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Comptroller General
of the United States

Accessible Version

April 20, 2020

The Honorable William P. Barr
Attorney General
Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Priority Open Recommendations: Department of Justice

The purpose of this letter is to provide an update on the overall status of the U.S. Department of Justice's (DOJ) implementation of GAO's recommendations and to call your personal attention to areas where open recommendations should be given high priority.¹ In November 2019, we reported that on a government-wide basis, 77 percent of our recommendations made 4 years ago were implemented.² DOJ's recommendation implementation rate was 78 percent. As of March 2020, DOJ had 84 open recommendations. Fully implementing all open recommendations could significantly improve DOJ's operations.

Since our April 2019 letter, DOJ has implemented seven of our 14 open priority recommendations. In doing so, DOJ:

1. Implemented two recommendations to improve the information that it provides to the Federal Bureau of Investigation's (FBI) whistleblower complainants about the status of their complaints.
2. Took actions to ensure privacy and accuracy of the FBI's face recognition capabilities, which implemented four open priority recommendations. Specifically, DOJ improved its privacy impact assessment development process, which included developing an approval template and implementing procedures to expedite the review process. In addition, the FBI conducted audits to determine whether users of the FBI's face recognition technology were conducting face image searches in accordance with FBI policy requirements. Further, the FBI conducted tests to verify that its face recognition system is sufficiently accurate for all allowable candidate list sizes and adjudicating all candidate photos returned by the system. Finally, the FBI surveyed federal and state partners about the face recognition technology they use in order to provide it with information on the accuracy of these systems.
3. Implemented a recommendation in the technology area to more efficiently use information in (1) the National Crime Information Center's Missing Persons and

¹Priority recommendations are those that GAO believes warrant priority attention from heads of key departments or agencies. They are highlighted because, upon implementation, they may significantly improve government operation, for example, by realizing large dollar savings; eliminating mismanagement, fraud, and abuse; or making progress toward addressing a high-risk or duplication issue.

²GAO, *Performance and Accountability Report: Fiscal Year 2019*, [GAO-20-1SP](#) (Washington, D.C.: Nov. 19, 2019).

Unidentified Persons files and (2) the National Missing and Unidentified Persons System.

DOJ has seven priority recommendations remaining from those we identified in the 2019 letter. We ask your continued attention on those remaining priority recommendations. We also are adding 11 new recommendations related to efforts to combat illicit opioid use, cybersecurity, and improper payments, bringing the total number of priority recommendations to 18. (See enclosure for the list of recommendations).

The 18 priority recommendations fall into the following six areas.

FBI Whistleblower Retaliation Complaints.

We have two priority recommendations in this area. In January 2015, we recommended improvements to DOJ's handling of FBI whistleblower retaliation complaints to help FBI whistleblowers ensure that they are fully protected from retaliation and enhance DOJ's accountability. First, we recommended that DOJ clarify guidance to clearly convey to whom FBI employees can make protected disclosures. And, second, we recommended that DOJ's Office of Professional Responsibility (DOJ-OPR), Office of the Inspector General (DOJ-OIG), Office of Attorney Recruitment and Management (OARM), and Office of the Deputy Attorney General (ODAG)—the four entities responsible for handling these complaints—jointly assess the impact of ongoing and planned efforts to reduce the duration of FBI whistleblower retaliation complaints. This will ensure that these changes are in fact shortening total complaint length, without sacrificing quality.

DOJ concurred with each of these recommendations but, as of February 2020, has not updated its regulations to provide clarity or assessed the impact of efforts to reduce the duration of complaints or requirements.

Technology.

We have two priority recommendations in this area. In May 2016, we recommended that DOJ and the FBI take additional actions to ensure privacy and accuracy of the FBI's face recognition capabilities. Specifically, we recommended that DOJ determine why a System of Records Notice (SORN) was not published as required for the FBI's Next Generation Identification-Interstate Photo System (NGI-IPS), and implement corrective actions. DOJ agreed in part with our recommendation regarding the SORN. DOJ has begun to apply the process for expediting privacy impact assessment reviews to the way that DOJ develops and reviews SORNs, but it is too early to tell if the corrective action is effective. We continue to believe that taking actions to develop a process for timely publishing of SORNs would better keep the public informed on how personal information is being used and protected.

