the [Guatemalan] pilot for interview by DS." Senior DS and INL officials discussed the request, among other issues, at a September 2012 meeting, but AS Brownfield remained opposed to providing access to the crews.

After the request was denied by INL, DS officials did not raise the issue any further. According to the SID Agent, by this point, the focus of the investigation had shifted because although the helicopters had fired on the passenger boat, he could find no evidence that the helicopter fire had actually hit any of the passengers who were shot. The SID Supervisor also explained to the OIGs that SID has limited resources and that they normally only focus their investigative resources on incidents involving American citizens under COM authority.<sup>165</sup> Further, Perez told us that INL was not focused on the circumstances of the helicopter opening fire on the passenger boat. She said that she had believed the helicopter fire was suppressive only and not intended as a use of deadly force.

## **VI. Diplomatic Security, State's Bureau of Western Hemisphere Affairs, and DEA Leadership Meet to Resolve Disagreements**

After the opening of the three DS investigations, discussions between WHA, DS, and DEA leadership in Washington eventually led to a meeting on August 10, 2012 at DEA Headquarters. PDAS John Feeley attended the meeting for WHA, PDAS Scott Bultrowicz attended for DS, and Deputy Administrator Harrigan, Chief of Global Operations James Soiles, Deputy Chief Counsel Wallace, and Deputy Chief Inspector Foley attended for DEA. INL did not send representatives to the meeting. PDAS Feeley told us that WHA, rather than INL, made the effort to broker a mutually acceptable compromise between DS and DEA because WHA was responsible for supporting Ambassadors serving in the field, whereas INL's primary mission was on combatting narcotics trafficking.

DEA e-mail communications reflect that, for DEA leadership, a catalyst for this meeting was Ambassador Kubiske's July 17 memorandum instructing DEA to provide information regarding the June and July shootings. E-mail communications

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attempted to "ensure that every aspect of the rules of engagement were followed as written - they were."

<sup>165</sup> With regard to the citizenship of the personnel in the helicopter, we interviewed most of the State contract pilots involved in the May 11 operation, and we found that at least one of them was an American citizen at the time of the shooting and a second pilot either was an American citizen at the time of the shooting incident or became one shortly afterwards. A [REDACTED] pilot was a legal permanent resident of the United States at the time of the shooting incident.

between Wallace, Foley, and others indicate that Wallace expressed the view internally that DS did not have the authority to impose demands upon DEA, but that the Ambassador did have such authority as COM. Wallace told us that before the August 10 meeting, his recommendation to DEA leadership was that DEA should not “cold shoulder” the Ambassador, that DEA would have to take steps to satisfy the COM’s legitimate demands for information.

At the meeting, Harrigan proposed a course of action that DEA had previously briefed to WHA and INL officials, which was that DEA would conduct its own shooting reviews and, upon completion, provide a narrative description of the reviews and findings to the Ambassador and DS. Harrigan and Soiles told us that they believed that they had come to an agreement with PDAS Bultrowicz and resolved the dispute between the two agencies at the meeting. However, Foley and Wallace told us that PDAS Bultrowicz had been relatively quiet and non-committal during the meeting.

PDAS Feeley told us that he left the meeting believing that there was an agreement between DEA and DS that DEA would not make its agents available to DS for interviews but that DEA would provide DS with summaries of their interviews. Feeley said that he had the impression that PDAS Bultrowicz found this resolution acceptable, and he never heard anything later to the contrary.

According to an e-mail communication PDAS Bultrowicz sent to DC Davidson after the meeting, all parties at the meeting were in agreement that after DEA completed its internal reviews of the three shooting incidents, DEA would provide an official written summary report of their findings to the Ambassador and DS for inclusion in a final DS report. Bultrowicz also stated that all parties agreed that DEA and DS would work out a template for cooperation on any future investigations involving use of force, suggesting that he did not believe that had been fully resolved at the meeting.<sup>166</sup>

Shortly after the meeting, Wallace prepared a memorandum addressed to PDAS Bultrowicz and PDAS Feeley that Harrigan signed on August 16, 2012. The August 16 memorandum stated that it memorialized an informal agreement reached during the August 10 meeting to establish protocol for addressing use of force incidents involving DEA personnel while carrying out their official duties in WHA’s geographical area of responsibility. The memorandum provided the following procedures:

- As soon as possible after the use of force, the local DEA Country Attaché would notify the local DS Regional Security Officer of the use of force incident as well as the identities of the DEA personnel involved, the time and location of the incident, and lastly he/she would provide a basic synopsis of what occurred including any related deaths or injuries.

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<sup>166</sup> PDAS Bultrowicz retired from the Department in June 2014 and declined the OIG’s request for an interview.

- Involved DEA personnel will be returned to the United States as expeditiously as circumstances permit.
- The Country Attaché and the Regional Security Officer would then exchange agency points of contact back at each agency's headquarters in the United States who will then establish a channel of communication between the two agencies. The DEA will use this channel of communication to keep the DS point of contact advised as to the progress of the DEA investigation and the anticipated completion date.
- Once the DEA completed its investigation, it would then arrange to orally brief the COM where the incident occurred as well as DS on the results of the investigation. DEA would also provide a written synopsis generally describing what had occurred during the use of force incident as well as the findings and conclusions that DEA had reached. The oral briefing by a knowledgeable DEA official to DS and the COM would also supply additional details not mentioned in the written narrative.

The memorandum did not request a response or signature from DS. According to Wallace, he drafted the memorandum as a "one-way memo" from DEA to WHA and DS rather than as a memorandum of understanding to avoid any further negotiations on what DEA agreed to do at the August 10 meeting.

According to Wallace, DS never responded to or signed the memorandum. However, PDAS Bultrowicz's e-mail communication to DC Davidson shortly after the August 10 meeting suggests that Bultrowicz recognized that the parties had yet to reach agreement on the protocol for future incidents. PDAS Feeley told us that after he received the memorandum he asked Bultrowicz, "Are you guys okay with this?" According to Feeley, Bultrowicz said, "Yes. I think so."

Some of PDAS Bultrowicz's subordinates told us that they were dissatisfied with the outcome of PDAS Bultrowicz's meeting with DEA, as well as the follow-up August 16 memorandum. They said that it was unwise of PDAS Bultrowicz to go alone to this meeting with DEA, and they were opposed to PDAS Bultrowicz seemingly bargaining away DS's authority to DEA. They also pointed out that DS never approved the DEA memorandum and that PDAS Bultrowicz left the agency shortly after the meeting and the drafting of the memorandum. An e-mail by a senior DS official stated that he had spoken with PDAS Bultrowicz about the August 16 memorandum and that PDAS Bultrowicz told him that the memorandum was effectively a memorandum of conversation, but not anything that had been cleared through him to ensure an agreement.

There were no further discussions between DS and DEA on the terms DEA outlined in the August 16 memorandum. DS officials told us that the Benghazi attack in Libya on September 11, 2012 completely consumed DS senior management in the weeks and months following the August 10 meeting and caused the use of force protocol to fall down the list of priorities for DS.

## **VII. Diplomatic Security and DEA Report Their Findings**

### **A. Diplomatic Security Briefs Preliminary Findings to WHA and INL**

On September 12, 2012, the SID agent and DS senior management met with INL and WHA senior officials, including AS Brownfield, PDAS Perez, PDAS Feeley, INL's Director of Western Hemisphere Programs Mark Wells, and WHA Director of Central American Affairs Gonzales Gallegos, to brief them on the preliminary findings of the investigations. INL Director for Western Hemisphere Programs Mark Wells, who, as described in Chapter Twelve, served as INL's subject matter expert for briefings with congressional staff, also attended this DS briefing. The briefing highlighted the lack of DEA cooperation, the inability of the Government of Honduras to conduct its own investigations, and the written accounts of the Honduran TRT that were provided to the Special Prosecutor for Human Rights and U.S. Embassy officials that contradicted themselves and DEA reporting.

The briefing included preliminary findings on all three incidents. With regard to May 11, DS found that the passenger boat was traveling under power upriver toward the pipante, eventually striking the pipante. The passenger boat was then fired upon by two individuals in the pipante, and 1 minute later, an INL helicopter fired upon the passenger boat as it drifted past the pipante. DS noted that additional investigative steps yet to be taken would include speaking with the DEA participants in order to address the local resident allegations of burglary, theft, assault, and failure to render aid, as well as testing the weapon of the second TRT officer on the pipante.

With regard to the June 23 incident, DS stated that during a search of the area where the plane landed, a FAST member encountered an armed individual who was shot and killed after failing to comply with commands. Witness statements supported that FAST and TRT officers identified themselves and gave loud verbal commands in Spanish prior to firing. DS noted further investigative steps included speaking with the DEA participants and tracing the chain of custody of a pistol recovered at the scene. Regarding July 3, DS stated that after the crash landing, the FAST and TRT team members encountered the injured copilot outside of the aircraft and rendered aid. They gave the pilot inside the aircraft commands in Spanish, but he did not comply and instead made a furtive movement, at which point the report stated that he was shot by two DEA agents. DS stated that additional investigative steps for the July 3 incident would include speaking with the DEA participants and resolving the two TRT reports that significantly contradict one another.

According to notes taken at the meeting, AS Brownfield inquired as to why DEA was not cooperating with the investigation and stated that he felt that DS was as much to blame for the impasse as DEA. According to the DS participants in the meeting, AS Brownfield was not happy about the initial findings because of their potential to create problems for INL. They also told the OIGs that Brownfield expressed his opinion that DS should not be involved in the investigation at all and that he compared the dispute to a juvenile competition.



## **B. Diplomatic Security Briefs Preliminary Findings to DEA**

In September 2012, DC Davidson requested a meeting with DCI Foley to brief him on the preliminary findings of the DS investigations. According to DEA and State e-mail communications, DCI Foley accepted the invitation but cautioned that he was not authorized to release any DEA findings to DS at that time.<sup>167</sup> The briefing, which took place on September 17, 2012, included Davidson, SAC Paul Houston of SID, the SID Agent who conducted the investigations, DCI Foley, another inspector from Foley's office, and Deputy Chief Counsel John Wallace. The SID Agent briefed all in attendance on his preliminary investigative findings.

According to the SID Agent, as well as an outline he prepared for the meeting, he provided summaries of the information he had gathered to date on each of the three Anvil shooting incidents. Regarding the May 11 incident, the SID Agent described some information that was similar to, or not inconsistent with, DEA reporting as reflected in Chapter Three of this report. However, the SID Agent told us that he advised DEA that he did not find any video evidence of shots fired from the passenger boat.

The SID Agent shared highlights from some of the TRT witness statements he obtained from the Office of the Honduran Special Prosecutor for Human Rights, including that a TRT officer placed a person in plastic handcuffs and that one of the TRT officers who was stranded in the pipante with the DEA agent said that he heard one of the passengers in the approaching boat say, "there is the boat with the drugs," before they began shooting at the officers in the pipante.

In addition, the SID Agent described the allegations of officer misconduct and abuse in the village, including that officers forced one of the local residents (Hilder Eulopio Lezama) to drive the boat that rescued the stranded officers and that officers broke into the shop of another local resident (Dolly Wood) and stole items. The SID Agent's outline noted that these allegations conflicted with other information that Lezama offered assistance and was compensated for the boat ride and that there were no indications of forced entry on Wood's property. However, the SID Agent said he needed the witness statements of DEA personnel regarding what happened in the village, as well as regarding any knowledge DEA personnel may have had during the interdiction about the people injured and killed and what the "security situation" may have been that night.

DEA did not provide the witness statements or any other documentation to the SID officials during the briefing. Nevertheless, DCI Foley said that he told the SID officials that the allegations of what happened in the village could not be true because they conflicted with the accounts of DEA participants in the May 10-11 interdiction. Foley stated, "that whole thing where our statements from our agents totally don't agree with that, that he was forced. He was paid at the end. There

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<sup>167</sup> As described in Chapters Seven and Nine, DEA's Shooting and Assault Incident Review Committee did not convene to make findings regarding the May 11, June 23, and July 3 shooting incidents until October 10, 2012.

was no forcing him to do it. He offered, he offered assistance. And, and he was compensated. That's what we told them." Foley said that he also told the SID officials that the FAST participants were unaware of any injured parties and were preoccupied for hours with rescuing the law enforcement officers in the stranded pipante.

The SID Agent told us that he briefed DEA about the results of the DS video analysis, including that DS's video analyst did not identify any contrasts of light originating from the passenger boat. He also described what he believed to be the repeated firing at people in the water. When we asked the case agent about the reaction of DEA officials to his observations of the video, he told us that DEA did not appear particularly interested in what DS had to say. He said that the attitude of DEA to the DS information was, "look, we don't care. You're JV, we're DEA. We're not going to answer to it." DCI Foley told us that he recalled that DS presented some still images taken from the May 11 video footage, but that he did not find them "conclusive in any way." Wallace said that DS told them that their video analyst had attempted a frame-by-frame analysis of the video, and DS showed them a large three-ring binder of still images the analyst had created. According to Wallace, he and Foley were not shown the analyst's memorandum of findings at the meeting, and he did not recall that DS described those findings to them. He said that he recalled the DS officials explaining that they did not observe gunfire from the passenger boat, but he did not recall that they specifically attributed that observation to their video analyst.

Foley recalled that DS raised the possibility that the FAST member on the pipante fired his weapon, but he quickly disabused them of this possibility by pointing out that the agent did not have his rifle at the time of the shooting. Foley told DS that the discharge of the agent's handgun would not produce the muzzle flash or flashes that were shown on the video.

According to the SID Agent's written summary of the meeting, SID officials advised DEA that Honduran authorities planned to request access to DEA firearms because of the results of Honduran ballistics testing that did not match one of the bullets recovered after the May 11 incident to any of the TRT weapons. DCI Foley told us that he recalled being aware that the Honduran ballistics tests could only confirm one bullet was fired from a TRT weapon and that "they couldn't do enough work on [the other bullets] I think."

Regarding the June 23 and July 3 shooting incidents, DC Davidson told DEA officials that SID was very close to closing their investigations but that they required statements from DEA on a few details. Specifically, the SID Agent requested that DEA provide him with the FAST witness statements for the June 23 shooting incident in order to help him determine why the Honduran prosecutors did not enter into evidence the pistol of the suspect who was killed and to clarify some of the details of the shooting in light of autopsy results that the suspect was shot in the back left shoulder and twice in the back left of the head. Regarding the July 3

shooting, the SID Agent pointed out that TRT statements about that interdiction contradicted DEA's initial reporting on the incident, as well as each other.<sup>168</sup>

DCI Foley told us that after SID presented their preliminary findings, he and DC Davidson had a private conversation during which Davidson pressed Foley for all of DEA's documentation. Foley said that he did not commit at that time to providing them with any documents. He said that he was not sure whether it was raised at this September 2012 briefing or at a later time, but at some point DEA agreed to offer SID the opportunity to review their inspection files for the May 11, June 23, and July 3 incidents. According to Foley, SID never came to review the files. However, according to Davidson, DEA never offered DS the opportunity to review its inspection files. He said that at most, DEA offered "an overview of their investigation." Davidson described Foley as saying "trust us, we're the good guys. Nothing happened."

The OIGs did not obtain evidence that resolves the factual question of whether DEA offered SID investigators the opportunity to review its inspection files. DEA and State documents reflect that in early November 2012, SID SAC Houston contacted DCI Foley asking for access to DEA's investigative files so that DS could complete its investigations. Foley responded by stating that his office would set up a briefing for SID officials after DEA briefed the Ambassador. During this briefing, which we describe later in this chapter, DEA officials did not grant SID officials access to the complete inspection files but gave an oral presentation and 3-page written summary of DEA's findings for each incident. E-mail communications between DEA and INL leadership reflect that in November 2013 DEA Chief of Global Operations Soiles advised Western Hemisphere INL Director James Story that DEA had agreed to allow DS to review its inspection files. However, DCI Foley reported to Soiles in January 2014 that this agreement did not lead to any contact from DS.

### **C. DEA Briefs the U.S. Ambassador on its Findings**

After DEA's Shooting and Assault Incident Review Committee made findings in October 2012 regarding the May 11, June 23, and July 3 shooting incidents, DEA officials made arrangements to provide a briefing of the findings to Ambassador Kubiske in Honduras. This briefing, which occurred on November 14, was provided by senior DEA officials, including Wallace, Soiles, and Deputy Chief of Operations for Special Projects Jay Fitzpatrick. The Assistant Regional Director, new Regional

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<sup>168</sup> As described in Chapter Eight, the Honduran TRT Commander submitted two reports describing the events that took place during the July 2-3 interdiction, both of which conflicted with DEA's and State's reporting of the interdiction and also contradicted each other on key facts. The Commander submitted one report that did not mention FAST's use of deadly force. Instead, the report said that the dead pilot died from injuries sustained during the plane crash. The report also said that offloaders fired at the helicopters, which is not supported by any statements from U.S. personnel, and made reference to a 9mm handgun found at the scene, which FAST personnel told us they never saw. The Commander's second report also made reference to a 9mm handgun, but it contradicted the first report by stating that a pilot aimed and fired a handgun at the officers and was subsequently killed by the officers.

Director Paul Craine, a TCO agent, the Acting RSO, the INL Director at the Embassy, and DCM Mitman also attended the briefing.

During the briefing, DEA provided the Ambassador with an oral presentation on the three shooting incidents accompanied by PowerPoint slides. The presentation used was a slightly modified version of the presentation (described in Chapters Seven and Nine) that DEA inspectors used to brief its review board the previous month. In addition to the oral presentation, DEA provided the Ambassador with a 3-page written summary for each of the three internal reviews DEA conducted, including the review board's findings that none of the DEA personnel involved in the three incidents committed misconduct or wrongdoing.

Wallace told us that it was apparent that Ambassador Kubiske was unhappy with DEA over the lack of information-sharing. The Ambassador told us that she did not remember many details about the meeting, but she recalled that she "read them the riot act" for failing to provide her with the information she needed to adequately respond to inquiries about the incidents. According to Wallace, the DEA delegation tried to assure the Ambassador that they respected her authority as COM and did not mean to cause problems for her. He said that he explained to the Ambassador DEA's "need to preserve investigative and prosecutorial equities in the handling of the agents that were involved in these three incidents so that . . . we don't contaminate them as potential witnesses."

DCM Mitman told us that the tone of the meeting was positive and professional, but he did not believe that the DEA delegation provided much new information. He said that the information provided did not clarify for him one way or the other whether the original DEA reporting on the May 11 incident had been factually accurate. The INL Director told us that she recalled State officials asking a number of questions about the May 11 incident, but that it was generally accepted at the Embassy that only the Honduran TRT fired their weapons and that there was no direct evidence that the DEA agent with them lied when he said he did not fire because he did not have his weapon. She said that it had never come to her attention that the DEA agent in the pipante had a handgun at the time of the shooting.

#### **D. DEA Briefs Diplomatic Security on its Findings**

After the DEA delegation briefed the Ambassador and other Embassy officials, IN made arrangements to give a similar briefing to SID officials. During this briefing, which took place on January 3, 2013, a senior DEA inspector gave a presentation on the results of DEA's internal reviews similar to the presentation given to DEA's review board and Ambassador Kubiske. The Senior Inspector also provided information from bullet points his office prepared that summarized the basic facts relevant to the three shooting incidents. The facts he recited regarding the May 11 incident – taken from FAST witness statements, Source of Information #2 (SOI #2), and the GOH investigation – included the following regarding the shooting encounter: "FAST agent hears "Policia" shouted and gunfire erupts in two bursts. FAST agent dives into canoe for cover and never fires a weapon." He also

noted that source information indicated that a local drug trafficker named "Emerson" was on the passenger boat and fired at the helicopters.

The SID Supervisor told us that he and his colleagues found DEA's presentation to be very generalized and lacking in detailed information. He said that he also found it incredible that the DEA inspectors had relied upon confidential source information as evidence regarding what happened during the incident. He and the SID Agent told us that based on the briefing they found the DEA's internal investigations to be inadequate and based on nothing more than some interviews or statements of DEA participants and one confidential source.

During the briefing, DEA inspectors provided the SID officials with the same 3-page summaries of their internal reviews that DEA had provided to the Ambassador. They did not provide SID with the written statements of each FAST member, which Foley told us was his decision supported by DEA leadership. The SID Supervisor told us that he was not comfortable relying upon the 3-page summaries to draw conclusions about the shootings. He said that the summaries did not compare to having the ability to interview the FAST members or review the transcripts of their interviews. The SID Supervisor said that SID wanted to interview the relevant DEA personnel, compare their statements against other witnesses as well as against the forensic and ballistic evidence, and then confront the witnesses with any inconsistencies – steps that he doubted the DEA inspectors had taken.

Because DEA inspectors did not agree to provide SID with access to the relevant FAST members, the SID officials told DEA that the DS investigations would be closed with "[i]nconclusive" findings. When we asked the Senior inspector why DEA did not make the FAST members available to SID for interviews, he told us that DS was not an investigative authority with jurisdiction over the Anvil shooting incidents; therefore, provisions in the DEA Agent Manual requiring DEA employees to cooperate with outside law enforcement agencies having jurisdiction over the shooting incident did not apply.

According to the SID Supervisor, he believed that DEA officials refused to provide access to any further information because of their concerns that DS was not an investigative agency and that DEA did not trust DS to conduct an investigation.

## **E. Diplomatic Security Issues its Final Reports**

In December 2012 and January 2013, the SID Agent concluded his investigations of the three incidents and issued three separate reports that were reviewed by his supervisor and SAC Houston.<sup>169</sup>

The May 11 report concluded that "there is no evidence that would suggest that COM personnel fired their weapons during the May 11 incident." It noted that

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<sup>169</sup> The report on the May 11 incident was completed on December 27, 2012. The reports on the June 23 and July 3 incidents were completed on January 3, 2013.

although all of the bullets recovered were consistent with the rifles carried by the TRT and FAST, the FAST agent on the pipante did not have his rifle. The report also concluded that there is no evidence that supports the claim that the TRT or FAST team broke into a village business and stole property because the local resident claimed a "large 'American' black male" was responsible for the trespass, but the only black male assigned to the FAST team was the Delta Team Leader who was on the pipante at the time of the alleged trespass. However, the report stated that SID was unable to make any "definitive findings" because of the refusal by DEA to provide access to witness statements, photographs, and ballistic tests. The report also stated that the "TRT statements are not reliable and conflict with the video evidence." According to the SID Agent, this was in reference to the fact that the TRT stated that they took fire from the passenger boat, and the DS analysis of the video only found evidence of gunfire originating from the pipante.

Because INL did not make the contractor pilots available, SID's May 11 report made no findings as to the conduct of State personnel who participated in the interdiction missions, particularly, the pilot who gave the order for the Honduran door gunner to fire shots during the river encounter with the passenger boat on May 11.

Regarding the June 23 and July 3 shooting incidents, SID issued reports also stating that the results of the investigation were inconclusive. According to the reports, SID encountered systemic breakdowns in the reporting of the shootings and the investigative process that made conclusive determinations "impossible." The reports stated that SID found that Honduran law enforcement authorities were "not properly trained and equipped to conduct a thorough and transparent investigation." The reports also stated that SID was unable to interview DEA personnel involved in the incidents and therefore could not compare and analyze the evidence and statements obtained by the Hondurans with the accounts made by DEA personnel. That omission, together with the limited abilities of the host government, made it impossible for SID to reach a conclusive determination regarding whether there was a violation of the COM Firearms Policy in those incidents.

#### **F. Diplomatic Security and DEA Meet to De-Conflict Findings**

On April 1, 2013, representatives from SID and IN met again to discuss their separate Anvil shooting investigations. DC Davidson and the SID Supervisor attended the meeting for SID, and DCI Foley and two inspectors attended for DEA. A few days beforehand, SAC Houston had requested the meeting in order to "de-conflict or resolve any differences from the understanding of events" between the two offices in anticipation of upcoming Congressional briefings. DCI Foley responded to the meeting request by stating that this was the first that he had heard that there were any significant differences between the SID and DEA findings regarding the three Anvil shootings. SAC Houston then responded to Foley that the purpose of the meeting would be to determine if there were significant differences in the investigations and to attempt to address those differences so that the two agencies can speak as one on the incidents or understand the differences.

The SID Supervisor told us that the significant difference between the two sets of investigations at that time was that DEA had concluded the shootings were justified and proper, whereas DS had found the available facts to be inconclusive. However, according to a summary of the meeting Foley sent to Chief Inspector Kasson after the meeting, the SID Supervisor and DC Davidson told him that they made “[i]nconclusive” determinations based upon the lack of access to DEA personnel and reports and not due to any information uncovered during their investigation. Foley said that the SID officials concluded that DEA personnel did not discharge any weapons or engage in any misconduct during the May 11 incident. However, Foley and another DEA inspector present at the meeting told us that DS and DEA had a different view regarding the passenger boat: SID officials referred to the boat as a “water taxi” whereas the inspectors believed, based upon DEA’s confidential source, that drug traffickers had commandeered the boat in search of the pipante carrying the cocaine. State documents reflect that SID officials also believed that the May 11 video footage contradicted DEA reporting that the passenger boat had fired upon the law enforcement officers in the pipante. They reported to SID leadership that they found no video evidence that would support that assertion.

The OIGs did not find evidence of any further discussions between DEA inspectors and SID regarding the Anvil shooting incidents after this April 2013 meeting.

### **VIII. DOJ and State OIG Observations**

As more fully set forth in the analysis and findings in Chapter Thirteen, the DOJ OIG concluded that DEA’s withholding of information from the U.S. Ambassador was inappropriate and unjustified. DEA’s presence in Honduras was at the pleasure and discretion of the Ambassador, and requesting and receiving information about the results of a law enforcement operation involving American personnel, which the Ambassador herself personally authorized, would clearly be within her supervisory responsibilities and authority as COM.

DOJ OIG found that DEA’s obligations to DS were less clearly defined, and that this likely contributed to the dispute between DEA and DS over investigative jurisdiction. Although DEA told us that they resolved this dispute through an “agreement” with DS, this agreement appears to have been more of a unilateral expression of the limited terms to which DEA would agree, namely that DEA would provide a presentation and short, summary report to the Ambassador and RSO at the conclusion of the DEA internal review.

State OIG likewise concluded, as set forth in the analysis and findings in Chapter Fourteen, that DEA failed to comply with COM authority granted to the Ambassador. The President has directed executive branch employees in a host country that they must comply with the direction of the Ambassador, the President’s personal representative to the host nation government. However, DEA repeatedly refused to comply with the Ambassador’s instructions to provide her and DS with information regarding the three incidents. Her instructions were in

accordance with State policy that grants SID the authority to investigate use of deadly force incidents that occur by COM personnel. State OIG also concluded that senior INL officials undermined the Ambassador's COM authority by telling DS that they had no authority to investigate the incidents and by refusing to provide the helicopter crews for DS to interview.



## **CHAPTER ELEVEN: INFORMATION DEA PROVIDED TO THE DEPARTMENT OF JUSTICE AND THE DEPARTMENT LEADERSHIP'S RESPONSE**

In this chapter, we describe the information DEA provided to the DOJ leadership offices concerning the three deadly force incidents and Department leadership's response. We begin with DEA's notification regarding the May 11 incident to the Offices of the Attorney General (OAG) and Deputy Attorney General (ODAG) and the immediate steps ODAG undertook to learn the available facts. We describe ODAG's involvement in DEA's decision to open a formal shooting review of the May 11 incident and the extent to which ODAG or OAG played a role in the conduct of that review. We describe the information DEA provided the Attorney General for his oversight hearings and representations DEA made during a briefing of the May 11 video footage given to ODAG and OAG officials. Finally, we describe the information updates DEA provided Department leadership concerning the May 11 incident and the two subsequent deadly force incidents, as well as other related information it does not appear DEA provided them.

### **I. DEA Notification to DOJ Leadership Regarding the May 11 Incident**

On May 16, 2012, Administrator Michele Leonhart sent an e-mail communication to then-Deputy Attorney General, James Cole, his Principal Associate Deputy Attorney General, Stuart Goldberg, and three other ODAG officials, with copies to Attorney General Eric Holder's Chief of Staff, Gary Grindler, and Counselor to the Attorney General, Molly Moran, stating that she was providing them with a "quick heads up" regarding a media account of the May 11 incident reported in the Honduran newspaper *El Tiempo*. As described in Chapter Three, an *El Tiempo* article had reported that two young men and two pregnant women were killed by a helicopter unit of Honduran police and DEA officers who mistook a boat containing innocent passengers for another boat that was being used by drug traffickers. In the Administrator's e-mail, she advised that there was a shooting incident during an operation in Honduras that was supported by DEA FAST personnel, and that it had been reported to her that the Hondurans, not FAST, did the shooting. She noted that the media account reported in *El Tiempo* was news to DEA, and that they were in the process of tracking down the facts, having received inquiries from the *New York Times* and *Associated Press*.

Based upon our review of relevant DEA and DOJ documents, as well as interviews with former OAG and ODAG officials, it appears that this May 16 e-mail was the first time DEA notified DOJ leadership of the May 11 incident.<sup>170</sup> Senior DOJ officials told us that before this notification little, if anything, was known at the

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<sup>170</sup> Like various other components, DEA submitted regular weekly reports to the Attorney General advising his office of significant accomplishments, deadlines, public events, anticipated press coverage, and "other items of importance/interest to Department leadership." The weekly submission dated May 14, 2012 did not include a description or reference to the May 11 incident in Honduras.

DOJ leadership level about Operation Anvil because ODAG and OAG played no role in the planning or execution of the operation. Further, we found no information that DEA had advised OAG and ODAG officials of the May 7 shooting incident (described in Chapter Two) before advising them of the May 11 incident.

Goldberg told us, and DOJ e-mail communications reflect, that upon receipt of the May 16 e-mail notification from Administrator Leonhart, ODAG assigned an attorney that same day to gather additional information about the May 11 incident.<sup>171</sup> This ODAG Attorney then contacted senior DEA officials and met with them at DEA Headquarters that afternoon. The ODAG Attorney told us that he received a substantive briefing during this meeting, primarily from Deputy Chief of Operations Jay Fitzpatrick who explained the sequence of events relevant to the May 11 incident. The ODAG Attorney said that he did not have a very strong memory of this specific briefing, but he told us that he recalled leaving the briefing with a different understanding of the incident than what press accounts had described, including clarification from DEA that there were only two boats on the river that evening, not three as a reading of the *El Tiempo* article suggested. He said that he believes that following the meeting he would have reported the information to his supervisors in ODAG.

E-mail communications between ODAG and DEA officials later on May 16 reflect that the ODAG Attorney contacted Administrator Leonhart and Fitzpatrick shortly after this briefing seeking more information. The next day, on May 17, Fitzpatrick sent the ODAG Attorney the After-Action Review Timeline of the May 10-11 interdiction that the DEA Country Attaché (CA) sent to the FAST members shortly after the May 11 incident. This timeline, which we describe in Chapter Three, included statements that no U.S. personnel discharged weapons, the passenger boat opened fire upon the TRT and DEA, and TRT and Honduran door gunners returned fire to address the threat. Although the ODAG Attorney said that he did not recall this specific timeline, he told us that DEA consistently represented to him that no DEA agent fired a weapon during the May 11 incident and that the passenger boat initiated the firefight. Consistent with his recollection, the ODAG Attorney's handwritten notes dated May 16, 2012 memorializing certain factual details he received from Fitzpatrick on May 16 indicate that Fitzpatrick told him that the passenger boat was "full of traffickers" and "fire[d] on" the *pipante* containing the FAST member and Honduran TRT officers. The notes also state that U.S. personnel did not fire a round and that, according to Honduran police, two people were killed and two were injured.

As described in the next section, following ODAG's initial effort to gather information about the May 11 incident, the office shifted its attention toward ensuring that DEA took additional steps to investigate the circumstances of the shooting.

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<sup>171</sup> The ODAG Attorney had been an Assistant U.S. Attorney for 13 years and worked in his U.S. Attorney's Office's Violent Crimes and Narcotics Section before starting a temporary detail with ODAG in mid to late April 2012. In addition to other responsibilities, he was assigned to manage the DEA portfolio for ODAG.

## **II. DOJ Engagement Concerning DEA's Review of the May 11 Incident**

### **A. ODAG Pressed DEA to Open a Review of the May 11 Incident**

As described in Chapter Seven, senior DEA officials initially decided that the agency would not conduct a formal review of the May 11 incident based upon reports that no DEA agent fired a weapon. These officials told us that they later changed their minds and opened a formal shooting review after media reports surfaced alleging DEA misconduct and after learning of what they believed to be a flawed local Honduran police report concerning the incident. Information we obtained indicates that the opening of the formal review also coincided with efforts by ODAG to press DEA to conduct an investigation of the incident.

The ODAG Attorney told us that at some point during his discussions with DEA officials about the May 11 incident, he asked them about what more DEA would do to gather information, whether DEA officials were talking to their agents, whether they were getting witness statements, and more generally whether they were going to conduct a formal review. He said that when DEA officials advised him that they did not intend to open a shooting review to investigate the incident because a DEA agent did not fire a weapon, he was not satisfied with this explanation and urged them to conduct an investigation.

The ODAG Attorney told us that he specifically recalled a telephone conversation with Deputy Administrator Thomas Harrigan about this topic where the ODAG Attorney "pushed" for DEA to conduct an investigation. Although he said he did not recall the specific points he made during this call, handwritten notes he prepared on May 18, 2012, in anticipation of this conversation with Harrigan, reflect that he planned to communicate the following:

1. No one is asking DEA to interview Hondurans
2. DEA had agents + at least 1 person/medic there
  - Asking that each of those be interviewed, provide an account
  - Need to know what they say
  - Need to be able to show you wanted to know what they said
  - Better for us to know now than after Honduran investig., after OIG investig. etc.
3. Not clear whether want statements – I'll get guidance here. But need a record that every person w/ knowledge was spoken with for their account.

The ODAG Attorney told us that he did not remember the source of these talking points, or what Harrigan said during their conversation. However, his general impression during this time was that DEA was resistant to opening an investigation.

The ODAG Attorney told us that he did not recall whether someone in ODAG asked him to urge DEA to conduct an investigation or whether he decided to do so on his own. Goldberg told us that he did not participate in, or recall learning about,

discussions regarding whether DEA should open a review to investigate the May 11 incident.<sup>172</sup>

The ODAG Attorney said that he did not recall the level of OAG engagement on the question of whether DEA should open an internal review or investigation. Molly Moran, who was the OAG official assigned to manage the DEA portfolio for the Attorney General at the time, told us that she did not recall giving any specific instructions to DEA regarding how they should respond to or otherwise handle the May 11 incident. In fact, she said that she did not recall participating in any discussions about how DEA should respond to the shooting, whether DEA should open up an internal review, or whether the Government of Honduras (GOH) should investigate. She explained that law enforcement operations were not the type of matter that her office would seek to micromanage. She said that it was more typical for ODAG to take the lead in monitoring issues that arose from law enforcement operations and, as necessary, update OAG. Grindler told us that he did not specifically recall whether he or OAG were involved in the decision to have DEA conduct an internal review. However, he said that as a general matter OAG would have wanted DEA to conduct a formal review in an instance where there were allegations, involving an agency that answers to the Attorney General, of law enforcement officers having killed innocent civilians.

As described in previous chapters, DEA eventually opened a formal shooting review of the May 11 incident on May 30, 2012. The ODAG Attorney said that he monitored the process closely because he wanted to make sure DEA was going to do the review and that the review was underway. Thus, after the GOH agreed to organize a Honduran task force to investigate the incident, the ODAG Attorney sent an e-mail communication to Administrator Leonhart on May 23, 2012, to ensure that DEA would nevertheless conduct its own, independent review, stating “[a]s I mentioned to [Harrigan] it is very important that [DEA] continue to make sure it has debriefed all of its people on this separate from the [H]onduran investigation. I understand that [this] is taking place and am happy to talk with you guys about it further.”

## **B. Minimal DOJ Role During the DEA Review Process**

Although ODAG urged DEA to conduct a review, it does not appear that ODAG directly participated in the formal review process. The ODAG Attorney told us that after he became satisfied that DEA was conducting a review, he did not give guidance or instructions on how the review should be conducted. He said that his office generally did not play a role in such matters and instead expected that DEA would follow its normal procedures for conducting use-of-force investigations. He

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<sup>172</sup> Another ODAG official, then an Associate Deputy Attorney General responsible for overseeing the Transnational Organized Crime Program, told the OIG that he recalled having a conversation with the ODAG attorney during which he advised the ODAG Attorney that DEA should conduct a shooting review and the ODAG attorney should review the results, though this ODAG official was not sure if this conversation concerned the May or June shooting. Given the parallel with the ODAG Attorney’s notes and that the ODAG Attorney was much more involved regarding the May shooting, we think it likely the advice this ODAG official recalled related to that incident.

stressed that if an issue surfaced during the course of the review that was inconsistent with the facts that DEA had previously represented or otherwise required the attention of the Deputy Attorney General, he expected that DEA would notify him so that he could advise DOJ leadership.

Similarly, Moran told us that OAG did not play a role in DEA's review of the May 11 incident and generally deferred to the agency in the handling of such matters. Further, she said that there was nothing known at the time that would have given her office reason to doubt that DEA would conduct the review appropriately.

Although ODAG and OAG officials may not have played a direct role in managing the review process, it appears that ODAG had some expectation that DEA would have spoken with all of the DEA personnel involved in the incident to obtain their accounts. The ODAG Attorney said that although he did not remember all the details, he recalled having the general impression at the time that DEA had done so. The talking points he prepared on May 18 in advance of his discussion with Harrigan indicate that the ODAG Attorney planned to ask DEA to speak with every person with knowledge, and make a record of having done so, and the e-mail communication the ODAG Attorney sent to Administrator Leonhart on May 23 stating his understanding that DEA was in the process of debriefing its people appears consistent with the impression that this was being done. In addition, Goldberg told us that his assumption at the time was that DEA had interviewed the agents involved, and not simply collected witness statements from them as discussed in Chapter Seven.

As described in Chapter Three, the FAST team leader did not conduct a check of each FAST member's weapon magazines before and after the May 10-11 interdiction to determine whether ammunition had been used.<sup>173</sup> The ODAG Attorney said that he did not recall whether he had an expectation that DEA would have done so. He said that he did not remember focusing on the issue of weapons checks, though he may have assumed they had been done. Goldberg, on the other hand, said that his expectation was that DEA would have taken all available steps to corroborate the statements of FAST personnel that they did not fire a weapon, including conducting weapons checks if it had been possible to do so.

In January 2014, before the Attorney General appeared before the Senate Judiciary Committee in an oversight hearing (discussed in Chapter Twelve), DEA sent talking points on the May 11 incident for the Attorney General, which stated, among other things, that DEA conducted weapons checks after the incident "which are routine after shooting events like this" and that the results supported the conclusion that DEA agents did not fire a weapon. According to an e-mail communication forwarding the talking points, Administrator Leonhart personally

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<sup>173</sup> DEA's post-shooting procedures state that a DEA Special Agent-in-Charge, Assistant Regional Director, Country Attaché, or their designee on scene is responsible for inspecting the weapons of all affected personnel to ensure that all weapons fired during a shooting are identified and all weapons not fired are identified.

added the reference to weapons checks, though the e-mail does not reflect the Administrator's source for this belief.

**C. No Discussions Regarding a Comprehensive Investigation or Whether U.S. Personnel May Have Directed the Honduran Door Gunner to Fire His Weapon**

As described in Chapter Seven, the scope of the DEA's review of the May 11 incident was limited to the conduct of the DEA employees involved. DEA did not investigate, or participate in any investigation, concerning the conduct of the other participants in the May 10-11 interdiction, including the INL contractor pilots, the Guatemalan co-pilots, the CBP flight crew, or the Honduran TRT officers and door gunners. Similarly, the ODAG Attorney said that his office's attention focused on DEA conduct only and making sure DEA gathered all information available to it on that issue. He and Goldberg said that they did not recall any thought or discussion raised internally about whether a comprehensive review of the entire May 11 incident was warranted.

In addition, it does not appear that DOJ leadership considered the question of whether anyone on Helicopter [REDACTED], including the [REDACTED] FAST personnel on board, directed or otherwise told the Honduran door gunner to fire upon the passenger boat. According to the ODAG Attorney, he did not recall ever hearing even a suggestion that DEA had directed the Honduran door gunner to fire his weapon during the May 11 incident, and, therefore, the question of who may have directed the door gunner to fire never surfaced as an issue. Similarly, Moran told us that no one raised this issue with her, and she never discussed the scope of the DEA review or that it would be limited to the conduct of DEA personnel.

