

United States Senate

WASHINGTON, DC 20510

November 15, 2024

The Honorable Merrick Garland
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

The Honorable Anne Milgram
Administrator
Drug Enforcement Administration
8701 Morrisette Drive
Springfield, V.A. 22152

Dear Attorney General Garland and Administrator Milgram:

I write to inquire into Drug Enforcement Administration (DEA) involvement in and oversight of unprompted questioning and searches of travelers who have already cleared airport security as they board flights in Atlanta’s Hartsfield Jackson International Airport. I am particularly concerned that Black travelers may be disproportionately targeted for these encounters. This is especially alarming because, according to a 2015 Department of Justice (DOJ) Office of the Inspector General (OIG) report, DEA did not have evidence to show that these encounters are effective in identifying and addressing criminal activity.

According to the OIG report, DEA and state and local officers participating in DEA-authorized task forces frequently use so-called “cold consent encounters” as a means of interdiction in mass transportation facilities like airports.¹ As described by OIG, in such encounters, law enforcement approach travelers either “based on no particular behavior” or “based on the officer’s perception that the person is exhibiting characteristics indicative of drug trafficking without the officer having any independent predicated information” in order to question them and, in some instances, search their person and belongings.² These encounters are often staged after a passenger has already cleared Transportation Security Administration (TSA) screening. In all events, law enforcement is supposed to secure passenger consent to speak with them and to search their belongings.³ Beyond its security interests, law enforcement has a financial incentive to target travelers for these searches—according to OIG, through agreements with DOJ, law enforcement agencies participating in these searches receive a percentage of any currency seized through forfeiture processes as a result.⁴

In its 2015 report, OIG concluded that DEA does not collect sufficient information to evaluate whether these encounters are effective or conducted in an unbiased manner.⁵ It further found that

¹ *Review of the Drug Enforcement Administration’s Use of Cold Consent Encounters at Mass Transportation Facilities* i, U.S. Dept. of Justice Off. of the Inspector Gen. (Jan. 2015), <https://oig.justice.gov/reports/2015/e153.pdf> [hereinafter “2015 OIG Report”].

² *Id.* at i.

³ *Id.*

⁴ *Id.* at 8.

⁵ *Id.* at ii.

DEA did not effectively manage or oversee use of these encounters to ensure law enforcement adhered to DEA policy in their implementation.⁶ At the time the OIG report was released, DEA concurred with and provided assurances that it would act on OIG's recommendations intended to address these problems.⁷

However, recent reporting suggests that DEA and DEA-authorized agents continue to use cold consent encounters in problematic ways in our nation's airports. According to reports, Black travelers in Atlanta have repeatedly been pulled aside on the jetway while boarding flights, when they are all but compelled to answer agents' questions and allow search of their bags or risk being denied boarding.⁸ In a reported instance also caught on camera, a DEA agent in the Cincinnati airport dismissed a traveler's express statements that he did not consent to a search, pulling the customer's baggage off of his flight to be sniffed by a drug-detecting dog and pressuring the traveler into consenting.⁹ According to reports, no illicit substances were found in his bag.

As acknowledged in the 2015 OIG report, DOJ itself has concluded that "racial profiling is more often associated with [cold consent] encounters than with encounters based on previously acquired information."¹⁰ And according to media reports, of the more than 360 travelers stopped by local law enforcement on or around jetways in Atlanta over a 17-month period in 2020 and 2021, more than two-thirds were people of color, and fully 54% were Black.¹¹ Approximately 46% of the encounters, in fact, were directed at Black men.¹²

Given these ongoing issues, I respectfully request an update on DEA's use and oversight of cold consent encounters, as well as its implementation of OIG's 2015 recommendations. Please respond in writing to the following questions by December 20, 2024.

1. What steps has DEA taken to respond to and implement each of the following 2015 OIG recommendations?:
 - a. Consider how to determine if cold consent encounters are being conducted in an impartial manner, including reinstating the collection of racial and other demographic data and how it could be used to make that assessment.
 - b. Develop a way to track cold consent encounters and their results and use the information collected to gain a better understanding of whether and under what circumstances they are an effective use of law enforcement resources.

⁶ *Id.* at iii.

⁷ *Id.* at 84-85.

⁸ Brendan Keefe, *In Plane Sight: Drug agents searching travelers for cash at airport gates*, Atl. News First (Oct. 19, 2023), <https://www.atlantaneewsfirst.com/2023/10/19/plane-sight-drug-agents-searching-travelers-cash-airport-gates/>.