We also recommended that the FBI conduct an operational review of NGI-IPS at least annually that includes an assessment of the accuracy of face recognition searches to determine if it is meeting federal, state, and local law enforcement needs. DOJ concurred with our recommendation. The FBI reported that it has designed a Face Recognition Test Strategy for Operational Analysis that it is in the process of implementing. To fully implement this recommendation, the FBI could, for example, test the accuracy rate of searches conducted against photos in the operational NGI-IPS database, or ask state and local law enforcement if they are satisfied with the results they are getting from NGI-IPS. Without conducting operational reviews, the FBI risks spending resources on a system that is not operating as intended and also may miss opportunities for improving the system.

Immigration Courts.

We have three priority recommendations in this area. In June 2017, we recommended that DOJ's Executive Office for Immigration Review (EOIR) take actions to address management challenges related to workforce planning, hiring, and technology utilization in its immigration court system. First, we recommended that EOIR develop and implement a strategic workforce plan that addresses, among other areas, key principles of effective strategic workforce planning. Second, we recommended that EOIR assess the immigration judge hiring process to identify opportunities for efficiency, use the assessment results to develop a hiring strategy that targets short- and long-term human capital needs, and implement any corrective actions related to the hiring process resulting from this assessment. Third, we recommended that EOIR document and implement an oversight plan for its ongoing development of a comprehensive electronic-filing system that is consistent with best practices for overseeing IT projects. EOIR has initiated some actions to address each of these recommendations. However, EOIR needs to take additional steps to fully implement our recommendations to help strengthen the management of the immigration court system and reduce the system's case backlog. In particular, EOIR needs to continue to develop, and then implement, a strategic workforce plan; and continue to improve its hiring process by completing the development of a hiring strategy targeting short- and long-term human capital needs. Further, EOIR needs to document and implement an oversight plan for implementation of its electronic filing system that describes, among other things, how the EOIR Investment Review Board and Office of Information Technology will monitor program performance and progress toward expected costs; assign corrective actions to the appropriate parties at the first sign of slippages; and ensure that corrective actions are tracked until the desired outcomes are achieved.

Efforts to Combat Illicit Opioid Use.

We have eight priority recommendations in this area. The Controlled Substances Act requires those handling controlled substances, including pharmacies, health practitioners, and other distributors, to register with DOJ's Drug Enforcement Administration (DEA). In 2015, to strengthen DEA's communication with and guidance for registrants, as well as to support the DEA's Office of Diversion Control's mission of preventing diversion while ensuring an adequate and uninterrupted supply of controlled substances for legitimate medical needs, we recommended that the DEA solicit input from distributors, and develop additional guidance for distributors regarding their roles and responsibilities for suspicious orders monitoring and reporting.

DEA did not expressly agree or disagree with our recommendation, but has drafted regulations that are undergoing internal agency review which it states will, among other things, provide additional guidance to registrants regarding the nature and timing of the suspicious order reporting requirement. Until the regulations are finalized, we cannot determine if these changes will fully address our recommendation.

In 2018, we made three recommendations to improve agencies' ability to better assess efforts to combat illicit opioids. We recommended that the Executive Director of Organized Crime Drug Enforcement Task Forces (OCDETF) work with the National Heroin Initiative Coordinator to establish outcome-oriented performance measures for the goals set out for the National Heroin Initiative. We also recommended that DOJ establish goals and outcome-oriented performance measures for its Strategy to Combat the Opioid Epidemic. Further, we recommended that DEA establish goals and outcome-oriented performance measures for the enforcement and diversion control activities within the 360 Strategy and establish outcome-oriented performance measures for the community engagement activities within this strategy. In its required follow up to our report, DEA in June 2018, OCDETF in October 2018, and DOJ in October 2019 indicated that

they had taken some steps to develop performance measures to address our recommendations. However, the agencies need to provide documentation of their respective measures and demonstrate their implementation to address these recommendations. In January 2020, we made four recommendations to improve DEA's collection and use of industry-reported data on suspicious opioid orders.