**III. Initial Briefings of the Attorney General and Hearing Preparation Regarding Operation Anvil and the May 11 Incident**

Moran told us that she probably first informed the Attorney General about the May 11 incident shortly after she learned of it. As noted, Moran received the e-mail notification about the incident from Administrator Leonhart on May 16. Internal e-mail communications reflect that Moran and Grindler forwarded updates regarding the May 11 incident and related issues to the Attorney General on at least five occasions, including on May 23, 2012 when Moran forwarded him an e-mail from Harrigan advising ODAG that the GOH agreed to organize a task force to investigate the May 11 incident.<sup>174</sup> According to Moran, the Attorney General did not give guidance or instructions on how DEA should respond to, or otherwise address, the May 11 incident, which was consistent with her comments about OAG's normal lack of involvement at that operational level.

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<sup>174</sup> The e-mail forwarded to the Attorney General did not mention DEA's decision to initiate its own investigation, which was discussed separately with ODAG as reflected elsewhere in this chapter.

Attorney General Holder testified during oversight hearings before the House Judiciary Committee on June 7 and the Senate Judiciary Committee on June 12, 2012. Although the Attorney General did not receive questions about May 11 during either hearing, his preparation materials for the hearings included information from DEA concerning Operation Anvil and the May 11 incident.

Specifically, the preparation materials contained a set of five talking points on the topic of "Honduras," which included the following representations:

- DEA's role in Honduras was to support, advise, and train vetted law enforcement officers.
- Honduran police led the operation on May 11, 2012.
- Preliminary reports from DEA indicated that during the operation assailants attacked the Honduran police, gunshots were exchanged between the assailants and Honduran police, and there was no evidence that any DEA agents fired weapons.
- Notwithstanding some media reports, DEA was not aware of any injuries or casualties to civilians during the operation.
- The GOH was conducting an investigation of the May 11 operation, and DEA was cooperating fully with the Honduran investigation.

Following these talking points, the preparation materials attached approximately two pages of supplemental information that included, among other things:

- During an earlier operation on May 7, drug smugglers opened fire on an INL helicopter and Honduran forces returned fire.
- During the river encounter on May 11, the passenger boat began firing upon Honduran forces who returned fire in self-defense. While DEA agents were present, none returned fire.
- The GOH organized a task force to investigate the May 11 incident and its preliminary investigation indicated no wrongdoing by any government forces in the operation.
- U.S. agents involved in the operation played a supporting, advisory role only.
- DEA has conducted a routine post-shooting investigation and is in the process of finalizing the report of this investigation.

An attorney in the DOJ's Office of Legislative Affairs (OLA) prepared the initial draft of the Honduras materials and forwarded them to DEA's Office of Congressional Affairs requesting that Fitzpatrick and FAST Section Chief Richard Dobrich approve them. The next day, the OLA Attorney received notice from DEA that both Fitzpatrick and Dobrich approved the draft.

The OLA Attorney told us that before she prepared and forwarded the Honduras materials to DEA for approval, she obtained all the factual information necessary to prepare the draft from DEA Congressional Affairs. DEA e-mail communications reflect that most of the supplemental information DEA Congressional Affairs provided to her originated from Fitzpatrick who sent Harrigan background information for the Attorney General's hearing binder on May 29. Although Fitzpatrick (who was no longer employed by DOJ at the time of the OIG's review) declined the OIG's request for an interview, it appears that he derived the background information almost entirely from a document he received from the Country Attaché on May 25 containing the talking points INL officials prepared for upcoming briefings with congressional staff on Operation Anvil and the May 11 incident.

According to DOJ documents, the ODAG Attorney, Moran, and Harrigan edited and cleared drafts of the Honduras talking points before OLA finalized them for the Attorney General. Among the edits, the ODAG Attorney added the talking points that assailants and Honduran police officers exchanged gunshots during the May 11 interdiction and that DEA was cooperating fully with a GOH investigation. He also added to the supplemental information that the preliminary investigation of the GOH task force indicated no wrongdoing by any government forces. The ODAG Attorney said that he did not specifically recall the source of the information he added, but he said he believed that he generally relied upon the factual information DEA's subject matter experts provided. E-mail communications between him and Harrigan indicate that around the time these edits were made, the ODAG Attorney received an e-mail from Harrigan with updated information on the GOH investigation, including that the task force's preliminary investigation indicated no wrongdoing by the police or other participants in the interdiction.

In anticipation of the upcoming hearings, OAG held a preparation session on June 4, 2012, during the course of which DOJ staff gave a short overview of the Honduras matter to the Attorney General. The following day, as described below, senior DOJ officials viewed the May 11 video footage for the first time.

#### **IV. DEA Briefing of the May 11 Video Footage to DOJ Leadership**

On June 5, 2012, DEA gave a briefing of the May 11 video footage to representatives from OAG, ODAG, and OLA, including Grindler, Moran, Goldberg, the ODAG Attorney, and the OLA Attorney.<sup>175</sup> The Attorney General and Deputy Attorney General did not attend this video briefing. This was the first time anyone from OAG, ODAG, or OLA saw any video footage. According to officials who attended, Administrator Leonhart gave a brief introduction (no one we asked recalled the substance, other than that it was very short), and Fitzpatrick and Dobrich provided the factual details during the briefing.

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<sup>175</sup> The record does not reflect any particular event that precipitated this briefing.



The OLA Attorney who organized the briefing told us that Fitzpatrick and Dobrich played video footage from the May 10-11 interdiction and described the events as they were taking place on-screen. She said that they did not give a formal presentation because DOJ Leadership had previously received information on Operation Anvil and the May 11 incident. Dobrich, who appears to have been the primary narrator, said that the video briefing was short, lasting no more than about 45 minutes.

According to Dobrich, the primary purpose of the briefing was to show DOJ leadership that there were only two boats on the river that evening – the pipante containing the law enforcement officers and a second boat that had made contact with it – and thereby to disprove the notion that there was a third boat that had become caught in the cross-fire between law enforcement and drug traffickers, as Dobrich believed certain press accounts had suggested.

As described in Chapter Four, Dobrich originally received nine clips of video footage from CBP of approximately 5 minutes each. In all, the nine clips contained consecutive footage beginning with the suspect plane landing on the clandestine landing strip and ending 2 minutes after the shooting incident on the river. Dobrich told us that he did not show all of this footage during the briefing. He said that he opened the clips and fast-forwarded to specific segments. Dobrich told us he did not have a record that he could provide to the OIGs reflecting which segments he showed during the briefing.<sup>176</sup> However, he said that he recalled showing a brief view of the suspect plane in the air before fast-forwarding to segments that showed the landing of the suspect plane at the clandestine landing strip, the offloading of the drugs onto a truck and then a boat, the engagement on the river between the pipante and passenger boat, and ending shortly after Helicopter [REDACTED] fired upon the passenger boat on the river. This description is consistent with the description the OLA Attorney gave us concerning which video segments DEA showed during the briefing. Although other DOJ officials had less-specific recollections about how much video they saw, including whether DEA showed them the encounter between Helicopter [REDACTED] and the passenger boat, all of the officials we interviewed told us they that they recalled viewing the video footage of the muzzle flashes near the two boats on the river.

Regarding that particular video segment, Dobrich said that he consistently represented during this and other briefings that the majority of the muzzle flashes depicted on the video footage represented gunfire originating from the pipante and that he believed a flash of light near the passenger boat shortly before Helicopter [REDACTED] fired down upon it represented gunfire from that boat toward the helicopter. He said that he believed he also identified a muzzle flash from the passenger boat a few seconds after the two boats made contact, but he did not believe he ever represented during a briefing that there was video evidence of the passenger boat firing first. On that point, he said that he probably shared what the Delta Team

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<sup>176</sup> Dobrich told us that he may have had notes on a Post-it sticker with time-stamps of video footage to assist him in fast-forwarding through the video, but he said he was unable to locate them in his files for the OIG.

Leader told him during their telephone call on May 11, namely, that the TRT Commander said that people in the passenger boat fired first.

The ODAG Attorney told us that he vaguely remembered that one of the DEA briefers replayed this video segment multiple times and explained that the passenger boat approached the law enforcement officers in the pipante and opened fire, followed by return fire from officers in the pipante. Three other officials told us that a DEA briefer pointed to images on the video screen and described them as gunfire originating from the passenger boat toward the pipante. As noted in Chapters Three and Four, neither the OIG investigators nor the video analysts we retained were able to identify any muzzle flashes on the video coming from the passenger boat.

Although DOJ officials said that they recalled DEA identifying images on the video as gunfire from the passenger boat in the direction of the pipante, they told us that they were unable to draw the same conclusion themselves from the video footage. The three ODAG officials who attended the video briefing, including Goldberg and the ODAG Attorney, told us that the video footage was not clear or conclusive regarding whether anyone in the passenger boat fired a weapon. Similarly, Moran said that she found the video footage very difficult to interpret, particularly regarding whether the passenger boat fired upon the pipante. She said that she would not have known what to conclude from the video alone without someone describing the images to her. Grindler said he did not recall his impression at the time about whether the video showed who fired first or whether the passenger boat fired at all, though he said he recalled both being the position that DEA articulated.

Of the six DOJ officials we interviewed, only the OLA Attorney told us that she recalled seeing video evidence of gunfire from the passenger boat toward the pipante. However, she cautioned that she did not see the video in a vacuum but had the benefit of DEA's narration. She said she took DEA officials at their word regarding the description of the video and, in particular, recalled that they explained that it was easier to see muzzle flashes from the pipante than from the passenger boat because of the angle of the infrared camera recording the footage. Dobrich told us that he provided the angle of the camera as a potential reason why not all gunfire could be seen or extrapolated from the video footage.

A short timeline of the May 10-11 interdiction, which we determined DEA provided ODAG and OAG officials at the video briefing, stated that, "[Drug Trafficking Organization (DTO)] boat converges on [the Delta Team Leader] and 2 [Honduran] Officers. DTO initiates firefight." The ODAG Attorney told us that although he did not recall this particular timeline, DEA officials consistently represented to DOJ leadership that they suspected that the passengers in the boat were involved in the drug trafficking activity that evening. With respect to the possibility that the passenger boat was a water taxi, Moran told us that she recalled DEA officials stating during the video briefing that it would have been odd for a water taxi to be operating in the middle of the night.

According to the ODAG Attorney, DEA officials steadfastly maintained that no DEA agents fired a weapon during the May 10-11 interdiction. With respect to the actions of the FAST member in the pibante, the ODAG Attorney said that he believed he was told (he did not recall by whom) that the FAST member was in the water when shots were fired. Moran said that she recalled that during the video briefing someone from DEA pointed to footage where the FAST member may have gone into the water. Dobrich told us that he represented in his briefings to DOJ leadership and congressional staff that the FAST member jumped out of the boat during the exchange of gunfire between the two boats. Dobrich told us that he made this representation because the Delta Team Leader told him during their middle-of-the-night telephone call on May 11 that he had jumped out of the water and used the boat as a barrier to avoid getting shot. However, the Delta Team Leader told the OIGs that he remained inside the boat during the entire river encounter and did not go into the water until minutes later when he grabbed some tree branches near the riverbank and pulled the pibante to shore.

As we described in Chapter Three, during the encounter between the two boats on the river, two officers in the pibante can be seen firing their weapons intermittently at people in the water for approximately 20 seconds. Dobrich told us that when he showed this footage to ODAG and OAG officials he did not draw their attention to the people in the water, and both the ODAG Attorney and Moran told us that they did not recall noticing or being made aware that the TRT officers had fired upon people from the passenger boat after they fell or jumped into the water.

Both the ODAG Attorney and Moran told us that they did not recall anyone in attendance questioning or expressing concerns about DEA's description of the video footage. The ODAG Attorney said that although he did not think the video was conclusive one way or another on the issue of who fired first, he did not identify anything on the video footage that was inconsistent with how DEA had described the events. Moran said she did not believe there was a basis to question the DEA's representations given the poor quality of the video. Further, according to multiple officials, no one in attendance gave instructions or recommendations to DEA regarding what further the agency should do in response to the incident. However, Goldberg said that because the video footage was difficult to interpret, he believed DEA needed to gather additional facts from the DEA agents who were present during the interdiction. Towards that end, the ODAG Attorney said that following the video briefing, he requested and eventually obtained the written statements of the FAST members' accounts, as described below.

## **V. Additional Information Provided to DOJ Leadership**

In the weeks and months following DEA's video briefing to Department leadership, DEA provided ODAG and OAG officials with additional information and periodic updates concerning the May 11 incident and related topics. However, in certain instances, we found that DEA officials provided incomplete or inaccurate information.

## **A. Witness Statements Regarding the May 11 Incident**

On June 13, 2012, Harrigan provided the ODAG Attorney with the witness statements of all █████ FAST members and the medic who participated in the May 10-11 interdiction. Harrigan also provided him with other documents from the shooting review package, including the summary report prepared by the FAST Supervisor, the DEA Operations Order, the Significant Enforcement Activity Report (SEAR), and the May 22 Cable from DEA personnel at TCO. The initial production of documents did not include the witness statement of the Delta Team Leader who was in the pipante at the time of the river encounter. After the ODAG Attorney inquired about it, Harrigan's executive assistant provided the statement a few hours later and advised that the reason for the delay was that the Delta Team Leader was in the process of "fixing a typo" in his statement.<sup>177</sup>

The ODAG Attorney forwarded the materials to Moran who told us that she did not believe she reviewed them as she was not that involved in the operational details regarding this incident. The ODAG Attorney also provided an update to his supervisors in ODAG after he received the FAST Supervisor's summary report, the operational documents, and the first six witness statements, which included the signed statements of the Bravo Team Leader and the FAST members on Helicopter █████. In his update, he stated that the documents were "all consistent with the facts as described to us in the briefings." The ODAG Attorney told us that his understanding throughout the review process was that DEA officials did not find any evidence of misconduct by DEA personnel or any inconsistencies in the facts as they had previously represented them.

## **B. June 23 and July 3 Shooting Incidents**

Shortly after obtaining the FAST team's witness statements, ODAG received notice of the June 23 and July 3 shooting incidents. According to his handwritten notes, the ODAG Attorney had telephone conversations with senior DEA officials who provided him with factual details concerning the incidents and confirmed that DEA's Office of Inspections would investigate each incident. In addition, DEA included brief summaries of these shooting incidents in its Weekly Reports to the Attorney General dated June 25 and July 9, 2012, stating in both submissions that the special agents involved "fired in self-defense, as permitted under DEA rules and those of the host country."

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<sup>177</sup> As described in Chapter Seven, the Delta Team Leader prepared three different witness statements in late May and early June 2012, only the third of which was ultimately included in the investigation file maintained by DEA's Office of Inspections. This third statement was also the only statement submitted to the ODAG Attorney. The Delta Team Leader said he was unable to explain why he prepared three statements, and he denied incorporating edits or feedback from supervisors or colleagues, though we found there were significant differences between the statements and that, in none of his statements, did the Delta Team Leader report that he heard or felt bullets over his head from the direction of the passenger boat or that the Delta Team Leader drew his weapon as he subsequently told the OIGs.

Based upon our review of DEA and DOJ documents, as well as interviews with DOJ officials, we determined that ODAG and OAG had substantially less engagement with DEA concerning the June 23 and July 3 incidents than the May 11 incident and did not receive or review documents from the shooting review packages. The ODAG Attorney told us that he did not recall learning any information about the June 23 and July 3 incidents that he believed required follow-up or otherwise raised questions or concerns. He said he also did not recall the latter shooting incidents having an impact on how his office viewed the May 11 incident.

### C. Confidential Source Information

DOJ documents reflect that in between the June and July shooting incidents, DEA officials advised ODAG about Source of Information (SOI) #2. As detailed in Chapter Five, SOI #2 was the confidential source who claimed to investigators that he/she [REDACTED] the passenger boat during the May 11 incident, and that [REDACTED] passengers in the boat were attempting to retrieve the drugs. The ODAG Attorney told us that he did not recall many details about the information he learned regarding this source. However, according to the ODAG Attorney's notes of a telephone call on June 29, 2012, Fitzpatrick told him that DEA had developed a confidential source who claimed to have [REDACTED] the passenger boat during the river encounter. The notes reflect that Fitzpatrick said that, according to the source, everyone in the boat was hired to retrieve the drug load, someone in the boat named "Emerson" fired a weapon at a helicopter as they approached the pipante, and that this action caused the firefight between the two boats.<sup>178</sup> Fitzpatrick also said that the source passed a polygraph, though the notes do not reflect if this was a DEA or other polygrapher.<sup>179</sup>

The ODAG Attorney said that he attended a regular monthly meeting between the Deputy Attorney General and Administrator Leonhart in July 2012, during which the Administrator described this source information to them. The ODAG Attorney's handwritten notes from this meeting, which took place on July 11, reflect that the Administrator advised the Deputy Attorney General that the source's account matched DEA's information, as well as provided the additional information that [REDACTED] the passenger boat with Emerson, attempting to retrieve the cocaine, and that Emerson fired at a helicopter as the passenger boat made contact with the pipante, causing the firefight. His notations further reflect that the

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<sup>178</sup> As described in Chapter Five, the report stated that SOI #2 told FAST personnel during his/her interview on June 16, 2012 that after offloading the drugs at the landing strip, the drugs were loaded onto a boat and that [REDACTED] local residents got into the boat and traveled back toward the village. The source said the occupants on the passenger boat observed and approached a disabled boat in the river, at which time someone named Emerson opened fire on a hovering helicopter.

<sup>179</sup> Although DEA officials advised DOJ leadership that SOI #2 had passed a polygraph, that polygraph examination, which we described in Chapter Five, was largely useless because of the failure to document it, conflicting information about what the polygrapher asked, and available evidence indicating that the examination may have been limited to whether the source was present on May 11 when the drugs were offloaded.

Administrator advised that the source said that only two passengers died as a result of the encounter – Emerson and an older woman – and that reports that there were two additional casualties from the passenger boat – a 14 year old and 28 year old – were not accurate. She also advised that the source passed a polygraph, again without indication as to whether the polygrapher was from DEA or other law enforcement.

Similarly, DOJ documents reflect that the Administrator described SOI #2 to the Attorney General during a regularly scheduled meeting on October 9, 2012. Moran told us that she did not recall this specific meeting, but that typically the regularly-scheduled meetings lasted 30 minutes or less and included high-level status updates on multiple topics. Her handwritten notes from the October 2012 meeting reflect that the Administrator made reference to a confidential source who claimed [REDACTED] the passenger boat. According to the notation, the confidential source “confirmed” that [REDACTED] passengers in the boat were drug smugglers from the village and that the smugglers fired the first shot.

Moran’s handwritten notes from the October 2012 meeting do not reflect that the Administrator advised the Attorney General about inconsistencies in SOI #2’s account, which became apparent after the source’s second interview on July 23, 2012, and we found no evidence that the Administrator or anyone at DEA notified the Deputy Attorney General of this following the July 11 briefing either. As described in Chapter Five, according to DEA’s report of the second interview, the source changed his/her account regarding what he/she did [REDACTED] the passenger boat. In his/her first interview, he/she claimed that he/she was [REDACTED] landing strip and had [REDACTED] the offloading of the drugs from the plane. In his second interview, he/she said he/she was [REDACTED] landing strip and instead [REDACTED] the riverbank before the drugs arrived. Further, although the source told DEA personnel during his/her first interview that Emerson was killed during the river encounter, he/she told DEA during the second interview that he/she saw Emerson alive in Ahuas 1 week after the May 11 incident.<sup>180</sup>

We found no documentation tending to show that DEA officials advised anyone in ODAG or OAG that the source had made these contradictory statements or otherwise changed aspects of his/her original account. The ODAG Attorney told us that he did not recall learning of inconsistencies in the source’s account or other information that might have impacted the reliability of the source’s information. He also said that he did not recall the extent to which he relied upon the source’s information in forming his understanding of the facts.

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<sup>180</sup> As noted in previous chapters, the reports from the Center for Economic and Policy Research (CEPR) and the Honduran Special Prosecutor for Human Rights identified Emerson Martinez Henriquez as among the people killed on May 11.

#### **D. Additional Video Footage**

Two weeks after the July 3 incident, DEA notified ODAG and OLA officials about the existence of additional May 11 video footage.<sup>181</sup> Dobrich had previously explained to DOJ officials and congressional staff that the reason the original footage cut off immediately after the helicopter engagement was that the CBP surveillance aircraft had to leave the mission because it was low on fuel. After receiving additional questions from Senate Judiciary staff in mid-July about the video, including whether there was additional video footage available, Dobrich contacted the DEA liaison at JIATF-South and learned that CBP had almost 5 hours of video footage, not the approximately 1 hour of footage CBP originally provided. Based upon DEA and DOJ documents, as well as witness interviews, it appears that this revelation reached high levels within Department leadership and caused some concern and frustration that DEA had given DOJ officials and congressional staff inaccurate information. As the ODAG Attorney advised Goldberg, DEA's late discovery of the additional video footage was "big news" because the "thrust of the press reporting and the congressional inquiry is, 'What happens after the video cuts off?'"

The ODAG Attorney told us that following DEA's discovery of the additional video footage, he sought to ensure that DEA corrected the record with ODAG and congressional staff. Towards that end, the ODAG Attorney sent DEA officials a list of questions on July 19 requesting that they provide the circumstances that led to the receipt of the shorter footage in May and the later discovery that they did not have the complete footage. He also asked DEA and OLA to notify the staff of all the congressional committees that DEA had previously briefed and offer them the opportunity to view the additional footage.<sup>182</sup> Finally, he requested a briefing from DEA officials after they received the complete footage on July 24.

During the briefing, which took place on July 26, Dobrich showed segments of the additional footage to the ODAG Attorney. Although the ODAG Attorney told us he did not recall which segments he saw, he said that the takeaway for him on the additional footage was that there was nothing of significance on it. The OLA Attorney, who also received the briefing, said that Dobrich told them that there was

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<sup>181</sup> As discussed in Chapters Three and Four, this additional footage included post-shooting video of the passenger boat on the shore, which the flight crew on the surveillance plane recording the video mistakenly believed at the time was the pipante.

<sup>182</sup> E-mail communications reflect that the OLA Attorney advised the ODAG Attorney on August 24, 2012 that the congressional committees previously briefed had been notified of the additional video footage by either DEA, State, or herself personally, except for Armed Services Appropriations, which she indicated DOD legislative staff had agreed to do themselves. As described in Chapter Twelve, the OLA Attorney told us that she did not receive any requests from the committees for additional information or the opportunity to review the additional footage, except for Senate Judiciary and Appropriations staff who saw segments of the additional footage on August 2, 2012. House Judiciary staff received the same briefing the next day. According to the OLA Attorney, DEA represented to all of the committees that there was nothing of significance on the additional footage, just the surveillance plane circling the area.

nothing on the video and that it only reflected the surveillance aircraft flying over the area for a few hours, and she recalled Dobrich showing them random clips from the additional footage that did not add anything of substance. With respect to what the video may have shown regarding the passenger boat, she said that she remembered Dobrich saying that after the encounter on the river, the passenger boat drifted downstream, and DEA did not see it again. She said that Dobrich told them that the CBP camera focused instead on the pipante because the officers were on it, and the team was trying to get to them. In so doing, it does not appear that Dobrich took notice of the fact that the boat shown repeatedly in the additional footage was the passenger boat, not the smaller pipante. Dobrich told us that he had no recollection of this meeting, but that in his prior viewings of the additional footage, he had not taken notice of the similarities between the boat on the footage and the passenger boat or the heat signature that looked like a person lying down and not moving in the bottom of the boat.

#### **E. Inaccurate TRT Statements and Gun-Planting Report**

We found no information that DEA officials advised ODAG or OAG that the Honduran TRT Commander present at the three interdictions provided inconsistent and inaccurate statements regarding the events that occurred before, during, and after the seizure of drugs, or that following the July 2-3 interdiction, a Honduran police officer planted a gun into evidence and reported it as a weapon found at the scene. The ODAG Attorney and Goldberg told us that they did not recall learning of any inconsistencies in the TRT's reporting or any allegations that the TRT planted a gun into evidence. The ODAG Attorney said that he would have wanted DEA officials to advise him of these facts, including any information that would have called the Honduran TRT Commander's reliability into question.

Similarly, Moran and Grindler told us that they were not aware of inconsistencies in the TRT's reporting or of any information that TRT misreported the existence of a gun at the scene. Moran told us that if DEA officials had knowledge of these circumstances, she would have expected them to explain the discrepancies and document the information in their after-action reports. Grindler told us that had DEA officials advised them of inaccurate reports or evidence of gun-planting the OAG would have attempted to obtain more facts and then review the matter further.

#### **F. Lessons Learned Discussions**

DOJ documents show that ODAG and DEA officials had discussions in the months following the May 11 incident about the future of operations in Honduras. During certain discussions, DEA officials provided ODAG with their assessment of "lessons learned" from Operation Anvil, including the need for Hondurans to have better gear and equipment during future operations. It appears that DEA also provided ODAG with at least a general assessment of the Hondurans' ability to lead future operations. The ODAG Attorney's notes from the meeting between the Deputy Attorney General and Administrator Leonhart in July 2012, reflect that the



Administrator advised the Deputy Attorney General at that meeting that the Hondurans “have [sic] long way to go. DEA here has to lead from [sic] front.”<sup>183</sup>

### **G. Honduran Investigation**

In the days and months following the May 11 incident, DEA officials periodically provided ODAG with updated information regarding the Honduran investigation. On May 23, 2012, Administrator Leonhart advised ODAG officials that the GOH agreed to organize a task force to investigate the incident. A week later, Harrigan sent the ODAG Attorney a progress report from the Country Attaché regarding the work of the Honduran Task Force, including that the preliminary investigation indicated no wrongdoing by any government forces. As described in Section III above, the ODAG Attorney later incorporated this information into the Attorney General’s preparation materials for his upcoming oversight hearings.

On June 29, 2012, Fitzpatrick gave the ODAG Attorney another update on the Honduran investigation, advising that the Honduran authorities exhumed the bodies of the people who died. Two weeks later, at the July 11 meeting between the Deputy Attorney General and Administrator Leonhart, the Administrator reported the results of the four autopsies that the Hondurans performed on the exhumed bodies, including that each of the four deceased had evidence of a gunshot wound, two with bullet fragments from an █████ rifle, the same caliber used by the TRT. The notes from the meeting reflect that the Administrator also reported that the female decedents were found not to be pregnant.

Finally, on October 2, 2012, Fitzpatrick forwarded to the ODAG Attorney an English translation of the Honduran Special Prosecutor’s Report setting forth the final findings of the Honduran investigation. The ODAG Attorney told us that he did not recall whether the report’s findings had a significant impact on his thinking at the time regarding the events of May 11. He said that by the time the Hondurans issued the Special Prosecutor’s Report, the facts relevant to the issues on which he focused – whether there were three boats or two on the river that evening, the existence of video footage, and the existence of additional footage – had “more or less gelled” by that point.

Although DEA officials provided ODAG with certain updates regarding the Honduran investigation, we found no information that DEA officials advised ODAG about the preliminary findings of the Honduran National Police. As described in Chapter Six, a preliminary report from the Honduran National Police made findings that were not favorable to law enforcement actions on May 11, including: (1) the testimonies of the Honduran TRT officers and door gunner who used deadly force were contradictory or not credible on certain facts, (2) the number of bullet

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<sup>183</sup> We asked the ODAG Attorney how this was consistent with other representations to the effect that Operation Anvil was led by the Hondurans. He indicated that he understood the latter to mean that DEA had participated in the operation at the request and with the consent of the Honduran authorities and that DEA was engaged in capacity building, as he understood DEA did in other countries as well.

perforations in the passenger boat and testimony that officers shot at people in the water suggested an excessive use of force, and (3) officers committed human rights violations by not attempting to help any injured passengers and instead focusing only on the seizure of drugs. The INL Director at the U.S. Embassy in Tegucigalpa, forwarded an English translation of these preliminary findings to the Country Attaché on June 14, 2012. This translated report was later forwarded to Dobrich and the Assistant Regional Director, and news of the report spread to other DEA officials, including Harrigan, Fitzpatrick, and Deputy Chief Counsel John Wallace.

The ODAG Attorney and Moran told us that they had no knowledge of the preliminary findings, though both said they would have expected that DEA would have shared the information with ODAG or OAG. The ODAG Attorney said that he would not have necessarily expected DEA officials to give him a copy of the report, but he would have expected them to give him the highlights as a further update on the Honduran investigation.

We also found no information that DEA officials advised ODAG or OAG officials about the unmatched bullet from the Honduran investigation or DEA's refusal to grant requests from Honduran authorities for access to DEA information. As described in Chapter Six, the Honduran Office of the Public Prosecutor conducted ballistics tests on TRT firearms and were unable to match one of the bullets reportedly recovered from the May 11 incident to a TRT firearm. Further, the Honduran Attorney General requested information from the U.S. Embassy in July 2012 to assist the Honduran investigation, including the names of the DEA personnel involved in the June and July shooting incidents and the report of DEA's internal investigation. DEA did not agree to provide this information. In August 2012, the Honduran Special Prosecutor for Human Rights again requested from the U.S. Embassy access to the DEA's internal investigation of the May 11 incident, as well as the opportunity to interview the DEA personnel involved in the interdiction. DEA did not agree to grant these requests either.

The ODAG Attorney and Moran told us that they did not recall DEA advising them that the Honduran investigators were unable to match a bullet recovered from the May 11 incident to a TRT weapon. They said that they also did not recall learning about the Honduran information requests or DEA's decision not to provide requested information. The ODAG Attorney told us that he would have expected DEA officials to advise him in the event DEA, in consultation with State or on their own, decided not to produce information requested from the GOH. Moran, on the other hand, told us that she would not have expected the DEA's decision not to produce information to Honduran authorities to elevate to the OAG, unless the Honduran Attorney General asked for the opportunity to address the issue with Attorney General Holder.

## **H. Diplomatic Security Investigations**

We found no information that ODAG or OAG officials gave guidance to DEA concerning the disagreements with Ambassador Kubiske and State's Bureau of Diplomatic Security (DS) over interagency information-sharing and investigative

jurisdiction. In fact, we found no information that DEA ever advised ODAG or OAG officials about these disagreements.

ODAG and OAG officials told us that they were not aware that the Ambassador and DS officials had requested information from DEA that DEA officials chose not to provide, or that the Ambassador had expressed frustration over a lack of DEA cooperation. In fact, ODAG and OAG officials told us that they did not recall learning that DS had opened its own investigations into the May 11, June 23, and July 3 incidents. Further, they said that they were not aware that DS had conducted an analysis of the May 11 video footage.

According to Goldberg, if DS was unable to make definitive findings without access to DEA information, then he would have expected DEA (or some other DOJ component with knowledge of the matter) to explain to ODAG the specific information DS was seeking and the reason DEA decided not to provide it. Grindler said that had he known that there were disagreements between DEA and DS over access to information that was material to the DS investigation, he would have encouraged his office or ODAG to obtain more information about the specific circumstances of the dispute.

## **VI. Reaction to New Facts Concerning the Actions of DEA FAST Members During the May 11 Incident**

As described in previous chapters, the OIGs obtained certain details from FAST members about the May 11 incident that they did not include in their witness statements and, based upon available information, were not made known to DEA officials at Headquarters. These details included that one or more FAST members had directed or otherwise told the Honduran door gunner to fire his weapon at the passenger boat and that the Delta Team Leader drew his firearm during the river encounter. After learning this information, we contacted the ODAG Attorney who gave us his reaction.

The ODAG Attorney told us that this “new” information did not seem consistent with facts that DEA had previously represented to him:

You know, DEA steadfastly maintained from day one that no DEA agents ever fired. And I guess that may still be the case. But the facts that you represented to me would suggest that making that kind of a statement may be a little more than the allowances [sic] required if you want to make a statement like that, which DEA consistently did. And that, so that would have given me great pause to know that there had been an order to shoot from a DEA agent... [s]imilarly that the fellow in the boat had stayed in the boat and pulled his gun.

. . . . .

So these questions that you’re raising, these points, you know, it could, I suppose it could well be that DEA’s narrative is still the correct one. That is, that this was an exchange of gunfire that occurred

between traffickers and law enforcement. But it would certainly . . . raise a host of questions. And I would imagine that that would have moved me had I heard these facts. That they would have moved the DAG had [he] heard these facts. And additional steps or measures or, and I mean, certainly documents that were going out and things that were being said externally would have had to have been changed and reconsidered in view of those facts.

. . . . .

I have in my mind now that kind of the mantra was always that no DEA agent ever fired their weapon. And I mean, that was just basically the lens through which things were always represented. And that sounds like it, while I guess still technically accurate, would benefit from a little more of an explanation.

The ODAG Attorney told us that this information could have influenced ODAG in any number of ways, but that at a minimum they would have raised more questions to encourage DEA to gather more facts.

## **VII. DOJ OIG Observations**

Based upon available information, it appears that DEA advised DOJ leadership of the May 11 incident only after media accounts surfaced that innocent civilians died. Information shows that ODAG immediately undertook steps to learn the available facts and shortly thereafter urged an initially reluctant DEA to open a formal shooting review. Although ODAG did not involve itself in the formal shooting review process, it appears that ODAG expressed some expectation that DEA officials would interview or otherwise speak directly with the DEA personnel involved in the May 11 incident to obtain their accounts – which DEA did not do.

While ODAG gave attention to the May 11 incident, available information indicates that ODAG had substantially less engagement on the June 23 and July 3 shooting incidents. Further, ODAG focused its attention regarding May 11 on the conduct of the DEA personnel and did not consider whether a more comprehensive review of the May 11 incident was warranted.

According to ODAG and OAG officials, DEA consistently represented that the passenger boat carried drug traffickers who approached the law enforcement officers in the pipante and opened fire. DEA also consistently represented that no DEA agent fired a weapon during the encounter. ODAG and OAG officials told us that they thought DEA's briefing of the May 11 video footage did not provide conclusive evidence that the passenger boat fired at any time upon the pipante. However, they also told us that nothing they did see on the video footage raised any concerns or additional questions about DEA representations. However, after the discovery of the additional footage, ODAG did express concerns about the accuracy of the information previously provided to Department leadership and congressional staff and took steps to ensure that DEA corrected the record with ODAG and congressional staff.

As described more fully in our analysis and findings in Chapter Thirteen, DOJ OIG found that DEA provided information about the May 11 incident to the OAG, including to the Attorney General, and to ODAG, including to the Deputy Attorney General, that we found in several instances to be inaccurate, incomplete, or based upon unreliable or inadequate evidence. According to DOJ and DEA documents, as well as witness interviews, DEA advised Department Leadership of source information supportive of DEA's account and status updates on the Honduran investigation. However, we found no information that DEA advised ODAG or OAG that the source had provided materially inconsistent accounts or that preliminary findings from the Honduran National Police were unfavorable to their own officers who participated in the operation. We also found no information that DEA advised them that Honduran investigators recovered a bullet they were unable to match to TRT weapons, that the Honduran TRT Commander submitted inconsistent and inaccurate statements regarding material facts, or that the TRT planted a gun into evidence during the July 3 incident. We additionally found no information that DEA advised ODAG or OAG that DEA did not agree to provide certain information Honduran authorities requested to further their investigation into the May 11 incident or to DS to assist its investigations into all three deadly force incidents. Officials with whom we spoke in ODAG and OAG would have expected to have been informed of most or all of this information.

Finally, it does not appear that anyone from DEA advised ODAG or OAG, or even gave consideration to, the actions of the Honduran officers in the *pipante* who, as shown in the video, fired shots at people from the passenger boat after they fell or jumped into the water. The available information also shows that DEA and Department leadership did not discuss whether anyone on Helicopter [REDACTED], to include the [REDACTED] DEA personnel on board, directed the Honduran door gunner to fire upon the passenger boat. The ODAG attorney told us, however, that had he learned that one or more FAST members had directed the Honduran door gunner to fire his weapon at the passenger boat, or that the Delta Team Leader drew his firearm during the river encounter, this new information would have given him great pause and caused him to reconsider some of the representations made internally and externally about the May 11 incident.

In the next chapter, we describe the information DEA and State officials provided to Congress regarding May 11, which we similarly found to be inaccurate, incomplete, or based upon unreliable or inadequate evidence in several respects.

## CHAPTER TWELVE: INFORMATION PROVIDED TO CONGRESS

DEA and State received the first congressional inquiries into Operation Anvil on May 16, 2012 following public reporting of allegations that DEA personnel were involved in an operation on May 11 that killed innocent civilians. Thereafter, DEA and State together conducted an initial set of briefings to the staff of interested congressional committees – including House Foreign Affairs, House Appropriations, Senate Judiciary, Senate Appropriations, Senate Foreign Relations, Senate Armed Services, and the Senate Caucus on International Narcotics Control (Drug Caucus) – during which DEA and State briefers gave presentations and showed short clips of the May 11 video footage. After the first set of briefings, State and DEA received additional questions from Senate Judiciary and Appropriations staff, which resulted in several more briefings and follow-up discussions.<sup>184</sup>

In this chapter, we describe the information State and DEA officials provided to congressional staff during these briefings, as well as information responsive to staffers' questions and concerns that DEA and State did not provide. We also describe the representations DOJ, DEA, and State made in written correspondence to Members of Congress and the answers then-DEA Administrator Michele Leonhart provided to questions during House and Senate oversight hearings.

### I. Timeline of Congressional Briefings and Letters

Below we provide a timeline of the briefings DEA and State officials provided congressional committee staff, as well as the written correspondence DEA and State exchanged with Members of Congress. This timeline is based upon information we compiled from multiple sources, including a timeline DEA's Office of Congressional Affairs maintained to record their significant Operation Anvil-related interactions with Congress.

May 16, 2012	DEA and State receive their first inquiries from congressional committee staff about May 11 incident
May 30, 2012	Separate briefings for House Foreign Affairs and House Appropriations Committee staff on Operation Anvil and May 11 incident
June 6, 2012	Briefing for Senate Judiciary, Appropriations, and Foreign Relations Committee staff and Senate Drug Caucus staff on Operation Anvil and May 11 incident

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<sup>184</sup> Unless otherwise noted, the congressional briefings described in this chapter were conducted jointly by DEA and State.

June 6, 2012	DEA Deputy Administrator receives Questions for the Record from Senator Grassley on Operation Anvil and May 11 incident
June 29, 2012	Briefing for Senate Armed Services Committee on Operation Anvil and May 11 incident
June 29, 2012	DEA Administrator receives Questions for the Record from Representative John Conyers on Operation Anvil and May 11 incident (record closed before DEA responded to questions)
July 18, 2012	Second briefing for Senate Judiciary Committee and Foreign Operations Appropriations Subcommittee staff on May 11 incident
August 2, 2012	Third briefing for Senate Judiciary Committee and Foreign Operations Appropriations Subcommittee staff on May 11 incident, additional May 11 video footage shown
August 3, 2012	Second briefing for House Judiciary Committee staff on May 11 incident, additional May 11 video footage shown
September 28, 2012	Briefing for House Foreign Affairs Committee on results of counternarcotics measures during Operation Anvil
December 17, 2012	Fourth briefing for Senate Judiciary Committee and Foreign Operations Appropriations Subcommittee staff on May 11 incident
Date unknown	Private meeting with Senate Judiciary Committee and Foreign Operations Appropriations Subcommittee staff on May 11 incident (DEA briefers only)
January 30, 2013	DOJ and State receive identical letters from Representative Hank Johnson and 57 other Members of Congress requesting a "thorough and credible" U.S. investigation of May 11 incident
March 14, 2013	State provides response to Rep. Johnson letter
June 7, 2013	Briefing for Senate Foreign Operations Appropriations Subcommittee staff on future U.S. operations in Honduras

June 28, 2013	DOJ submits responses to June 6, 2012 Questions for the Record from Senator Grassley
July 29, 2013	DEA provides response to Rep. Johnson letter
October 16, 2013	DEA receives letter from Senator Patrick Leahy referencing DEA's response to Rep. Hank Johnson letter and requesting additional information concerning May 11 incident
April 2, 2014	DEA Administrator answers questions regarding May 11 incident during 2015 budget hearing before House Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies
April 28, 2014	DEA provides response to Senator Leahy letter
April 30, 2014	DEA Administrator answers questions regarding May 11 incident during oversight hearing before Senate Judiciary Committee
May 12, 2014	DEA receives second letter from Senator Leahy concerning the May 11 incident
August 8, 2014	DEA provides response to Senator Leahy's May 12, 2014 letter declining to give additional information regarding May 11 during pendency of OIG review

## **II. Initial Inquiries from Congressional Committee Staff Concerning the May 10-11 Interdiction**

According to DEA documents, on May 16, 2012, the same day Administrator Leonhart notified DOJ leadership about the May 11 incident, DEA and State received their first inquiries from congressional committee staff. The first inquiry came from the staff of Senator Dianne Feinstein, Co-Chair of the Senate Drug Caucus, who upon learning of the public statement from the Committee of the Families of the Detained and Disappeared in Honduras (COFADEH) regarding the May 11 incident contacted DEA's Office of Congressional Affairs requesting further details.<sup>185</sup> Shortly thereafter, DEA and State received inquiries and briefing requests from

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<sup>185</sup> As described in Chapter Three, COFADEH issued a public statement within days of the May 11 incident stating that a DEA-led operation in Ahuas resulted in the massacre of innocent civilians and demanding an explanation and public apology from the U.S. Department of State. This appears to have been the first publicized statement alleging in substance that DEA led a military-style operation that recklessly killed residents of the La Mosquitia region, including pregnant women and children. Approximately 10 days later, on May 24, 2012, COFADEH filed a formal complaint with the public prosecutor in Puerto Lempira as legal representative of the victims and surviving family members.



multiple congressional committees, including the House Foreign Affairs and Senate Appropriations Committees, as well as from Senator Joseph Lieberman's staff.