⁹ Andrew Wimer, *The Airport Is Not A Constitution Free Zone*, Forbes (Jul. 16, 2024), <https://www.forbes.com/sites/instituteforjustice/2024/07/16/the-airport-is-not-a-constitution-free-zone/>.

¹⁰ See 2015 OIG report at 11.

¹¹ Keefe, *supra* n.7.

¹² *Id.*

- c. Require all interdiction TFG members and supervisors to attend either Jetway or alternative DEA-approved interdiction training.
 - d. Ensure appropriate coordination of training, policies, and operations for conducting cold consent encounters and searches, including assessing which policies should apply to cold consent searches at transportation facilities and ensuring that interdiction TFG members know when and how to apply them.
 - e. Examine whether disclaimer of ownership of cash forms should be used in cold consent encounters and, if so, establish a consistent practice and training regarding their use.
2. If DEA has not implemented one or more of the above-cited 2015 OIG recommendations, why not?
3. What policies are in place governing the types of information DEA agents and task force members may use to identify targets for cold consent encounters? How does DEA ensure these policies are adhered to? If no policies are in place, why not?
4. When must cold consent encounters conducted by DEA agents or task force members be documented? What information must be documented regarding these encounters? To whom is this information reported?
5. What determinations has DEA made regarding the effectiveness of cold consent encounters in uncovering evidence of criminal activity? What evidence does DEA rely upon to evaluate cold consent encounters' effectiveness? If no determinations have been made or evidence collected, why not?
6. What determinations has DEA made regarding whether cold consent encounters are being conducted in an unbiased manner? What evidence does DEA rely upon to evaluate whether cold consent encounters are conducted in an unbiased manner? If no determinations have been made or evidence collected, why not?
7. What policies are in place governing how and where DEA agents or task force members may conduct cold consent encounters in our nation's airports?
8. What policies are in place governing how DEA agents or task force members may secure traveler consent to questioning or a search in our nation's airports?
 - a. Do these policies require DEA agents or task force members to inform travelers of their right to refuse consent?
 - b. Do these policies require DEA agents or task force members to secure written consent from a traveler prior to a search?
9. How many cold consent encounters have DEA agents or task force members performed in our nation's airports since 2014?
 - a. Of this total, how many have targeted travelers of color?
 - b. If DEA does not have data to answer these questions, why not?
10. Of the airport travelers targeted for cold consent encounters by DEA agents or task force members since 2014:
 - a. How many have been arrested for suspected crimes based on information or evidence uncovered through the encounter? How many of these are travelers of color?

- b. How many have been charged with crimes based on information or evidence uncovered through the encounter? How many of these are travelers of color?
 - c. How many have been convicted of crimes based on information or evidence uncovered through the encounter? How many of these are travelers of color?
 - d. If DEA does not have data to answer these questions, why not?
11. Of the total cold consent encounters performed by DEA agents or task force members in our nation's airports since 2014:
- a. How many have resulted in currency being seized?
 - b. How many have resulted in drugs or other illicit substances being seized?
 - c. How many have yielded other physical evidence of criminal activity?
 - d. How many have yielded other evidence of criminal activity, including information gathered through questioning?
 - e. If DEA does not have data to answer these questions, why not?
12. How much total currency has been seized from airport travelers targeted for cold consent encounters by DEA agents or task force members between 2014 and today?
- a. Of this total, how much currency has been the subject of contest by travelers challenging the seizure or otherwise filing claims for its return?
 - b. Of this total, how much currency has been returned to travelers subject to a court decision?
 - c. Of this total, how much currency has been returned to travelers subject to a settlement, consent agreement, or other agreement?
 - d. Of this total, how much currency has been retained by state or local law enforcement responsible for the search?
 - e. If DEA does not have data to answer these questions, why not?
13. From how many total airport travelers have DEA agents or task force members seized currency following a cold consent encounter between 2014 and today?
- a. Of this total, how many travelers have been arrested for suspected crimes based on information or evidence gathered through the cold consent encounter? How many of these are travelers of color?
 - b. Of this total, how many travelers have been charged with crimes based on information or evidence gathered through the cold consent encounter? How many of these are travelers of color?
 - c. Of this total, how many travelers have been convicted of crimes based on information or evidence gathered through the cold consent encounter? How many of these are travelers of color?
 - d. If DEA does not have data to answer these questions, why not?

To promote transparency, I encourage DEA to respond in a manner that can be made public. Should you have concerns about this, my staff is willing to discuss accepting confidential responses, as well.

Thank you for your attention to this matter and for your continued work to ensure the safety and wellbeing of travelers in our nation's airports.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jon Ossoff", with a long horizontal flourish extending to the right.

Jon Ossoff
United States Senator