- We recommended that the DEA develop and implement additional ways to use algorithms, such as those in the analysis conducted by GAO, in analyzing data from the agency's Automated Reports and Consolidated Orders System (ARCOS) and other data to more proactively identify problematic drug transaction patterns. DOJ agreed with this recommendation and stated it will continue to look for ways to analyze ARCOS and other data to more proactively identify problematic drug transaction patterns.
- We also recommended that the DEA establish and document a data governance structure to ensure DEA is maximizing its management of industry-reported drug transaction data. DOJ also agreed with this recommendation and DEA has recently started to work on developing a data strategy.
- Further, we recommended that the DEA establish outcome-oriented goals and associated measurable performance targets related to opioid diversion activities, using data it collects, to assess how the data it obtains and uses supports its diversion control activities. DOJ neither agreed nor disagreed with this recommendation. To address this recommendation, DEA should consider further development of related performance goals and targets as they relate to its use of industry-reported data, which could potentially improve the usefulness of the data DEA collects and uses in support of its diversion control program efforts.
- Finally, we recommended that the DEA identify solutions to address the limitations of the ARCOS Enhanced Lookup Buyer Statistic Tool, to ensure registrants have the most useful information possible to assist them in identifying and reporting suspicious orders to DEA. DEA agreed with this recommendation and indicated that it consulted with industry stakeholders to identify solutions to address the tool's limitations; however, to address the recommendation, DEA should continue this consultation to address all of the tool's limitations, which could help ensure registrants have the information necessary to help them identify and report suspicious opioid orders.

Cybersecurity.

We have two priority recommendations in this area. In July 2019, we recommended that the Department of Justice take steps to fully establish elements of its cybersecurity risk management program. First, we recommended that it fully establish a cybersecurity risk management strategy that includes key elements called for in federal guidance, including a statement of risk tolerance and how the department intends to assess, respond to, and monitor risk. We also recommended that DOJ fully establish and document a process for coordination between its cybersecurity and enterprise risk management (ERM) functions. The department did not state whether or not it concurred with these recommendations.

In January 2020, the department reported that it had an integrated strategy for identifying, prioritizing, assessing, responding to, monitoring, and reporting on cybersecurity risks. DOJ also stated that it is developing an ongoing mechanism to institutionalize coordination between its cybersecurity and ERM functions in fiscal year 2020. To fully implement these recommendations, the department needs to ensure that its cyber risk management strategy addresses key elements such as a statement of risk tolerance and risk mitigation strategies and

to fully establish and document its process for coordination between cybersecurity risk management and ERM functions.

Improper Payments.

We have one priority recommendation in this area. In January 2019, we recommended that you direct the revision of DOJ's process for conducting improper payment risk assessments for the Law Enforcement program to help ensure that it results in a reliable assessment of whether the program is susceptible to significant improper payments. This should include preparing sufficient documentation to support DOJ's risk assessments.

DOJ disagreed with this recommendation on the basis that DOJ believes (1) its existing risk assessment methodology is reasonable for determining whether the law enforcement program is susceptible to significant improper payments and (2) its risk assessment documentation is adequate and meets all of the requirements in the Improper Payments Information Act of 2002, as amended. We continue to believe that full implementation of this recommendation is warranted because DOJ's risk assessment documentation did not adequately demonstrate how DOJ determined the weighting of the risk factors or the numerical risk level ranges or whether a program is or is not susceptible to significant improper payments.

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As you know, in 2019, we issued our biennial update to our [high-risk program](#), which identifies government operations with greater vulnerabilities to fraud, waste, abuse, and mismanagement or the need for transformation to address economy, efficiency, or effectiveness challenges.³ Our high-risk program has served to identify and help resolve serious weaknesses in areas that involve substantial resources and provide critical service to the public.