Eric Akers, then-Acting Chief of DEA's Office of Congressional and Public Affairs, told us that even before they started receiving inquiries and briefing requests, he knew that the May 11 incident was going to be a "hot topic" once the allegations surfaced that U.S. law enforcement had killed innocent civilians in the course of a drug interdiction mission. He said that once he learned of the allegations on May 16, his office began collecting information about the May 10-11 interdiction from DEA officials on the Operations side of the agency, as well as officials from State. The same day, he received and forwarded to the DEA Administrator the media account of the May 11 incident reported in the Honduran newspaper El Tiempo. In his e-mail communication, Akers stated:

We have been in contact with State about this from the beginning, and the State Dept is going to handle inquiries regarding the recent operations in Honduras. There is a lot of misinformation being circulated and State is trying to clarify the details. Their plan is to confirm – off the record – that DEA was involved in these operations, but on background they will only talk about 'U.S. law enforcement.' They plan to clear up inaccurate reports that the most recent operations resulted in the deaths of innocent bystanders. . . . We will follow States [sic] lead and only confirm off the record.

Shortly thereafter, Akers and his counterpart, Leigh Anne DeWine, from State's Bureau of Legislative Affairs, and their offices, began scheduling briefings for congressional committee staff.

Akers told us that after the first inquiries came in, he and his colleagues reached out to the staff of all the congressional committees they thought would be interested in the May 11 incident and offered briefings. Akers said their objective was to keep everyone on the "same page" and avoid any confusion about what really happened on May 11. According to an e-mail communication he sent to DeWine on May 23:

Part of this effort will be re-branding by DEA from the media perception of FAST as some kind of special forces unit to describing their actual role as specialized law enforcement trainers working with host nation [law enforcement] to provide guidance on tactics, techniques, and procedures in engaging bad guys with big guns in hostile environments. I think we will be most successful with this if every staffer has a chance (or multiple chances) to pick apart why DEA has FAST and we are able to repeatedly address the false assumptions.

In order to allow opportunities for questions from congressional committee staff, Akers recommended against one consolidated briefing for staff from multiple offices and instead advocated for a series of briefings with smaller audiences, the first of which took place on May 30, 2012.

### **III. First Briefings for Congressional Committee Staff**

DEA and State gave their first briefings to congressional committee staff on May 30, 2012: one to staffers from the House Foreign Affairs Committee and another to those from the House Appropriations Committee. These briefings were followed by briefings on June 6 to staffers from Senate Judiciary Committee, Senate Appropriations Committee, Senate Foreign Relations Committee, and the Senate Drug Caucus, and on June 29 to a staffer from the Senate Armed Services Committee.

#### **A. State and DEA Presentations – Generally**

Although congressional liaisons from DEA, DOJ, and State attended the briefings, officials told us that the primary briefers – those who gave the substantive presentations and answered most of the questions – were the “subject matter experts” within each agency. For DEA, those subject matter experts were Deputy Chief of Operations Jay Fitzpatrick and FAST Section Chief Richard Dobrich. For State, the subject matter experts were INL Director for Western Hemisphere Programs Mark Wells and WHA Director of Central American Affairs Gonzales Gallegos.

During the briefings, the subject matter experts presented overviews of Operation Anvil and the May 6-7 and May 10-11 interdictions. According to the prepared remarks of Mark Wells, the State subject matter experts described background information on Operation Anvil, including how the Anvil interdictions supported the Central America Regional Security Initiative (CARSI), described in Chapter Two. These remarks also included that: (1) Operation Anvil was a DEA initiative, led by the Government of Honduras (GOH), with support from State; (2) U.S. personnel participated in operations in a supportive, advisory role only; and (3) the Honduran law enforcement officers were highly trained and vetted. The remarks reflect that the State briefers deferred to DEA for descriptions of the May 6-7 and May 10-11 interdictions. According to Akers, when it came to the details of what happened on May 11, in particular, the subject matter experts from DEA took the lead during the briefings.

With respect to the DEA presentations, DEA officials told us that Fitzpatrick gave introductory remarks, and Dobrich provided the detailed information regarding the interdictions. In addition, the Bravo Team Leader accompanied Dobrich to two of the briefings and provided additional detail.<sup>186</sup> Dobrich told us that he did not

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<sup>186</sup> The Bravo Team Leader was the ground force commander for FAST personnel during the May 10-11 interdiction. As described in Chapter Three, he was on Helicopter [REDACTED] and, during the encounter on the river, was on the riverbank walking toward the village. The record is not clear about which briefings the Bravo Team Leader attended. A timeline maintained by DEA Congressional Affairs reflected that he was at both sets of briefings on May 30 and June 6. However, the Bravo Team Leader told us that he recalled only attending 1 day with two briefings and that he believed it was on June 6 because he had not returned from Honduras until after May 30. Dobrich thought that the Bravo Team Leader attended the briefings on May 30 but not June 6.

use prepared remarks at the briefings, but that he generally gave the same presentation each time, including a narration of the May 11 video footage.<sup>187</sup>

According to Dobrich, because DEA's internal review had just begun, his intention for the congressional briefings was never to portray a complete set of post-shooting findings. He said that the major purpose for briefing staffers before the completion of the internal review was to assure them that the facts as portrayed in media accounts and by non-governmental organizations (NGOs) were not accurate.<sup>188</sup> Similar to his description of the briefing he gave DOJ leadership on June 5 described in Chapter Eleven, Dobrich said that he wanted to show through the video footage that there were only two boats on the river that evening – the pipante containing the law enforcement officers and a second boat that made contact with it. He said that he wanted to disprove the notion that there was an innocent third party that had become caught in what he described as cross-fire between law enforcement and drug traffickers, which he told the OIGs he believed media and NGO accounts suggested.

Dobrich told us that he started his presentations with a brief overview of the drug threat posed by illicit flights that depart from South America and land in eastern Honduras. He said that he also described the shooting incident that occurred during the May 6-7 interdiction as context for the events that occurred on May 11. In particular, he said that to understand what must have been on the minds of the Honduran TRT officers in the pipante before the passenger boat made contact, it was necessary to emphasize the fact that drug traffickers had fired at the law enforcement officers, in defense of their drug load, only 4 days before the May 11 incident. He said that the earlier incident would have sensitized the officers to the danger of these missions.

With respect to the May 11 incident, Dobrich told us that during the first set of briefings he showed segments of the original May 11 video footage he obtained from CBP. Below we describe the representations Dobrich made regarding the video footage, as well as other statements Dobrich or other DEA officials made during the first briefings.

## **B. Representations Made During the Initial Briefings**

### **1. Dobrich's Representations Regarding the May 11 Video Footage**

Dobrich said that for the first briefings he did not show staffers the entire video footage available at that time and instead fast-forwarded through certain segments. According to the accounts of DEA officials and an attorney from DOJ's

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<sup>187</sup> E-mail communications between Congressional Affairs staff at DEA and State reflect that DEA decided that it alone should present Congressional staff on the video and the events depicted on the video.

<sup>188</sup> Dobrich's understanding of events at the time was primarily based on initial reports about Anvil operations that he received from the FAST team leaders and the May 11 video footage.

Office of Legislative Affairs (OLA) who attended the briefings, Dobrich showed short segments of the landing of the suspect airplane, the offloading of the drugs to the truck, the transfer of the drugs to the pipante, the zig-zag pattern of the passenger boat before it approached the pipante, the muzzle flashes that appeared after contact between the boats, and the rounds fired from the helicopter.<sup>189</sup> In response to questions about why the video cut off immediately after the helicopter engagement, Dobrich explained to congressional committee staffers that the CBP surveillance aircraft recording the footage was low on fuel and had to return to base. As noted below, Dobrich later told us that this statement was an assumption on his part that did not turn out to be accurate.

According to Dobrich, he identified two segments of video footage where he believed there was evidence of muzzle flashes coming from the passenger boat: the first was a few seconds after the boats made contact (and after muzzle flashes from the pipante are visible) and the second was at the time the helicopter fired rounds at the passenger boat. Dobrich told us that he did not see video evidence of someone in the passenger boat firing first, and he never made that representation during briefings. In addition, he said he did not recall anyone asking him whether the video showed evidence of the passenger boat firing first. Dobrich said he probably shared with congressional staffers what the Delta Team Leader told him during their telephone call on May 11, namely, that the TRT Commander said that people in the passenger boat fired first. However, he said he never represented to staffers that there was a "correlation" between the video footage and the representation that the passenger boat fired first. He said that because the camera temporarily lost the two boats from the field of view shortly before the boats made contact, he was unable to determine from the video footage alone exactly what happened the moment before the TRT fired and never suggested otherwise.

We have been unable to reconcile Dobrich's statements to the OIGs – that he never saw video evidence of the passenger boat firing first – with e-mail communications Dobrich sent to DEA officials shortly after he received the video. As we described in Chapter Four, Dobrich sent an e-mail communication to DEA officials on May 31 – the day after the May 30 briefings – stating that, "Everything DEA has put out is corroborated by the video. The DTO fired first." The same day, he sent an e-mail communication to another DEA official stating, "We now have the video of May 11 which obliterates all the bogus press. DTO fired upon us first. 100% legit shooting." When we asked Dobrich how he reconciled these statements with what he told us previously, he told us that he had not recalled sending the e-mails but that they probably reflect that he had a firm opinion when he first saw the video that the passenger boat fired first. He said that he probably thought at the time that he saw bullets or fragments flying from the direction of the passenger boat. He said that at some point his opinion on that changed over time, but he said he was unable to recall when that change in opinion occurred in relation to the briefings.

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<sup>189</sup> As described in the previous chapter, Dobrich told us he may have had notes on a Post-it sticker with time-stamps of video footage to assist him in fast-forwarding through the video during briefings, but he said he was unable to locate the notes in his files for the OIG.

A congressional liaison from DEA's Office of Congressional Affairs who attended the May 30 briefings told us that Dobrich's presentation of the May 11 incident included an assertion that the officers in the pipante had been fired upon by the passenger boat. The DEA Congressional Liaison said that she did not recall the specific sequence Dobrich gave staffers about who fired when, but she generally recalled him describing that the officers in the pipante had taken fire from individuals in the passenger boat.

Akers, who attended the June 6 briefing, told us that he did not recall discussion or questions during the briefing about the specific issue of whether there was video evidence that the passenger boat fired first. He said that at that time it appeared to him that the staffers were in the preliminary fact-gathering stage and not as knowledgeable about the incident as they later became.

However, Akers said that when Dobrich showed him the video footage at some point before the briefings began, Dobrich identified segments of the video where he (Dobrich) said there were muzzle flashes coming from the passenger boat and that he took Dobrich at his word that there were flashes on the recording showing that the passenger boat fired first. Akers told us that he was unable to see for himself the muzzle flashes from the passenger boat that Dobrich identified. Nevertheless, he said that the explanation Dobrich gave made sense to him, which was that it was easier to see muzzle flashes from the pipante than from the passenger boat because of the angle of the infrared camera recording the footage.

Akers told us that in preparation for follow-up briefings with Congressional staff that happened later, DEA placed more emphasis on the witness statements from the participating law enforcement officers for the details regarding May 11. He said that from DEA's perspective, they did not need corroborating video evidence because the officers' statements that they were fired upon first should have been the only "storyline." Consistent with this notion, documents suggest that as time went on DEA moderated its stated position that the video showed gunfire coming from the passenger boat. According to the OLA Attorney's notes from a later briefing, Dobrich or another DEA official agreed with a Senate staffer that the video did not answer the question of whether someone in the passenger boat fired at the pipante when the two boats collided. However, the notes also reflect that Dobrich or the DEA official told the staffer that DEA continued to believe the passenger boat fired first based upon the statements of the DEA and Honduran officers.

Gallegos, who, as described above, served as one of the State Department's subject matter experts during the congressional briefings, told us that he was not sure whether Dobrich represented to staffers that there was video evidence of the passenger boat firing first. He said that he recalled that when DEA showed staffers the video, the DEA official who narrated the footage (who we believe to be Dobrich) offered two justifications for the use of deadly force by the Hondurans: (1) the passenger boat rammed or directed itself towards the pipante, and (2) it was reported that there was gunfire from the passenger boat towards the pipante. Gallegos said that he was not sure what reports DEA briefers relied upon to say that

there was gunfire from the passenger boat, but he remembered the video narrator mentioning “reported gunfire” from the passenger boat.

Finally, as we described in Chapter Three, during the encounter between the two boats on the river, two officers in the pipante can be seen firing their weapons intermittently at people in the water for approximately 20 seconds. Dobrich told us that when he showed this footage to staffers during congressional briefings he did not draw their attention to the people in the water. He also said that he did not recall any questions or discussions raised about the TRT continuing to fire their weapons at the people in the water.

## **2. Statements Regarding the Passenger Boat Occupants**

According to DEA and State officials who attended one or more of the first briefings, the DEA briefers told congressional staffers that the passenger boat carried people who were affiliated with drug traffickers and attempting to retrieve the drugs from the pipante. Akers told us that the DEA briefers were always very confident that the passenger boat carried drug traffickers and that the drug traffickers were looking for the pipante because of the zig-zag pattern in which the passenger boat had traveled. Further, he said that the briefers referred to the passenger boat during the initial briefings as the “drug trafficker boat.” Regarding whether innocent people could have been in the passenger boat, Akers told us that Dobrich said during the briefings that while not everyone in the boat may have been directly involved in the drug trafficking activity, they must have known what was going on because there would be no other reason for the boat to be on the river at that time of night.<sup>190</sup>

Similarly, the OLA Attorney told us that the DEA briefers consistently conveyed during briefings that at least some of the people in the passenger boat were involved in drug trafficking activity. With respect to what happened to the people in the passenger boat after the river encounter, the OLA Attorney said that Dobrich told staffers that the passenger boat continued to travel downriver, never to be seen again. Wells told us that he also advised staffers that the passenger boat was never seen again after the encounter on the river.

Further, the OLA Attorney said that the DEA briefers were adamant that the FAST members did not see any injured people before they left the area to return to base and that they would have helped the injured had they known.

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<sup>190</sup> As described in Chapter Three, through a basic Internet search in 2016 and 2017, we were able to find travel information that included an early morning commercial boat service (2:00 a.m.-5:00 a.m.) between Brus Laguna and Palacios in the La Mosquitia region of Honduras. See <http://www.frommers.com/destinations/brus-laguna/planning-a-trip> (last accessed April 6, 2017). We have not determined whether this service ran in May 2012; however, we believe this information suggests that nighttime boat travel may not be as rare in the La Mosquitia region as DEA officials assumed.

### **3. Whether U.S. Personnel Directed the Honduran Door Gunner to Fire**

It is unclear to what extent DEA or State briefers discussed the circumstances surrounding the Honduran door gunner's decision to fire his weapon at the passenger boat. As described in Chapter Three, one or more FAST members on Helicopter [REDACTED] directed or otherwise told the Honduran door gunner to fire upon the passenger boat. In particular, FAST Member G told us that he yelled, "Fuego, fuego, fuego!" or "Fire, fire, fire!" at the door gunner on two occasions immediately before the door gunner fired. Further, [REDACTED] FAST members from the same helicopter stated that the helicopter pilot (who was a State contractor) maneuvered the helicopter to provide the door gunner with a clearing to fire upon the passenger boat. One of these two witnesses also reported in his witness statement that the door gunner fired on the pilot's order. We found no evidence that DEA or State briefers told congressional staffers that U.S. personnel had or may have ordered or told the door gunner to fire.<sup>191</sup>

Both Akers and Dobrich told us that they recalled some discussion about whether someone had directed the door gunner to fire his weapon, but they said they did not recall whether this discussion came up in a briefing, an internal DEA meeting, or a meeting with State counterparts. According to Akers, his understanding from the discussion was that no order or direction to fire was given or necessary. Similarly, Dobrich told us that at the time of the briefings he was not aware that anyone had told the door gunner to fire. Further, when we shared the information we received from the FAST members on Helicopter [REDACTED] with Dobrich during his interview, he said that he never knew that one or more of the FAST members had directed the door gunner to fire. He said that had he known this information at the time of the congressional inquiries, he would have incorporated the information into his description of May 11.

### **4. Statement that Delta Team Leader Went Into the Water**

Dobrich told us that he explained to congressional committee staff that the FAST member in the pipante had rolled or jumped out of the boat and into the water during the encounter with the passenger boat. According to Akers and Gallegos, Dobrich gave this explanation when staffers asked why the FAST member in the pipante had not fired his weapon. The explanation was not accurate. The Delta Team Leader told us that he never rolled out of the pipante during the encounter with the passenger boat and instead remained inside the boat the entire time. Further, as described in Chapter Three, the Delta Team Leader said that at some point after diving for cover inside the pipante he sat up and drew the handgun he was carrying on his hip.

Dobrich told us that in making the representation to staffers that the FAST member went into the water, he had relied upon what he recalled the Delta Team Leader telling him during the phone conversation on the night of May 11. As

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<sup>191</sup> In light of the scope of the OIG's review, we did not interview any congressional staff.

described in Chapter Three, the Delta Team Leader told us that shortly after the encounter between the two boats he lowered himself into the water, grabbed some nearby branches, and pulled the pipante to the riverbank. We do not know if Dobrich misunderstood the information conveyed during this telephone call and confused the sequence of when the Delta Team Leader went into the water. In any event, it appears that the information Dobrich provided to the staffers was inconsistent with what the Delta Team Leader told us happened that evening.

### **C. Involvement of DOJ Leadership**

It does not appear that officials from the Offices of the Attorney General (OAG) and Deputy Attorney General (ODAG) provided guidance to DEA before the first set of briefings. According to DOJ documents, and interviews with ODAG officials, ODAG did not learn of the briefings until a few hours before the first briefing on May 30, a point that drew criticism at the time from ODAG officials. The ODAG Attorney responsible for the DEA portfolio told us that he did not become involved in the briefing process until after the first set of briefings, while Counselor to the Attorney General Molly Moran, who was responsible for the DEA portfolio for OAG, told us that she never gave guidance during the briefing process.

We found no information suggesting ODAG and OAG officials provided guidance to DEA officials before the first briefings. Rather, DOJ documents reflect that the ODAG Attorney received feedback after the briefings took place. For example, on June 4 the OLA Attorney advised the ODAG Attorney that the DEA briefers did a “good job” during the briefings on May 30 with the House Foreign Affairs and Appropriations Committees and that they were scheduled to do another briefing on June 6. She provided another update to the ODAG Attorney after the June 6 briefing with Senate Judiciary, Appropriations, and Foreign Relations Committee staffers, and Drug Caucus staffers, stating that the briefing with Senate Appropriations staff was “tough.” The ODAG Attorney forwarded this feedback to Moran who later forwarded the information to senior OAG officials.

### **D. Responses to Concerns and Questions from Senate Committee Staff**

According to the OLA Attorney’s update to the ODAG Attorney following the June 6 briefing, one of the staff members from Senate Appropriations raised concerns about the May 11 incident, including that the video footage did not show all of the events that happened on May 11. According to the OLA Attorney’s update, this staffer asked the briefers, “what happened when the video cut off? [W]hat *didn’t* the video capture?” to which DEA responded, “nothing. DEA and Honduran Police loaded the drugs onto the Helos and left.” (Emphasis in original). She said that the staffer also did not agree with State and DEA’s decision to defer the investigation of the incident to the Honduran authorities. According to her summary, the DEA briefers responded that DEA would not participate in the investigation because the shooting involved Honduran officers only, and the State briefers added that they believed the U.S. agencies needed to respect Honduran sovereignty. The OLA Attorney said that the State briefers told the staffer that a State contractor had participated in the “initial [Honduran] investigation,” but the



contractor was no longer involved after the initial investigation concluded with a finding of no misconduct and referred the matter to the Honduran Attorney General's Office.

Finally, according to the summary update, the staffer asked to see the results of DEA's internal review. The OLA Attorney told us that staffers made this request on multiple occasions, but DEA officials said that the review was still underway. She said that once the review was complete and the report was finished, DEA and DOJ officials ultimately decided not to give the internal report, or a summary of that report, to congressional staff.

The OLA Attorney told us that in response to questions at the June 6 briefing about whether innocent people were killed or injured during the operation, the DEA briefers said that they did not have any evidence establishing or disproving the claims of civilian deaths or injuries. Akers told us that he also recalled this line of questioning and believed that the briefers probably said they did not know what happened to the people in the passenger boat because the boat disappeared and no one knew what happened to it. Akers said that at the time of the first set of briefings, officials did not have the information necessary to give firm answers to these questions. He said that while there may have been deaths or injuries, DEA did not have evidence at that time establishing that they were the result of the operation.

In addition, Akers told us that in response to questions raised about the allegations from local residents that officers knocked down doors, tied people up, and kept the village awake all night, he said that the DEA briefers said that they did not believe any of that happened. However, he said that because the camera did not capture the activities in the village, DEA was unable to prove these allegations false.

#### **IV. DEA and State Department Provide Additional Information to Congressional Committee Staff in Response to More Questions**

Following the first set of briefings, State and DEA received additional questions from Senate committee staff, which resulted in several more briefings and follow-up discussions. Shortly after the June 6 briefing, staff from the Senate Appropriations Subcommittee on State, Foreign Operations, and Related Programs requested details about the Honduran investigation, the people who were reported to have been seriously injured on May 11, and the DEA internal investigation. A few weeks later, Senate Judiciary Committee staff provided DEA and State with more follow-up questions, including whether more May 11 video footage was available than what they had seen during the first briefing. To address all the questions, DEA and State officials gave another briefing to Senate Judiciary and Foreign Operations Appropriations staff on July 18, 2012.<sup>192</sup>

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<sup>192</sup> Leading up to the July 18 briefing, the OLA Attorney asked staffers whether they wanted DEA briefers to come prepared to discuss the June 23 and July 3 shooting incidents, and staff advised

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## **A. July 18 Briefing and Anvil-Funding Hold**

In preparation for the July 18 briefing, DEA officials reached out to CBP at JIATF-South to confirm that the original May 11 video footage CBP provided DEA was all that was available – only to learn shortly before the July 18 briefing that CBP had in its possession hours of additional footage.<sup>193</sup> On the same afternoon as the briefing, DEA officials met with the ODAG Attorney, at his request, to discuss what DEA planned to say at the briefing. Although the ODAG Attorney told us that he did not recall this meeting with DEA, e-mail communications reflect that DEA officials advised him of the existence of the additional footage, and the ODAG Attorney expressed frustration within ODAG afterwards over DEA previously representing to congressional staff that no other video footage existed.<sup>194</sup>

According to the OLA Attorney's written summary of the July 18 briefing, Senate staffers asked several questions during the briefing about the discovery of the additional May 11 footage, probing DEA about its initial claim that the video stopped after the helicopter engagement because the surveillance plane was low on fuel and had to return to base. Dobrich responded to the questions, stating that he made the wrong assumption about the surveillance plane. Because DEA had not yet received the additional video footage, Dobrich and others were unable to answer questions about its content. Staffers requested another briefing once DEA received the additional footage from CBP.

Also during this July 18 briefing, Dobrich shared the new information his team in Honduras had developed from a source (SOI #2) who claimed to investigators that he/she [REDACTED] the passenger boat during the May 11 incident, and that [REDACTED] the boat had attempted to retrieve the drugs that were left in the pipante. Dobrich told the staffers that SOI #2 said he/she [REDACTED] someone named "Emerson" and that the passengers had instructions to fire at the helicopters. According to the OLA attorney's written summary, Dobrich told them that SOI #2 corroborated the video footage and DEA's and TRT's reporting of what happened on May 11.

As we described in Chapter Five, the day before this briefing, Dobrich had requested that DEA personnel in Honduras re-interview SOI #2 because the first interview was "superficial at best" regarding the details of what the source had seen before, during, and after the shooting. Further, although SOI #2 had "passed" a

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that they did not plan to discuss the two subsequent incidents. According to the OLA Attorney and Akers, congressional committee staff did not show much interest in the June 23 or July 3 shootings. The OLA Attorney and Akers said that they did not remember receiving any questions about those incidents during the briefing process.

<sup>193</sup> See Chapter Four for a detailed description of the additional footage and its discovery.

<sup>194</sup> After this meeting with ODAG and shortly before the July 18 briefing, the OLA Attorney contacted Senate Judiciary staff to advise them of the additional video footage and offered them the option of postponing the briefing until after DEA obtained and reviewed the additional footage. DOJ e-mail communications reflect that Senate Judiciary staff elected to proceed with the briefing as scheduled, with the understanding that there would be another briefing to discuss the additional footage.

polygraph, that polygraph examination was largely useless because of the failure to document it, conflicting information about what the polygrapher asked, and available evidence indicating that the examination may have been limited to whether the source was present on May 11 when the drugs were offloaded. Senate staff asked several questions about the source's information during the July 18 briefing that Dobrich was unable to answer at that time, such as who was in the passenger boat and when and how [REDACTED] the passenger boat. Consequently, a staffer requested that DEA obtain more information from the source.

According to the written summary, an unidentified DEA briefer – likely Dobrich, Fitzpatrick, or Akers – stated that based on the information collected during DEA's internal review and interviews with all the FAST members, DEA believed that DEA personnel did not fire their weapons during the May 10-11 interdiction and did not witness or participate in any misconduct. The briefer said that because DEA personnel did not fire their weapons, DEA limited the scope of its review to DEA conduct only and did not examine the conduct of other participants. As discussed in Chapter Seven, the DEA internal review of the May 11 incident did not include any interviews, only the collection of written statements submitted by the FAST members. Dobrich told us that he did not know at the time whether his FAST members had been interviewed during the internal review, and he did not advise staffers that interviews had been conducted. Similarly, Akers said that he did not know any of the specifics of the internal review, including whether the FAST members had been interviewed, and he did not represent that interviews had been conducted.<sup>195</sup>

According to the written summary, a Senate staffer suggested that someone should examine the conduct of the officers on the helicopters, including how many rounds they fired. State briefers responded that they did not have the ability to count the rounds before and after operations, but a rough estimate was 30-40 rounds from a Honduran door gunner on one helicopter. According to the written summary, a Senate staffer expressed concern that the participating U.S. agencies were claiming only small pieces of the operation, instead of taking greater responsibility for an operation that would not have happened without their involvement. The staffer asked whether anyone was going to conduct a comprehensive review of the entire May 11 incident, to which the State briefers responded that the Hondurans were doing a comprehensive review with State support.

According to State documents, State officials who attended the briefing expressed concerns amongst themselves afterwards that State could lose congressional funding for Operation Anvil and similar operations because of staffers' dissatisfaction with DEA's explanations of what occurred. Shortly thereafter, on July 23, a staffer notified State officials that the Senate Foreign Operation

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<sup>195</sup> As noted in previous chapters, the other briefer, Fitzpatrick, retired from DEA and declined the OIG's request for an interview.

Appropriations Subcommittee placed a hold on INL funding for foreign counternarcotics operations, training, and assistance in Honduras.<sup>196</sup>

## **B. Representations Made In Later Briefings**

DEA and State officials met with congressional staff on several more occasions between August 2012 and July 2013 during which they discussed the May 11 incident.<sup>197</sup> Below we discuss the information DEA and State officials provided, and did not provide, during these additional discussions.

### **1. Additional Video Footage**

Shortly after the July 18 briefing, DEA officials received and reviewed the additional video footage of the May 10-11 interdiction. Soon thereafter, in consultation with ODAG, DEA Congressional staff and the OLA Attorney contacted the committees that DEA had previously briefed to advise them of the additional footage.

According to the OLA Attorney, they represented to each of the committees that there was nothing of significance on the additional footage, just the surveillance plane [REDACTED]. She said that this representation was based on her understanding of the additional footage from the short video segments Dobrich showed her, as well as from Dobrich's description of the footage.

On August 2, 2012, DEA Congressional staff and the OLA Attorney met with Senate Judiciary and Appropriations staff to show them the additional May 11 video footage. House Judiciary staff received the same briefing the next day. According to the OLA Attorney, DEA did not show the additional footage in its entirety but what appeared to her to be random segments shown for a few minutes at a time.

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<sup>196</sup> In January 2013, a staffer from the Senate Foreign Operations Appropriations Subcommittee gave State officials a list of 12 conditions for lifting the hold on INL funding, which included, among other things, that: (1) State develop and implement written policies and procedures governing use of force, protection of innocent people, and planning for contingencies, (2) a Honduran prosecutor be deployed on any future counternarcotics operations involving U.S. personnel, (3) no DEA participation in such operations until further consultation with the Senate Judiciary and Appropriations Committees about DEA's role, (4) a compensation fund be established to assist victims of counternarcotics operations and drug trafficking in Honduras, and (5) DEA and State cooperate fully with Honduran authorities investigating the May 10-11 interdiction. As of this date, we found no evidence that State and DEA fully met all of the conditions. Shortly after receiving the list of conditions, State officials prepared a draft manual of protocols and procedures that would govern future Anvil-type operations in Honduras and address several of the conditions on the list. However, State and DEA officials were unable to reach an agreement on the manual's procedures for use-of-force investigations. State officials had proposed that the Embassy's Regional Security Officer (RSO) would be the lead investigator and have immediate access to DEA personnel in instances in which DEA exercised deadly force. DEA officials rejected this proposal, asserting that DEA would investigate its own personnel. Despite several discussions, DEA and State officials did not reach agreement on the proposal, or agree to an alternative, and the manual was never finalized.

<sup>197</sup> DEA officials gave a briefing to House Foreign Affairs Committee staff on the results of Operation Anvil on September 28, 2012, but officials told us that the May 11 incident was not discussed at this briefing.

The OLA attorney said that she did not receive any other follow-up requests from committees for additional information or an opportunity to view the footage.

Dobrich said that he told congressional staff that the additional footage did not provide any new information. In particular, he told them that the 2 hours of footage recorded after the river encounter showed the surveillance plane watching over the officers in the stranded pipante and that the passenger boat was never seen again. We found this information was incorrect. As described in previous chapters, the boat shown repeatedly in the additional footage was the passenger boat, possibly with one or more injured people onboard, and not the smaller pipante.

## **2. Honduran Investigation**

As described above, State and DEA briefers received several requests from Senate Judiciary and Appropriations staff for details about the Honduran investigation, and, among other things, State briefers advised them that the Hondurans were doing a comprehensive review of the May 11 incident with State support. However, State and DEA did not provide the Hondurans with all of the information that the Hondurans requested to further their investigation, and we found no information that State or DEA advised the Senate staffers of that fact.

As described in previous chapters, the Honduran Attorney General requested information from the U.S. Embassy in July 2012 to assist the Honduran investigation, including the report of DEA's internal investigation. DEA did not agree to provide this information. In August 2012, the Honduran Special Prosecutor for Human Rights again requested from the U.S. Embassy access to the DEA's internal investigation of the May 11 incident, as well as the opportunity to interview the DEA personnel involved in the interdiction. DEA did not agree to grant these requests either, and we found no information that State or DEA advised the Senate staffers about this.

Further, there is evidence tending to show that DEA officials inaccurately represented that DEA had never received a request from Honduran authorities for the opportunity to talk to DEA personnel. On December 17, DEA officials met with Senate Judiciary and Appropriation staff to discuss the Honduran investigation, among other related issues. According to a DEA congressional liaison's notes of the briefing, during a discussion about DEA's assistance to the Honduran investigation, an unidentified DEA official said: "The Hondurans did not talk to DEA. No, DEA never received a request from the Hondurans, but DEA would have said no . . . any additional info needed for the Hondurans? No. The Hondurans have been provided all necessary and appropriate information." The liaison did not recall which DEA briefer made this statement. Dobrich and Deputy Chief Counsel John Wallace told us that they did not make the statement or recall the discussion at all. The only remaining DEA briefer was Fitzpatrick; however, as we noted previously, he retired from DEA and declined our request for an interview.

In addition, although Senate Judiciary and Appropriations staff received the report setting forth the final findings of the Honduran Special Prosecutor for Human

Rights (Honduran Special Prosecutor's Report), we found no information that State or DEA officials advised staffers about the results of Honduran ballistics tests on TRT firearms that could not match one of the bullets reportedly recovered from the May 11 incident. We also found no information that officials advised staffers of the preliminary findings of the Honduran National Police, described in Chapter Six, which were not favorable to law enforcement actions on May 11, including: (1) that the testimonies of the Honduran TRT officers and door gunner who used deadly force were contradictory or not credible on certain facts; (2) that the number of bullet perforations in the passenger boat and testimony that officers shot at people in the water suggested an excessive use of force; and (3) that officers committed human rights violations by not attempting to help any injured passengers and instead focusing only on the seizure of drugs. Wallace told us that he believed at the time of the congressional briefings that the Senate staffers were already fully aware of these findings, though he said he did not specifically recall why he believed this at that time.<sup>198</sup>

### **3. Results of the DEA Internal Review and Re-Interview of SOI #2**

Some of the questions DEA received from Senate Judiciary staff before the December 17 briefing requested updated information on DEA's internal review. In preparation for the briefing, and at the request of ODAG, Dobrich and Wallace drafted written responses to all of the questions, which were provided to ODAG by e-mail on November 29. It does not appear that ODAG edited the responses, and the ODAG attorney told us that he did not remember the document or having reviewed it. Records we obtained indicate that there was a conference call between DEA, OLA, and ODAG during which the responses were discussed, though the ODAG Attorney, OLA Attorney and DEA congressional liaisons told us that they did not recall the call or specifically what was discussed.

The DEA briefers – Dobrich, Fitzpatrick, and Wallace – did not provide the written responses to the staffers during the December 17 briefing; however, according to DEA's Congressional database, one or more of the briefers provided a "narrative summary" of the responses. Accounts varied among DEA officials as to which of the briefers provided the information during the briefing – whether it was predominantly Dobrich, Wallace, or a combination of both.

The written responses included a summary of the steps taken during DEA's internal review process and the findings of DEA's Shooting and Assault Incident Review Committee, including that the actions taken by DEA employees on May 11 were in compliance with DEA policies and procedures. Consistent with statements that DEA officials made during earlier briefings, the written responses stated that DEA's internal review included "extensive interviews" of all DEA personnel involved in the interdiction. Both Wallace and Dobrich told us that they did not know that, in fact, none of the FAST members were interviewed during the review process. Wallace told us that he developed the information about the internal review from a

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<sup>198</sup> As noted previously, the OIGs did not interview congressional staff.

number of secondary sources, including early drafts of congressional letters described later in Section IV. Based on the documents DEA provided the OIG, we were unable to identify any possible sources for the representation that DEA conducted interviews.

Also during the December 17 briefing, Dobrich gave staffers a summary of his recent re-interview of SOI #2 and answered questions. According to a DEA congressional liaison's notes of the briefing, Dobrich said that the source told him that he/she ██████████ two boats by the river – a water taxi that would carry the drugs and a look-out boat – and that as many as four people who got into the water taxi were armed. Dobrich told us that he acknowledged then that the source was not a perfect witness and that there were still questions as to the truthfulness of the account that he/she gave. The OLA Attorney who attended the briefing told us that Dobrich was “upfront” about the fact that the source had provided inconsistent statements.

Sometime after the briefing in December 2012 and before the briefing in July 2013, Dobrich and DEA Deputy Chief Counsel John Wallace met with Senate Judiciary and Foreign Operations Appropriations staff in a private meeting. Dobrich said that he brought his working copy of the Anvil investigative file and allowed the staffers to read the witness statements of all ██████ FAST members who participated in the interdiction, as well as the written reports of the SOI #2 interviews. According to Dobrich, this was an unprecedented and extraordinary step that few within DEA even knew about besides his supervisor Jay Fitzpatrick. The record does not reflect, and Dobrich indicated that he did not know, whose idea at DEA this had been, but Dobrich stated that he supported it as an effort to be as transparent as possible with the staffers about the information DEA had and hopefully thereby address their concerns. He said there were still credibility issues with SOI #2 at the time, which was why he gave the staffers the opportunity to read the results of the interviews themselves.

Although the staffers had the opportunity to read the FAST witness statements described in Chapter Seven, the FAST members did not document material facts in those statements, including that the Delta Team Leader remained in the pipante and drew his weapon and that one, possibly two, FAST members on Helicopter ██████ told the Honduran door gunner to fire upon the passenger boat. In addition, Dobrich never received, and therefore would not have had in his investigative file, the TRT Commander's police report regarding the May 11 incident or the sworn statements the Honduran officers provided to the Honduran Special Prosecutor, which, as detailed in previous chapters, provided accounts that were materially inconsistent with State and DEA reporting.

#### **4. Video Analysis**

Another question Senate staffers asked DEA before the December 17 briefing was whether either DEA or State sought to obtain an enhanced forensic analysis of the May 11 video footage, particularly the portion depicting the shooting incident. The response Dobrich prepared in advance of the briefing stated:

DEA's digital evidence lab examined the video and determined that no substantial enhancements were possible. During the sequence between the DOS helicopter and the boat containing civilians, flashes of light consistent with a burst of automatic weapons fire can be seen emanating from the civilian boat directed against the DOS helicopter.<sup>199</sup>

This response made no mention of the State Department's Bureau of Diplomatic Security (DS) video enhancement and analysis, which had been completed in August 2012. As described in Chapter Ten, a DS video analyst enhanced the video by taking over 150 still frames from the video and adding color codes to identify individuals and flashes. She also conducted an analysis of the enhanced video and reported that she did not find any flashes of light (consistent with gunfire) originating from the passenger boat. The DS video analyst also reported that flashes of light originated from two individuals in the pipe but that no conclusions could be drawn as to whether any flashes of light originated from the third individual in the pipe.

According to the notes of the DEA congressional liaison, the question posed during the briefing was whether any attempt had been made to enhance the quality of the video. The response, which Dobrich told us he gave on behalf of DEA only, was that DEA gave the footage to the evidence laboratory, but due to the compression of the files the lab was unable to enhance the video. The liaison's notes do not reflect that either DEA or State officials discussed the existence of the DS video enhancement or analysis. Further, DEA officials told us that the State officials present during the briefing did not mention it.

Wells told us that he was aware of the DS video analysis before the December briefing, but he was not certain whether he had reviewed a copy of it. He said that he did not recall the issue of whether any other agency besides DEA had conducted an analysis of the video footage being raised during the briefing: "I just don't remember any of the specifics regarding this." He added that the State briefers were prepared to confirm the existence of the DS investigation but only if specifically asked about it. According to Wells, State briefers were reluctant to inform congressional staff of the DS investigation and did not offer DS to brief the staff because the staff "would have immediately figured out that [DS and DEA] were having an argument." Wells said that he did not want DS to inform congressional staff that DEA was not cooperating with its investigation.

Dobrich told us that he did not believe he was aware at that time that DS had performed a video enhancement or analysis. He said that he learned

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<sup>199</sup> As described in Chapter Three, at the time the helicopter began to fire, a light near the passenger boat is briefly visible on the video footage. According to OIG-retained video analysts Archer and Miller, the appearance and behavior of this light, which appears on the video for 42 consecutive frames, is strongly inconsistent with a muzzle flash. They said the light could be a signal flare or something similar, or a byproduct of camera processing. Less likely due to its brightness, the light could also be indicative of a person. In any event, they told us that they believe the light is an object, rather than a flash.



secondhand from someone at State that DS had asked a video analyst to review the footage, but he believed he may have learned about it sometime after all the congressional briefings had taken place. He said that if DS had performed a video analysis before the December 17 briefing, he would have expected the State briefers to provide that information.

Wallace told us that during a meeting in September 2012, which we more fully described in Chapter Ten, DS officials told him and DEA Deputy Chief Inspector Kevin Foley that their video analyst had attempted a frame-by-frame analysis of the video, and DS showed them a large three-ring binder of still images the analyst had created. According to Wallace, he had “lengthy” conversations with Fitzpatrick and Dobrich after this meeting regarding the work that DS performed, including the still images of the video. However, Wallace said that he did not recall DS officials having shared any findings or conclusions that the video analyst had reached.

According to handwritten notes, the DEA congressional liaison attended an internal DEA meeting or telephone conversation in November 2012 during which Wallace stated that a DS “videographer” analyzed the video and concluded that the “[g]ood guys fired first” with suppressed weapons. The liaison told us that she did not recall this discussion or who was present, but her notes also reflect that during this discussion someone stated that the “evaluation is not accurate,” which she said she assumed (based on her notes) was another statement made by Wallace.

When we asked Wallace about the completeness of Dobrich’s response to the question about attempts to enhance the video footage, Wallace said that he believed that the response was appropriate. Wallace said that although DS officials had shown him a binder of still images their video analyst had taken from the footage, he did not think that those images constituted an enhancement or forensic analysis. He said that the still images did not clarify in his mind what the video depicted, and he relied upon DEA officials who told him that an enhancement was not possible.

## **5. Inaccurate TRT Statements and Gun-Planting Report**

DEA briefers relied in part upon the representations of the TRT officers in the pipante in conveying to congressional committee staff that the passenger boat fired a weapon at the moment the two boats made contact. We found no information that DEA or State officials shared with staffers that the Honduran TRT Commander present at the three interdictions – who was one of the two TRT officers in the pipante who fired at the people in the passenger boat – provided inconsistent and inaccurate statements regarding the events that occurred before, during, and after the seizure of drugs, or that following the July 2-3 interdiction, a Honduran police officer planted a gun into evidence and reported it as a weapon found at the scene. The OLA Attorney who attended the briefings with DEA and State officials told us that she did not recall ever learning anything about inconsistencies in TRT reporting or allegations that a TRT officer planted a gun into evidence.

Although the TRT’s pattern of inaccurate statements and the gun-planting report undermined the credibility of TRT’s assertion that individuals in the

passenger boat were armed and fired first, we found no information that DEA briefers reconsidered the narrative they provided congressional staffers concerning May 11. We have been unable to ask one of DEA's two principal briefers, Fitzpatrick, whether he had knowledge of the TRT's false reports or the gun-planting incident because Fitzpatrick declined our request for an interview. The other briever, Dobrich, told us that the information did not reach his level at DEA Headquarters, and he described himself as "stunned" to learn of the TRT's inaccurate reporting and potential gun planting during his OIG interview. He said that he had believed the TRT's version of events one hundred percent, but that this newly learned information caused him to question the veracity of the TRT statements.

However, Wallace told us that "everyone knew" about these issues with the TRT, and he specifically recalled a discussion with Fitzpatrick, Dobrich, Deputy Administrator Thomas Harrigan, and Deputy Chief of Operations James Soiles about the gun-planting incident. Wallace said that it was possible that Fitzpatrick was the person who informed the group of the gun-planting, but his memory was that it was Dobrich who told the group that TRT had planted a gun into evidence and advised them to therefore be skeptical of everything the TRT said.<sup>200</sup>

We found no evidence that Wallace or any other briever advised congressional staff about the TRT's inaccurate reporting and gun-planting, or that DEA reconsidered DEA's description of the May events as a result of these issues. Wallace told us that it was because of the questionable reliability of the TRT's story that he was very careful not to rely on it for the facts regarding May 11 but, as we discuss in Chapter Thirteen, we do not believe that this absolved him or DEA of the responsibility to ensure that the Congressional staffers had this information, which was necessary to fairly assess DEA's account of the incident. Further, we believe that DEA should have considered the information in their own assessment of the incident.

## **6. GOH-Led Operation**

After the May 11 incident, congressional committee staffers asked questions about DEA's role during the operation. According to Akers, DEA briefers were consistent from the beginning that DEA's role was to train and advise the Honduran TRT during the missions because they did not yet have the capabilities to do the missions on their own. For example, Fitzpatrick advised House Foreign Affairs Committee staff in September 2012 that DEA's goal was to be solely advisory, but the Hondurans were not yet capable of taking on a larger operational role by themselves.

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<sup>200</sup> The DEA Assistant Regional Director told us that "everyone at headquarters" was aware of the gun-planting incident, including Wallace, Fitzpatrick, and Dobrich, but she only specifically recalled a conversation with Wallace in which Wallace asked her if she had heard about it.

One of the questions DEA received from Senate Judiciary staff before the December 17 briefing requested clarification regarding the following information reported in a New York Times article published October 13, 2012:

The [DEA] agents were supposed to act as trainers. 'During our operations in Honduras, Honduran law enforcement is always in the lead, and we play a support and mentorship role,' said Dawn Dearden, a spokeswoman for the DEA. But American officials overseeing Anvil now acknowledge that turned out not to be the case. Members of the Honduran police teams told government investigators that they took their orders from the DEA. American officials said that the FAST teams, deploying tactics honed in Afghanistan, did not feel confident in the Hondurans' abilities to take the lead.<sup>201</sup>

Shortly after the New York Times article, INL and WHA circulated press guidance to State and DEA officials that included, among other things, that: "Counternarcotics operations in Honduras and elsewhere in Central America are led by host country civilian law enforcement." (Emphasis in original.) The Assistant Regional Director forwarded this press guidance to her new supervisor, Paul Craine, who had recently replaced Joseph Evans as DEA's Regional Director for the North and Central Americas, stating: "I'm good with attached press guidance. However, just FYI Op Anvil was not host nation led and DEA was acting in an operational capacity not in an advisory role." When we asked the Assistant Regional Director about this statement, she told us that she believed it was fair to say that Anvil was a joint operation, but she did not believe it was fair to say it was Honduran-led. E-mail communications reflect that RD Craine suggested to the Assistant Regional Director that she send her comment to Dawn Dearden, Chief of DEA's Office of Public Affairs.<sup>202</sup> The Assistant Regional Director told us that she assumed she did so but did not specifically recall, and we found no documentation that she did so by e-mail. Although the Assistant Regional Director said she believed she advised DEA Public Affairs, she did not interact with DEA Congressional Affairs on Operation Anvil and did not raise with them the issue she had with calling Anvil a Honduran-led operation.

The response Wallace prepared to Senate Judiciary staff's question stated:

Honduran government officials always maintain sovereign control of law enforcement operations within Honduras. FAST served in a training, advise and assist capacity. FAST did not express a lack of confidence in the Honduran's [sic] ability to take the lead. However, due to the complexity of nighttime air interdiction operations conducted in remote areas of Honduras with limited GOH presence and

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<sup>201</sup> Damien Cave and Ginger Thompson, "U.S. Rethinks Antidrug Efforts After Deadly Turn in Honduras," *The New York Times*, October 13, 2012, A1. Online version available at [http://www.nytimes.com/2012/10/13/world/americas/in-honduras-deaths-make-us-rethink-drug-war.html?\\_r=0](http://www.nytimes.com/2012/10/13/world/americas/in-honduras-deaths-make-us-rethink-drug-war.html?_r=0) (accessed December 20, 2016).

<sup>202</sup> Dearden is no longer employed by DEA.

directed against extremely violent drug trafficking organizations, FAST assessed that the [TRT] was not prepared to operate unilaterally aboard Department of State helicopters. Throughout the events in Ahuas, DEA was in a support role. DEA did not direct Honduran police to engage in the application of deadly force.

Wallace told us that because he was not present during the operation, his sources of information for how the operation was conducted were the DEA officials on the operations side of the agency, particularly Dobrich and Fitzpatrick. Wallace said that he understood that FAST and TRT had worked “collaboratively” during the operation, but he did not recall discussions with Dobrich or Fitzpatrick about the details of exactly how FAST and TRT had worked together on the ground during interdictions.

As we discuss in Chapter Thirteen, which provides DOJ OIG’s analysis and findings, the facts detailed in previous chapters are not consistent with the notion that FAST played only a “support role” in the Anvil operations. Indeed, the initial drafts of the “Concept of Operations” (CONOPS) for Operation Anvil specified that the FAST team leader would be the Ground Force Commander of the operation. Further, during the early planning phases of Anvil, the Bravo Team Leader told FAST and INL officials that “Each FAST Agent will be assigned X number of Hondo’s to herd/control.” After an INL attorney raised concerns that INL funds could not be used for a DEA-led operation overseas, the CONOPS was revised so that, by the terms of the final Operations Order, the TRT Commander became the Ground Force Commander assisted by DEA personnel who would serve in an advisory role.

As described in Chapter Two, Ambassador Kubiske remained concerned that FAST intended to take a tactical or leadership role in the operation. To gain the Ambassador’s support for the operation, DEA officials agreed to a role limiting them to support the TRT, or “lead from behind.”

In practice, however, TRT did not command the Anvil operations and FAST did not merely serve in an advisory role. The Bravo Team Leader told us that he worked collaboratively with the TRT Commander and that it was the TRT Commander who gave orders to his officers, and the Bravo Team Leader who gave orders to his FAST members. When we asked FAST members who participated in the operation about the command structure, some of them told us that FAST gave tactical commands to the TRT officers during the missions. Conversely, according to FAST members, FAST did not take any orders from the TRT. One FAST member told us that the way it worked was that “ultimately, we have the radio communication. We give the commands. We make the calls. . . . However, TRT can tell us at any point what they think and put a stop to something. . . .”

In addition, as described in Chapter Three, and contrary to Wallace’s representations regarding DEA’s role in the operation, DEA personnel did, in fact, instruct the Honduran officers to apply deadly force during the May 11 operation by directing the Honduran door gunner to fire at the passenger boat moments before the door gunner did so.

Representations regarding DEA and TRT's roles during the operation were not limited to DEA officials. As described earlier in this chapter, Wells' description of Operation Anvil during the first round of briefings included that the operation was GOH-led with support from State, U.S. personnel participated in the operation in a supportive, advisory role only, and the Honduran TRT were highly trained and vetted. Despite these assurances, several State officials expressed their belief that the Hondurans lacked the ability to lead the operation. For example, the Ambassador told the OIGs, "it would be nice if the Hondurans could have taken the lead on [Operation Anvil], but they weren't in a position." She characterized calling Operation Anvil a Honduran-led operation as "always preposterous." In addition, Gallegos, who, as noted previously, was one of State's congressional briefers, told us that "the Hondurans were not a highly-skilled force. Although . . . the FAST team and the Embassy seemed to feel that they could fulfill the functions, ultimately they needed a lot of advising and coordination from the FAST team." Further, in an August 2012 e-mail exchange with other State officials over responses to congressional questions about May 11, Gallegos noted that State does not "like to admit that" the TRT "answer[s] to our embedded advisors."

## **V. Responses to Questions from Members of Congress Concerning the May 10-11 Interdiction**

Below we describe the representations DOJ, DEA, and State made regarding Operation Anvil and the May 10-11 interdiction in response to Questions for the Record (QFRs) and letters from Members of Congress. We also describe the answers Administrator Leonhart provided to questions about the May 11 incident from Members during House and Senate oversight hearings.

### **A. DOJ and DEA**

#### **1. Questions for the Record from Senator Charles Grassley**

On May 16, 2012, Deputy Administrator Harrigan appeared before the Senate Caucus on International Narcotics Control (Drug Caucus) regarding countering narcotics in West Africa. Although Harrigan did not receive questions about the May 11 incident during the hearing, DEA received questions for the record (QFRs) from Senator Charles Grassley on June 6, 2012, that, among other topics, included questions about DEA's operations in Honduras. See Appendix F. In particular, Senator Grassley asked DEA to describe its involvement in the recently reported operation in Honduras, the rules governing the use of deadly force in Honduras, the nexus between the operation and the United States and DEA's statutory authority for operating inside Honduras, and the immunities applicable to DEA personnel in Honduras.

More than 1 year later, on June 28, 2013, DOJ's Office of Legislative Affairs (OLA) submitted a 19-page response to Senator Grassley's QFRs, which included four pages responding to the Anvil-related questions. See Appendix G. Among other things, the Anvil-related QFR responses briefly described: (1) the Letter of Agreement between the United States and Honduras establishing Operation Anvil,

including its provisions regarding the use of force and the immunities and privileges for participating non-Honduran personnel; (2) the temporary relocation of State Department helicopters to Honduras, flown by INL contractors and Guatemalan Air Force pilots; and (3) FAST personnel's tactical and investigative training of the Honduran TRT before operations began and while on stand-by in between missions.

Regarding FAST's role during operations, the QFR responses stated that the "participating DEA Special Agents, in conjunction with support being provided by the [State Department], were advising and mentoring Honduran law enforcement authorities on law enforcement missions led and executed by Honduran law enforcement." The QFR response further provided:

Throughout the entire operation, FAST provided communication and coordination between JIATF-S, the [surveillance] aircraft, and INL Pilots. While the TRT was responsible for the mission execution and operational decisions made during the deployment, FAST would also make recommendations with regards to when to launch and where to respond. These proposals were based on predictive analysis of the [suspect aircraft] based on the [REDACTED]. Once on the ground, FAST provided communication and coordination between elements during night time operations, as well as ensured at least two DEA medics were present.

Although the QFR responses stated that any evidence of U.S. crimes recovered during the operation could be referred to U.S. law enforcement authorities, it also noted that it would be inappropriate to comment on the existence of any such information or ongoing investigations.

Regarding the two May shooting incidents, the QFR responses stated:

[O]n or about May 6, 2012, the TRT intercepted over 400 kilograms of cocaine with DEA FAST in a supporting role. During this operation, suspected drug smugglers opened fire on an INL helicopter, and the Honduran government forces returned fire. The suspected drug smugglers fled and the TRT recovered the cocaine. No DEA FAST members fired their weapons during this incident, and there were no reported injuries. The other incident occurred on May 11, 2012. While Honduran TRT, supported by DEA FAST, were recovering over 400 kilograms of cocaine there was an exchange of gunfire between suspected drug traffickers and Honduran TRT members. Although no injuries were confirmed nor injured persons identified immediately after the shooting, media reports and a report subsequently issued by the Government of Honduras (GOH) stated that two men and two women were killed on May 11, 2012. The GOH report also determined that neither of the female decedents was pregnant, and that no DEA FAST members fired their weapons during the May 11, 2012 incident. According to the DEA's Office of Inspections' internal review, no DEA FAST members fired their weapons during the May 11, 2012 incident.

The QFR response was inaccurate regarding the following facts: (1) DEA FAST played only a supporting role in Honduran “led and executed” missions, and (2) the GOH report (which was a reference to the Honduran Special Prosecutor’s Report described in Chapter Six) determined that no DEA FAST member fired a weapon. With regard to the first point, by stating only that DEA FAST provided communication and coordination between the various law enforcement participants while officers were on the ground, it omitted the fact that FAST members gave commands to the Honduran TRT and in most other respects played a substantial tactical role in the attempted interdictions. With regard to the second point, the Honduran Special Prosecutor’s Report did not include a determination as to whether DEA personnel fired a weapon, a point that DEA later acknowledged in correspondence with Senator Patrick Leahy, discussed below.

Further, the QFR response stated that there had been an “exchange of gunfire” with suspected drug traffickers on May 11. As we discuss in our analysis and findings in Chapter Thirteen, DEA officials had a number of reasons to question the accuracy of the initial reports that there had been an exchange of gunfire with suspected drug traffickers.

We examined how the QFR response was prepared. Before the final QFR responses cleared the Office of Management and Budget (OMB) and were submitted to the Drug Caucus and Senator Grassley, earlier drafts underwent an extensive review process within DEA and ODAG. According to DEA and DOJ documents, as well as our interviews with relevant officials, Wallace prepared the initial draft of the Anvil-related QFR responses, incorporating information he received from Fitzpatrick and Dobrich, as well as the Significant Enforcement Activity Report (SEAR) of the May 10-11 interdiction described in Chapter Three and draft witness statements of the FAST personnel Wallace received shortly after the May 11 incident.<sup>203</sup> Wallace sent the draft to the relevant operations offices for their contributions and vetting, and eventually the draft cleared Dobrich, Fitzpatrick, Harrigan, and their offices. An e-mail from a DEA congressional liaison reflects that, shortly before the draft response was sent to OLA and ODAG, Administrator Leonhart “cleared” the responses and asked that Fitzpatrick review them one last time for accuracy.<sup>204</sup>

Before submitting the final Anvil-related QFR responses in June 2013, DOJ provided DEA with edits and written comments on at least four occasions, followed by re-drafts from DEA. The vast majority of the DOJ edits and comments to the Anvil-related questions originated from ODAG and, specifically, the ODAG Attorney who had previous interactions with DEA regarding the shooting incidents. We found no documentation that OAG reviewed the Anvil-related QFRs, and Counselor to the Attorney General Molly Moran told us that she did not recall doing so.

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<sup>203</sup> According to Dobrich, he and his subordinates probably played “a majority role” in the language concerning the tactical aspects of the operation.

<sup>204</sup> We asked Administrator Leonhart about this, and she said that she was “involved” in the process that ensured what was provided to DOJ was accurate, though she indicated she may not have seen the final before it was sent to the Department.

The ODAG Attorney added more details about the May 11 incident than had appeared in DEA's draft, including the language in the final version that there was "an exchange of gunfire" between suspected drug traffickers and the Honduran TRT. The ODAG Attorney told us that he did not independently recall the details of his involvement with these QFR responses, but he believed that he likely took the "exchange of gunfire" language from DEA's reporting of the May 11 incident. As described in Chapter Three, multiple FAST members had used the phrase "exchange of gunfire" to describe what they believed they had observed or heard during the river encounter between the two boats.

In addition, the ODAG Attorney changed DEA's description of the Honduran Special Prosecutor's Report to state that the GOH determined that no DEA FAST members fired their weapons during the May 11 incident. The report in fact made no such finding. DEA officials did not correct the error after ODAG sent the edits back to them. The ODAG Attorney told us that he did not specifically recall why he made this change, but he said the resulting inaccuracy was unintentional. We have no information to suggest otherwise.

E-mail communications reflect that a day before DEA and ODAG agreed to the final language regarding the May 11 incident, Fitzpatrick and Akers discussed whether to include a description of the circumstances surrounding the use of deadly force by the Honduran door gunner on Helicopter [REDACTED]. Harrigan's executive assistant suggested to them that the helicopter engagement be added to the May 11 description, but Akers responded that DEA was "asked to describe DEA involvement, DEA was not involved in the decision by the Honduran door gunner to return fire. Including the exchange doesn't add much to the response." Fitzpatrick agreed with Akers, and the helicopter engagement was not described in the QFR response. The ODAG Attorney told us that DEA did not include him in this discussion or raise the point that the helicopter engagement was not included in the narrative. Harrigan told us that he was also not consulted on this issue, and, if he had been, he would have disagreed with the decision not to describe the helicopter engagement.

In March 2013, DOJ sent the QFR responses to OMB for final interagency review and 2 weeks later received comments from other agencies, including a few comments and edits from State on the Anvil-related responses. State's feedback did not materially change DEA's descriptions of the shooting incidents or FAST's role during the operation. After an additional 2 months finalizing all of the QFR responses, most of which did not concern Anvil, on June 28, 2013, Peter Kadzik, Principal Deputy Assistant Attorney General for OLA, submitted the responses on behalf of DOJ to the Senate Drug Caucus and Senator Grassley.

## **2. Letter from Representative Hank Johnson**

On January 30, 2013, Attorney General Eric Holder received a letter signed by Representative Hank Johnson and 57 other Members of Congress (Rep. Johnson letter) requesting a "thorough and credible investigation on the tragic killings of May 11 in Ahuas to determine what exactly occurred and what role, if any, was played by [DEA] agents." See Appendix H. The letter described the Members'



concern that official inquiries into the incident had been perfunctory and deeply flawed despite credible evidence that the victims were innocent civilians and not drug traffickers. The letter also described the Members' concerns for the human rights of Afro-Indigenous Hondurans and called for an immediate investigation into alleged abuses perpetrated by Honduran police and military officials.

By letter dated July 29, 2013, DEA submitted a 2-page response to the Rep. Johnson letter, signed by Eric Akers as Deputy Chief of DEA's Office of Congressional and Public Affairs. See Appendix I. According to Akers and the OLA Attorney, OLA decided to wait to respond to the Rep. Johnson letter until after DOJ sent the QFR responses to Senator Grassley so that the same language could be used in both responses. Therefore, after OLA submitted the final QFR responses in June 2013, the OLA Attorney worked with Akers and a liaison in his office on the response to Rep. Johnson. Even though the Rep. Johnson letter was addressed to the Attorney General, we found no documentation that ODAG or OAG participated in the drafting or review of this Rep. Johnson response, and the ODAG Attorney and Moran told us that they did not recall doing so.

The response letter DEA submitted to Rep. Johnson and the 57 other Members of Congress in July 2013 contained two paragraphs of background information regarding drug smuggling flight activity in Honduras and DEA's history of training Honduran law enforcement, most of which appears identical to information previously provided in the QFR responses. The letter's description of the May 11 incident was also identical to the language in the QFR responses, except for the last two sentences, which stated:

Contrary to media reports referenced in your letter, all operations conducted under Operation Anvil were led by the GOH, with support from DEA and [Department of State]. All operations are planned, coordinated and executed with input and agreement from [Department of State], DEA and the GOH.

Documents reflect that DEA Congressional Affairs added the two sentences to the letter, which were substantively similar to statements DEA and DOJ made in the QFR responses, and the OLA Attorney inserted them at the end of the May 11 description.

The July 2013 response letter did not address the Members' requests for a "thorough and credible" U.S. investigation into what happened on May 11 except to note that DEA's internal review found that no FAST members fired their weapons.

### **3. Letters from Senator Patrick Leahy**

#### **a. October 16, 2013 Letter**

On October 16, 2013, Administrator Leonhart received a letter from Senator Patrick Leahy referencing DEA's response to Representative Johnson. See Appendix J. In the letter, Senator Leahy expressed disappointment that DEA dedicated one paragraph to Rep. Johnson's questions about the May 11 incident and that DEA appeared to hold the view that all inquiries into the incident were answered by the

fact that DEA agents did not fire their weapons and the GOH led the operation. Senator Leahy's letter also stated that DEA's response appeared to suggest that the casualties were less serious because the two women killed were not pregnant. Senator Leahy said that he remained troubled by what appeared to him to be DEA's failure to thoroughly and critically assess the role that DEA played in the operation and its aftermath.

In addition, Senator Leahy's letter identified factual assertions in DEA's July 2013 response letter to Rep. Johnson as "highly questionable." Those assertions were:

- The GOH [Special Prosecutor's] Report determined that no DEA FAST members fired their weapons during the incident and that there was an exchange of gunfire between suspected drug traffickers and Honduran TRT members. The letter asked that DEA provide the excerpts from the report that concluded that no DEA FAST members fired their weapons and any credible evidence to corroborate DEA's assertion that the May 11 video shows gunfire from the passenger boat.
- The Honduran Special Prosecutor's Report determined that neither of the female decedents was pregnant. The letter stated that the autopsies were conducted in a highly unprofessional and unreliable manner and were contradicted by testimony from the victim's families and a medical examination of Juana Jackson's body shortly after it was recovered.
- No injuries were confirmed nor injured persons identified immediately after the shooting. The letter stated that witness testimony contradicted this assertion, and DEA and TRT should have recognized that there may have been casualties after shooting the passenger boat repeatedly from close range.
- DEA and its counterparts maximized the safety of all involved personnel. The letter stated that DEA made no reference to any procedures designed to minimize casualties and maximize the safety of bystanders and asked what, if anything, DEA learned from the incident and would do differently in future operations.

Senator Leahy ended his letter by expressing his reluctance to support future DEA involvement in such operations in Honduras or elsewhere in Central America.

While we saw documentation that DEA officials attempted to put together a draft response to Senator Leahy's letter shortly after it was received, it was not until over 6 months later that it was cleared through DEA and ODAG. On April 28, 2014, DEA sent Senator Leahy a response letter, signed by Gary Owen, then Acting Chief of DEA's Office of Congressional and Public Affairs. See Appendix K. In the response letter, DEA described its capacity-building strategy in Honduras and Central America and stated that its personnel "go to great lengths" to provide for the safety of all individuals. In that regard, DEA stated that the deaths of the four

Hondurans were unintended, unfortunate tragedies and assured that DEA personnel are trained to provide or seek aid for any wounded or injured individuals they might encounter during law enforcement operations. The letter also stated that, since the May 2012 incident, DEA had expanded the training it provides to Honduran counterparts to place greater emphasis on public safety and human rights, including the risks and responsibilities associated with the application of deadly force.

DEA attached two documents to the letter: a supplemental response and a letter from Honduran Ambassador to the United States, Jorge Ramón Hernández-Alcerro, addressed to Attorney General Eric Holder that included an expression of his government's commitment to protecting the human rights of ethnic minorities in Honduras and desire to continue working closely with the United States on achieving common goals.

The supplemental response was the result of substantial deliberation at DEA as to the best format in which to address the factual assertions Senator Leahy questioned in his letter. In the supplemental response:

- DEA acknowledged the inaccuracy in its response to Rep. Johnson (and the response to Senator Grassley's QFRs) that associated the Honduran Special Prosecutor's Report with a determination that no DEA FAST members fired their weapons during the May 11 incident. DEA stated that the determination was not derived from a particular GOH report, but from the "totality of information available to DEA," including forensic analysis, reports generated by various elements of the GOH, and recorded imagery of the event.
- DEA stated that it did not know whether all persons aboard the passenger boat had knowledge of the drug trafficking activity on May 11, and it is possible that some were unwitting participants. However, based on the totality of information derived from an array of DEA investigative efforts, including witness interviews, review of GOH reporting that summarizes Honduran law enforcement witness statements about the event, review of the limited forensic and ballistic analysis of the event, and a review of the May 11 video footage, DEA concluded that "it is likely that some passengers did have knowledge of and criminal involvement with" the cocaine recovered on the river.
- DEA stated that the May 11 video footage shows what DEA officials familiar with thermal imagery of law enforcement operations believed depicts gunfire coming from the passenger boat. The video also appears to show the passenger boat making suspicious movements that officers in the pipante interpreted as attempts to intercept and strike their boat.
- DEA devoted three paragraphs to describing the responsibility of all DEA agents to ensure the safety of all individuals, the effort made by the law enforcement team on May 11 to search for the passenger boat, and DEA's after-action assessment that the ground team did not

have adequate resources to maintain the scene, provide security, and maximize the safety of innocent bystanders. Regarding the search effort, DEA stated:

All team members involved in the events that occurred on the night of May 11, 2012, made efforts to monitor the immediate area of their operations, including the last known location of the water taxi. Unfortunately, the brief encounter with the water taxi was the only time DEA saw it on the river that night. The helicopter teams, consisting of members of DEA FAST, [TRT], Honduran Air Force personnel, and Department of State contracted DynCorp Pilots and Guatemalan Air Force Pilots, did what they could to search for the water taxi and any injured parties, but they did not have the benefit of search lights and were also dealing with a dense tree canopy. The thermal imagery camera recording the video was on a surveillance aircraft that remained in the area until approximately 5:30 a.m. Throughout that time, the crew monitored the area for activity, but they did not observe the water taxi after the initial exchange of gunfire on the river. To the best of our knowledge, DEA and [the Honduran National Police] never received any information suggesting the eventual fate of the water taxi, or any distress or emergency experienced by its occupants or bystanders.<sup>205</sup>

DEA's response, including the supplemental response excerpted above, underwent an extensive review process within DEA and DOJ. According to DEA documents, as well as our interviews with relevant DEA officials, these documents were drafted in late October 2013 by Gary Owen and an Associate Chief Counsel from DEA's Chief Counsel's Office, with substantial contributions from Dobrich. According to DEA documents and OIG interviews, a final draft cleared the operations offices and DEA leadership, including Administrator Leonhart and Deputy Administrator Harrigan, and was submitted to the OLA Attorney in January 2014. Following multiple pass-backs and discussions between OLA, ODAG, OAG, and DEA, OLA gave final approval and the letter went out from DEA on April 28.

We determined that there are significant questions about the basis for several assertions in DEA's response to Senator Leahy, and we attempted to determine the genesis of these assertions. First, as detailed elsewhere in this report, there are serious questions about the statement in the final response letter that "DEA officials familiar with thermal imagery of law enforcement operations believe [the video depicts] gunfire coming from the water taxi." According to Owen and DEA documents, Congressional Affairs had originally drafted language that stated: "a technical analysis [of the video] does not conclusively show gunfire originating from the water taxi." Owen told us that during a late-night telephone conversation with Dobrich and the Associate Chief Counsel, the three discussed the

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<sup>205</sup> We interpret the last sentence as a reference to what DEA and Honduran personnel knew while they were still on the ground in Ahuas, not what later became known after the interdiction.

language Congressional Affairs had originally written, and Dobrich said “no, I, I believe it does show gunfire.” Owen said that while the three were on the telephone, the Associate Chief Counsel reworded the draft response to what appears in the final version. According to Owen and the Associate Chief Counsel, the phrase “DEA officials familiar with thermal imagery” was a reference to FAST leadership, including Dobrich, Fitzpatrick, and James Soiles. Dobrich told us that the phrase was predominantly a reference to him.

Second, we attempted to determine the basis for DEA’s description of the law enforcement efforts to search for the passenger boat and any injured parties. According to Owen and Dobrich, the information in that description came from Dobrich. According to Dobrich, his original source for the information was the Bravo Team Leader. However, as described in Chapter Three, the law enforcement officers did not conduct a search and rescue mission to look for injured or dead people from the passenger boat. Instead, by all accounts, the priority of the law enforcement effort after the river encounter was to recover the officers stranded with the pipante and drugs. Any searches during that time appear to have been focused on identifying any possible dangers to those officers and the entire ground team before extraction, not identifying or treating any injured people from the passenger boat.

Dobrich told us that he also relied upon the Bravo Team Leader to describe the CBP flight crew’s monitoring activities on May 11, including that they never observed the passenger boat after the shooting. According to Dobrich, the Bravo Team Leader told him that he was in communication with the CBP flight crew until the surveillance plane left the scene. The Bravo Team Leader told Dobrich that he directed the surveillance plane to monitor the vicinity for any activity, and he believed the flight crew would have alerted him had they observed any activity of interest. Because they did not alert him, the Bravo Team Leader believed they did not observe the passenger boat or any other activity, and Dobrich relied upon that assertion. In fact, as noted in Chapters Three and Four, the CBP flight crew took video of the stranded passenger boat that appears to depict at least one, possibly two, dead or injured passengers in the boat, although we have no information that anyone at the time recognized that it was the passenger boat rather than the pipante.

Third, we examined the genesis of the statement in the response regarding the potential culpability of the people in the passenger boat. The original language DEA included in its draft response stated:

It is plausible that some were unwitting participants. It is also possible, and DEA certainly has concluded, that the evidence establishes that some passengers did have knowledge of and criminal involvement with the 450 kilos of cocaine unloaded in Ahuas that evening.

E-mail communications between DEA and OLA in April 2014 reflect that over the course of 3 weeks OLA sought to soften this language regarding the passengers but received considerable push-back from DEA.

The OLA Attorney had argued in favor of a “may have known” or “could have known” formulation to describe the passengers’ knowledge. However, according to e-mail communications, the issue of the boat passengers became a real sticking point, with DEA advocating for stronger language, including Administrator Leonhart who wanted the response to state that at least some of the passengers knew or were involved in the drug trafficking activity on May 11. An e-mail communication from Owen to the OLA Attorney on April 10 responding to OLA’s recommendation that DEA change the language to “could have known,” stated:

The [A]dministrator suggested the following [language]: “Various pieces of information available to DEA support our conclusion that at least some of the people aboard the water taxi knew about, or were involved with, drug trafficking activity on the night of May 11th, including movement of the 450 kilos of cocaine recovered on the river.”

Administrator Leonhart told the OIGs that she recalled meeting with her staff to determine how to describe the knowledge of the people aboard the passenger boat in a way that was accurate and would take into account the source information that some people in the boat did have knowledge of the drug trafficking activity.

The OLA Attorney told us that she believed “fairly strongly” that her suggested formulation was the best course of action. In her e-mail communications, she explained to DEA officials, including Owen and the Associate Chief Counsel, that she believed “the one witness Rich [Dobrich]/FAST interviewed [i.e., SOI #2] changed some details of his/her story” and therefore should not be relied upon, and that “DEA has never shown anything to definitively indicate that water taxi passengers absolutely knew about the drug trafficking.” She also explained that “part of the reason we’re in this spot is some briefers [made] definitive statements/claims, and then subsequently [had] to walk them back. Trying to avoid that this time around.” Despite these explanations, the OLA Attorney was unable to reach agreement with DEA on language regarding the passengers.

The OLA Attorney elevated the issue to more senior officials in OLA, ODAG, and OAG, advising them that “DEA continues to feel very strongly that they be allowed to say some of the water taxi occupants ‘knew’ (not ‘may have known’) about the drug trafficking activity that night. . . .” However, even after obtaining ODAG and OAG support, the OLA Attorney was unable to reach agreement with DEA on language until late in the afternoon on April 28. At that time, the OLA Attorney worked with an ODAG attorney and Molly Moran on compromise language that inserted the word “likely” before “some passengers did have knowledge of criminal involvement with” with drug trafficking activity, and DEA officials finally agreed.<sup>206</sup> DEA sent the final letter to Senator Leahy on the evening of April 28,

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<sup>206</sup> ODAG asked for one other change that did not make it into the final letter, which was to soften “concludes” by replacing it with “believes” in the sentence: “DEA concludes it is likely that some passengers did have knowledge of and criminal involvement with the 450 kilograms of cocaine recovered on the river.” Owen told us that Administrator Leonhart agreed to this change, and he did

*Cont’d*

with the language that “DEA concludes it is likely that some passengers did have knowledge of and criminal involvement with the 450 kilograms of cocaine recovered on the river.”

#### **b. May 12, 2014 Letter**

In response to DEA’s April 28, 2014 letter, on May 12, 2014, Senator Leahy sent a second letter to Administrator Leonhart regarding the May 11 incident. See Appendix L. The Senator’s letter contained five sets of questions seeking more detailed information from DEA on the following topics:

- The specific changes to procedures DEA adopted as a result of the May 11 incident;
- The specific excerpts from Honduran Special Prosecutor’s Report(s) that concluded that no DEA FAST members fired their weapons<sup>207</sup>;
- The specific, credible, or conclusive evidence DEA has that the passengers were involved in drug trafficking activity, and whether DEA had an independent forensic expert review the video;
- A judicial proceeding referenced in the Honduran Ambassador’s letter attached to DEA’s response; and
- A request that DEA publicly release the May 11 video footage and any relevant DEA documents regarding what happened on May 11.

On OLA’s recommendation, DEA sent a letter to Senator Leahy on August 8, 2014, stating that DEA was not in a position to provide additional information until after this OIG review has concluded.<sup>208</sup> See Appendix M.

#### **4. DEA Administrator Leonhart’s Congressional Hearing Testimony**

In April 2014, Administrator Leonhart appeared before two Congressional committees that asked questions about the May 11 incident: on April 2, 2014, before the House Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies, and on April 30, 2014, before the Senate Judiciary Committee.

During the April 2 Appropriations Subcommittee hearing, Representative José Serrano stated that local authorities had claimed that they were not given access to the information DEA or other agencies had about the incident and asked the Administrator to describe what happened. Administrator Leonhart responded:

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not know the reason the final version did not include it, other than possibly an error that caused the transmission of the wrong version of the letter to Senator Leahy.

<sup>207</sup> DEA’s draft of the April 28, 2014 letter had provided additional explanation that OLA removed from the final letter regarding the portions in the Honduran Special Prosecutor’s Report that DEA officials believed supported the conclusion that no DEA FAST members fired their weapons.

<sup>208</sup> DOJ OIG was not consulted by OLA or DEA before DEA submitted this response to Senator Leahy, and the OIG never requested that DEA defer any response to Congress.

I can tell you that the Honduran government approached our agency several years back and asked for help because . . . Honduras . . . Central America is where all of this – all the cocaine that has been transiting Mexico is landing. And they don't have the resources, they don't have the training, they don't have the helicopters, they don't have anything to combat this steady flow of – especially air traffic into Honduras. So the government has asked us for help. So we have been helping by training their law enforcement teams, side by side, and we were training with them for quite some time. Training is one thing but the best way to train is actually to go operational.

. . . .

The incident that you were talking about was May two years ago and there was a shooting in the middle of the night, two, three in the morning.

. . . .

The Honduran police, along with at least one DEA agent went to go rescue [the] cocaine boat and in the middle of the night, in the darkness, while they were doing that, a boat came from the middle of nowhere and rammed their boat and there was a shoot-out. And unfortunately people lost their lives.

Now there is the question about were these innocent people or were these actually traffickers? The investigation was then done by the Honduras government and all of the allegations that were being made by some townspeople, the allegations that this was an innocent boat. Those were somewhat refuted by an investigation, a second investigation that was done. But the bottom-line there were – it doesn't matter if someone was innocent or not, there were lives that were lost. And it was a very dangerous situation and thank goodness that there were no Honduran police hurt because there could have been.

It's been fully investigated. It was investigated by the Hondurans, our standard shooting investigation and the one that was done following that, all concluded to a tragic accident. And we have looked at how to make sure that the operations that the Hondurans are running are done with more safety in mind and more planning involved. And we, for the most part, have done what we can do to alleviate that.

Administrator Leonhart's response did not address Representative Serrano's question about the allegation that Honduran authorities were denied access to information about the incident known to DEA.

Additionally, we have been unable to conclusively determine what investigation Administrator Leonhart referred to as the "second investigation" after the Honduran investigation and the DEA shooting review. Leonhart told us that she was generally aware of the Honduran investigation, the DEA internal review, and the investigation DS conducted. She also told us, and DEA documents reflect, that



she requested information about the status of the DS investigation in 2013 in case she received questions about it during a hearing or from DOJ leadership.

In preparation for the April 30 oversight hearing before the Senate Judiciary Committee, DEA Congressional Affairs developed talking points for the Administrator that included:

- The tragic deaths of four Hondurans on May 11 were unintended and deeply regrettable.
- DEA and the Department have provided extensive briefings to House and Senate congressional staff concerning this operation. We also provided a response to your [Sen. Leahy's] letter on April 28, 2014.
- Since the May 11 operation, DEA has thoroughly reviewed its policies and procedures including an enhanced review of public safety factors during operational planning. The training provided to our Honduran counterparts now places an even greater emphasis on public safety and human rights, including the risks and responsibilities associated with the application of deadly force.

These talking points and the Administrator's eventual testimony appeared to strike a different tone than her April 2 testimony, particularly with respect to the people who were killed. During the hearing, Senator Leahy asked the Administrator whether DEA had made changes in response to the May 11 incident, including steps to minimize casualties. Administrator Leonhart responded:

I assure you that we have looked at that operation from many, many sides, to figure out, number one, how to learn from that. Number two, you know, working with our Honduran counterparts, making sure that we are providing them the best training that we can. We – I want to assure you that we feel very, very bad about any tragedy, and this with the loss of four civilians is included. We going forward, however, have looked at ways that we could improve operational planning, how we can improve the training that we're [giving].

## **B. Department of State**

On January 30, 2013, Representative Hank Johnson sent a letter to Secretary of State John Kerry, cosigned by 57 House Members, expressing their grave concerns about the May 11, 2012 shootings in Ahuas. See Appendix N. This letter was substantively the same as the letter Rep. Johnson sent to the Attorney General on the same date. As in the letter addressed to the Attorney General, the letter to the Secretary requested a "thorough and credible investigation" into the deaths and injuries that occurred during the drug interdiction and the role played by DEA FAST agents.