Several government-wide, [high-risk areas](#)—including (1) [ensuring the cybersecurity of the nation](#), (2) [improving management of IT acquisitions and operations](#), (3) [strategic human capital management](#), (4) [managing federal real property](#), and (5) [the government-wide security clearance process](#)—have direct implications for DOJ and its operation.⁴ We urge your attention to the government-wide high-risk issues as they relate to DOJ. Progress on high-risk issues has been possible through the concerted actions and efforts of Congress, the Office of Management and Budget, and the leadership and staff in agencies, including within DOJ.

Copies of this report are being sent to the Director of the Office of Management and Budget and appropriate congressional committees including the Committees on Appropriations, Budget, and Homeland Security and Governmental Affairs, United States Senate; and the Committees on Appropriations, Budget, and Oversight and Reform, House of Representatives. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

I appreciate DOJ's continued commitment to these important issues. If you have any questions or would like to discuss any of the issues outlined in this letter, please do not hesitate to contact me or Charles Michael Johnson, Jr., Managing Director, Homeland Security and Justice Team at JohnsonCM@gao.gov or (202) 512-8777. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Our teams will

³GAO, *High-Risk Series: Substantial Efforts Needed to Achieve Greater Progress on High-Risk Areas*, [GAO-19-157SP](#) (Washington, D.C.: Mar. 6, 2019).

⁴[GAO-19-157SP](#). See pages 178-184 for Ensuring the Cybersecurity of the Nation, pages 123-127 for Improving the Management of IT Acquisitions and Operations, pages 75-77 for Strategic Human Capital Management, pages 78-85 for Managing Federal Real Property, and pages 170-177 for Government-wide Personnel Security Clearance Process.

continue to coordinate with your staff on all of the 84 open recommendations. Thank you for your attention to these matters.

Sincerely yours,



Gene L. Dodaro
Comptroller General
of the United States
Enclosure - 1

cc: Jeffrey Rosen, Deputy Attorney General, Office of the Deputy Attorney General
Christopher Wray, Director, Federal Bureau of Investigation
Michael Horowitz, Inspector General
Lee Lofthus, Assistant Attorney General for Administration, Justice Management
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Uttam Dhillon, Acting Administrator, Drug Enforcement Administration (DEA)
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William McDermott, Assistant Administrator, Diversion Control Division, DEA
Thomas Prevocznik, Deputy Assistant Administrator, Diversion Control Division, DEA
Adam Cohen, Executive Director, Organized Crime Drug Enforcement Task Forces
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Corey Ellis, Director, Executive Office for United States Attorneys
Melinda Rogers, Acting Chief Information Officer

Federal Bureau of Investigation (FBI) Whistleblower Retaliation Complaints

Whistleblower Protection: Additional Actions Needed to Improve DOJ's Handling of FBI Retaliation Complaints. [GAO-15-112](#). Washington, D.C.: January 23, 2015.

Recommendation: To better ensure that FBI whistleblowers have access to recourse under DOJ's regulations should the individuals experience retaliation, and to minimize the possibility of discouraging future potential whistleblowers, we recommend that the Attorney General clarify in all current relevant DOJ guidance and communications, including FBI guidance and communications, to whom FBI employees may make protected disclosures and, further, explicitly state that employees will not have access to recourse if they experience retaliation for reporting alleged wrongdoing to someone not designated in DOJ's regulations.

Action Needed: DOJ agreed with the recommendation. In response to our report, in December 2016, Congress passed and the President signed the FBI Whistleblower Protection Enhancement Act of 2016, Pub. L. No. 114-302, which, among other things, provides a means for FBI employees to obtain corrective action for retaliation for disclosures of wrongdoing made to supervisors and others in the employees' chain of command. Following this, the FBI worked closely with the Department of Justice's Office of Inspector General (DOJ-OIG) to develop a training that clearly identifies to whom FBI employees may make protected disclosures. In addition, the FBI issued an aligned policy directive and two fact sheets detailing whistleblower rights. According to DOJ's FY 2021 budget justification and Annual Report to Congress on Outstanding Government Accountability Office and Office of Inspector General Recommendations, implementation of this recommendation is in progress and, in February 2020, DOJ officials confirmed that the updated regulation remained in the departmental clearance process.⁵ It has been in the clearance process since October 2018 and DOJ cannot provide an estimate for when it will be finalized. As a result, DOJ's regulations have not been updated and are inconsistent with the current statute and FBI's guidance and training; as such, the problem of unclear or conflicting guidance to FBI employees still needs to be addressed. To address this recommendation, DOJ would need to update its regulations and ensure that all relevant guidance is clear and consistent across the department.