On March 14, 2013, Thomas Gibbons, acting Assistant Secretary for Legislative Affairs, replied to Rep. Johnson and the 57 cosigners. See Appendix O. Regarding the May 11 incident, the letter stated:

During the May 11, 2012, interdiction to which you refer, a drug trafficking flight landed at a clandestine airstrip in a remote part of Gracias a Dios. At the time, the U.S. government was providing support to a Honduran-led effort to disrupt suspected drug transportation flights into northeastern Honduras. Within this program, U.S. Drug Enforcement Agents serve *as advisors only* to Honduran law enforcement. Following the May 11, 2012, landing, Honduran law enforcement officers interdicted 500 kilograms of cocaine after it was transported off of the plane. However, during the seizure, a firefight ensued and four individuals were killed, and four others wounded, by the Honduran law enforcement officials. Subsequently, the U.S. government supported an investigation into the incident by Honduras' special prosecutor for human rights. The investigative report, completed in September 2012, concluded that U.S. Drug Enforcement Administration agents did not discharge their weapons.

Mr. Gibbons closed his response letter to Mr. Johnson explaining that in joint operations, such as the May 11 interdiction, protocols are followed to minimize the chance of loss of life while emphasizing human rights protection and the importance of prompt, transparent investigations into any fatalities.

The letter was drafted by the desk officer for Honduras, WHA's point person at State Headquarters for issues related to that country, and was edited and approved by Deputy Chief of Mission Matthias Mitman (who collected comments on behalf of Embassy officials), as well as other officials within WHA and the Office of the Under Secretary for Political Affairs (which supervises regional bureaus such as WHA).

## **VI. DOJ and State OIG Observations**

One of DEA's congressional liaisons told us that, in retrospect, DEA briefers may have given the congressional committee staff the perception that they were overconfident that their view of the events that took place on May 11 was the correct one. In the next chapter, DOJ OIG provides its overall analysis of DEA's responses to the Anvil-related shootings and the accuracy of the information DEA provided to DOJ leadership and Congress, particularly concerning the May 11 incident. As we describe there, DOJ OIG found that DEA's overconfidence was not only a perception, but was real and pervasive and overtook what should have been a serious and thorough response to the incident.

Relevant to this chapter, DOJ OIG concluded that DEA's overconfidence, and its failure to conduct a thorough post-incident investigation, resulted in several factual representations regarding the May 11 incident in congressional briefings and in congressional letters that were inaccurate, incomplete, or based upon unreliable and insufficient information. For example, DOJ OIG found DEA's insistence that there was an exchange of gunfire between Honduran officers and individuals in the passenger boat completely unsupported by the video footage, and further

undermined by the unreliability of the Honduran TRT and SOI #2 accounts. The lack of video evidence of gunfire from the passenger boat also undermined DEA's representation that individuals in the passenger boat were drug traffickers or assisting drug traffickers.

In some instances, DEA officials described information favorable to DEA's positions while omitting unfavorable information, such as the video evidence of the Honduran TRT officers shooting at people who had fallen or jumped into the water. DOJ OIG found troubling that DEA focused only on its own actions and failed to recognize or acknowledge its accountability for the actions of the TRT officers whom they advised and mentored. Further, DOJ OIG found that DEA continued to inaccurately and incompletely characterize its role in Operation Anvil as being supportive and advisory only, while claiming that Honduran officers led the missions.

In addition, given DEA's own recognition that SOI #2's first interview was "superficial at best," as well as the undocumented and inadequate polygraph, the DOJ OIG believes that DEA should have ensured that it had obtained sufficiently detailed – and reliable – information from SOI #2 before briefing Senate staff that the source corroborated the video and DEA's and TRT's reporting of the incident. We also found troubling that DEA continued to rely upon SOI #2 even after the source's second and third interviews substantially undermined his/her credibility.

The State OIG found that the briefers for the State Department similarly provided incomplete and inaccurate statements during Congressional briefings. State briefers emphasized that Operation Anvil was Honduran-led and involved U.S. support only in an advisory role, which the briefers knew to be inaccurate. State briefers also never mentioned the fact that DS was conducting its own investigation of the three deadly force incidents despite inquiries from Congressional staff. Because of their fear of airing the conflict between DS and DEA, State officials never informed the staff of the three investigative reports prepared by DS, including the video analysis it had prepared.

The OIGs more fully analyze the information DEA and State provided to Congress in the next chapters.

## **CHAPTER THIRTEEN: DEPARTMENT OF JUSTICE OFFICE OF THE INSPECTOR GENERAL ANALYSIS AND FINDINGS**

In this review the DOJ OIG examined the adequacy of DEA's responses to the three Operation Anvil shooting incidents, including the internal investigations DEA conducted. We concluded that DEA's response to the incident that occurred on May 11, 2012 was significantly flawed in a number of critical respects.

DEA's initial post-action reporting of the May 11 incident was that while stranded on the Patuca River in a stalled boat or "pipante," a combination of Honduran TRT and FAST personnel were fired upon by passengers in another boat and that the Honduran officers in the pipante and on a nearby helicopter returned fire. DEA asserted from the start, with little credible corroborating evidence, that the people in the passenger boat were attempting to retrieve the drugs that the law enforcement officers had seized from the pipante and that these passengers initiated a firefight with the officers. Further, we found that as additional information became available to DEA after the operation that conflicted with DEA's initial reporting, DEA officials did not consider even the possibility that their assumption of a firefight initiated by drug traffickers was wrong or that the passenger boat may have carried only innocent civilians.

Instead, DEA remained steadfast in its commitment to the initial reporting that drug traffickers had initiated an attack on the officers in the pipante and that the only law enforcement officers involved in the use of deadly force were the Hondurans. Overconfidence in, and a failure to reexamine, prematurely reached conclusions led to a delayed and inadequate DEA reaction to the incident – first deciding that the incident did not warrant a DEA investigation and then, after mounting pressure from DOJ leadership and Congressional oversight committees, deciding to open an abbreviated internal review that was little more than a paper exercise. It also led to inaccurate and incomplete information being provided to the Attorney General, the Deputy Attorney General, and Congress.

From the beginning, DEA officials should have taken more seriously the allegations that officers in the operation had mistakenly killed innocent civilians and should have ensured a thorough investigation of the incident. However, we found that DEA officials took a very narrow view of DEA's own responsibility – based on the notion that the operation was "Honduran-led" and on the quick judgment that DEA personnel did not exercise deadly force. As described below, we believe the evidence establishes that "Honduran-led" was a fiction that was apparently motivated in part by the fact that a DEA-led operation would not have been eligible for the INL funding that was made available for the operation - International Narcotics Crime and Law Enforcement (INCLE) funds granted to INL by Congress for foreign assistance initiatives in Central America. In practice, the DEA FAST members were very much in leadership roles during the drug interdiction missions. More broadly, treating Operation Anvil as a Honduran operation ignored the fact that: (1) DEA and State had the primary and leading roles in planning the operation; (2) the operation was executed primarily with U.S. funding, equipment,

intelligence, and personnel; and (3) the results of the operation were intended to be used to support U.S.-based prosecutions of high-level targets.

Although we concluded that none of the FAST members who participated in the operation on May 11 discharged their own weapons, we disagree that this fact absolved DEA of responsibility to conduct an appropriately thorough review of the incident. The Honduran officers – including those who discharged their weapons on May 11 – participated in the operation under the training, advice, and on-scene tactical direction of the FAST members. Moreover, as described in Chapter Three, at least one DEA FAST member specifically directed a Honduran door gunner on a helicopter to fire his machine gun at the passenger boat, which the Honduran door gunner did – a critical fact that we believe DEA officials could have learned had they simply interviewed their own personnel.

Yet DEA did not interview their own personnel, and it also did not cooperate with either the State Department’s Bureau of Diplomatic Security (DS) or the Government of Honduras (GOH) in their investigations. We found that DEA’s premature assumptions, inadequate investigation, and lack of cooperation resulted in the agency making decisions based upon incomplete and, in some cases, inaccurate information. Further, we found that in some instances DEA officials described information favorable to DEA’s positions while omitting information that was unfavorable or may have called their view of what happened into question.

Although the OIG was not in a position to make a determinative finding as to whether there was an “exchange of gunfire” on May 11, we found that the available evidence places in serious question whether there was *any* gunfire from the passenger boat. We based this conclusion on several factors, including the lack of evidence on the May 11 video footage of gunfire from the passenger boat, as confirmed by video analysts retained by the OIG to examine the footage. In addition, we found that the Honduran TRT’s reports that individuals in the passenger boat had fired at them were unreliable given their inaccurate reporting, which reflected to us an apparent desire on their part to bolster the justification for the use of deadly force. We found similarly unreliable DEA’s source of information (SOI #2), who claimed to have witnessed the river encounter but gave varying and conflicting accounts that differed with the video evidence and whose accounts, we believe, should have been significantly discounted if not completely rejected as a result.

Excluding the accounts of the TRT and SOI #2, the witnesses who remained were the Delta Team Leader who was in the *pipante* with the TRT and certain FAST members who said they had observed the events on the river from Helicopter [REDACTED]. DEA officials told us that they relied most heavily on the accounts of their own personnel. However, the only FAST member in close proximity, the Delta Team Leader, said that his back faced the approaching boat, making him unable to see what happened when gunfire erupted. Although he told the OIGs that he felt bullets from the passenger boat fly over his head, we questioned the accuracy of this statement given that he had not previously reported this recollection to DEA. Moreover, the accounts of the FAST members on Helicopter [REDACTED] who said they saw muzzle flashes originate from the passenger boat were not consistent with the

video footage. Given the closeness of the boats at the time of the initial muzzle flashes and what was described as “terrible” visibility that evening, it was unclear whether their accounts were based more on perception than reality, a perception that may have been influenced by reports over the radio that the officers in the pipante were under fire.

In addition to these factors, we also considered the fact that, despite close range, neither the pipante nor the officers in it were struck by gunfire.

Unlike the May 11 incident, the June 23 and July 3 shooting incidents did not involve reports of innocent civilian deaths. Yet DEA’s responses to these shootings were more thorough and timely – this was no doubt the result of an investigation being required following the discharge of a weapon by DEA personnel and reflected anticipation of issues that we believe should have been thought of in advance of the May 11 incident, as detailed below.

Nevertheless, the facts of the June 23 incident still revealed inadequate pre-operational planning regarding scene management, which dangerously prolonged law enforcement personnel’s presence at the shooting location. In addition, DEA officials did not respond to reports that a Honduran TRT officer planted a gun into evidence to justify DEA’s use of deadly force on July 3, or respond to the inconsistent and inaccurate Honduran police reports regarding all three shooting incidents.

In the sections below, we describe our more specific findings. We begin with an assessment of DEA’s pre-operational planning before Operation Anvil began and DEA’s role during the operation. We then assess DEA’s internal reviews of the three Anvil shooting incidents, including the decision-making by senior DEA officials immediately after the May 11 shooting, the abbreviated internal reviews that were eventually conducted, and the adequacy of DEA’s post-shooting incident procedures. We assess DEA’s cooperation with State and Honduran entities and the representations DEA made to DOJ leadership and Congress about the incident. Finally, we analyze DEA’s apparent failure to address TRT’s inaccurate reporting and gun-planting incident.

## **I. Inadequate Pre-Operational Planning**

### **A. Uncertainty Regarding Applicable Deadly Force Policies**

As described in Chapter Two, FAST and TRT had unclear understandings of what each other’s deadly force policy permitted. FAST operated under the DOJ Deadly Force Policy, which authorizes deadly force when an officer has the reasonable belief that the subject of such force poses an imminent danger of death or serious physical injury to the officer or to another person. When such a threat exists, the Policy does not require FAST to wait until the subject fires first. The OIGs were advised that the Hondurans operated under the UN Human Rights Standards, which requires an imminent threat of death or serious injury and permits the use of deadly force and firearms only when less extreme measures are

insufficient and when deadly force is strictly unavoidable in order to protect human life. Honduran TRT officers apparently did not have a clear understanding of their own rules regarding deadly force, believing that their requirements were more restrictive than either the DOJ policy or the UN Human Rights Standards.

According to DEA personnel in the Tegucigalpa Country Office and a FAST team leader, the Honduran TRT said that their own officers had to be fired upon first before they could use deadly force. However, most FAST members could not tell the OIGs the differences between the DOJ and Honduran policies, and it does not appear this articulation or perception of when the Honduran officers could use deadly force was ever briefed formally before interdiction missions began. This lack of clear understanding had several negative consequences.

First, absent a clear understanding of each other's deadly force policies, neither FAST nor TRT could be confident about when and how their partners were allowed to respond to an imminent threat of death or serious physical injury. Such uncertainty could have had deadly consequences in dangerous joint operations of this type if one officer misunderstood what another officer was allowed to do in the heat of the moment. We believe that this disconnect may have contributed to the hesitation of the Honduran door gunners to return fire during the May 6-7 interdiction and of the TRT to approach the crashed plane, with potentially heavily armed individuals inside, during the July 2-3 interdiction. Although this hesitation did not result in any harm to law enforcement in these instances, it would not be difficult to imagine circumstances in which misperceptions of what partner officers will do could lead to errors of coordination between U.S. and foreign forces and avoidable risks of harm.

Second, it appears that a misunderstanding of the policy applicable to FAST likely contributed to the TRT reportedly planting a gun into evidence after the July 3 incident. DEA concluded that the use of force on July 3 was justified under the DOJ Deadly Force Policy because the FAST members stated that they feared under the circumstances that the non-compliant pilot moved to re-enter the suspect plane in an attempt to retrieve a weapon. However, the Honduran National Police leadership apparently believed that there was a need to plant a gun into evidence to make the threat against FAST look greater in order to justify DEA's use of deadly force. Greater clarity between TRT and FAST regarding their respective deadly force policies may have undercut the motivation for such an effort.

Third, perceptions about restrictions on the TRT's use of force could have helped to drive the narrative that DEA quickly adopted after the May 11 incident that there was no question that individuals on the passenger boat fired first. As noted elsewhere, the video evidence does not support this narrative, but DEA persisted in promoting it as an undisputed fact.

## **B. Planning for Critical Incidents**

The OIG concluded that the pre-operation planning for responding to critical incidents was almost nonexistent. Although we believe that all of the U.S. and Honduran partners in this operation bear some responsibility for this failure, we

believe DEA, in particular, should have ensured before interdiction missions began that mechanisms were in place in the event of a critical incident to support the law enforcement personnel on the ground, allow for any and all necessary search and rescue missions, and ensure a comprehensive and timely post-incident investigation. DEA officials served in key roles in the planning of the operation, and their personnel, as we address in the next section, played a substantial leadership role during the interdiction missions.

We found that DEA failed to ensure the availability of additional forces (for instance, a quick reaction force or QRF) to support FAST and TRT during critical incidents that might well have been anticipated in such operations in that environment. State and DEA documents reflect that a QRF was discussed before the operation began, including the use of JTF-Bravo to airlift [REDACTED] units to requested locations. However, a QRF was not available when the team needed it. Following the shooting on June 23, and again following the shooting on July 3, FAST requested additional forces to assist the outnumbered law enforcement team, who in both instances were in a dangerous tactical situation. Yet, on both occasions, no additional forces arrived to assist FAST and TRT, who remained exposed for extended periods in unsecure and dangerous locations. In its April 28, 2014 letter to Senator Leahy, DEA cited the lack of sufficient forces on May 11 as a reason it was unable to adequately maintain the scene, provide security, and maximize the safety of innocent bystanders. If there had been sufficient forces, FAST and TRT would have been in a better position to conduct an adequate search and rescue for passengers who may have been injured, rather than focusing solely on recovering the law enforcement officers stranded in the pipante.

However, we found that no effort was made, or even considered, to search for and render aid to the people who may have been injured. We found that at a minimum the FAST members on Helicopter [REDACTED] who witnessed the encounter on the river knew or should have known that there would be individuals who likely would have been injured in the encounter. Nevertheless, we found no evidence that Honduran authorities were contacted by FAST or TRT during or immediately following the interdiction to render aid to any injured. This was a flaw in both the planning and the execution of the operation, regardless of whether the officers believed at the time that the people in the passenger boat may have been innocent bystanders or suspected targets of the operation.

In addition, after the Hondurans declined to supply Honduran "fiscales" or prosecutors to travel on the helicopters during the interdictions, there was no alternate plan put in place for securing scenes and interviewing eye witnesses, which contributed to the prolonged wait on June 23 for a Honduran investigation team to arrive at the shooting location. This placed FAST and TRT dangerously vulnerable to armed offloaders in the surrounding area, who outnumbered law enforcement. We believe this prolonged wait for the Honduran investigation team may have provided motivation for the Delta Team Leader to misreport the medical status of the pilot shot 10 days later on July 3 to ensure law enforcement's safety by departing the area immediately as opposed to waiting in another dangerous situation.



DEA officials told us that before Operation Anvil began they anticipated that there was a likelihood of shooting incidents, and the Operations Order specified that law enforcement personnel should expect resistance from armed offloaders. Despite this anticipation, most officials generally acknowledged that before the operation began no consideration was given to developing a plan for responding to shootings. The failure to plan for who would investigate shooting incidents, and how the investigation would be conducted, contributed in particular to confusion, disagreements, and the absence of a comprehensive investigation on or after May 11 into the May 11 shooting.

### **C. Other Issues**

We identified some other significant issues in operational planning that concerned the ability of FAST to effectively communicate with the TRT while conducting operations and the ability of the TRT officers to operate tactically in dark and remote locations.

As described elsewhere in this report, none of the FAST members who participated in Operation Anvil were fluent in Spanish, and none of the TRT officers were fluent or even conversant in English. Because only a few FAST members were conversant in Spanish, the FAST team relied to a significant extent upon a Spanish-speaking medic to communicate with the TRT, hand signals, and a prepared list of tactical commands in Spanish. We were told that another FAST team – Team Echo – had more Spanish speakers than Teams Bravo and Delta and had already trained and developed a camaraderie with the TRT, but Team Echo was committed elsewhere at the time Operation Anvil began. Although the DEA Country Attaché had reservations about bringing on a new team that did not have as many Spanish speakers, the decision was made to proceed with Teams Bravo and Delta with the addition of one Spanish-speaking DEA Intelligence Analyst who assisted Team Delta on the very last mission.<sup>209</sup>

In addition, FAST members who participated in Operation Anvil told us that TRT officers were not as well equipped as FAST personnel, and that they believed the inferior equipment significantly impacted the TRT's operational capabilities. For example, the radios utilized by FAST [REDACTED] [REDACTED] Radio communications on the ground were limited for TRT members who were only able to communicate with other TRT members. The Night Vision Goggles (NVGs) used by the TRT were an older generation and not as good as the NVGs utilized by FAST, but we were told DEA was prohibited from providing the newer generation NVGs to foreign nationals. The TRT members did not have laser sights on their weapons, which would have allowed them to see their targets at night while they were wearing their NVGs. Without this capability, they had to rely on sighting their target with a light and without using their single lens NVG, making it more challenging for them to accurately fire.

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<sup>209</sup> The FAST Section Chief told us that sometime around the time of Operation Anvil, possibly before, he initiated a language training program for all FAST team members to improve their Spanish-speaking capabilities.

None of the FAST members or other DEA officials we interviewed told us that a language barrier impacted the operation. However, the language issue and TRT's equipment limitations appear to have impacted the TRT's ability to take the lead during the interdictions, as we describe below and elsewhere in this report. Although further examination of the impact of the language and equipment issues, both potential and actual, fell outside the scope of this review, DOJ OIG provided a briefing to senior DEA leadership in September 2015 that included these issues so that they could consider them further.

## **II. Inaccurate Representations Regarding DEA's Role in Operation Anvil**

After the events of May 11, DEA consistently maintained in information provided to DOJ leadership, Congress, and the public that the Hondurans led and executed the operation and that DEA acted solely in a support role as mentors and advisors to the Honduran officers. Based on our review of the evidence, we concluded that this was inaccurate because FAST personnel maintained substantial control over the conduct of the operation.

### **A. DEA's Representations**

State press guidance issued to Embassy and DEA officials on May 17, 2012, stated that DEA personnel served in a supporting, advisory role only to host nation law enforcement officers who were highly trained and vetted. We found that DEA officials did not correct this characterization of DEA's role and instead repeated it in the information they provided to DOJ leadership, DOJ's Office of Legislative Affairs (OLA), Congress, and the public. For example, talking points and background information provided to the Attorney General in preparation for House and Senate Judiciary hearings in early June 2012 stated that:

- DEA's role in Honduras was to support, advise, and train vetted law enforcement officers.
- Honduran police led the operation on May 11, 2012.
- U.S. agents involved in the operation played a supporting, advisory role only.

In addition, DEA's answers to Senator Grassley's Questions for the Record (QFR), which DOJ submitted to the Senate Caucus on International Narcotics Control on June 28, 2013, represented that Honduran law enforcement officers led and executed the missions and that DEA's role was to advise and mentor them.<sup>210</sup> A month later, DEA made a similar statement in response to a letter Representative Hank Johnson and 56 other Members of Congress submitted to the Attorney

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<sup>210</sup> As described in Chapter Twelve, on May 16, 2012, Deputy Administrator Thomas Harrigan appeared before the Senate Caucus on International Narcotics Control regarding countering narcotics in West Africa. Although Harrigan did not receive questions about the May 11 incident, DEA received QFRs from Senator Charles Grassley on June 6, 2012 that, among other topics, included questions about DEA's operations in Honduras.

General. Further, prepared remarks and talking points developed by State and DEA officials in preparation for briefings with congressional staff suggest that State and DEA briefers told staffers that the Hondurans led the operation while U.S. personnel participated in a supportive, advisory role only.

We found that, as a general matter, DEA deferred to the State Department to handle press inquiries about Operation Anvil or the May 11 incident. However, in a rare exception, an October 2012 *New York Times* article attributed the following statement to a DEA spokesperson: "During our operations in Honduras, Honduran law enforcement is always in the lead, and we play a support and mentorship role."

## **B. Evidence Not Consistent with Representations**

The OIG concluded that the facts as detailed in the prior chapters are not consistent with the notion that Operation Anvil was a Honduran-led operation or that FAST played only a support, advisory, and mentorship role. The evidence shows that even before operations began, the Honduran authorities did not take ownership of the operation and left the planning and preparation primarily to their U.S. partners. Indeed, it was DEA who designed the operation and drafted the "Concept of Operations" (CONOPS) for Operation Anvil. The initial drafts of the CONOPS specified that the FAST team leader would be the Ground Force Commander of the operation. Further, during the early planning phases of Anvil, the Bravo Team Leader told FAST and INL officials that "[e]ach FAST Agent will be assigned X number of Hondo's to herd/control." After INL officials raised concerns that INL funds could not be used for a DEA-led operation overseas, the CONOPS was revised so that, by the terms of the final Operations Order, the TRT Commander became the Ground Force Commander assisted by DEA personnel who would serve in an advisory role.<sup>211</sup> We concluded that concerns about violating the funding limitation provided at least part of the motivation for DEA and the State Department to promote the narrative that TRT was in charge of leading Operation Anvil.

However, we found that this revision was essentially on paper only and that in practice the Honduran TRT did not command the Anvil operations and FAST did not merely serve in an advisory role. In the first instance, the Honduran TRT did not have direct access to intelligence information or the necessary radio connectivity and equipment to effectively command the operation. [REDACTED]

[REDACTED] Most of the time, communications between the FAST team and TRT officers on the ground were conducted only when in a close proximity and with hand signals. On June 23, for example, using the assistance of a State-contracted helicopter pilot, a FAST member approached the location of the suspect

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<sup>211</sup> As described in Chapter Two, INL financed Operation Anvil using INCLE funds granted to INL by Congress for foreign assistance purposes, not for law enforcement operations. In addition, the Mansfield Amendment to the Foreign Assistant Act prohibited U.S. personnel from participating in foreign police action in furtherance of narcotics control efforts.

hiding behind the tree because the FAST member had the radio connectivity with the pilot and strobe light and [REDACTED].

The Bravo Team Leader told us that he worked collaboratively with the TRT Commander and that it was the TRT Commander who gave orders to his officers, and the Bravo Team Leader who gave orders to his FAST members. When we asked FAST members who participated in the operation about the command structure, some of them told us that FAST gave tactical commands to the TRT officers during the missions. Conversely, according to FAST members, FAST did not take any orders from the TRT. One FAST member told us that the way it worked was that "ultimately, we have the radio communication. We give the commands. We make the calls. . . . However, TRT can tell us at any point what they think and put a stop to something. . . ." Giving direction to the FAST members, however, would have been difficult for the TRT given their inability to speak English and FAST's only fluent Spanish speaker serving as a medic and not an operator on the ground during interdictions. Similarly, FAST's inability to communicate with TRT beyond single phrase commands brings into question the level of collaboration that purportedly took place between both groups.

Further, the specific accounts of the three Anvil shooting incidents tend to show that the FAST team leaders directed the actions taken during the missions. On May 11, the FAST team leader made the critical tactical decisions, including when and where to interdict the drugs, the establishment of a security perimeter in the village, and the reinsertion of the helicopters to load the seized cocaine and depart the area. He also gave instructions to the helicopter pilots and surveillance plane throughout the mission and controlled the recovery effort. On June 23 and July 3, it was the FAST members out in front, addressing the perceived threats.

### **C. Senior DEA Officials Knew DEA Was in the Lead**

There is some evidence that senior DEA officials were either complicit or indifferent to the inaccurate and incomplete characterizations of DEA's role in the operation. For example, in response to press guidance from the State Department that included, among other things, that counternarcotics operations in Honduras are led by host nation law enforcement, the Assistant Regional Director told her new supervisor, Paul Craine, that: "[J]ust FYI [Operation] Anvil was not host nation led and DEA was acting in an operational capacity not in an advisory role." Further, although former DEA Administrator Michele Leonhart advised Attorney General Eric Holder in June 2012 that the Honduran officers led the operation, meeting notes indicate that she advised the Deputy Attorney General in July 2012 that the Hondurans "have a long way to go. DEA here has to lead from the front." In addition, the FAST witness statements that many senior DEA officials reviewed and relied upon during the internal reviews and in communications with Congress and DOJ leadership demonstrate that the FAST team leaders gave the critical directions during the mission and the FAST members served in an operational capacity alongside and, at least at times, ahead of the TRT.

Moreover, the evidence does not suggest that DEA misled State officials who participated in the planning and execution of Operation Anvil. As the State OIG

concluded in the next chapter, there is some evidence that State officials were well aware of the limited capabilities of the Honduran officers who participated in the operation.

### **III. Assessment of DEA's Internal Shooting Reviews**

#### **A. DEA's Delayed and Superficial Internal Review of the May 11 Incident**

##### **1. DEA Procedures and Decision-Making Failed to Ensure that DEA Initiated a Timely Internal Review**

The post-shooting incident procedures contained in the DEA Agent Manual defined a "shooting incident," requiring the initiation of an internal review, as:

[A]ny discharge of a firearm by a Drug Enforcement Administration (DEA) Special Agent (SA) or deputized Task Force Officer (TFO) (whether on or off duty), another law enforcement officer (LEO) (federal, state, or local, whether deputized or non-deputized) working on a joint investigation and/or law enforcement operation with DEA, or other DEA employees authorized in writing to carry a firearm by the Administrator.

Although DEA has hundreds of agents stationed overseas who work with foreign LEOs, the DEA Agent Manual does not address whether an incident in which shots are fired by a *foreign* LEO (as opposed to "federal, state, or local" LEOs) working on a joint operation with DEA in another country is a "shooting incident" that triggers DEA's post-shooting incident procedures.<sup>212</sup>

We found that in the immediate aftermath of the May 11 incident, senior DEA officials decided against conducting a formal shooting review because early post-action reporting was that no DEA agent fired a weapon and because the Hondurans

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<sup>212</sup> In DOJ OIG's 2015 report concerning our Review of Policies and Training Governing Off-Duty Conduct by Department Employees Working in Foreign Countries, available at <https://oig.justice.gov/reports/2015/e152.pdf> (accessed December 20, 2016), we noted that DEA had 833 permanent positions abroad as of June 2013, as well as 1,751 temporary duty assignments in FY 2012.

As described in Chapter Seven, a December 2015 MOU between DOJ OIG, the Criminal Section of DOJ's Civil Rights Division (CRT), and DOJ's law enforcement components, including DEA, provides procedures for coordinating any criminal or administrative investigation among and between DOJ OIG, CRT Criminal Section, the Federal Bureau of Investigation, and the DOJ component of the involved employee. Under the 2015 MOU, DOJ's law enforcement components (including DEA) are required to advise both CRT Criminal Section and DOJ OIG of all incidents that involve: (1) any intentional discharge of a firearm aimed at or striking another person, (2) any unintentional discharge of a firearm striking another person, and (3) any intentional or unintentional discharge of a firearm resulting in damage to private property. By its express terms, the MOU covers shootings by DOJ employees, as well as non-federal law enforcement officers who are acting as DOJ-deputized task force officers or who are participating on DOJ-led enforcement operations, and applies regardless of whether the reportable shooting incident occurred inside or outside the United States.

who fired were foreign LEOs. DEA changed its position weeks later, but only after the allegations of civilian deaths were reported publicly, mounting pressure from DOJ leadership, and the receipt of congressional inquiries.

However, even with the absence of foreign LEO coverage in DEA's post-shooting incident procedures and our ultimate determination that FAST members did not discharge their weapons on May 11, these facts did not absolve DEA of responsibility to have conducted a timely and thorough review of the incident for several reasons. First, DEA never even considered the possibility that one or more of its personnel may have been mistaken or inaccurate in their belief regarding whether they had fired in a high pressure situation. Initial reporting following a shooting incident is not always correct or complete – a fact that DEA failed or refused to acknowledge in its rapid acceptance of the assertion that FAST personnel did not fire a weapon on May 11 and therefore no investigation was warranted.

Second, DEA failed to recognize or acknowledge its role in the operation and take responsibility, at least in part, for the events of that evening. As described throughout this report, the Honduran officers – including those who discharged their weapons on May 11 – participated in the operation under the training, advice, and tactical supervision of the FAST members.

Third, as described in Chapter Three, at least one FAST member acknowledged to the OIG that he specifically directed a Honduran door gunner on a helicopter to fire his machine gun immediately before the door gunner fired at the passenger boat – a critical fact that was omitted from DEA's initial reporting. Plainly, DEA should be expected to conduct a shooting review when another law enforcement officer fires a weapon at the direction of a DEA agent during a joint operation. Yet it appears no one at the DEA asked the agents present on May 11 whether they had given any such instructions to the Hondurans.<sup>213</sup> We believe procedures should be in place to ensure that DEA verifies whether DEA personnel or task force officers fired or did not fire their weapons, and whether DEA personnel or task force officers played a role in the firing of a weapon by one of DEA's partners. In addition to conducting a thorough post-incident investigation, all DEA personnel and task force officers should understand that weapons checks must be conducted as soon as it is practical to do so, as DEA's post-shooting procedures appear to require.

Accordingly, DEA's post-shooting procedures should be revised to ensure DEA investigates all shootings during joint operations abroad in which initial

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<sup>213</sup> Further, FAST personnel gave conflicting accounts on whether FAST Member G reported his involvement in the Honduran door gunner's use of deadly force to his direct superiors. As described in Chapter Three, FAST Member G did not report in his witness statement that he directed the door gunner to fire, but he told the OIGs that during the debrief in ██████ on the morning of May 11 he reported to his fellow FAST team members that he had directed the door gunner to fire. None of the other FAST team members gave this account of the debrief during their OIG interviews, and both the Bravo and Delta Team Leaders told us that they did not recall any such report from anyone after the interdiction. The Bravo Team Leader told us that no one ever told him that they directed the door gunner to fire his weapon.

reporting or available information is that DEA personnel either may have discharged their weapons or instructed other individuals to fire their weapons, was in a position to discharge their weapons or instruct other individuals to fire, or it is determined that DEA nevertheless played a leadership role in the operation. Further, we believe that DEA should not limit its review to only an examination of DEA conduct during the joint operation. Although DEA may not typically have jurisdiction to take direct criminal or administrative action against host nation participants, DEA inspectors and the Shooting and Assault Incident Review Committee (SAIRC) should, at a minimum, evaluate DEA and foreign LEO conduct to determine whether DEA's advice and any direction or leadership provided to foreign LEOs were appropriate, whether foreign LEOs require more training from DEA or elsewhere, whether DEA should continue working with the host nation on future similar joint counternarcotics operations, and, more generally, to fully assess lessons learned from the incident for DEA and its operations in that country or elsewhere.

In addition, because the post-shooting procedures of other DOJ law enforcement components, including the Federal Bureau of Investigation's (FBI) and U.S. Marshals Service's (USMS), also do not address whether an incident in which shots are fired by a foreign LEO working on a joint law enforcement operation in another country falls within the definition of a "shooting incident" triggering their post-shooting incident procedures, we recommend that the post-shooting incident procedures of DOJ's law enforcement components be considered more broadly by the Deputy Attorney General to determine whether revisions should be made to ensure that these shooting incidents are handled in a consistent and appropriate manner across the Department's law enforcement components.

Finally, we believe that DEA's post-shooting procedures should be revised to clarify the circumstances under which shooting incidents are to be investigated directly by the Office of Inspections and the circumstances under which investigations will be delegated to the field. As described in Chapter Seven, we found that the procedures do not provide delegation guidelines regarding foreign incidents or, in the case of domestic incidents, state whether such incidents will be investigated directly by IN or delegated to the field when the incident involves significant injuries, death, or other significant potential sources of liability.

## **2. DEA Procedures and Inspectors Failed to Ensure a Thorough Investigation**

The DOJ OIG concluded that DEA's post-shooting procedures and inspectors failed to ensure a thorough investigation of the May 11 incident. In fact, DEA's actions with respect to the May 11 incident can barely be characterized as an "investigation" at all. Instead, DEA assigned the matter to a supervisor in the FAST program who merely collected witness statements from FAST personnel.

We believe the assignment of the FAST Supervisor to conduct the investigation demonstrated poor judgment on the part of DEA's regional leadership who selected him and DEA management and inspectors who condoned it. DEA's post-shooting procedures did not require independence from the office or program whose officers' conduct was under review, only that the investigator be a GS-14

level or higher and not a witness to the incident under investigation. However, we believe that someone outside the managerial chain of the FAST program was necessary and should have been required by the procedures to ensure an objective investigation. Illustrating this point, the FAST Supervisor told the OIG that he did not believe he needed to take any other action besides collecting witness statements from the relevant FAST personnel because none of his agents would have lied to him about the events. Such an assumption regarding the untested credibility of the witnesses is facially inconsistent with any sort of meaningful review.

Similarly, the FAST Supervisor did not take basic and logical steps such as interviewing the FAST personnel who participated in the operation, including the Delta Team Leader who was in the piperante with the TRT officers, the FAST members in the helicopter that fired upon the passenger boat, and the FAST members who witnessed the activities in the village. He did not seek to interview or at least obtain witness statements and reports from FAST's U.S. and Honduran partners who participated in the operation, even if only to determine and evaluate the information they had relevant to DEA conduct on that occasion. We also did not find evidence that he gave any consideration to the accounts of the survivors from the passenger boat or local residents of the village.

We found it troubling that the FAST Supervisor viewed his role as limited to collecting a checklist of documents rather than conducting a true investigation. We found it at least as troubling that the DEA inspectors assigned to oversee the investigation did not provide the FAST Supervisor with any guidance about his role or the steps he should take (besides collecting certain documents) or, after reviewing his scant submission, direct that he conduct any actual interviews or seek additional information or reports. For these reasons, we concluded DEA inspectors did not meet their responsibility of ensuring a thorough, factual, and objective investigation of a very sensitive shooting incident. Indeed, after DEA insisted that no one else but DEA investigate DEA conduct during the May 11 interdiction, the DEA inspectors did almost nothing.

Had DEA inspectors ensured a thorough investigation, we believe DEA officials likely would have learned that their personnel did, in fact, exercise deadly force when at least one of them specifically directed a Honduran door gunner on a helicopter to fire his machine gun at the passenger boat. They may have also learned other relevant facts that would have given them some appreciation for the allegations of the local Paptalaya residents regarding the forcefulness of law enforcement conduct in the village.

We believe that a more credible inquiry might have been conducted had DEA's post-shooting procedures articulated sufficiently detailed requirements for such investigations. However, the existing requirements cover only two pages of the DEA Agent Manual and contain no more than a list of forms, reports, and other



documents that must be collected for the shooting investigation file.<sup>214</sup> No other requirements for the investigation are identified or described, except that investigations should be completed within 30 business days unless an extension is granted. The requirements do not state whether interviews of the shooter or other witnesses must or should be conducted, under what circumstances, or what procedures should apply to the conduct of such interviews. In fact, the requirements do not mention witness interviews at all. They also do not provide procedures or guidance regarding when or how witness statements should be prepared and collected.

DEA inspectors and senior DEA officials told us that they relied heavily, if not exclusively, on the FAST witness statements to determine DEA's conduct on May 11. Yet we found no evidence that any of them noticed that one of the FAST members who witnessed the river encounter clearly cut and pasted from another team member's statement and called it his own. Cut and pasting from another's statement, describing events not personally witnessed, and omitting key material facts from the statements as described in Chapter Seven, suggest that guidelines for the preparation and collection of witness statements are warranted, though we believe sworn federal agents should have known better in this case even without them. Further, the glaring deficiencies with the witness statements in this case illustrate the importance of actual interviews to test assertions and arrive at the truth, as opposed to relying solely upon remotely prepared written statements. We were troubled DEA's inspectors did not recognize this and that Deputy Chief Inspector Kevin Foley instead asserted that there was no difference between a sworn written statement and an interview.

Finally on this point, we believe that the lack of any meaningful investigation and the failure to present the SAIRC with all information relevant to the May 11 incident – particularly regarding the results of the DS video analysis, TRT's inaccurate reporting, and the multiple, conflicting accounts of SOI #2 – undermined the foundation for the SAIRC's findings. Regardless of whether the SAIRC would have ultimately reached the same conclusion, all relevant information should have been discussed and weighed.

## **B. DEA's Internal Reviews of the June 23 and July 3 Incidents**

We found that both the June 23 and July 3 shooting reviews complied with the procedures in the DEA Agent Manual and were opened immediately after each shooting. DEA appropriately assigned the investigations to a supervisory special agent outside the FAST program and with no ties to Operation Anvil in Honduras. The Assigned SSA's investigation of these shootings was more thorough than the steps taken for the May review. For example, the Assigned SSA conducted interviews of the FAST members involved in the June and July shooting incidents,

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<sup>214</sup> By contrast, the FBI's Shooting Incident Guide is approximately 263 pages and includes detailed provisions covering the chain of command for shooting incidents, pre-incident preparation, the collection of investigative and administrative documents, and protocols for conducting interviews of agency and non-agency personnel.

the team medics, a DEA Intelligence Research Specialist (IRS), and one of the DynCorp helicopter pilots. He also included the TRT reports in the shooting packages.

However, as with the May incident, the Assigned SSA made no determination as to whether a weapons check was conducted after each shooting. Although the Delta Team Leader told the OIG that he conducted a weapons check on FAST Member G's rifle at the scene of the June 23 shooting, we found no contemporaneous record of the result of such a check. Further, FAST Member G himself stated that his weapon was never checked, and he was never asked how many rounds had been loaded in his magazine, despite remaining on site with his weapon on his person throughout the many hours the ground team waited on scene for the Honduran investigation team to arrive.

Additionally, we found that the presentations to the SAIRC omitted significant details, including important inconsistencies between TRT and FAST reports. During the presentation regarding the June 23 incident, the inspectors advised the SAIRC that the TRT report contained no inconsistencies with other available information, failing to note that the TRT report described a sustained firefight between the TRT and drug traffickers that FAST personnel said did not occur and omitted entirely any mention of FAST's acknowledged use of deadly force. During the presentation regarding the July 3 incident, the inspectors described two inconsistencies – the TRT report stated that law enforcement recovered a 9mm handgun near the scene and omitted any mention of FAST's use of deadly force – but made no mention of the fact that the TRT had inaccurately reported that the INL helicopters were fired upon when they attempted to land and that the second pilot died from injuries resulting from the crash. Further, the inspectors were not aware of the second inaccurate TRT report stating that before the use of deadly force, the pilot aimed and fired a handgun at the officers.

Even if this additional information would not have changed the SAIRC's ultimate conclusions regarding the June 23 and July 3 shootings, we believe it is critical that all relevant information be known to the SAIRC so that its decisions are fully informed. Moreover, there was a missed opportunity for a more careful examination of the TRT's pattern of inaccurate reporting, which we believe should have led DEA officials to also look more critically at the TRT's narrative regarding the events of May 11, particularly their assertion that people in the passenger boat were armed and fired first.

#### **IV. DEA Did Not Cooperate With the U.S. Ambassador and Investigations Conducted by DS and the Honduran Government**

Embassy officials expressed considerable frustration over not having access to DEA information in the aftermath of the Anvil shooting incidents. In particular, Ambassador Kubiske told us she became concerned and frustrated over DEA's refusals to give her any information to rebut the negative press coverage and questions from Congress regarding May 11. As described in Chapter Ten, DEA Headquarters and regional leadership ordered the DEA personnel in Honduras not to provide information about the May 11 incident to those outside DEA, including

Ambassador Kubiske, while DEA conducted its internal review. After this instruction, DEA officials did not comply with the Ambassador's requests for information concerning May 11 and, later, the June 23 and July 3 incidents.

The OIG concluded that DEA's withholding of information from the Ambassador was inappropriate and unjustified. As with all U.S. personnel in-country, DEA's presence in Honduras was at the pleasure and discretion of the Ambassador, and Operation Anvil was executed under her authority. Pursuant to Section 207 of the Foreign Service Act of 1980, 22 U.S.C. § 3927, the Ambassador as Chief of Mission (COM) has "full responsibility for the direction, coordination, and supervision of all Government executive branch employees in that country." Requesting and receiving information about the results of a law enforcement operation involving American personnel, which the Ambassador herself personally authorized, would clearly be within her supervisory responsibilities and authority as COM. Further, we are not aware of any authority granted to DEA that would allow it to deny the Ambassador's requests for information. To the extent DEA officials construed the agency's own internal procedures as granting them with such authority, we disagree and believe that DEA, at a minimum, should reconcile its procedures to ensure that they are consistent with the statutory authorities of the COM.

We found that DEA's obligations to DS were less clearly defined, and that this likely contributed to the dispute between DEA and DS over investigative jurisdiction. As described in Chapter Ten, the COM Firearms Policy at the U.S. Embassy in Honduras mandated that the Embassy would convene a Firearms Review Board to review the circumstances of any discharge of a firearm by personnel acting under COM authority, but it did not explicitly state that a post-shooting investigation would be conducted or specify who would be responsible for conducting any such investigation. None of the DS and DEA officials we interviewed were able to give us any past examples of DS investigating a shooting by a non-State Department employee or contractor during an authorized law enforcement operation. However, a sample acknowledgement form attached to the COM Firearms Policy stated that the Regional Security Officer (RSO), a DS employee at the Embassy, would investigate any discharge of a firearm by personnel acting under COM authority. As described in Chapter Two, the Embassy was unable to produce records that the FAST personnel who participated in Operation Anvil signed the acknowledgement form.

DEA officials said that in an August 2012 meeting they reached an "agreement" with DS to resolve DEA's disagreement with DS over investigative jurisdiction. The agreement, however, appears to have been more of a unilateral expression of the limited terms to which DEA would agree, namely that DEA would provide a presentation and short, summary report to the Ambassador and RSO at the conclusion of the DEA internal review. DEA did not agree to allow the Ambassador or DS investigators access to DEA personnel or their firearms, or provide the Ambassador or DS with copies of DEA's internal review file.

We are aware of no authority that would have allowed DEA to impose terms that would delay or restrict the Ambassador's access to information necessary to

fulfill her supervisory responsibilities as Chief of Mission. Yet, consistent with the terms DEA imposed, the Ambassador and RSO did not receive a briefing on the results of the DEA's Anvil-related internal reviews until November 2012, 6 months after the May 11 incident occurred.

We also found that even though State officials pressured the GOH to conduct an investigation into the May 11 incident, DEA – with State's concurrence – did not grant Honduran requests for information. As described in Chapter Six, on at least two occasions in the summer of 2012, DEA refused Honduran requests for DEA information, including a copy of DEA's investigative report and the opportunity to question the DEA personnel involved in the operation.

DEA officials provided us with several reasons why DEA refused GOH access to DEA personnel involved in the operation, including that the Letter of Agreement between the GOH and the United States for Operation Anvil provided diplomatic protections that insulated participating U.S. personnel from host nation jurisdiction and concern that multiple witness statements could harm U.S. judicial proceedings against Anvil drug traffickers. Even assuming that DEA's reasons were valid, it was contradictory for DEA and State to assert to congressional staff that the GOH was the entity that should investigate the May 11 incident but not give Honduran authorities the information necessary to conduct a thorough investigation.

Moreover, we concluded that the lack of cooperation between DEA, State, and the GOH during their respective investigations was closely related to the deficiencies in pre-operation planning for what would happen in the event of a critical incident. And even under DEA's construct that each entity would investigate its own personnel, there was no mechanism for ensuring access to relevant information across the entities, and resolving or even identifying conflicting evidentiary or investigative gaps created by this division of responsibility. The result was that no one did a comprehensive or thorough review of the May 11 incident.

Therefore, we believe that in connection with future counternarcotics operations outside the United States, DEA should work with the relevant U.S. Embassy and host nation partners to develop a specific protocol, in advance of the operation, that will determine which entity or entities will investigate a shooting or other critical incident that occurs during the operation; the scope and requirements of such an investigation; what information will be shared between and among the relevant entities for use in such investigation and when that will occur; and the time-frame and procedures for sharing the results of the investigation. Such protocols should ensure timely access to relevant information by the COM, as well as whatever entity or entities is or are involved in the investigation of any shooting or other critical incident, and include a procedure to identify and resolve conflicting evidence or investigative gaps when more than one such entity is involved in the investigation. To the extent DEA and the COM determine that certain information should not be provided to the host nation, DEA should work with the Embassy to ensure that any investigation conducted by the host nation receives sufficient information to allow for a meaningful and thorough review of the relevant facts. DEA should not undertake future joint counternarcotics operations with its foreign

counterparts outside the United States in instances where it is unable to reach agreement with the U.S. Embassy and its foreign counterparts in advance on such basic post-incident protocols, at least in circumstances where shootings or other critical incidents are a possibility.

## **V. Incomplete and Inaccurate Information Provided by DEA to DOJ Leadership and Congress**

### **A. DOJ Leadership**

DOJ OIG found that officials from the Office of the Attorney General (OAG) and the Office of the Deputy Attorney General (ODAG) learned of Operation Anvil and the May 11 incident after Administrator Leonhart advised them on May 16 of the media accounts reporting that innocent civilians were killed during a joint DEA-Honduran counternarcotics operation. Following this notification, ODAG immediately became engaged and undertook steps to learn the available facts. Shortly thereafter, ODAG officials urged a reluctant DEA to investigate the May 11 incident. Although DEA eventually initiated an internal review, DEA inspectors did not conduct any meaningful investigation or interview relevant DEA personnel, as DEA officials led ODAG to believe.

DEA's misplaced confidence in its assumptions about the events that took place on May 11, and its failure to conduct a thorough post-incident investigation, resulted in DEA making several factual representations to OAG, including to the Attorney General, and to ODAG, including to the Deputy Attorney General, that were inaccurate, incomplete, or based upon unreliable or inadequate evidence. This included representations regarding the central facts of May 11: (1) Honduran officers led the operation, while DEA agents played a support role only; (2) individuals in the passenger boat fired first and Honduran officers returned fire; and (3) no DEA agents discharged their weapons.

On the first point, we described above our finding that the notion of a Honduran-led operation was essentially a fiction, likely motivated at least in part to justify the INL funding that was made available for the operation, while also providing DEA with a convenient refrain for deflecting responsibility for the May 11 incident.

On the second point, not only was there no credible evidence that the individuals in the passenger boat fired first, but the available evidence places into serious question whether there was any gunfire from individuals in the passenger boat at any time. As described above, we based this conclusion on several factors, including the lack of evidence on the May 11 video footage of gunfire from the passenger boat and the pattern of inaccurate reporting by the Honduran TRT. The video evidence did show that the TRT officers shot at people from the passenger boat who had fallen or jumped into the water; however, we found that DEA remarkably did not even bring that to the attention of OAG and ODAG officials.

On the third point, although we did not determine that DEA fired their own weapons on May 11, we found that DEA's failure to investigate the May 11 incident resulted in DEA providing inaccurate or incomplete information to DOJ leadership concerning FAST's involvement in the use of deadly force. Indeed, the attorney responsible for managing the aftermath of the May 11 incident for ODAG told us that had he was never told that any FAST members had directed the Honduran door gunner to fire his weapon at the passenger boat, or that the Delta Team Leader drew his firearm during the river encounter. He said this new information would have given him great pause and caused him to reconsider representations DEA made internally and externally about the May 11 incident. In particular, he said that DEA's insistence that no DEA agent fired a weapon, while still technically accurate, would have required further explanation in light of the new information.

Over the course of several months, DEA periodically provided updates regarding the May 11 incident to DOJ leadership as additional information became available, including source information supportive of DEA's account and status updates on the Honduran investigation. In meetings with the Attorney General and Deputy Attorney General and their staff, senior DEA officials, including Administrator Leonhart and Deputy Chief of Operations Jay Fitzpatrick, relied upon information provided by SOI #2 as evidence corroborating DEA's narrative that individuals in the passenger boat were attempting to retrieve the drugs and that gunfire from that boat initiated the firefight. However, we found that these DEA officials subsequently learned that the source had provided inconsistent accounts of the May 11 incident, and the source's claim that the gunfire that initiated the firefight was aimed at a helicopter was not supported by any other reliable evidence, including the video footage.<sup>215</sup> Despite the fact that this source's credibility was substantially undermined, there was no evidence that these DEA officials clarified or modified their prior representations to the Attorney General, the Deputy Attorney General, or any other Department leadership officials to account for the source's inconsistent statements or questionable reliability.

Further, DEA officials advised DOJ leadership that the source passed a polygraph, but we found no evidence that they advised, or that Fitzpatrick or Administrator Leonhart were even aware, that the polygraph examination was largely useless because of the failure to document it, conflicting information about what the polygrapher asked, and available evidence indicating that the examination may have been limited to whether the source was present on May 11 when the drugs were offloaded. Moreover, we found that DEA failed to adequately question SOI #2 about his/her multiple versions of events or confront him/her with the inconsistencies between his/her various stories and the May 11 video footage.<sup>216</sup>

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<sup>215</sup> By contrast, DEA did not give much, if any, consideration to the statements SOI #4 made about the May 11 incident despite the fact that his/her account, which did not support the DEA narrative, was more in line with the events depicted in the video.

<sup>216</sup> As we described in Chapter Five, DEA interviewed SOI #2 on three occasions, during which SOI #2 gave three different accounts of what happened on May 11. DEA accepted certain aspects of SOI #2's accounts that corroborated DEA's May 11 narrative and represented this information to both DOJ and Congress, despite clear evidence that not one of SOI #2's versions of events was supported

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In addition, despite requests from ODAG for updates on the Honduran investigation, we found no evidence that DEA advised ODAG or OAG officials that a preliminary report from the Honduran National Police made findings unfavorable to their own officers who participated in the operation or that Honduran investigators recovered a bullet from May 11 that they were unable to match to a TRT weapon. We also found no evidence that DEA advised Department leadership that the Honduran TRT Commander submitted inconsistent and inaccurate reports regarding material facts, or that the TRT planted a gun into evidence during the July 3 incident. In fact, the evidence tends to show that Administrator Leonhart was not briefed herself on TRT's inaccurate reporting, and we found no evidence that this significant evidence was ever contemporaneously reported to Department leadership. Further, despite advising OAG and ODAG in June 2012 that DEA was cooperating "fully" with Honduran authorities investigating the May 11 incident, we found no evidence that DEA advised them that DEA, in fact, withheld access to FAST personnel and information Honduran authorities requested to further their investigation.

We similarly found that DEA did not advise ODAG or OAG of the disagreements with the Ambassador and DS over investigative jurisdiction and information sharing. Although Administrator Leonhart and Deputy Administrator Harrigan were aware of the disagreements, and Harrigan, in particular, helped determine the DEA position, ODAG and OAG officials told us they had never heard of any conflict involving DS over the investigation, that DS was conducting an independent investigation and had traveled to Ahuas for that purpose, or that DS had analyzed the video footage and found no video evidence consistent with gunfire from the passenger boat. Although the State Department did not elevate the disagreements directly to DOJ leadership, which it could have done, we believe DEA should have made ODAG officials aware that DEA was withholding information requested from an Ambassador about an operation she authorized and should have shared with ODAG officials the clearly relevant information arising from State's own investigative efforts.

Finally, DEA provided ODAG with inaccurate information about the additional video footage of the May 10-11 interdiction – first about the availability of additional footage and later about what was on the footage after it was discovered. We found that the discovery of the additional footage had reached high levels within DOJ leadership and caused some concern and frustration that DEA had given

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by the video footage. The third interview of SOI #2 provided an opportunity for DEA to question SOI #2 regarding his/her prior interviews and confront him/her with his/her inconsistent narratives and the fact that his/her prior narratives conflicted with the video evidence. However, the third interview was conducted in a manner similar to the previous two: SOI #2 gave a third version of events to a third set of interviewers, who did not adequately challenge the source's previous statements and one of whom was not even aware that DEA had ever interviewed the source on a prior occasion.

Further, DEA chose to send members of the FAST team that participated in the operation, who were witnesses themselves to the events of May 11, to conduct the first interview of SOI #2. We believe DEA should have made the effort to have agents from TCO meet with the source in [REDACTED] or made other arrangements to ensure that personnel involved in the incident were not also the ones debriefing a potential key witness to the incident.

DOJ officials and congressional staff inaccurate information by stating as fact, without verifying, that the surveillance aircraft had stopped recording after the gunfire ended because it was low on fuel and had to return to base. After obtaining and reviewing the additional footage, FAST Section Chief Richard Dobrich later told representatives from ODAG and OLA that there was nothing of significance in the additional video footage and that it only reflected the surveillance aircraft [REDACTED] [REDACTED] for a few hours. To the contrary, we found that the boat shown repeatedly in the additional footage was the passenger boat, with possibly one or more injured or deceased people onboard.

## **B. Information Provided to Congress**

In staff briefings and written correspondence, Congress called upon DEA to provide information and answer questions regarding the May 11 incident. In addition, Administrator Leonhart appeared before two Congressional committees in April 2014 where she answered questions about the May 11 incident. The DOJ OIG concluded that DEA made certain factual representations to Congress that were inaccurate, incomplete, or based upon unreliable and insufficient information. In some instances, DEA officials described information favorable to DEA's positions while omitting unfavorable information that would have placed their view of what happened into question.

In particular, DEA consistently maintained in Congressional briefings that there was an exchange of gunfire between officers in the pipante and individuals in the passenger boat. We found that this assertion had widespread support within DEA, including Administrator Leonhart and Deputy Administrator Harrigan, who approved DEA's congressional correspondence. Further, there is evidence that at least in briefings with Senate Judiciary and Appropriations staff, if not others, DEA officials told staffers that individuals in the passenger boat had fired first.

We found that DEA's insistence in congressional correspondence, including its April 2014 response letter to Senator Leahy, that the video footage showed evidence of gunfire from individuals in the passenger boat was unsupported. The DOJ OIG and OIG-retained video analysts, Cynthia Archer and John Miller, found that although the video clearly shows gunfire from the pipante, there was no video evidence of gunfire from the passenger boat. The CBP camera operator and CBP pilots we interviewed, all of whom told us they had significant experience interpreting nighttime operations recorded on thermal imagery, also found no such evidence supporting DEA's position. The DS video analyst did not find such evidence either. Nor was there consensus within DEA on the issue of whether the video footage showed gunfire from the passenger boat. While obviously not experts in infrared video analysis, even the officials at ODAG and OAG who viewed the video did not independently find evidence of this, telling the OIG that they believed the video was unclear or inclusive on this point. Only Administrator Leonhart, Deputy Administrator Harrigan, an attorney in OLA, and a select few DEA officials close to the operation told the OIGs that they observed what they believed to be gunfire from the passenger boat. However, we found no evidence to support their beliefs or the representations made to Congress to the same effect.



In fact, the lack of video evidence of gunfire from the passenger boat undermined a key aspect of DEA's account that the occupants of the passenger boat were drug traffickers or assisting drug traffickers with retrieving the drugs. The highly questionable reliability of the assertions made by the TRT and SOI #2 that the passenger boat fired first also undermined DEA's insistence that the passengers had such a malicious purpose.

Given DEA's own recognition that SOI #2's first interview was "superficial at best," as well as the undocumented and inadequate polygraph, the DOJ OIG believes that DEA should have ensured that it had obtained sufficiently detailed – and reliable – information from SOI #2 before briefing Senate staff that the source corroborated DEA's narrative. Further, although there is some evidence that DEA briefers advised congressional staff that SOI #2 was not a perfect witness, DEA continued to rely upon SOI #2 in congressional correspondence to corroborate the DEA narrative concerning the purpose and actions of the passengers, even after the source's second and third interviews completely undermined his/her credibility. DEA later tempered its characterization of the passengers in its April 2014 response letter to Senator Leahy, but only at the insistence of DOJ leadership because of the weakness of the evidence supporting DEA's prior position and only slightly to say that DEA concluded that it was likely that at least some of the passengers had knowledge of or involvement in the drug activity that evening.

In briefings with congressional staff and in its responses to Senator Grassley's QFRs and Representative Hank Johnson's letter, DEA continued to inaccurately and incompletely characterize its role in Operation Anvil as being supportive and advisory only, while claiming that Honduran officers led the missions. ODAG officials had vetted DEA's responses to Senator Grassley's QFRs and allowed DEA to claim that the Hondurans led the operation, when evidence showed Administrator Leonhart acknowledged to ODAG in July 2012 that Hondurans had a long way to go and that therefore DEA had to lead from the front.

DEA also represented in its April 2014 letter to Senator Leahy that the officers who participated in the operation did what they could to search for the passenger boat and any injured parties, which we found significantly overstated the search that was conducted. As described in Chapter Three, the priority of the mission after the encounter with the passenger boat was the recovery of the officers and drugs in the stranded pipante. The law enforcement team did not have the personnel or search lights to perform an adequate search and rescue mission. Although the FAST team leader said he asked the helicopter pilots on two occasions whether they saw anyone on the river, we concluded he did so to identify possible dangers to the ground team as it conducted the recovery effort, not out of concern for finding the people from the passenger boat.

The DOJ OIG concluded that these key representations to Congress – an exchange of gunfire, the boat passengers as drug traffickers or their affiliates, Operation Anvil as Honduran-led, and efforts to search for injured people – as well as the certainty with which DEA made them – were not supported by the evidence DEA had available to it and were indicative of the fact that no one in DEA critically

assessed FAST's information and assumptions about the Operation and the incident in question.

Moreover, we concluded that DEA made other inaccurate statements to Congress concerning the May 11 incident as a result of carelessness or the failure to conduct a thorough investigation. These statements were:

1. The additional video footage taken during the May 10-11 interdiction contained no helpful information and that the passenger boat was never seen after the river encounter – in fact, a boat shown repeatedly in the additional footage appears to be the passenger boat, with possibly one or more injured or deceased people onboard, and the pilots of two of the helicopters told us that they had observed the passenger boat up on the opposite riverbank after the encounter;
2. DEA interviewed all FAST personnel involved on May 11, and the May 11 incident was “fully investigated” – in fact, apart from collecting witness statements, some of which were questionable, no interviews or actual investigation was conducted by DEA during its internal review;
3. The FAST team member in the pipante rolled or jumped into the water during the gunfire – in fact, the DEA agent told the OIG that he remained inside the boat and at one point drew his handgun; and
4. U.S. personnel did not exercise deadly force on May 11 – in fact, an INL pilot moved his helicopter into position and gave the Honduran door gunner permission to fire, and FAST directed the door gunner to fire his machine gun at the passenger boat.

In addition, handwritten notes from a briefing DEA and State provided to congressional staff in December 2012 suggest that DEA provided inaccurate information to staffers regarding questions about DEA's cooperation with the Honduran investigation of the May 11 incident. While the congressional liaison who took the notes indicated that she had no independent recollection of the briefing, her notes do not reflect that DEA officials told the staffers that Honduran authorities had made multiple requests for DEA information, including the report of DEA's internal investigation and the opportunity to interview the DEA personnel involved in the incident, or that DEA and the U.S. Embassy did not agree to provide this information. Further, the notes suggest that a briefer specifically told congressional staff that the Hondurans never requested the opportunity to speak with DEA personnel and that the Honduran authorities did not need any additional information – assertions that would have been inaccurate and incomplete.

Finally, we concluded that DEA omitted additional significant facts that should have been included in the information provided to Congress, consisting of:

1. The video evidence showing that officers in the pipante fired intermittently at people in the water for approximately 20 seconds;

2. The inaccurate reporting and gun-planting by the Honduran TRT, which we believe undermined the reliability of the TRT's assertions regarding the events of May 11;
3. The preliminary report of the Honduran National Police that contained findings unfavorable to law enforcement, and the recovered bullet that Honduran investigators were unable to match to a TRT weapon; and
4. The existence and results of the DS video enhancement and analysis, which found no evidence indicative of gunfire from the passenger boat.

We found the failure to disclose the DS video analysis particularly egregious because Senate Judiciary and Appropriations staff specifically asked DEA whether DEA or State made attempts to enhance or analyze the video footage. Although we believe that the State briefers were best situated to address State's attempts to enhance or analyze the video, DEA briefers also had at least some knowledge of the DS video analysis. We determined that at a minimum, DEA Deputy Chief Counsel John Wallace was aware that a DS video analyst had performed work on the video and he said he shared that fact with Fitzpatrick and Dobrich. Wallace told us he did not give much weight to what the analyst had done, and there were conflicting recollections between DS and DEA officials about whether DS specifically briefed DEA on the conclusions the DS analyst had reached. Nevertheless, we believe that Wallace, Fitzpatrick, or Dobrich should have ensured that staff received a complete answer that disclosed the existence of the work performed by the DS video analyst.

## **VI. Inadequate Response to TRT's Inaccurate Statements and to Gun-Planting Report**

The DOJ OIG was told repeatedly that the climate in Honduras is drastically different and more challenging for law enforcement than in the United States, including that Honduran police officers face serious and personal repercussions for their work with DEA. Given this knowledge, DEA should have been particularly careful in determining the accuracy of information obtained from the TRT. Each of the questionable representations TRT made in their reports and the apparent gun planting reportedly ordered by Honduran National Police leadership appeared consistent with an attempt to "protect" the TRT and, they may well have believed, DEA based on the misconception that DEA had to be fired upon first in order to fire their weapons, as Honduran law enforcement practice itself apparently dictated. Those in DEA that had knowledge of the inaccurate reporting and apparent gun planting by TRT may not have been able to rectify these issues with the TRT, but they should have generated more concern and critical analysis than DEA's reaction reflected. To the contrary, Deputy Chief Counsel John Wallace told us that he was made aware of the gun planting incident but that he did not believe it was a significant event in terms of the Anvil-related U.S. prosecutions because DEA had been very cautious not to rely upon any evidence from the TRT to support the criminal charges.

We believe these facts raised questions about the integrity of any evidence collected by TRT during Operation Anvil. Therefore, we concluded that DEA should have advised prosecutors handling Operation Anvil cases of the gun planting incident and notified them about the TRT's inaccurate reporting. Because DEA had not done so, in October 2015, DOJ OIG provided notification to the U.S. Attorneys for the Eastern District of Virginia and the Southern District of New York, the Chief of the Narcotic and Dangerous Drugs Section of DOJ's Criminal Division, and the Deputy Attorney General's Office, so that they could evaluate the information for potential *Brady* or *Giglio* material.

Moreover, as we noted previously, there was a missed opportunity for a more thoughtful examination of the TRT's pattern of inaccurate reporting, which we believe should have led DEA officials to look more critically at the TRT's narrative regarding the events of May 11, particularly their assertion that people in the passenger boat were armed and fired first.

In the next chapter, State OIG describes its analysis and findings, followed by our final chapter in which we make recommendations to address several findings in this report.

## **CHAPTER FOURTEEN: DEPARTMENT OF STATE OFFICE OF THE INSPECTOR GENERAL ANALYSIS AND FINDINGS**

In this review, the State OIG examined the application of Chief of Mission authority to the responses to the three Operation Anvil shooting incidents by DEA and State officials. State OIG also examined the accuracy of the information provided to the public and to Congress about Operation Anvil. As described in greater detail in the sections below, State OIG found that DEA failed to comply with the Chief of Mission authority granted to Ambassador Kubiske by refusing to comply with her information requests and to cooperate with the Diplomatic Security investigation that she initiated in accordance with Department of State policies. Rather than support the Ambassador's authority, senior INL officials undermined her authority at every turn by objecting to the authority of DS to conduct its investigation and refusing to allow DS investigators access to the helicopter crews. DEA and INL actions prevented DS from concluding its investigation of the three incidents.

In addition, WHA and INL officials provided inaccurate and incomplete statements to Congress and the public regarding Operation Anvil and the three incidents. In many cases, they failed to inform Congress of information that challenged the narrative that on May 11 drug traffickers had attacked the officers in the pipante.

### **I. Chief of Mission Authority**

#### **A. DEA Failed to Comply with Chief of Mission Authority**

Under both federal law (22 U.S.C. § 3927) and Presidential instruction, Ambassador Kubiske was given full authority over all executive branch employees in Honduras, including those of DEA. The Foreign Service Act provides that this authority includes "full responsibility for the direction, coordination, and supervision" over these employees. DEA agents had a responsibility under the law to "comply fully with all applicable directives of the chief of mission," and the DEA had a legal duty to keep the Ambassador "fully and currently informed with respect to all activities and operations of its employees" in Honduras and to "insure that [they] comply fully with all applicable directives of the chief of mission." The Department of State describes the Chief of Mission as "the Chief Executive Officer of a multi-agency mission."<sup>217</sup> Chief of Mission authority is critical to the maintenance of the President's foreign policy, as the Ambassador serves as the President's personal representative to the host nation government.

However, DEA failed to comply with all of these duties and to treat the Ambassador as the Chief Executive Officer of its employees in country. As noted in

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<sup>217</sup> Department of State, *Leading Through Civilian Power: The First Quadrennial Diplomacy and Development Review*, 2010, 29.

Chapter Ten, Ambassador Kubiske ultimately authorized the Special Investigations Division (SID) of DS investigate the three deadly force incidents. This request was in accordance with State policies authorizing DS to investigate the use of deadly force by Chief of Mission personnel. DS officials reached out to DEA to coordinate investigations. DEA was reluctant to agree to a joint investigation and asked DS for its legal authority to conduct a review of the shootings. DS provided its authorities to DEA, which included the Chief of Mission statute. However, DEA's reluctance to cooperate only intensified.

Senior DEA leadership, with the former Administrator's concurrence, instructed DEA personnel not to cooperate with DS and to deny them access to DEA personnel and records. The SID Agent assigned to investigate the shooting incidents repeatedly tried to speak with DEA personnel at the Embassy, but they refused to provide any information because they were under orders from DEA leadership not to cooperate or assist the investigation, contrary to the responsibility to keep the Chief of Mission informed of their activities.

After these refusals, the Ambassador became involved and issued a memorandum formally instructing DEA to provide information regarding the June 23 and July 3 shooting incidents. The Ambassador personally delivered this memorandum to the Assistant Regional Director in mid-July. It instructed DEA to provide the Ambassador and the Acting RSO with specific documentation, including witness statements, photographs, videos, and all documentation generated by DEA regarding these incidents. However, the State OIG found that the Assistant Regional Director effectively denied the Ambassador's request at the direction of her chain of command. The Ambassador was never provided these documents and instead was given an oral briefing and a 3-page written summary of DEA's findings for each incident. However, the briefing failed to answer all of her questions, and she was extremely frustrated by the failure to provide any new information.

The State OIG found that DEA personnel at the Embassy may have also instructed the TRT officers not to cooperate with the investigation ordered by the Ambassador. According to the SID Agent, the TRT officers were anxious to tell him their side of the story, until the SID Agent notified DEA of his interviews with them. After DEA found out about the interviews, the TRT officers refused to answer even the most basic of questions.

## **B. INL Failed to Comply with Chief of Mission Authority and Undermined the Ambassador's Exercise of Her Authority**

As a bureau within the Department of State, INL should understand the importance of Chief of Mission authority. However, INL senior officials repeatedly undermined Ambassador Kubiske's authority and failed to cooperate with the investigations she authorized.

Within a day of the Ambassador authorizing DS to investigate the June and July shooting incidents, INL Principal Deputy Assistant Secretary Carol Perez began to raise objections to DS involvement. She communicated these objections to both DS and DEA officials, and although she told the OIGs that she did not intend to

obstruct the investigation of the shooting incidents, INL's support bolstered DEA's unwillingness to cooperate.

Likewise, AS Brownfield also raised internal and external objections to DS involvement. Immediately following the Ambassador's request for DS involvement, he e-mailed Deputy Administrator Harrigan and offered to push the investigation "back into the box." Likewise, in the September 2012 meeting between DS, INL, and WHA, AS Brownfield minimized the failure of DEA to cooperate and ascribed partial blame to DS.

In addition, INL failed to comply with Chief of Mission authority by refusing to assist DS in its attempt to interview the helicopter crews. As noted in Chapter Ten, the SID agent requested to speak with the pilots and gunners, but INL denied this request. The request was forwarded up to the highest levels of INL, and AS Brownfield instructed his staff not to cooperate. Although he recognized that the request fell under the Chief of Mission authority, he instructed that INL was not to produce the crew for DS to interview. Senior DS and INL officials also discussed the request at a September 2012 meeting, but AS Brownfield remained opposed to providing DS access to the crews. In fact, INL was not even focused on the circumstances of the helicopter opening fire on the passenger boat, because they believed the helicopter fire was suppressive only and not intended as a use of deadly force.

The failure of DEA and INL to provide any cooperation with the investigation requested by the Ambassador resulted in the inability of the SID Agent to complete his investigations and develop conclusive findings regarding the three shooting incidents. DEA's refusal to follow the Ambassador's written request for information, supported by INL, not only violated their duties under the Foreign Service Act, but prevented a complete and comprehensive understanding of the three incidents. Ambassador Kubiske and other State officials had grave concerns over the methodology and findings of the various Honduran investigations, so she requested the DS investigation to better understand what could quickly become a diplomatic problem. However, her intentions were never realized because of the failure of DEA and INL to abide by Chief of Mission authority.

## **II. Statements by State Officials to Congress and the Public**

### **A. Statements to Congress**

Several Congressional committees expressed a great deal of interest in the three shooting incidents and requested multiple briefings by State and DEA officials. While many of the queries were answered by DEA officials, INL Director for Western Hemisphere Programs Mark Wells and WHA Director of Central American Affairs Gonzales Gallegos attended most of the briefings and provided information, not all of which was accurate or complete.

For example, according to the notes that Director Wells used during the briefings, he informed the staffers that: (1) Operation Anvil was a DEA initiative,

led by the Government of Honduras with support from State; (2) U.S. personnel participated in operations in a supportive, advisory role only; and (3) the Honduran law enforcement officers were highly trained and vetted. However, numerous State officials, including Wells, told the OIGs that they were aware that describing Operation Anvil as a "Honduran-led operation" was a useful fiction. For example, Wells described DEA's role as "leading from behind" and told the OIGs that the fact that FAST officers fired the shots in the June and July incidents raised serious questions as to whether DEA was actually leading the operation. Director Gallegos told the OIGs that he discussed with Wells the question of why the FAST officers were the shooters in the June and July incidents if DEA was not in the lead.

State officials were also aware that the TRT were not actually "highly trained." For example, Wells told the OIGs that at State, there was "zero confidence" that the TRT could do these missions without DEA oversight. Likewise, Ambassador Kubiske told the OIGs that the TRT did not have the capability of undertaking such missions and characterized the description of Operation Anvil as a Honduran-led operation as "preposterous."

State briefers also never informed Congress of the DS investigations, despite numerous questions from the Senate Appropriations staff regarding whether State planned to investigate the shooting incidents. According to Wells, he was reluctant to inform the staff of the DS investigation and did not offer DS officials to brief the staff because Congress may have come to realize the conflict between DS and DEA. Therefore, Congress was never informed of the investigative work performed by DS, including the video analysis, which seemed to challenge DEA's previous statements to Congress that the passenger boat had fired upon the pipante.

## **B. Statements to the Public**

On several occasions, State officials prepared press guidance to be used to discuss Operation Anvil and the shooting incidents with media and public audiences. However, these talking points contained information that was not accurate. For example, INL and WHA officials prepared press guidance immediately after the May 11 incident that repeatedly referred to DEA acting only in a "supporting" and "advisory" role with the "highly trained" Honduran law enforcement officers in the lead. These statements were repeated by State's spokesperson in the daily press briefing on May 17, 2012. Similarly, Embassy officials prepared talking points for the Ambassador's interview with the Associated Press on May 25, 2012 that stated that the DEA agents were involved in "a supporting, advisory role only" with "highly trained and vetted" Honduran officers "who operate with advice from U.S. Government law enforcement agents." As noted above, both INL and WHA officials were aware of the limitations of the TRT and that they were not capable of leading such operations.

After the July 3 shooting, WHA and INL officials developed press guidance that did acknowledge that DEA agents "were involved with the shooting," but stated that "both suspects were given first aid and transported via helicopter to a secure location." This guidance was repeated verbatim by State's spokesperson during the daily press briefing on July 9, 2012. As noted in Chapter Eight, this statement was



inaccurate. All three FAST medics told the OIGs that the pilot was already dead when they first assessed him at the scene and that they focused their attention to the other pilot who had significant injuries from the crash. This questionable statement may have originated from the INL Senior Aviation Advisor or the Delta Team Leader, and the INL and WHA officials who drafted and approved the press guidance may not have realized it was incorrect, although the Embassy had received a report from the TRT officer dated July 3, 2012 which stated that the pilot "died instantly."

State officials failed on numerous occasions to provide accurate information to Congress and the public regarding Operation Anvil and the three shooting incidents. In an effort to avoid highlighting DEA's failure to cooperate with the DS investigation, State officials never informed Congress of the DS investigation, including the video analysis, which could have contradicted prior DEA assertions. These incomplete and inaccurate statements have contributed to the continued uncertainty regarding what actually occurred during the three shooting incidents.

## **CHAPTER FIFTEEN: DOJ OIG RECOMMENDATIONS**

In the previous chapters the OIGs described the results of our special review into the post-incident responses by State and DEA to the three Anvil shooting incidents in Honduras in 2012 that resulted in deaths and injuries. The DOJ OIG found that DEA's responses to the incident that occurred on May 11, in particular, was significantly flawed in a number of critical respects. Some of the issues we identified concerned deficiencies in DEA procedures that failed to ensure that DEA initiated a timely internal review of the May 11 incident and that it conducted a thorough investigation. Procedures also did not ensure cooperation between DEA, the U.S. Embassy, and the Government of Honduras that would allow for a comprehensive review and appropriate sharing of information regarding the incident.

Further, DOJ OIG found that the three shooting incidents revealed deficiencies in pre-operational planning, including the failure to ensure that the participating law enforcement officers had a clear understanding of each other's applicable deadly force policies and that mechanisms were in place in the event of a critical incident to support the law enforcement personnel on the ground, allow for any and all necessary search and rescue missions, and ensure a comprehensive and timely post-incident investigation.

For these reasons, and as more fully described in previous chapters, DOJ OIG recommends that:

1. DEA establish procedures that will require sufficient training and de-confliction between DEA personnel and host nation counterparts on their respective deadly force policies before commencing future counternarcotics operations outside the United States.
2. DEA establish protocols that will ensure that, in joint operations abroad in which critical incidents are possible, appropriate and sufficient mechanisms are in place in the event of a critical incident to support the law enforcement personnel on the ground (including the availability of additional forces and airlift support), provide for the processing of the scene without prolonged delay, and allow for any and all search and rescue missions that may become necessary.
3. DEA's post-shooting procedures should be revised to ensure DEA investigates all shootings during joint operations abroad in which initial reporting or available information is that DEA personnel either may have discharged their weapons or instructed other individuals to fire their weapons, was in a position to discharge their weapons or instruct other individuals to fire, or it is determined that DEA nevertheless played a leadership role in the operation. Further, DEA should not limit its review to only an examination of DEA conduct during the joint operation. Although DEA may not typically have jurisdiction to take direct criminal or administrative action against host nation participants, DEA inspectors and the Shooting and Assault Incident Review Committee should, at a minimum, evaluate DEA and foreign LEO conduct to determine whether DEA's advice and any direction

or leadership provided to foreign LEOs were appropriate, whether foreign LEOs require more training from DEA or elsewhere, whether DEA should continue working with the host nation on future similar joint counternarcotics operations, and, more generally, to fully assess lessons learned from the incident for DEA and its operations in that country and elsewhere.

4. Because DEA's post-shooting incident procedures do not provide delegation guidelines for foreign incidents or, in the case of domestic incidents, state whether the investigation will be investigated directly by IN or delegated to the field when the incident involves significant injuries, death, or other significant liabilities, DEA's procedures should be revised to clarify the circumstances under which shooting incidents are to be investigated directly by the Office of Inspections and the circumstances under which investigations will be delegated to the field.

5. DEA's post-shooting incident procedures should be revised to include a requirement that will ensure that, when delegated to the field, the supervisory agent assigned to conduct the investigation will be someone outside the supervisory chain or program of the shooter and relevant witnesses.

6. DEA's post-shooting incident procedures should be revised to ensure that a thorough post-shooting investigation is conducted, including, but not necessarily limited to:

a. Specific requirements for the inspection of all weapons of DEA personnel and task force officers to ensure that all such weapons fired during the shooting are identified and that all weapons not fired are identified. All DEA personnel and task force officers should understand that weapons checks must be done as soon as it is practical to do so and procedures should specify how such weapons checks must be conducted, including whether a standard load procedure or other mechanism is required to ensure that missing rounds will be identified;

b. Specific guidance to the supervisory special agent or inspector assigned to investigate the incident regarding the appropriate steps that should be taken to investigate the incident in addition to the collection of relevant documents; and

c. Specific requirements for the conduct of interviews and preparation and collection of witness statements.

7. The Deputy Attorney General should determine whether revisions to the post-shooting incident procedures should be made across the Department's law enforcement components to address the issue of shooting incidents outside the United States by a foreign LEO working on a joint law enforcement operation with a DOJ component. We also recommend that the Deputy Attorney General consider whether revisions to the components' post-shooting incident procedures should be made to ensure that the requirements are appropriate and consistent across the Department's law enforcement components.

8. In connection with future counternarcotics operations outside the United States, DEA should work with the relevant U.S. Embassy and host nation partners to develop a specific protocol, in advance of the operation, that will determine which entity or entities will investigate a shooting or other critical incident that occurs during the operation; the scope and requirements of such an investigation; what information will be shared between and among the relevant entities for use in such investigation and when that will occur; and the time-frame and procedures for sharing of the results of the investigation. Such protocols should ensure timely access to relevant information by the Chief of Mission, as well as whatever entity or entities is or are involved in the investigation of any shooting or other critical incident, and include a procedure to identify and resolve conflicting evidence or investigative gaps when more than one such entity is involved in the investigation. To the extent DEA and the COM determine that certain information should not be provided to the host nation, DEA should work with the Embassy to ensure that any investigation conducted by the host nation receives sufficient information to allow for a meaningful and thorough review of the relevant facts. DEA should not undertake future joint counternarcotics operations with its foreign counterparts outside the United States in instances where it is unable to reach agreement with the U.S. Embassy and its foreign counterparts in advance on such basic post-incident protocols, at least in circumstances where shootings or other critical incidents are a possibility.

# **APPENDIX**

## **A**



U. S. Department of Justice  
Drug Enforcement Administration


www.dea.gov

Washington, D.C. 20537

MAY 01 2017

MEMORANDUM

TO: Mr. Daniel C. Beckhard  
Assistant Inspector General  
Oversight and Review Division  
Office of the Inspector General

FROM: Mary B. Schaefer   
Chief Compliance Officer  
Office of Compliance

SUBJECT: DEA Response: *A special Joint Review of Post-incident responses by the Department of State and Drug Enforcement Administration to Three Deadly Force Incidents in Honduras*

The Drug Enforcement Administration (DEA) appreciates the opportunity to respond to the Office of the Inspector General's (OIG) formal draft report titled, *A Special Joint Review of Post-incident Responses by the Department of State and Drug Enforcement Administration to Three Deadly force Incidents in Honduras*. Additionally, we appreciate the consideration the OIG has given our remarks related to law enforcement sensitivities while working towards a publicly releasable document.