Recommendation: To better ensure that DOJ is fulfilling its commitment to improving efficiency in handling these complaints, we recommend that the DOJ Office of Professional Responsibility (DOJ-OPR), Office of the Inspector General, Office of Attorney Recruitment and Management (OARM), and Office of the Deputy Attorney General (ODAG) jointly assess the impact of ongoing and planned efforts to reduce the duration of FBI whistleblower retaliation complaints throughout the entire investigation, adjudication, and appeal process to ensure that these changes are in fact shortening total complaint length, without sacrificing quality.

Action Needed: DOJ agreed with this recommendation. In September 2019, DOJ officials told us and provided documentation indicating that OARM, DOJ-OIG, and DOJ-OPR officials meet annually to review case statistics and discuss possible ways to streamline the investigative and adjudicative processes. DOJ reported in the FY 2021 budget justification that, in general, implementation is in progress. However, in January 2020, DOJ officials stated that while they have taken steps intended to expedite case handling and annually compile statistics on the numbers of open cases, they do not compile information on case duration and have not undertaken an assessment of the impact of these efforts on case duration. To fully address this

⁵ *Department of Justice Annual Report to Congress on Outstanding Government Accountability Office and Office of Inspector General Recommendations*, February 2020.

recommendation, DOJ would need to assess the impact of efforts to reduce the duration of FBI whistleblower retaliation complaints throughout the entire complaint process.

Director: Gretta L. Goodwin, Homeland Security and Justice

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Technology

Face Recognition Technology: FBI Should Better Ensure Privacy and Accuracy. [GAO-16-267](#). Washington, D.C.: May 16, 2016.

Recommendation: To improve transparency and better ensure that face recognition capabilities are being used in accordance with privacy protection laws and policy requirements, the Attorney General should assess the system of records notice (SORN) development process to determine why a SORN was not published that addressed the collection and maintenance of photos accessed and used through Next Generation Identification (NGI) for the FBI's face recognition capabilities prior to using NGI-Interstate Photo System (IPS), and implement corrective actions to ensure SORNs are published before systems become operational.

Action Needed: DOJ agreed, in part, with our recommendation and submitted the SORN for publication after we provided our draft report for comment. In June 2019, DOJ officials told us that they had applied the pilot program for expediting the privacy impact assessment review process to the way that DOJ develops and reviews SORNs. DOJ subsequently documented in its July 2019 memorandum for the record the requirement that the DOJ Office of Privacy and Civil Liberties (OPCL) is to provide comments or approval within 30 days of the FBI submitting a draft SORN to DOJ OPCL for review. The memorandum also outlines a more direct and expedient process for resolving feedback and finalizing drafts. Further, the memorandum provides that after DOJ approves an FBI SORN, it will begin the formal publication process, in accordance with the law and Office of Management and Budget (OMB) policy. DOJ officials told us that the intent of the July 2019 memorandum was to make changes to the current process that would permit DOJ to more efficiently and effectively facilitate all aspects of SORN development within its purview prior to submission to OMB. DOJ and FBI officials stated that it is their goal to consistently publish SORNs before a system's implementation. According to the FY2021 budget justification, implementation of this recommendation is in progress. In follow-up with DOJ in December 2019, DOJ stated that it may have sufficient data to demonstrate the effect of these changes in the spring of 2020. We believe that DOJ's efforts to begin establishing a more streamlined review process for SORNs is a positive step and continue to monitor this pilot to determine whether these efforts help ensure SORNs are published before systems become operational.

Recommendation: To better ensure that face recognition systems are sufficiently accurate, the Director of the FBI should conduct an operational review of NGI-IPS at least annually that includes an assessment of the accuracy of face recognition searches to determine if it is meeting federal, state, and local law enforcement needs and take actions, as necessary, to improve the system.

Action Needed: DOJ agreed with this recommendation. In July 2019, the FBI reported that it has designed a Face Recognition Test Strategy for Operational Analysis with the objective of being able to perform an annual operational review of NGI-IPS. The FBI plans to develop and test the operational review in fiscal year 2020. As a first step, in January 2020, FBI officials told us that they had developed a tool to benchmark whether the FBI face recognition system returns the expected photos in the FBI's operational environment and were in the process of testing it. According to the FY2021 budget justification, implementation of this recommendation

is in progress. To fully implement this recommendation, the FBI should conduct operational reviews at least annually to assess the accuracy of face recognition searches on NGI-IPS.

Director: Gretta L. Goodwin, Homeland Security and Justice

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Immigration Courts

Immigration Courts: Actions Needed to Reduce Case Backlog and Address Long-Standing Management and Operational Challenges. [GAO-17-438](#). Washington, D.C.: June 1, 2017.

Recommendation: To better address current and future staffing needs, the Director of the Executive Office for Immigration Review (EOIR) should develop and implement a strategic workforce plan that addresses, among other areas, key principles of effective strategic workforce planning, including (1) determining critical skills and competencies needed to achieve current and future programmatic results; (2) developing strategies that are tailored to address gaps in number, deployment, and alignment of human capital approaches for enabling and sustaining the contributions of all critical skills and competencies; and (3) monitoring and evaluation of the agency's progress toward its human capital goals and the contribution that human capital results have made toward achieving programmatic results.

Action Needed: EOIR agreed with our recommendation. In October 2018, EOIR officials told us that EOIR was developing an agency-wide strategic plan that would address workforce planning, among other issues. DOJ reported in the FY 2021 budget justification that implementation of this recommendation is in progress. In follow-up with EOIR in December 2019, officials similarly indicated that the agency continues to work on implementing the recommendation. In particular, EOIR officials explained that EOIR is continuing to develop an agency-wide strategic plan. In addition, EOIR completed a review of the Office of the Chief Immigration Judge workforce in October 2018 that, according to EOIR officials, resulted in a new organizational structure and staffing plan for each immigration court. According to EOIR officials, the staffing plan addresses and mitigates gaps and updates position descriptions to more clearly define roles and responsibilities. These are positive steps, but to fully address our recommendation, EOIR needs to continue to develop, and then implement, a strategic workforce plan that addresses key principles of effective strategic workforce planning. Once this strategic workforce plan is completed, EOIR needs to monitor and evaluate the agency's progress toward its human capital goals.

Recommendation: To better address EOIR's immigration judge staffing needs, the Director of EOIR should: (1) assess the immigration judge hiring process to identify opportunities for efficiency; (2) use the assessment results to develop a hiring strategy that targets short- and long-term human capital needs; and (3) implement any corrective actions related to the hiring process resulting from this assessment.

Action Needed: EOIR concurred with our recommendation and stated that in April 2017 the Attorney General approved a revised immigration judge hiring process. EOIR officials explained that as part of the development of the revised process, the Office of the Deputy Attorney General, in consultation with EOIR, assessed the immigration judge hiring process, identified opportunities for efficiency, and proposed changes to the hiring process that address those opportunities. The DOJ FY 2021 budget justification and our follow-up with EOIR indicate that efforts to implement this recommendation continue. In follow-up with EOIR in December 2019, officials similarly indicated that the agency continues to work on implementing the recommendation. Specifically, EOIR officials told us that EOIR is continuing to develop an agency-wide strategic plan that will address the immigration judge hiring process, among other issues. To fully address our recommendation, EOIR needs to continue to improve its hiring

process by completing the development of a hiring strategy targeting short- and long-term human capital needs.

Recommendation: To help ensure that EOIR meets its cost and schedule expectations for the EOIR Courts and Appeals Systems (ECAS) electronic filing system, the EOIR Director should document and implement an oversight plan that is consistent with best practices for overseeing IT projects, including (1) establishing how the oversight body is to monitor program performance and progress toward expected cost, schedule, and benefits; (2) ensuring that corrective actions are identified and assigned to the appropriate parties at the first sign of cost, schedule, or performance slippages; and (3) ensuring that corrective actions are tracked until the desired outcomes are achieved.