The loss of life and injuries which occurred between May and July of 2012 were tragic. DEA acknowledges that its pre-mission preparation was not as thorough as it should have been and that the subsequent investigation lacked the depth and scope necessary to fully assess what transpired that night. To that end, DEA has made significant changes in this area over the last five years. Additionally, we accept the recommendations contained in the OIG's review. DEA continually strives to be a better, more effective law enforcement agency; one which has earned the public's trust as a defender of the rule of law.

In the nearly five years that have elapsed since the events referenced in the report, much has changed internally within DEA, to include agency leadership and significant changes to DEA's Foreign-Deployed Advisory and Support Teams (FAST). FAST, originally created to conduct missions in Afghanistan to disrupt the Afghan opium trade, conducted its last operation in 2015. Since that time, we have evaluated both the need for and the underlying mission of the FAST program. In 2016, FAST was renamed as the Special Support Section (S3) under the Office of

Special Projects (OT). As S3, the section provided personnel recovery training, special response training, and special rapid response operational support to domestic offices, and training and host-nation capacity building for foreign offices. In March 2017, S3 was transferred from OT to DEA's Office of Training (TR) in an effort to consolidate DEA's foreign and domestic training curriculums under one management structure. Under the TR structure, S3 personnel were integrated into TR's existing training units, which also include tactical training units. The regional response teams and any operational or enforcement function such as under previous iterations of FAST/S3 have been dissolved.

Below please find our efforts to date in implementing the OIG's recommendations that are directed towards DEA:

- 1. DEA establish procedures that will require sufficient training and de-confliction between DEA personnel and host nation counterparts on their respective deadly force policies before commencing future counternarcotics operations outside the United States.**

#### DEA Response

DEA concurs with the recommendation. DEA recognizes the need for appropriate, accurate and thorough pre-operational training, coordination and de-confliction regarding potential policy differences between DEA and our host-nation counterparts while engaging in counter-narcotics activity abroad. This is especially true when these differences involve any potential use of force. While the FAST program's last operation was in 2015, DEA remains fully committed to providing this type of training for all DEA agents assigned overseas. DEA will review its policies in this area and will update them, as needed, to better reflect the goals of enhanced pre-operational planning, de-confliction, and cooperation with our host nation counterparts.

- 2. DEA establish protocols that will ensure that, in joint operations abroad in which critical incidents are possible, appropriate and sufficient mechanisms are in place in the event of a critical incident to support the law enforcement personnel on the ground (including the availability of additional forces and airlift support), provide for the processing of the crime scene without prolonged delay, and allow for any and all search and rescue missions that may become necessary.**

#### DEA Response

DEA concurs with this recommendation. Although, as noted earlier, DEA's FAST program no longer exists, we recognize there is potential for future scenarios involving bilateral operations abroad and the inherent associated risks. While it is impossible to eliminate all risk given the nature of counternarcotics operations, DEA continually strives to put in place appropriate measures to mitigate operational risks for its employees, its targets, and the public at large, wherever they may be located. DEA will review, and update as needed, its policies to ensure pre-operational planning procedures incorporate the potential for critical incidents and the resources required to support them.

3. **DEA's post-shooting procedures should be revised to ensure DEA investigates all shootings during joint operations abroad in which initial reporting or available information is that DEA personnel either may have discharged their weapons or instructed other individuals to fire their weapons, was in a position to discharge their weapons or instruct other individuals to fire, or it is determined that DEA nevertheless played a leadership role in the operation. Further, DEA should not limit its review to only an examination of DEA conduct during the joint operation. Although DEA may not typically have jurisdiction to take direct criminal or administrative action against host nation participants, DEA inspectors and the Shooting and Assault Incident Review Committee should, at a minimum, evaluate DEA and foreign LEO conduct to determine whether DEA's advice and any direction or leadership provided to foreign LEOs were appropriate, whether foreign LEOs require more training from DEA or elsewhere, whether DEA should continue working with the host nation on future similar joint counternarcotics operations, and, more generally, to fully assess lessons learned from the incident for DEA and its operations in that country and elsewhere.**

#### DEA Response

DEA concurs with this recommendation. DEA acknowledges that certain portions of its shooting policy, whether in a domestic or foreign arena, require revision. DEA is updating the policy in a cooperative effort between its Office of Inspections (IN), Operations Management (OM), and Office of Global Enforcement (OE). The revision of DEA's shooting policy will more clearly indicate that any activity/operation in which a shooting occurs and DEA personnel are present will be handled as a shooting incident. DEA will also review its guidance to inspectors and the Shooting and Assault Incident Review Committee to determine if additional language should be included to require an evaluation, when applicable, of DEA and foreign LEO conduct to determine whether DEA's advice and any direction or leadership provided to foreign LEOs was appropriate.

DEA requests clarification as to the portion of OIG's draft report recommending that a review be conducted whenever DEA personnel are in a "*position to discharge their weapons or instruct other individuals to fire.*" This language appears to be overly broad because during any enforcement operation, Special Agents and other law enforcement personnel are always in a position to discharge their weapons, as training dictates that law enforcement personnel always be prepared to protect the public, fellow law enforcement officers, and themselves. DEA will work with OIG to further discuss the intent behind this recommendation and develop language to appropriately satisfy situations where the potential for a weapons discharge exists.

4. **Because DEA's post-shooting incident procedures do not provide delegation guidelines for foreign incidents or, in the case of domestic incidents, state whether the investigation will be investigated directly by IN or delegated to the field when the incident involves significant injuries, death, or other significant liabilities, DEA's procedures should be revised to clarify the circumstances under which shooting incidents are to be investigated directly by the Office of Inspections and the circumstances under which investigations will be delegated to the field.**



**DEA Response**

DEA concurs with this recommendation. While DEA policy currently addresses the delegation of shootings, it will be updated to provide clearer guidance regarding when the Deputy Chief Inspector (DCI) of IN will delegate shooting reviews to the field and when they will be retained and conducted by the Office of Inspections.

- 5. DEA's post-shooting incident procedures should be revised to include a requirement that will ensure that, when delegated to the field, the supervisory agent assigned to conduct the investigation will be someone outside the supervisory chain or program of the shooter and relevant witnesses.**

**DEA Response**

DEA concurs with this recommendation. As noted earlier, IN will coordinate with OM to update DEA's shooting policy. Until DEA policy is updated, IN has implemented interim policy which is outlined in the delegation teletype IN sends to the Office Head of the office involved in the shooting. This interim policy states the supervisory agent assigned to conduct the shooting investigation cannot be in the same chain of command, up to the GS-15 level, as any individual identified as being directly involved in the underlying incident.

- 6. DEA's post-shooting incident procedures should be revised to ensure that a thorough post-shooting investigation is conducted, including, but not necessarily limited to:**
  - a. Specific requirements for the inspection of all weapons of DEA personnel and task force officers to ensure that all such weapons fired during the shooting are identified and that all weapons not fired are identified. All DEA personnel and task force officers should understand that weapons checks must be done as soon as it is practical to do so and procedures should specify how such weapons checks must be conducted, including whether a standard load procedure or other mechanism is required to ensure that missing rounds will be identified.**

**DEA Response**

DEA concurs with this recommendation and IN will coordinate with OM and TR to update DEA's shooting policy to address when and how a weapons check of DEA personnel involved in a shooting is conducted. Due to the various handguns and shoulder weapons TR authorizes for DEA personnel to carry, and each weapon's differing load capacity, IN will coordinate with OM and TR to address the feasibility of implementing a standard load procedure or other mechanism to identify possible missing rounds during a shooting incident.

- b. Specific guidance to the supervisory special agent or inspector assigned to investigate the incident regarding the appropriate steps that should be taken to investigate the incident in addition to the collection of relevant documents.**

**DEA Response**

DEA concurs with this recommendation. IN will continue to conduct regular training for Shooting Incident Team Inspectors outlining how to conduct detailed shooting investigations. This training includes conducting on-site shooting investigations and assisting/reviewing delegated shootings. In February 2017, IN leadership implemented internal procedures to mandate that once a shooting is delegated to the field, the Headquarters Inspector assigned to oversee the shooting review must contact the field supervisor assigned to conduct the investigation. The Inspector is to provide the supervisor direction and any necessary assistance regarding the investigation. This initial contact between the Inspector and the supervisor should occur within two business days once the respective Office Head has appointed the supervisor. The Inspector must document this contact, typically via email, and ensure the documentation becomes part of the shooting review package. Additionally, once a shooting package is completed, the package is reviewed for completeness and content through each level of the Inspector's chain of command up to the DCI. The Office of Inspections intends to incorporate this internal procedure into DEA policy.

- c. Specific requirements for the conduct of interviews and preparation and collection of witness statements.**

**DEA Response**

DEA concurs with this recommendation. DEA already has detailed policy regarding how to conduct interviews of targets of investigations (Agents Manual, Subsection 6641.32, Interviewing (Adults) / Electronic Recording of Statements or Interviews), interviewing DEA personnel who were participants or witnesses in a shooting incident (Agents Manual, Subsection, 6114.42 Interviews), and the preparation and submission of reports (Agents Manual, Subsection 6211, Report Writing and Review). However, DEA will review its policies to identify any necessary updates and improvements, and will reiterate the policy requirements to the workforce for increased awareness.

- 8. In connection with future counternarcotics operations outside the United States, DEA should work with the relevant U.S. Embassy and host nation partners to develop a specific protocol, in advance of the operation, that will determine which entity or entities will investigate a shooting or other critical incident that occurs during the operation; the scope and requirements of such an investigation; what information will be shared between and among the relevant entities for use in such investigation and when that will occur; and the time-frame and procedures for sharing of the results of the investigation. Such protocols should ensure timely access to relevant information by the Chief of Mission, as well as whatever entity or entities is or are involved in the investigation of any shooting or other critical incident, and include a procedure to identify and resolve conflicting evidence or investigative gaps when more than one such entity is involved in the investigation. To the extent DEA and the COM determine that certain information should not be provided to the host nation, DEA should work with the Embassy to ensure that any investigation conducted by the host nation receives sufficient information to**

**allow for a meaningful and thorough review of the relevant facts. DEA should not undertake future joint counternarcotics operations with its foreign counterparts outside the United States in instances where it is unable to reach agreement with the U.S. Embassy and its foreign counterparts in advance on such basic post-incident protocols, at least in circumstances where shootings or other critical incidents are a possibility.**

**DEA Response**

DEA concurs with this recommendation. DEA understands and accepts the primacy of Chiefs of Mission, and remains committed to its obligation to keep them currently and fully informed about DEA activities in their countries of assignment. DEA also remains dedicated to thorough, meaningful cooperation with host nation investigators of critical incidents. As noted, DEA has disbanded its FAST program. However, to the extent that any of our future operations outside of the United States might expose our personnel or host country personnel to the potential for a critical incident, we will work with the relevant U.S. Embassy and host nation partners to develop specific protocols to address shooting incident investigations, the scope and requirements of the investigation, the roles of each country and entity in the investigation, information sharing protocols, and the timeframe for sharing of results of the investigation in advance of the start of the operation. In the coming months, we will review our current policies to identify where such guidance should exist and will incorporate it, where appropriate.

If there are any questions regarding this response, please contact the Audit Liaison Section on 202-307-8200.

# **APPENDIX**

## **B**



U.S. Department of Justice

Office of the Deputy Attorney General


Associate Deputy Attorney General

Washington, D.C. 20530

May 1, 2017

MEMORANDUM

TO: Michael E. Horowitz  
Inspector General

FROM: Armando O. Bonilla   
Associate Deputy Attorney General  
Office of the Deputy Attorney General

SUBJECT: Response of the Office of the Deputy Attorney General to the Draft OIG Report Entitled "A Special Joint Review of Post-Incident Responses by the Department of State and Drug Enforcement Administration to Three Deadly Force Incidents in Honduras"

The Office of the Deputy Attorney General (ODAG) appreciates the opportunity to review the above-referenced draft report prior to its formal issuance and public release. In accordance with your office's April 27, 2017 request, ODAG submits the following response to the sole recommendation directed to ODAG (*i.e.*, Recommendation No. 7). We understand that the Drug Enforcement Administration (DEA) contemporaneously will submit responses to the remaining recommendations directed at DEA (*i.e.*, Recommendation Nos. 1-6 and 8).

**Recommendation 7:** *The Deputy Attorney General should determine whether revisions to the post-shooting incident procedures should be made across the Department's law enforcement components to address the issue of shooting incidents outside the United States by a foreign law enforcement officers working on a joint law enforcement operation with a DOJ component. We also recommend that the Deputy Attorney General consider whether revisions to the components' post-shooting incident procedures should be made to ensure that the requirements are appropriate and consistent across the Department's law enforcement components.*

**Response:** ODAG concurs with the recommendation and will undertake a review of the relevant post-shooting incident procedures to determine whether any revisions are warranted and, if so, direct the relevant law enforcement components to implement those revisions.

cc: James Crowell  
Chief of Staff and Associate Deputy Attorney General

Gary E. Barnett  
Counsel to the Deputy Attorney General

Subject: Response of the Office of the Deputy Attorney General to the Draft OIG Report Entitled "A Special Joint Review of Post-Incident Responses by the Department of State and Drug Enforcement Administration to Three Deadly Force Incidents in Honduras"

Michael J. Stanfill  
Deputy Chief Inspector  
Office of Inspections  
Drug Enforcement Administration

Chad Sarchio  
Assistant Deputy Chief Counsel  
International and Intelligence Law  
Drug Enforcement Administration

Mary B. Schaefer  
Chief Compliance Officer  
Drug Enforcement Administration

# **APPENDIX**

## **C**





United States Department of State

Washington, D.C. 20520

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January 17, 2017

**MEMORANDUM FOR OIG INSPECTOR GENERAL STEVE A. LINICK**

FROM: INL/RM/EX – Patricia Thomas (Acting) *P. Thomas*

SUBJECT: Draft Report: A Special Joint Review of Post-Incident Responses by the Department of State and Drug Enforcement Administration to Three Deadly Force Incidents in Honduras (dated December 23, 2016)

INL appreciates the opportunity to comment on the draft report resulting from the Special Joint Review that was conducted by the Offices of Inspector General for the Department of State (DOS) and the Department of Justice (DOJ), concerning post-incident responses to three deadly force incidents in Honduras.

Key points concerning INL in this draft report include: (1) INL not making contractor pilots available for investigative interview; (2) the implication that INL officials willfully provided inaccurate and incomplete information to Congress; (3) the implication that INL was not supportive of Chief of Mission (COM) authority over DOJ law enforcement personnel; and (4) INL's initial reluctance to support the Bureau of Diplomatic Security in its investigation of incidents involving U.S. Drug Enforcement Administration (DEA) agents. However, each of these issues emanates from a systemic disagreement over prevailing yet conflicting legal authorities applying to the various agencies that govern law enforcement protocols for accountability. INL had hoped that this joint review and draft report would shed light on this issue and direct a clear path for resolving the conflicting interagency equities.

Nevertheless, INL will examine the experience of Operation Anvil from the perspective of lessons to be learned within the context of the current INL operational environment, including any improvements that have developed since the time of Operation Anvil in 2012 and the resulting fallout. Going forward, INL intends to identify and apply best practices, where feasible, to similar counternarcotics activities in other countries. For example, INL plans to discuss lessons learned during our aviation strategic planning conference in February 2017.

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Regarding the implications in the draft report, INL officials did not willfully provide incomplete or inaccurate information to members of Congress; nor did we seek to undermine the Chief of Mission's authorities; nor did we intend to diminish the investigative authorities of the Bureau of Diplomatic Security regarding the three deadly force incidents in Honduras. As a matter of priority and practice, INL always supports Chief of Mission authority and readily cooperates with the Bureau of Diplomatic Security (DS). We also have good rapport with members of Congress and the oversight community. We successfully engage with our interagency partners to implement U.S. Rule of Law Foreign Assistance programs abroad. Nevertheless, as discussed above, there is a systemic risk that results from the conflicting equities and legal authorities that govern interagency disclosure of collaborative law enforcement activities, transparency in accountability reporting, and protocols for an investigative process. INL notes as well that some interviews that are referenced in the draft report occurred years after the incidents, and we believe that DOS employees unequivocally acted in good faith in a chaotic environment. It also should be noted that OIG verified in 2015 interviews that INL leadership mistakenly believed that the air crews were 100 percent Guatemalan and Honduran, and did not want to compel foreign governments to make official personnel available to U.S. investigators. Had U.S. investigators asked for access to U.S. contractor pilots, INL would have provided it. The OIG's protocol for identifying DOS officials' names, their speculations, and impressions in the draft report is unclear, especially since some DOJ officials are referred to only by title. More importantly, the draft report lacks the context of the crucial interagency conflict that impacts mission preparation, execution, and accountability measures, as shown by the confusing accounts described in the after-action reporting.

INL and DOJ will embark on renewing an overarching Memorandum of Understanding (MOU) later this year that incorporates general terms and conditions under which INL and DOJ implement foreign assistance through the interagency agreement process. As a result of this review, clarity concerning Chief of Mission authority, serious incident reporting, after-action protocols, and required documentation for mission planning and protocols, including those for the investigative process, will be among the topics for negotiation. To be fair, DOJ and DOS would benefit from clearer guidance by the OIGs. The recommendation that individual embassies, DEA, and host governments work out protocols case by case is unlikely to succeed. COMs are not staffed to negotiate such protocols; DS/SID does not have presence overseas; problems will arise from unexpected operations; host governments will insist on formal diplomatic agreements. Most important, the dispute over legal jurisdiction remains unresolved. The State and

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Justice OIGs are uniquely qualified to resolve that statutory dispute.

INL also offers a technical correction for your consideration. Page 78 of the draft states that "Four days after an interdiction..., three law enforcement officers found themselves stranded..." The report should state "four hours" rather than "four days."

INL's sensitivity review of the draft OIG report did not identify any information as classified.

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# **APPENDIX**

## **D**



United States Department of State

Washington, D.C. 20520

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March 1, 2017

FROM: WHA – Francisco L. Palmieri, Acting

TO: OIG - Steve A. Linick

SUBJECT: (U) Draft Report - A Special Joint Review of Post-Incident Responses by the Department of State and Drug Enforcement Administration to Three Deadly Force Incidents in Honduras

(U) Thank you for the opportunity to comment on the draft report regarding three deadly force incidents that occurred in Honduras in 2012.

(U) The draft report had no recommendations for WHA but asserts WHA “provided inaccurate and incomplete statements to Congress and the public regarding Operation Anvil and the three incidents.”

(U) WHA did not willfully provide incomplete or inaccurate information to members of Congress nor did WHA knowingly clear inaccurate press guidance. All information conveyed to Congress and the public was provided in good faith based on the best information available to the Bureau at the time.

(U) WHA did not identify any information in the draft OIG report as classified.

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Approved: WHA/FO: Francisco L. Palmieri, Acting (ok)

Drafted: WHA/CEN: Don Jacobson, ext. 7-0087

Cleared: WHA/FO: KMerten (ok)  
WHA/FO: JCreamer (ok)  
WHA/EX: JDinkelman (ok)

# **APPENDIX**

## **E**

TABLE OF HONDURAN INVESTIGATIONS

Entity	Date	Investigative Steps	Major Findings
Puerto Lempira Police Department	May 18, 2012	Interviewed 7 individuals (including 3 boat passengers); Reviewed death certificates and photographs	Confusion surrounding identification of the passenger boat and whether the bags of household goods were narcotics resulted in the deaths and injuries of individuals who had no link to persons engaged in drug trafficking.
Honduran Foreign Ministry Task Force (inter-agency)	June 5, 2012	Interviewed a Senior Deputy representing the La Moskita region, a member of the Honduras National Police, the DEA Country Attaché, and a representative of the organization representing indigenous people in La Moskita.	The Task Force Report did not provide specific findings or conclusions and instead recommended that additional investigation be conducted by the Honduran Public Prosecutor.
Honduran National Police	June 12, 2012	Conducted a site visit; Interviewed the Ahuas police chief, three passengers on the boat who had been wounded, the Ahuas resident who alleged that gasoline was stolen from her shed and two TRT officers; Took 53 photographs.	The passenger boat, which was not a high speed boat commonly used in trafficking, collided with the pipante during a 6 hour trip to Ahuas. Its cargo likely appeared from the air as drugs. The two TRT officers on board the pipante contradicted each other. Excessive force was evident from the large number of perforations on the passenger boat. The TRT and FAST officers did not attempt to provide medical assistance to the wounded.
CONADEH, (Honduras National Human Rights Commission)	August 27, 2012	Interview witnesses in Ahuas and the TRT officers; Took photographs.	Statements of TRT officers contradict each other and the statements of the victims.
Honduran Office of the Public Prosecutor, Special Prosecutor for Human Rights	September 2012	Performed exhumations of the bodies; Interviewed the TRT officers and survivors and families of the deceased; Performed ballistic analysis of TRT weapons and bullets collected; Watched the CBP video of the incident.	The TRT officers fired at the passenger boat under the rational belief that the people driving the boat were traffickers, and that they feared being shot and that their lives were in danger. A recovered bullet matched to a TRT weapon. The entrance wounds indicate that the shots were fired on the same level as the boat. Neither female decedent was pregnant.

# **APPENDIX**

## **F**



**Sen. Grassley**  
**QFRs for DEA – Deputy Administrator Harrigan**

## **2. DEA Special Operations Division Involvement in Honduras:**

On May 16, 2012, it was reported that agents from Drug Enforcement Administration's (DEA) Special Operations Division (SOD) may have been involved in two firefights with cocaine smugglers in the jungles of Honduras. According to media reports and other sources, DEA has downplayed the agency's involvement in the incident in which four people—including two pregnant women—were killed. DEA has indicated that agents were providing training and technical assistance to the operation which was led by Honduran authorities.

- Describe what involvement DEA agents had in these operations, including a description of the types of training and technical assistance DEA is providing the Hondurans.
- What are the rules of engagement for use of deadly force by for DEA agents and officials serving in Honduras? When is a DEA agent or official authorized to use deadly force? Provide a copy of any written agreement(s) between DEA and Honduran officials regarding the use of force.
- Describe the circumstances and nexus to the United States the two operations had and what statutory authority the DEA relies upon for operations inside Honduras.

- Does DEA describe the involvement in Honduras as an "investigative" operation? Specifically, is DEA's provision of supplying "training and technical assistance" or acting in a "supporting role" considered an "investigative" activity under U.S. law, policy, rule, or regulation? If not, how does DEA officially classify the activities undertaken on foreign soil?
- If a DEA agent or official providing "training or technical assistance" or acting in a "supporting role" utilizes deadly force against a foreign national in Honduras and ultimately kills that foreign national, what prohibits them from being prosecuted by local officials in Honduras? Is this contingency part of a negotiated agreement with Honduras or is there official immunity for the agent or official?

# **APPENDIX**

## **G**



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 28, 2013

The Honorable Dianne Feinstein  
Chairman  
Caucus on International Narcotics Control  
United States Senate  
Washington, D.C. 20510

Dear Madam Chairman:

Enclosed please find responses to questions for the record arising from the appearance of Thomas Harrigan, Deputy Administrator, Drug Enforcement Administration, before the Caucus on May 16, 2012, at a hearing entitled "Countering Narcotics Threats in West Africa." We hope that this information is of assistance to the Caucus.

Please do not hesitate to call upon us if we may be of additional assistance. The Office of Management and Budget has advised us that there is no objection to submission of this letter from the perspective of the Administration's program.

Sincerely,

Peter J. Kadzik  
Principal Deputy Assistant Attorney General

Enclosure

cc: The Honorable Charles Grassley  
Co-Chairman

**Questions for the Record  
Thomas Harrigan  
Deputy Administrator  
Drug Enforcement Administration  
U.S. Department of Justice**

**Caucus on International Narcotics Control  
United States Senate**

**“Countering Narcotics Threats in West Africa”  
May 16, 2012**

**Questions Posed by Senator Charles Grassley**

**2. DEA Special Operations Division Involvement in Honduras**

**On May 16, 2012, it was reported that agents from Drug Enforcement Administration's (DEA) Special Operations Division (SOD) may have been involved in two firefights with cocaine smugglers in the jungles of Honduras. According to media reports and other**

**sources, DEA has downplayed the agency's involvement in the incident in which four people—including two pregnant women—were killed. DEA has indicated that agents were providing training and technical assistance to the operation which was led by Honduran authorities.**

**Describe what involvement DEA agents had in these operations, including a description of the types of training and technical assistance DEA is providing the Hondurans.**

In March 2012, the U.S. Government and the Government of Honduras agreed to cooperate on a helicopter interdiction operation designed to support Honduran counter-narcotics efforts. The operation in question was named "Operation Anvil." The law enforcement operation was led by the Government of Honduras, with support from DEA and the U.S. Department of State (DOS). The DEA personnel involved in Operation Anvil were comprised of members of DEA's Foreign-deployed Advisory and Support Teams (FAST), not personnel assigned to DEA's Special Operations Division (SOD). Operation Anvil was supported by the U.S. interagency and was designed to disrupt suspected drug transportation flights into the "Gracias a Dios" region (northeastern tip) of Honduras.

According to Joint Interagency Task Force-South (JIATF-S), almost 95 percent of cocaine smuggled to the United States transited the Central America/Mexico corridor, and approximately 20 percent of the smuggled cocaine leaves South America via air. As of April 2013, an estimated 95 percent of the suspected cocaine smuggling flights departing South America first landed in Honduras.

In April 2012, the DOS temporarily relocated [REDACTED] helicopters from Guatemala (where they provide air lift in support of counter-narcotics activities under the Central America Regional Security Initiative-CARSI) to Honduras. The temporary relocation, as notified to Congress, was designed to support Honduran law enforcement's Tactical Response Teams (TRT) – a vetted and trained team of law enforcement officers mentored by DEA advisors – to enable the Honduran police to intercept drug trafficking events in Honduras and deny traffickers safe havens in which to operate. These helicopters were owned by the DOS and were flown by a mix of DOS' Bureau of International Narcotics and Law Enforcement Affairs (INL) contractors and active duty Guatemalan air force pilots. The helicopters were also staffed by Honduran law enforcement crew. Operation Anvil began on April 14, 2012, and was scheduled to last for three months.

With regard to DEA's involvement, as well as the type of training and technical assistance provided by DEA, it must be noted that prior to beginning actual operations in Honduras, FAST conducted training of and with Honduras' TRT to establish standard operating procedures in order to ensure these operations were conducted safely. This training included helicopter-borne operations, medical, vehicular interdiction, marksmanship, night vision goggle usage, GPS navigation, radio communication procedures, evidence collection, arrest procedures, and Honduran law among other topics. Following this initial training period, daily training continued as the TRT was on stand-by for a mission.



Each day, the FAST Team Leader would conduct a teleconference with officials at JIATF-S to determine the likelihood of an [REDACTED]. An [REDACTED] is a suspected drug-laden airplane. The FAST Team Leader would also be briefed on the availability of friendly air assets ([REDACTED] aircraft) that could track the [REDACTED].

Once an [REDACTED] was declared, the FAST Team Leader would communicate this information to the leadership of the Honduran TRT, and a decision would be made whether or not to initiate response procedures established during training. Throughout the entire operation, FAST provided communication and coordination between JIATF-S, the [REDACTED] aircraft, and INL Pilots. While the TRT was responsible for the mission execution and operational decisions made during the deployment, FAST would also make recommendations with regards to when to launch and where to respond. These proposals were based on predictive analysis of the [REDACTED] based on the type of aircraft, its speed and range, and historical landing sites for that specific type of aircraft. Once on the ground, FAST provided communication and coordination between elements during night time operations, as well as ensured at least two DEA medics were present.

With respect to the referenced media report, please note that the details of these law enforcement operations are sensitive and it would be inappropriate to discuss them in a public forum. However, we can tell you that on or about May 6, 2012, the TRT intercepted over 400 kilograms of cocaine with DEA FAST in a supporting role. During this operation, suspected drug smugglers opened fire on an INL helicopter, and the Honduran government forces returned fire. The suspected drug smugglers fled and the TRT recovered the cocaine. No DEA FAST members fired their weapons during this incident, and there were no reported injuries. The other incident occurred on May 11, 2012. While Honduran TRT, supported by DEA FAST, were recovering over 400 kilograms of cocaine there was an exchange of gunfire between suspected drug traffickers and Honduran TRT members. Although no injuries were confirmed nor injured persons identified immediately after the shooting, media reports and a report subsequently issued by the Government of Honduras (GOH) stated that two men and two women were killed on May 11, 2012. The GOH report also determined that neither of the female decedents was pregnant, and that no DEA FAST members fired their weapons during the May 11, 2012 incident. According to the DEA's Office of Inspections' internal review, no DEA FAST members fired their weapons during the May 11, 2012 incident.

**What are the rules of engagement for use of deadly force for DEA agents and officials serving in Honduras? When is a DEA agent or official authorized to use deadly force? Provide a copy of any written agreement(s) between DEA and Honduran officials regarding the use of force.**

"Rules of engagement" refer to specific authorizations for, and limitations on, the use of force by military forces engaged in military operations. As such, DEA Agents assigned internationally do not operate under rules of engagement.

DOJ's policy on the use of deadly force permits DEA agents to use deadly force to defend themselves and others when necessary, i.e. when they have a reasonable belief that they or another person face an imminent threat of death or serious physical injury. In addition, the

Governments of the United States and Honduras concluded a Letter of Agreement that established terms and conditions for U.S. assistance to Honduras in these law enforcement efforts. The agreement included rules on the use of force, as well as for the extension of immunities and privileges (I&P) to DEA personnel. The rules on the use of force were developed based on applicable law, including the Foreign Assistance Act of 1961, as amended, which permits U.S. officers and employees to be present when foreign officers effect arrests, to assist them, and to take direct action to protect life or safety if exigent circumstances arise that pose an immediate threat to United States officers or employees, foreign officers or employees, or members of the public. All U.S. personnel in Honduras pursuant to the Letter of Agreement operated under these rules as approved by the Government of Honduras. The Letter of Agreement and associated diplomatic notes also accorded DEA agents immunities and privileges equivalent to those afforded members of the Administrative and Technical Staff of the U.S. diplomatic mission to Honduras.

**Describe the circumstances and nexus to the United States the two operations had and what statutory authority the DEA relies upon for operations inside Honduras.**

As noted above, according to JIATF-S, some 95 percent of the cocaine from South America destined for the U.S. transits the Central America/Mexico corridor, and approximately 20 percent leaves South America via air. Of that amount, the United States estimates that as of April 2013, 95 percent of all cocaine smuggling flights departing South America first landed in Honduras. Northeastern Honduras remains highly vulnerable to drug-trafficking organizations due to its remoteness, limited infrastructure, lack of state presence, and weak law enforcement institutions. The La Mosquitia region is a primary landing zone for drug-carrying flights and transshipment is facilitated by subsequent flights, maritime vessels, riverine traffic, and land movement. The increased flow of cocaine to and through Honduras has contributed to our nation's rates of crime and violence. The subject DEA operations specifically targeted the drug trafficking and transshipment activities described, with the aim of supporting Honduran authorities' efforts to stem the flow of drugs to and through Mosquitia on their way to the U.S.

DEA is the lead U.S. agency responsible for coordinating drug enforcement activities worldwide by virtue of Reorganization Plan No. 2 of 1973, 38 Fed. Reg. 15932, 87 Stat. 1091 (1973), as amended by Pub. L. No. 93-252, 88 Stat. 50 (1974) and the Controlled Substances Act, Title 21 U.S.C. Section 801 et seq. Additionally, DEA performs drug-related foreign assistance activities overseas in collaboration with the DOS pursuant to the Foreign Assistance Act of 1961, as amended, Title 22 U.S.C. Section 2151, et seq. Finally, in performing duties overseas, DEA is subject to the direction and control of the U.S. Chief of Mission pursuant to Title 22 U.S.C. Section 3927.

In support of DEA's international drug control programs, including interdiction and supply reduction efforts, the Conference Report (104-863) accompanying the Omnibus Consolidated Appropriations Act, 1997 (P.L. 104-208, Title I) under the heading "*Source Country/International Strategy*" explained that funds appropriated to DEA for its expenses were to be used to support vetted units by providing equipment and support to augment the intelligence effort, and to train and work with newly emerging vetted units in source countries.

**Does DEA describe the involvement in Honduras as an "investigative" operation? Specifically, is DEA's provision of supplying "training and technical assistance" or acting in a "supporting role" considered an "investigative" activity under U.S. law, policy, rule, or regulation? If not, how does DEA officially classify the activities undertaken on foreign soil?**

As indicated above, the temporary support and assistance provided to Honduras, as notified to Congress, was designed to support Honduran law enforcement's TRT. The TRT is a vetted and trained team of law enforcement officers mentored by DEA Special Agents to enable the Honduran police to intercept drug trafficking events in Honduras and deny traffickers safe havens to operate. The participating DEA Special Agents, in conjunction with support being provided by the DOS, were advising and mentoring Honduran law enforcement authorities on law enforcement missions led and executed by Honduran law enforcement. Although the primary mission of the DEA Special Agents was to train, mentor, and support their Honduran TRT counterparts, any information they encountered incidental to their primary support mission that related to violations of U.S. law could be referred to other law enforcement authorities, including other authorities with the DEA, having investigative responsibility for such violations. It would not be appropriate to comment on the existence of any such information or any ongoing investigations.

**If a DEA agent or official providing "training or technical assistance" or acting in a "supporting role" utilizes deadly force against a foreign national in Honduras and ultimately kills that foreign national, what prohibits them from being prosecuted by local officials in Honduras? Is this contingency part of a negotiated agreement with Honduras or is there official immunity for the agent or official?**

As referenced above, the United States and Honduras entered into a Letter of Agreement that establishes the terms and conditions for U.S. assistance to the Government of Honduras that includes rules on the use of force, and immunities and privileges for foreign participating personnel. The rules on the use of force were developed based on applicable law, including Section 481(c) of the Foreign Assistance Act of 1961, as amended, which permits U.S. officers and employees to be present when foreign officers are effecting an arrest, and does not prohibit them from assisting foreign officers, or from taking direct action to protect life or safety if exigent circumstances arise posing an immediate threat to United States officers or employees, officers or employees of a foreign government, or members of the public. All U.S. personnel in Honduras pursuant to the Letter of Agreement operated under the rules on the use of force approved by the Government of Honduras. DEA Agents are authorized to carry weapons by the Government of Honduras and are authorized to use their weapons in defense of themselves or others. Pursuant to the Letter of Agreement, DEA personnel are afforded immunities and privileges by the U.S. Government and the Government of Honduras as members of the Administrative and Technical Staff of the U.S. Diplomatic Mission to Honduras.

# **APPENDIX**

## **H**

**Congress of the United States**  
**Washington, DC 20515**

January 30, 2013

The Honorable Eric H. Holder, Jr.  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Dear Attorney General Holder:

We write to express our concern regarding the grave human rights situation in Honduras, and in particular the dire situation of Afro-Indigenous Hondurans in the aftermath of the June 2009 military coup. We request a thorough and credible investigation on the tragic killings of May 11 in Ahuas to determine what exactly occurred and what role, if any, was played by U.S. Drug Enforcement Administration (DEA) agents. We also call for an immediate investigation into alleged abuses perpetrated by Honduran police and military officials in the country.

We are troubled to hear of the threats and repression targeting Afro-Hondurans who have bravely voiced their alarm over the steady deterioration of democracy in their country. We are also concerned regarding acts of violence and intimidation against Afro-Indigenous people defending their historic land rights. We are particularly disturbed to learn of the effects of a militarized counternarcotics policy on Afro-Honduran communities, and the participation of U.S. agents in operations that have led to the deaths of Afro-indigenous civilians.

On May 11, 2012, four Afro-Indigenous villagers, including a 14-year-old boy, were killed during the course of a May 11 drug interdiction raid in Ahuas, Honduras. Three others were seriously wounded. At least ten U.S. Drug Enforcement Administration (DEA) agents participated in the mission as members of a Foreign-Deployed Advisory Support Team (FAST), a DEA unit first created in 2005 in Afghanistan. According to the New York Times, Honduran police agents that were part of the May 11 operation "told government investigators that they took their orders from the D.E.A."

We understand that this tragic incident has been extremely traumatic for the otherwise peaceful and tightly knit community of Ahuas. Although Honduran human rights groups and international organizations such as Human Rights Watch have demanded that U.S. and Honduran authorities conduct a thorough and impartial investigation of this incident, the investigation has not been properly conducted. For instance, official inquiries into the matter have been perfunctory, and deeply flawed. Credible testimony indicates that the victims were innocent bystanders and not drug traffickers. As Honduran authorities have yet to address the issue, our



government should press ahead with a full investigation to better determine exactly what occurred and what role was played by U.S. agents.

On June 22, the Fraternal Organization of Black People of Honduras (OFRANEH), one of the most prominent groups representing Afro-Indigenous Hondurans, objected to what it views to be racially biased, "outrageous and dangerous" statements given to the New York Times and the Washington Post by U.S. officials following the May 11 killings. OFRANEH claims U.S. officials made unsubstantiated accusations of drug trafficking against the entire Afro-indigenous communities in the Moskitia region of Honduras.

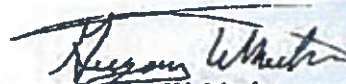
OFRANEH states that since the coup, drug traffickers have been increasingly targeting Afro-Indigenous communities, claiming their traditional lands, and killing those who stand in their way. Human rights groups confirm that the Honduran judiciary has done little to defend the basic rights of these communities. For instance, the Inter-American Commission on Human Rights of the Organization of American States has ordered the State of Honduras to cease and desist from approving any title transfers on land in the Afro-Indigenous community of Triunfo de la Cruz in order to protect its vulnerable population from attacks by drug traffickers anxious to secure access to the Caribbean. Currently, many more Afro-Indigenous communities seek similar protection. We note that, even in this context, Afro descendent and Indigenous leaders assert that the U.S. -backed drug war in Honduras hurts their communities.

In addition, since the country's June 2009 military coup, according to numerous reports, the rate of impunity of alleged abuses perpetrated by state security forces has risen to unprecedented heights. According to Honduras' leading human rights organization, the Committee of Families of the Detained and Disappeared in Honduras (COFADEH), over the last three years, more than ten thousand complaints have been filed regarding police and military abuses, very few of which have been investigated. Furthermore, State security forces are also directly carrying out repression against government critics. For instance, Afro-indigenous leader, Miriam Miranda, president of OFRANEH, was physically attacked and arrested by a departmental police chief in May 2011.

Finally, we strongly recommend a review on the implementation of counternarcotics operations carried out by our government in Honduras taking into account the unique conditions and high vulnerability of Afro-descendent and indigenous communities, who are disproportionately affected by drug trafficking activities.