Action Needed: The DOJ FY 2021 budget justification and our follow-up with EOIR indicate that implementation of this recommendation is in progress. As of April 2019, EOIR reported that it had selected the EOIR Investment Review Board as the ECAS oversight body with the EOIR Office of Information Technology (OIT) directly responsible for the management of the ECAS program. Since that time, EOIR has shared documents with us that, according to EOIR, collectively serve as its oversight plan for ECAS. In particular, in January 2020, EOIR provided a copy of its Investment Review Guidance Concept of Operations, a document that outlines the process, roles and responsibilities, and criteria it uses to assess selected IT investments, including ECAS. EOIR also provided documentation illustrating assessment of the ECAS investment performance towards expected schedule and benefits, and identification of areas where performance was not deemed very good or excellent. However, the documentation EOIR provided does not assign corrective actions to appropriate parties or establish how EOIR is monitoring program performance and progress toward expected costs. To fully address this recommendation, EOIR should document and implement a plan that describes how the EOIR Investment Review Board and OIT will oversee the full implementation of ECAS, including how these bodies will, consistent with best practices for overseeing IT projects, monitor program performance and progress toward expected costs; assign corrective actions to the appropriate parties at the first sign of cost, schedule, or performance slippages; and ensure that corrective actions are tracked until the desired outcomes are achieved.

Director: Rebecca S. Gambler, Homeland Security and Justice

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Efforts to Combat Illicit Opioid Use

[Prescription Drugs: More DEA Information about Registrants' Controlled Substances Roles Could Improve Their Understanding and Help Ensure Access. GAO-15-471. Washington, D.C.: June 25, 2015.](#)

Recommendation: In order to strengthen the Drug Enforcement Administration's (DEA) communication with and guidance for registrants and associations representing registrants, as well as supporting the Office of Diversion Control's mission of preventing diversion while ensuring an adequate and uninterrupted supply of controlled substances for legitimate medical needs, the Deputy Assistant Administrator for the Office of Diversion Control should solicit input from distributors, or associations representing distributors, and develop additional guidance for distributors regarding their roles and responsibilities for suspicious orders monitoring and reporting.

Action Needed: DEA did not expressly agree or disagree with our recommendation, but raised concerns about the recommendation, stating that "short of providing arbitrary thresholds to distributors, it cannot provide more specific suspicious orders guidance because the variables

that indicate a suspicious order differ among distributors and their customers.” In September 2019, DEA told us that the agency had refocused its efforts on revising draft regulations in line with the SUPPORT Act, and that the revised draft was undergoing internal DEA and DOJ review. The agency noted that it expected the rule to codify existing legal obligations related to due diligence and suspicious order reporting and provide additional guidance regarding the nature and timing of the suspicious order reporting requirement, but also indicated that it was not possible to be certain of the precise nature of the draft rule. While DEA has reported taking some actions to address this recommendation, as noted above, until the regulations are finalized we cannot determine if these changes will fully address the recommendation. We will continue to monitor DEA’s progress in addressing our recommendation.

Director: Mary Denigan-Macauley, Health Care

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Illicit Opioids: While Greater Attention Given to Combating Synthetic Opioids, Agencies Need to Better Assess their Efforts. [GAO-18-205](#). Washington, D.C.: March 29, 2018.

Recommendation: The Executive Director of Organized Crime Drug Enforcement Task Forces (OCDETF) should work with the National Heroin Initiative Coordinator to establish outcome-oriented performance measures for the goals set out for National Heroin Initiative.

Action Needed: DOJ disagreed with this recommendation. DOJ officials stated that the structure of the National Heroin Initiative with local sub-components does not lend itself to having long-term performance measures. We disagree and believe that establishing such outcome-oriented performance measures would allow OCDETF to compare the performance of the local sub-components to better understand what efforts are working well and which may require additional attention. In October 2018, the National Heroin Initiative Coordinator reported that the regional directors were in the process of developing and tracking region-specific measures for the initiative. We reached out to DOJ in January 2020 and the department did not have additional information to provide on its progress. To fully implement this recommendation, these region-specific measures would need to be finalized and the program would need to demonstrate the measures’ linkage to the National Heroin Initiative goals and that the measures have been implemented in each region.