Sincerely,

  
Henry C. "Hank" Johnson, Jr.  
Member of Congress

  
Gregory W. Meeks  
Member of Congress

*John Conyers, Jr.*

John Conyers, Jr.  
Member of Congress

*Karen Bass*

Karen Bass  
Member of Congress

*James P. McGovern*

James P. McGovern  
Member of Congress

*Barbara Lee*

Barbara Lee  
Member of Congress

*Sam Farr*

Sam Farr  
Member of Congress

*Luis V. Gutierrez*

Luis V. Gutierrez  
Member of Congress

*Michael M. Honda*

Michael M. Honda  
Member of Congress

*Ed Lewis*

Ed Lewis  
Member of Congress

*Bobby L. Rush*

Bobby L. Rush  
Member of Congress

*Peter DeFazio*

Peter DeFazio  
Member of Congress

*Frederica S. Wilson*

Frederica S. Wilson  
Member of Congress

*Janice D. Schakowsky*

Janice D. Schakowsky  
Member of Congress

*Shelley Jackson Lee*

Shelley Jackson Lee  
Member of Congress

*Danny K. Davis*

Danny K. Davis  
Member of Congress

*Wm. Lacy Clay*  
William "Lacy" Clay  
Member of Congress

*Edward J. Markey*  
Edward J. Markey  
Member of Congress

*Raul M. Grijalva*  
Raul M. Grijalva  
Member of Congress

*Charles B. Rangel*  
Charles B. Rangel  
Member of Congress

*Jared Polis*  
Jared Polis  
Member of Congress

*John F. Tierney*  
John F. Tierney  
Member of Congress

*Emmanuel Cleaver II*  
Emmanuel Cleaver II  
Member of Congress

*Yvette D. Clarke*  
Yvette D. Clarke  
Member of Congress

*Jose E. Serrano*  
Jose E. Serrano  
Member of Congress

*Gary Peters*  
Gary Peters  
Member of Congress

*Anna G. Eshoo*  
Anna G. Eshoo  
Member of Congress

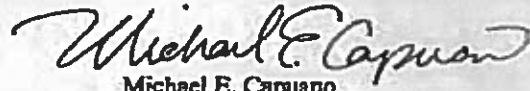
*David Cicilline*  
David Cicilline  
Member of Congress

*Paul D. Tonko*  
Paul D. Tonko  
Member of Congress


*Chaka Fattah*  
Chaka Fattah  
Member of Congress



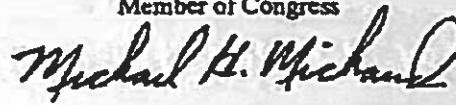
  
Jackie Speier  
Member of Congress

  
Michael E. Capuano  
Member of Congress

  
Rosa L. DeLauro  
Member of Congress

  
Jim Langevin  
Member of Congress

  
George Miller  
Member of Congress

  
Michael H. Michaud  
Member of Congress

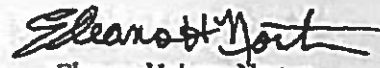
  
Zoe Lofgren  
Member of Congress

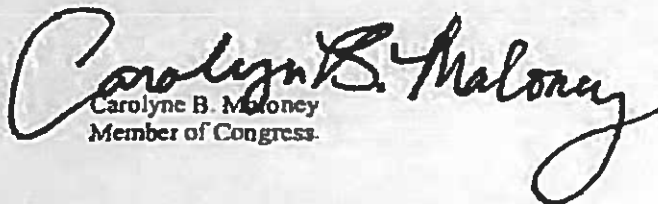
  
Maxine Waters  
Member of Congress

  
Doris O. Matsui  
Member of Congress

  
James P. Moran  
Member of Congress

  
Peter Welch  
Member of Congress

  
Eleanor Holmes-Norton  
Member of Congress

  
Carolyn B. Maloney  
Member of Congress

  
Bill Foster  
Member of Congress

Earl Blumenauer  
Member of Congress

Lois Capps  
Member of Congress

Keith Ellison  
Member of Congress

Marcy Kaptur  
Member of Congress

Alcee L. Hastings  
Member of Congress

John Yarmuth  
Member of Congress

Louise M. Slaughter  
Member of Congress

Chellie Pingree  
Member of Congress

Donna F. Edwards  
Member of Congress

Jim McDermott  
Member of Congress

Al Green  
Member of Congress

Ed Pastor  
Member of Congress

*David Price*

David Price  
Member of Congress

*Chris Van Hollen*

Chris Van Hollen  
Member of Congress

Cc Michele M. Leonhart, Administrator, Drug Enforcement Administration

Cc Lisa J. Kubiske, U.S. Ambassador to Honduras

Cc Ricardo Zufiga, Senior Director for the Western Hemisphere

# **APPENDIX**

## **I**



**U. S. Department of Justice  
Drug Enforcement Administration**

[www.dea.gov](http://www.dea.gov)

Springfield, VA 22152  
JUL 29 2013

The Honorable Hank Johnson  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Congressman Johnson:

This responds to your letter to the Attorney General dated January 30, 2013, regarding the Drug Enforcement Administration's (DEA) role in Honduras in May 2012. This is an issue taken very seriously by both DEA and the United States Department of State (DOS). Please be assured DEA and the DOS have been in regular contact with the relevant Congressional Committees regarding the overall operation in Honduras and, in particular, the events of May 11, 2012.

According to the Joint Interagency Task Force-South, approximately 95 percent of the cocaine from South America destined for the United States transits the Central America/Mexico corridor, and approximately 20 percent leaves South America via air. Of that amount, an estimated 95 percent of *all* cocaine smuggling flights departing South America first land in Honduras. In particular, Northeastern Honduras remains highly vulnerable to drug-trafficking organizations due to its remoteness, limited infrastructure, lack of state presence, and weak law enforcement institutions. The Gracias a Dios/La Mosquitia region is a primary landing zone and transshipment point for drug trafficking, one which provides a vital nexus for drug-carrying flights, maritime vessels, riverine traffic, and land movement. The increased flow of cocaine to and through Honduras and the accompanying transnational organized crime elements exacerbate the nation's rising rates of crime and violence.

DEA, as the lead U.S. agency responsible for coordinating drug enforcement activities worldwide, regularly provides counter narcotics assistance to foreign governments in collaboration with the DOS. DEA's involvement in Honduras, which began in 1981, includes providing training and technical assistance to Honduran law enforcement institutions and officers including rule of law training to root out abusive and corrupt personnel thereby further institutionalizing respect for human rights in the Honduran criminal justice system. These efforts began long before the actual commencement of operations in Honduras and remain ongoing throughout and following any operational deployments. By establishing standard operating procedures, DEA agents and their counterparts maximize the safety of all involved personnel and provide a reference for after-operation evaluation and improvement. Examples of this training include helicopter-borne operations, medical care, vehicular interdiction, marksmanship, night vision goggle usage, GPS navigation, radio communication procedures, evidence collection, arrest procedures, and Honduran law. Also included are interactive firearms and situational judgment live fire exercises designed to

simulate shoot and do not shoot situations. These exercises are designed to demonstrate and reinforce the appropriate use of deadly force, among other topics.

The Government of Honduras (GOH) requested additional DEA counter narcotics training and assistance in March 2012. The resulting interagency effort, as notified to Congress, came to be known as "Operation Anvil," which began on April 14, 2012 and was scheduled to last three months. It was designed to disrupt suspected drug transportation flights into the Gracias a Dios region (northeastern tip) of Honduras. DEA's Honduran partners during Operation Anvil were all members of the Honduran National Police's Tactical Response Team (TRT), a group that is vetted, trained, and mentored by DEA.

On May 11, 2012, the Honduran TRT, supported by DEA FAST, were recovering over 400 kilograms of cocaine when there was an exchange of gunfire between suspected drug traffickers and Honduran TRT members. Although no injuries were confirmed nor injured persons identified immediately after the shooting, media reports and a report subsequently issued by the GOH stated that ~~two~~ men and two women were killed on May 11, 2012. The GOH report also determined that neither of the female decedents was pregnant, and that no DEA FAST members fired their weapons during the May 11, 2012 incident. According to the DEA's Office of Inspections' internal review, ~~no~~ DEA FAST members fired their weapons during the May 11, 2012 incident. Contrary to media reports referenced in your letter, all operations conducted under Operation Anvil were led by the GOH, with support from DEA and DOS. All operations are planned, coordinated and executed with input and agreement from DOS, DEA and the GOH.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this, or any other matter.

Sincerely,



Eric J. Ayers, Deputy Chief  
Office of Congressional & Public Affairs

# **APPENDIX**

## **J**



PATRICK J. LEAHY, VERMONT, CHAIRMAN

DIANNE FEINSTEIN, CALIFORNIA  
CHARLES E. SCHUMER, NEW YORK  
RICHARD J. DURBIN, ILLINOIS  
SHELDON WHITEHOUSE, RHODE ISLAND  
AMY KLOBUCHAR, MINNESOTA  
AL FRANKEN, MINNESOTA  
CHRISTOPHER A. COONS, DELAWARE  
RICHARD BLUMENTHAL, CONNECTICUT  
MAZIE HIRONO, HAWAII

CHARLES E. GRASSLEY, IOWA  
ORRIN G. HATCH, UTAH  
JEFF SESSIONS, ALABAMA  
LINDSEY O. GRAHAM, SOUTH CAROLINA  
JOHN CORNYN, TEXAS  
MICHAEL S. LEE, UTAH  
TED CRUZ, TEXAS  
JEFF FLAKE, ARIZONA

## United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

KRISTINE J. LUCAS, *Chief Counsel and Staff Director*  
KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

October 16, 2013

The Honorable Michele Leonhart  
Administrator  
Drug Enforcement Administration  
600-700 Army Navy Drive  
Arlington, VA 22202

Dear Administrator Leonhart:

I am writing concerning Deputy Chief for Congressional and Public Affairs Eric J. Akers' response to a letter dated January 30, 2013, from Members of Congress to Attorney General Holder. The letter concerned the Drug Enforcement Administration's involvement in a counter-narcotics operation in Ahuas, Honduras on May 11, 2012, in which four Hondurans were killed in that operation, including two women and a 14 year old boy, and others severely injured.

I appreciate that the DEA states in its letter that it takes its role in that operation "very seriously," but in its two page letter the DEA dedicates only a paragraph to respond to questions about the incident and seems to suggest that all inquiries should be answered by the assertion that its agents did not fire their weapons and the operation was "led by the [Government of Honduras]." The letter also seems to suggest that the casualties were less serious because the two women killed were reportedly not pregnant. Even if the operation was technically "led by" Honduran personnel, it cannot be disputed that this operation would not have been possible without the active support, participation, and guidance of the DEA. Accordingly, I remain troubled by what appears to be a failure to thoroughly and critically assess the role that the DEA played in the operation and its aftermath.

I am also concerned that several of the factual assertions in the letter are highly questionable, while others are based in part on a Honduran Attorney General's report which suffered from serious flaws – including omissions of key testimony and forensic evidence and "observations" that are not corroborated by the evidence cited. For example:

1. The DEA asserts that a GOH report determined that "no DEA FAST members fired their weapons during the May 11, 2012 incident" and that "there was an exchange of gunfire between suspected drug traffickers and Honduran TRT members."

Please provide the excerpt(s) from the GOH report concluding that "no DEA FAST members fired their weapons."

While the DEA informed congressional staff that the passenger boat embarked from a location near Ahuas and the boat's occupants were involved in the illegal drug operation, Honduran investigators determined that the boat originated some 7 hours



away at the mouth of the river. Please provide any credible evidence to support the conclusion that the occupants of the passenger boat were involved in any illegal activity that night.

The DEA has long asserted that a grainy video of the incident shows flashes of light, indicating gunfire, coming from the passenger boat. That assertion, however, has been refuted or called into question by the victims and multiple witnesses, as well as other Administration officials, and is not corroborated by any forensic evidence. If the DEA has any credible evidence to corroborate its assertion, please provide it.

2. The DEA's letter states that the GOH report also determined that "neither of the female decedents was pregnant."

While the accuracy of this statement may never be conclusively determined, it is based on field "autopsies" conducted in a highly unprofessional and unreliable manner on the decomposed bodies over 40 days after the killings. The Public Ministry's assertion that neither of the deceased women was pregnant is contradicted by testimony from the women's families and, in the case of the late Juana Jackson, by the medical examination of Ms. Jackson's body shortly after it was recovered.

3. The letter asserts that "no injuries were confirmed [by DEA personnel and their colleagues] nor injured persons identified," and indicates that the DEA only learned about the casualties from subsequent media reports.

The statements of several witnesses contradict this. In addition, after shooting at the passenger boat repeatedly from close range (the boat had at least 21 bullet holes in it and several victims had more than one bullet injury), the DEA and TRT agents should have recognized that there may have been casualties. I am deeply concerned that, according to Honduras' National Human Rights Commission, the DEA made no effort to verify the condition of the passengers and ensure that medical attention was provided to any injured individuals.

4. The DEA states that, in their training procedures in Honduras, the "DEA and its counterparts maximize the safety of all involved personnel" and provide a reference for after-operation evaluation and improvement.

The fact that the DEA describes procedures to "maximize the safety of all involved personnel," but makes no reference to any procedures designed to minimize casualties and maximize the safety of bystanders begs the question of what, if anything, the DEA learned from the Ahuas incident and what, if anything, it would do differently in a future operation of this kind.

The Honorable Michele Leonhart  
Page 3 of 3

I am concerned with the assertions in the DEA's letter and the material inconsistencies described above. The Judiciary Committee is planning a DEA oversight hearing in the coming weeks and I would appreciate your response in advance. Absent confidence that the DEA recognizes the seriousness of the problems associated with the Ahuas operation and has taken appropriate remedial action, I would be reluctant to support further DEA involvement in such operations financed by the Department of State in Honduras or elsewhere in Central America.

Sincerely,



PATRICK LEAHY  
Chairman  
Senate Committee on the Judiciary  
Senate Committee on Appropriations, Department of State  
and Foreign Operations Subcommittee

*I look forward to  
your response*

# **APPENDIX**

## **K**



**U. S. Department of Justice  
Drug Enforcement Administration**

*www.dea.gov*

Springfield, Virginia 22152

April 28, 2014

The Honorable Patrick J. Leahy  
Chairman  
Senate Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

This responds to your letter dated October 16, 2013, regarding the Drug Enforcement Administration's (DEA) involvement in a counter-narcotics operation in Ahuas, Honduras on May 11, 2012. We understand your continued concerns and appreciate the opportunity to provide additional information.

As sworn law enforcement professionals, all DEA agents go into the field with one goal in mind: arresting criminals and bringing them to justice in a court of law in order to protect the public. This responsibility holds as true for agents working overseas as it does for agents in domestic offices – including the agents assigned to the Foreign Deployed Advisory and Support Teams (FAST).

A major part of our strategy in Honduras and Central America is to build host government capacity, help establish the rule of law, and build credible, functioning institutions that can withstand the corrupting influences of drug trafficking organizations. Our personnel go to great lengths to provide for the safety of all individuals, be they law enforcement officers, suspects, or innocent bystanders, and DEA views the deaths of the four Hondurans as unintended, unfortunate tragedies. Please be assured DEA personnel would provide or seek aid for any wounded or injured individuals they might encounter during law enforcement operations, and DEA leaders would never condone conduct to the contrary.

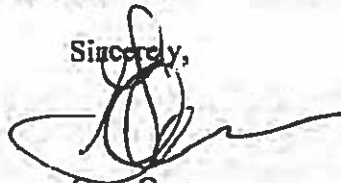
Following the May 11, 2012 operation, DEA reviewed its policies and procedures and incorporated lessons learned, not the least of which is an enhanced review of public safety factors during operational planning. The training we provide to our Honduran counterparts relating to arrest procedures and tactics has been expanded to provide a greater emphasis on public safety and human rights, including the risks and responsibilities associated with the application of deadly force. Strengthening Honduran law enforcement capacity includes incorporating such professional standards into every operation. In this way, Honduran law enforcement can more reliably pursue and conduct successful enforcement activities, and in turn earn the trust and confidence of all Hondurans.

The Honorable Patrick J. Leahy  
Page Two

Attached to this letter are two documents. The first is a document ("Attachment 1") intended to provide more specific responses to the questions posed in your letter. The second is a letter from the Government of Honduras dated February 13, 2013, expressing its commitment to both human rights and the rule of law and the importance of working together with the U.S. Government to interdict drug traffickers and prevent criminal activity.

Please be assured that DEA takes your concerns seriously and appreciates your passionate interest in ensuring that innocent civilians are not harmed in the course of law enforcement operations. I hope the enclosed information is helpful to you.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Owen", with a long horizontal flourish extending to the right.

Gary Owen  
Acting Chief  
Congressional and Public Affairs

Attachments

**Attachment 1**  
**DEA Supplemental Response to**  
**Chairman Patrick J. Leahy Letter Dated October 16, 2013**

1. The Drug Enforcement Administration (DEA) previously indicated that a Government of Honduras (GOH) report made a determination that no DEA Foreign Deployed Advisory and Support Team (FAST) members fired their weapons during this incident. Having reviewed the matter further, we find that that determination was derived not from a particular GOH report, but from the totality of information available to DEA through its internal review, including forensic analysis, reports generated by various elements of the GOH, and recorded imagery of the event. DEA has concluded based on this information that no DEA FAST members fired their weapons.

DEA does not know if all persons aboard the passenger boat had knowledge of the drug trafficking activity the night of May 11, 2012, and it is possible that some were unwitting participants. Based on the totality of information derived from an array of DEA investigative efforts, including: witness interviews; review of GOH reporting that summarizes Honduran law enforcement participant/witness statements about the event; review of the limited forensic and ballistic analysis of the event; and review of the video recording of the event, DEA concludes it is likely that some passengers did have knowledge of and criminal involvement with the 450 kilograms of cocaine recovered on the river.

You have also requested specifically any corroboration of DEA's assertions regarding the video recording of the shooting incident. The video, which was subjected to intensive post-event analysis by DEA personnel, provides critical if incomplete information about the circumstances of the event that evening. It shows two boats and what DEA officials familiar with thermal imagery of law enforcement operations believe depicts gunfire coming from the water taxi. In the video it also appears that the water taxi was making suspicious movements that law enforcement officers in the drifting boat interpreted as attempts to intercept and strike their boat. However, because the video was taken at night from high altitude in a very dark area with a dense tree canopy, it does not depict with perfect clarity or certainty all of the events that occurred on May 11<sup>th</sup>.

2. As your letter indicates, there may never be a conclusive determination about whether either of the female decedents was pregnant. On the night of the operation, DEA did not possess information that there were any victims as a result of the engagement on the river. Similarly, DEA did not have any information about whether there were female decedents and, if so, whether they were pregnant. Regardless, at no time did DEA ever mean to suggest that these victims would have deserved any lesser degree of care, protection, or medical attention that night based on our subsequent belief that

they were not pregnant. DEA views the deaths of all four Hondurans as unintended, unfortunate tragedies.

3. As noted in the attached cover letter, all DEA agents go into the field with one goal in mind: arresting criminals and bringing them to justice in a court of law in order to protect the public. This responsibility holds as true for agents working overseas as it does those in domestic offices, including the agents assigned to FAST. Our personnel go to great lengths to ensure the safety of all individuals, be they law enforcement, suspects, or innocent bystanders. Given this goal, any loss of life during an enforcement operation is unwanted and regrettable. Please be assured DEA personnel would provide or seek aid for any wounded or injured individuals they might encounter during law enforcement operations, and DEA leaders would never condone conduct to the contrary. DEA views the deaths of the four Hondurans as unintended and unfortunate.

All team members involved in the events that occurred on the night of May 11, 2012, made efforts to monitor the immediate area of their operations, including the last known location of the water taxi. Unfortunately, the brief encounter with the water taxi was the only time DEA saw it on the river that night. The helicopter teams, consisting of members of DEA FAST, Honduran law enforcement Tactical Response Teams (TRT), Honduran Air Force personnel, and Department of State contracted DynCorp Pilots and Guatemalan Air Force Pilots, did what they could to search for the water taxi and any injured parties, but they did not have the benefit of search lights and were also dealing with a dense tree canopy. The thermal imagery camera recording the video was on a surveillance aircraft that remained in the area until approximately [REDACTED]. Throughout that time, the crew monitored the area for activity, but they did not observe the water taxi after the initial exchange of gunfire on the river. To the best of our knowledge, DEA and HNP never received any information suggesting the eventual fate of the water taxi, or any distress or emergency experienced by its occupants or bystanders.

In critically assessing this operation, DEA concluded that the ground team was not of sufficient size to maintain a crime scene, provide security, and maximize the safety of innocent bystanders. The operational and environmental circumstances encountered on the ground, some of which are referenced above, created a fluid and challenging law enforcement environment, one that strained the human and technical capabilities of the law enforcement resources available that night. As a result, we have made recommendations that future, similar interagency operations include plans for additional Honduran security resources, as well as redundant surveillance platforms.

The Honorable Patrick J. Leahy  
Page Three

4. We want to assure you that DEA and its interagency partners have thoroughly and critically assessed the roles played by all entities on May 11, 2012. That assessment has led to the creation of an interagency Regional Aviation Program (RAP) manual, which remains in development. The RAP manual will be a living document that is updated and modified in light of future operations and unforeseen circumstances that may be encountered. It captures and explains helpful operational contingencies and, equally importantly, updates protocols to better facilitate communication within the United States Government. In addition to the RAP, we are expanding the training for our Honduran counterparts to provide a greater emphasis on public safety and human rights, including the risks and responsibilities associated with the application of deadly force.



## Attachment 2



### EMBAJADA DE HONDURAS WASHINGTON, D.C.

THE AMBASSADOR

CV/070/EHW/2013

February 13, 2013

The Honorable  
Eric Holder, Attorney General  
U.S. Department of Justice  
Washington, D.C., 20530

Dear Attorney General Holder:

I have the honor of addressing you, on the occasion of referring to the letter sent to you by members of the House of Representatives on January 30<sup>th</sup>, 2013. In the letter, they express their concern regarding the human rights situation in Honduras, specifically related to "Afro-Indigenous Honduran" communities during the past three years. They refer to alleged threats, acts of repression, violence, and intimidation against Afro Hondurans. In addition, they mention the drug interdiction operation occurred in Ahuis on May 11<sup>th</sup>, 2011 that resulted in the death of indigenous villagers.

On February 12<sup>th</sup>, 2013, in an effort to clarify the concerns of the members of the House of Representatives, a Honduran Delegation conformed by Luis Green, Secretary of State for Afro Honduran and Indigenous Community Affairs; his Undersecretaries, Gloria Lopez and Edy McNab, for Public Policy and Equality and Afro Honduran and Ethnic Community Projects, respectively; myself and members of my staff, met with Congressman Hank Johnson(D-GA), his staff, as well as other staff members of the various Representatives who also signed the letter. The Honduran Delegation gave a detailed presentation and provided a document listing the policies, programs, projects and actions from President Lobo's Administration regarding Afro Indigenous Honduran communities.

The Honduran Delegation highlighted that: i) President Lobo integrated his Cabinet with members of ethnic minorities as never before in the history of Honduras. ii) In 2011, President Lobo created the Secretariat of State for Indigenous and Afro Honduran People, the

only one of its kind in the world. iii) The current Government has issued land titles in favor of Afro Indigenous Honduran communities located in Punta Gorda, Roatán; Vallecito, Limón, Colón; and also in Cauquira, Gracias a Dios, in favor of the Territorial Council of KATAYNASTA. This is the largest land title ever extended to the Misquito people equivalent to 55,293 hectares. Two other equally large land titles are in the process of being issued to the Territorial Councils of AUYA YARI and FINZMOS. iv) The current Government has made conditional direct cash transfers to Afro Indigenous Hondurans in extreme poverty to ensure their children remain in school and take ordinary health checks and vaccinations. I have attached to this letter the complete list of policies, programs, projects and actions from President Lobo's Administration regarding Afro Indigenous Honduran communities.

With regards to the case of Afro Honduran leader Ms. Miriam Miranda, we informed the attendees that as a result of the investigations conducted by our Honduran authorities, a judicial proceeding has been filed. Our Embassy will keep updating them about any significant progress in this judicial proceeding.

During the meetings, the Embassy of Honduras explained that the unfortunate incident of May 11<sup>th</sup>, 2011, in Ahuas occurred as a direct result from a counter narcotics operation and not, as a result of an act of violence by Honduran authorities directed specifically against Afro Indigenous Hondurans.


Our Government shares the concern of the members of the House of Representatives with respect to the fact that drug traffickers have been targeting Afro Indigenous Hondurans, to engage in their illicit activities thus, endangering their lives and personal safety. Furthermore, our Government is extremely concerned that the drug trafficking activities are taking a devastating toll on the entire Honduran population. Every day our citizens and law enforcement officials fall victims to the violence that derives from drug trafficking and organized international crimes.

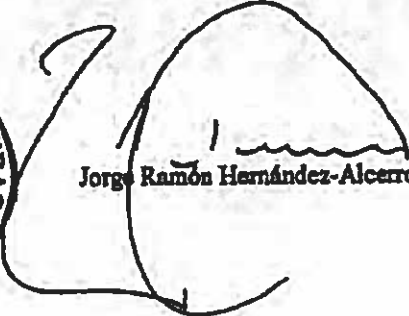
Drug transshipment through Honduras to supply the Northern drug market is linked to two thirds of Honduras' homicides according to the National Observatory of Violence, an independent institution. Illegal drug trade is undoubtedly having dire consequences over the fundamental human rights of our people and has spillover effects on our institutional system, our economy and the international image of our country. It is therefore of the utmost

importance that both our nations continue to work closely together with a holistic approach to prevent criminal activity, to strengthen our justice and security institutions, to interdict drug trafficking and disband organized international crime in general, and protect the human rights of our people. These are common goals established in the Memorandum of Understanding signed last year between Honduras and the U.S. Unfortunately, significant delays in the U.S. appropriations process have prevented both countries from achieving these common goals, in spite of the efforts of both Administrations.

Allow me to express, that the Government of Honduras remains fully committed to working in close cooperation with the U.S., and to continue to provide for the security and well-being of our people.

I avail myself of the opportunity to express to you, the assurances of my highest and distinguished consideration.



  
Jorge Ramón Hernández-Alcero

Cc Michele M. Leebhart, Administrator, Drug Enforcement Administration  
Cc Lisa J. Kubhaka, U.S. Ambassador to Honduras  
Cc Ricardo Zúñiga, The White House Senior Director for the Western Hemisphere

# **APPENDIX**

## **L**

PATRICK J. LEAHY, VERMONT, CHAIRMAN

DIANNE FEINSTEIN, CALIFORNIA  
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## United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

KACSTRAE J. LUCAS, Chief Counsel and Staff Director  
KOLAN L. DAVID, Republican Chief Counsel and Staff Director

May 12, 2014

The Honorable Michele Leonhart  
Administrator  
Drug Enforcement Administration  
600-700 Army Navy Drive  
Arlington, VA 22202

Dear Administrator Leonhart:

I am writing in response to the DEA's April 28, 2014, reply to my letter of October 16, 2013, regarding the counter-drug operation in Ahuas, Honduras, that caused the deaths and injuries of Honduran civilians.

I am perplexed as to why it took almost six months to answer my inquiry, and would appreciate your prompt reply to the following additional questions:

- 1) The DEA says it learned lessons and modified its practice as a result of this incident, but ~~the letter, as well as your testimony last week before the Senate Judiciary Committee,~~ have been very short on specifics. You testified last week that you "have looked at ways ~~that we could improve operational planning, how we can improve the training."~~ ~~What specific changes has the DEA adopted as a result of this incident? Please provide a copy of the newly created Regional Aviation Program (RAP) manual that is referenced in the DEA's April 28 letter. If these changes had been in place, what would the DEA have done differently on May 11, 2012? As part of assessing what happened that night, including whether DEA personnel may have failed to provide aid to injured individuals, did the DEA interview the people involved, either those in the village or on the water taxi? If not, how can the DEA assert that it critically assessed the operation? Will future protocol require conducting such interviews?~~
- 2) DEA's July 29, 2013, letter asserted that a Government of Honduras (GOH) report determined that "no DEA FAST members fired their weapons during the May 11, 2012 incident" and that "there was an exchange of gunfire between suspected drug traffickers and Honduran TRT members." DEA's April 28, 2014, letter asserts that the determination was derived from "forensic analysis, reports generated by various elements of the GOH, and recorded imagery of the event." Please provide the excerpt(s) from the GOH report(s) concluding that "no DEA FAST members fired their weapons."

The Honorable Michele Leonhart  
May 12, 2014  
Page 2 of 2

- 3) The DEA continues to assert that some of the individuals on the water taxi were involved with the drug transaction, but the letter points to no credible or conclusive evidence to support that assertion. What specific, credible or conclusive evidence does the DEA have that any water taxi passenger was involved in the drug transaction? Did the DEA interview any of the passengers or investigate the taxi's origin and route? The DEA places great emphasis on the surveillance video. Has an independent forensic expert reviewed the video?
- 4) What is the "judicial proceeding" referenced in the February 13, 2014, letter from the Honduran Embassy, and what is the status of that proceeding?
- 5) In view of the controversy surrounding the Ahuas operation, I believe there is a need for additional public disclosure. Accordingly, I request that you publicly release the video recording of the operation that has been described by DEA and State Department officials and reported on in the press, as well as any other DEA documents that are relevant to what occurred that night.

Thank you for your assistance.

Sincerely,

  
PATRICK LEAHY  
Chairman

*I have to assume that these  
questions can be answered in far  
less than the 6 months taken for  
the previous answers.*

# **APPENDIX**

## **M**



**U. S. Department of Justice**  
**Drug Enforcement Administration**  
**Office of Congressional and Public Affairs**

[www.dea.gov](http://www.dea.gov)

[AUG 08 2014]

The Honorable Patrick Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

This responds to your letter to Administrator Michele Leonhart dated May 12, 2014, regarding the Drug Enforcement Administration's (DEA) involvement in a counter-narcotics operation in Ahuas, Honduras on May 11, 2012. We appreciate your continued concerns regarding this subject.

It is important to note that DEA has addressed this operation in numerous congressional briefings and written documents submitted to Congress. We have striven in all of these communications to be responsive and thorough and to explain DEA's actions, dispel misconceptions, clarify the record, and provide a reasonable vision for appropriate, future regional operations in collaboration with vetted host-nation counterparts who we believe can help fight the scourge of drug trafficking.

As you may be aware, on May 5, 2014, the Inspectors General for the Departments of State and Justice announced they would conduct a joint review of the post-incident responses by State and DEA regarding three drug interdiction missions in Honduras in 2012. Until the review has concluded, we are not in a position to provide additional information. DEA is cooperating fully with this review and we look forward to the Inspectors' findings.

DEA takes your concerns seriously and shares your commitment to ensuring innocent civilians are not harmed in the course of law enforcement operations. We hope that this information is helpful.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Owen".

Gary Owen, Acting Chief  
Office of Congressional and Public Affairs



# **APPENDIX**

## **N**

**Congress of the United States**  
**Washington, DC 20515**

January 30, 2013

The Honorable John Kerry  
Secretary of State  
U.S. Department of State  
2201 C Street NW  
Washington, DC 20520

Dear Secretary Kerry:

We write to express our concern regarding the grave human rights situation in Honduras, and in particular the dire situation of Afro-Indigenous Hondurans in the aftermath of the June 2009 military coup. We request a thorough and credible investigation on the tragic killings of May 11 in Ahuas to determine what exactly occurred and what role, if any, was played by U.S. Drug Enforcement Administration (DEA) agents. We also call for an immediate investigation into alleged abuses perpetrated by Honduran police and military officials in the country.

We are troubled to hear of the threats and repression targeting Afro-Hondurans who have bravely voiced their alarm over the steady deterioration of democracy in their country. We are also concerned regarding acts of violence and intimidation against Afro-Indigenous people defending their historic land rights. We are particularly disturbed to learn of the effects of a militarized counternarcotics policy on Afro-Honduran communities, and the participation of U.S. agents in operations that have led to the deaths of Afro-indigenous civilians.

On May 11, 2012, four Afro-Indigenous villagers, including a 14-year-old boy, were killed during the course of a May 11 drug interdiction raid in Ahuas, Honduras. Three others were seriously wounded. At least ten U.S. Drug Enforcement Administration (DEA) agents participated in the mission as members of a Foreign-Deployed Advisory Support Team (FAST), a DEA unit first created in 2005 in Afghanistan. According to the New York Times, Honduran police agents that were part of the May 11 operation "told government investigators that they took their orders from the D.E.A."

We understand that this tragic incident has been extremely traumatic for the otherwise peaceful and tightly knit community of Ahuas. Although Honduran human rights groups and international organizations such as Human Rights Watch have demanded that U.S. and Honduran authorities conduct a thorough and impartial investigation of this incident, the investigation has not been properly conducted. For instance, official inquiries into the matter have been perfunctory, and deeply flawed. Credible testimony indicates that the victims were innocent bystanders and not drug traffickers. As Honduran authorities have yet to address the issue, our

government should press ahead with a full investigation to better determine exactly what occurred and what role was played by U.S. agents.

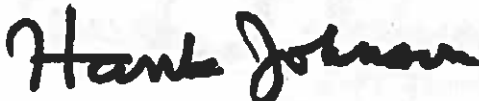
On June 22, the Fraternal Organization of Black People of Honduras (OFRANEH), one of the most prominent groups representing Afro-Indigenous Hondurans, objected to what it views to be racially biased, "outrageous and dangerous" statements given to the New York Times and the Washington Post by U.S. officials following the May 11 killings. OFRANEH claims U.S. officials made unsubstantiated accusations of drug trafficking against the entire Afro-Indigenous communities in the Moskitia region of Honduras.

OFRANEH states that since the coup, drug traffickers have been increasingly targeting Afro-Indigenous communities, claiming their traditional lands, and killing those who stand in their way. Human rights groups confirm that the Honduran judiciary has done little to defend the basic rights of these communities. For instance, the Inter-American Commission on Human Rights of the Organization of American States has ordered the State of Honduras to cease and desist from approving any title transfers on land in the Afro-Indigenous community of Triunfo de la Cruz in order to protect its vulnerable population from attacks by drug traffickers anxious to secure access to the Caribbean. Currently, many more Afro-Indigenous communities seek similar protection. We note that, even in this context, Afro descendent and Indigenous leaders assert that the U.S. -backed drug war in Honduras hurts their communities.

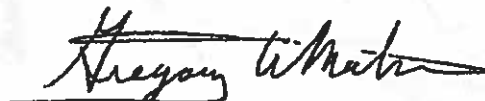
In addition, since the country's June 2009 military coup, according to numerous reports, the rate of impunity of alleged abuses perpetrated by state security forces has risen to unprecedented heights. According to Honduras' leading human rights organization, the Committee of Families of the Detained and Disappeared in Honduras (COFADEH), over the last three years, more than ten thousand complaints have been filed regarding police and military abuses, very few of which have been investigated. Furthermore, State security forces are also directly carrying out repression against government critics. For instance, Afro-indigenous leader, Miriam Miranda, president of OFRANEH, was physically attacked and arrested by a departmental police chief in May 2011.

Finally, we strongly recommend a review on the implementation of counternarcotics operations carried out by our government in Honduras taking into account the unique conditions and high vulnerability of Afro-descendent and indigenous communities, who are disproportionately affected by drug trafficking activities.

Sincerely,



Henry C. "Hank" Johnson, Jr.  
Member of Congress



Gregory W. Meeks  
Member of Congress

*John Conyers*

John Conyers, Jr.  
Member of Congress

*Karen Bass*

Karen Bass  
Member of Congress

*James P. McGovern*

James P. McGovern  
Member of Congress

*Barbara Lee*

Barbara Lee  
Member of Congress

*Sam Parr*

Sam Parr  
Member of Congress

*Luis V. Gutierrez*

Luis V. Gutierrez  
Member of Congress

*Michael M. Honda*

Michael M. Honda  
Member of Congress

*John Lewis*

John Lewis  
Member of Congress

*Bobby L. Rush*

Bobby L. Rush  
Member of Congress

*Peter DeFazio*

Peter DeFazio  
Member of Congress

*Frederica S. Wilson*

Frederica S. Wilson  
Member of Congress

*Janice D. Schakowsky*

Janice D. Schakowsky  
Member of Congress

*Shirley Jackson Lee*

Shirley Jackson Lee  
Member of Congress

*Danny K. Davis*

Danny K. Davis  
Member of Congress

*Wm. Lacy Clay*  
William "Lacy" Clay  
Member of Congress

*Edward J. Markey*  
Edward J. Markey  
Member of Congress

*Raúl M. Grijalva*  
Raúl M. Grijalva  
Member of Congress

*Charles B. Rangel*  
Charles B. Rangel  
Member of Congress

*Jared Polis*  
Jared Polis  
Member of Congress

*John F. Tierney*  
John F. Tierney  
Member of Congress

*Emmanuel Cleaver II*  
Emmanuel Cleaver II  
Member of Congress

*Yvette D. Clarke*  
Yvette D. Clarke  
Member of Congress

*Jose E. Serrano*  
Jose E. Serrano  
Member of Congress

*Gary Peters*  
Gary Peters  
Member of Congress

*Anna G. Eshoo*  
Anna G. Eshoo  
Member of Congress

*David N. Cicilline*  
David Cicilline  
Member of Congress

*Paul D. Tonko*  
Paul D. Tonko  
Member of Congress

*Chaka Fattah*  
Chaka Fattah  
Member of Congress

Jackie Speier  
Member of Congress

Michael E. Capuano  
Member of Congress

Rosa L. DeLauro  
Member of Congress

Jim Langevin  
Member of Congress

George Miller  
Member of Congress

Michael H. Michaud  
Member of Congress

Zoe Lofgren  
Member of Congress

Maxine Waters  
Member of Congress

Doris O. Matsui  
Member of Congress

James P. Moran  
Member of Congress

Peter Welch  
Member of Congress

Eleanor Holmes-Norton  
Member of Congress

Carolyn B. Maloney  
Member of Congress

Bill Foster  
Member of Congress

Earl Blumenauer  
Member of Congress

Lois Capps  
Member of Congress

Keith Ellison  
Member of Congress

Marcy Kaptur  
Member of Congress

Alcee L. Hastings  
Member of Congress

John Yarmuth  
Member of Congress

Louise M. Slaughter  
Member of Congress

Chellie Pingree  
Member of Congress

Donna F. Edwards  
Member of Congress

Jim McDermott  
Member of Congress

Al Green  
Member of Congress

Ed Pastor  
Member of Congress

*David Price*

David Price  
Member of Congress



Chris Van Hollen  
Member of Congress

Cc Michele M. Leonhart, Administrator, Drug Enforcement Administration

Cc Lisa J. Kubiske, U.S. Ambassador to Honduras

Cc Ricardo Zuñiga, Senior Director for the Western Hemisphere



# **APPENDIX**

## **O**



United States Department of State

Washington, D.C. 20520

MAR 14 2013

Dear Mr. Johnson:

Thank you for your January 30 letter regarding human rights in Honduras. We share your concern about threats to indigenous and Afro-Honduran communities, and the importance of strengthening Honduras' law enforcement institutions.

The U.S. government has a longstanding commitment to work with the Honduran government and civil society groups to protect indigenous and Afro-Honduran communities. In 2010, President Lobo appointed the country's first minister of Afro-Honduran and Indigenous Affairs. We celebrated that milestone, and urged Honduran authorities to provide sufficient resources to address the social exclusion and poverty affecting Honduras' ethnic minorities. In March 2011, then-Deputy Assistant Secretary Reynoso traveled to La Ceiba to meet with the Organization for Ethnic Community Development – an NGO that advocates for Afro-Hondurans' rights – and to review a USAID project to prevent HIV/AIDS in Garifuna and other indigenous communities. In August 2011, the U.S. government supported the Global Summit of African Descendants, sending six officers to La Ceiba to participate and deliver a letter from then-Secretary of State Clinton. In 2012, the U.S. ambassador visited the National Agricultural University, where ethnic minorities make up one-fifth of the student body, to meet students benefiting from a U.S.-funded English-language program. Finally, we highlighted indigenous and Afro-Honduran communities in a declaration of the G-16 donor group while the United States held the rotating chairmanship.

As you note in your letter, narcotics trafficking poses a particular risk to Honduras' ethnic minority communities. Traffickers expropriate property for remote landing strips and staging areas, and exploit rural inhabitants. At the request of the Honduran government, U.S. citizen security programs help Honduras deny these traffickers a safe haven. Our assistance also facilitates training to Honduran police, including human rights, and professionalizes Honduras' criminal justice institutions to reduce impunity and root out abusive and

The Honorable  
Henry C. Johnson Jr.,  
House of Representatives.



corrupt personnel. The United States supports a newly established internal affairs unit of the Honduran national police that conducts background investigations and responds to allegations of wrongdoing. Additionally, we support a public security reform commission and a parallel effort to strengthen the Honduran national police and Honduras' attorney general's office.

During the May 11, 2012, interdiction to which you refer, a drug trafficking flight landed at a clandestine airstrip in a remote part of Gracias a Dios. At the time, the U.S. government was providing support to a Honduran-led effort to disrupt suspected drug transportation flights into northeastern Honduras. Within this program, U.S. Drug Enforcement Agents serve as *advisors only* to Honduran law enforcement. Following the May 11, 2012, landing, Honduran law enforcement officers interdicted 500 kilograms of cocaine after it was transported off of the plane. However, during the seizure, a firefght ensued and four individuals were killed, and four others wounded, by the Honduran law enforcement officials. Subsequently, the U.S. government supported an investigation into the incident by Honduras' special prosecutor for human rights. The investigative report, completed in September 2012, concluded that U.S. Drug Enforcement Administration agents did not discharge their weapons. In joint operations, such as the May 11, 2012, operation, we follow protocols to minimize the chance for the loss of life and emphasize the protection of human rights and the importance of prompt and transparent investigations into any fatalities.

Honduras faces a daunting challenge in reducing the level of violent crime and protecting the human rights of all its citizens. We will continue to help in this effort. We welcome all opportunities to consult with those who share our goals of a peaceful and prosperous Honduras. Please do not hesitate to contact us if we can be of further assistance on this or any other matter.

Sincerely,



Thomas B. Gibbons  
Acting Assistant Secretary  
Legislative Affairs



Office of the Inspector General  
U.S. Department of Justice  
[www.justice.gov/oig](http://www.justice.gov/oig)



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