Recommendation: The Attorney General should, in consultation with its relevant components such as the DEA and Executive Office for United States Attorneys (EOUSA), establish goals and outcome-oriented performance measures for its Strategy to Combat the Opioid Epidemic.

Action Needed: DOJ disagreed with this recommendation and maintains that it is difficult to develop outcome-oriented performance measures because of the emergence of new opioid threats, which can also vary geographically. DOJ also cited challenges in measuring the success of any one strategy in isolation. While we acknowledge that developing outcome-oriented performance measures can be challenging given the nature of the opioid threat, we continue to believe that finding meaningful ways to measure the impact of such strategies is particularly important because the threat is evolving. Further, such measures will help DOJ

establish a baseline, chart its progress, and adjust its course if needed. In October 2019, DOJ officials reported that the department is currently working to finalize its Annual Priority Goals and related performance measures with respect to opioids but could not provide a timeline for completion. We reached out to DOJ in January 2020 and the department did not have additional information to provide on its progress. To fully address this recommendation, DOJ needs to finalize these goals and performance measures and demonstrate their implementation into its strategy.

Recommendation: The DEA Administrator should establish goals and outcome-oriented performance measures for the enforcement and diversion control activities within the 360 Strategy and establish outcome-oriented performance measures for the community engagement activities within the 360 Strategy.

Action Needed: DOJ disagreed with this recommendation. DOJ officials stated that, given that the efforts under the 360 strategy vary by location and are time-limited, developing goals and outcome-oriented performance measures was not advisable. We disagree and believe that since these programs are designed to be sustained within the communities after the official DEA pilots are complete, developing outcome-oriented performance measures will not only help DEA determine whether their efforts are yielding desired results, but also position the local communities to continue to monitor progress. In June 2018, DEA officials reported that they had taken steps to develop and implement goals and performance measures for the various activities under the 360 Strategy, but as of January 2020 have been unable to demonstrate that the goals and performance measures had been finalized and implemented. To fully address this recommendation, DEA needs to demonstrate that it has established goals for its enforcement and diversion control activities under the 360 Strategy and that it has established outcome-oriented performance measures for its enforcement, diversion control, and community engagement activities under the 360 Strategy.

Director: Gretta L. Goodwin, Homeland Security and Justice

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Drug Control: Actions Needed to Ensure Usefulness of Data on Suspicious Opioid Orders.
GAO-20-118. Washington, D.C.: January 29, 2020.

Recommendation: The DEA Administrator should develop and implement additional ways to use algorithms in analyzing Automated Reports and Consolidated Orders System (ARCOS) and other data to more proactively identify problematic drug transaction patterns.

Action Needed: DOJ agreed with this recommendation and DEA stated it will continue to examine a variety of technologies to analyze ARCOS and other data and implement additional ways to use algorithms to more proactively identify problematic drug transaction patterns. If these and other actions to expand the agency's analytic capabilities are effectively implemented, DEA would address the intent of our recommendation.

Recommendation: The DEA Administrator, in coordination with the department-wide efforts on data strategy, should establish and document a data governance structure to ensure DEA is maximizing its management of industry-reported drug transaction data.

Action Needed: DOJ agreed with this recommendation. As of September 2019, DEA officials stated that its Office of Information Systems' Chief Data Officer just recently started to work with DOJ and other components to develop a data strategy in response to the recently released department-wide strategy, and has begun efforts to develop a governance structure. In November 2019, DEA indicated it will continue to mature its data governance structure. The intent of this recommendation is for DEA to establish a formalized data governance structure to manage its collection and use of data used to support the Diversion Control Division's mission. To fully address this recommendation, DEA would need to continue with its efforts to establish a

data governance structure and document its activities, which could help DEA better ensure its important data assets are formally managed and fully utilized, and could also help ensure consistent data management across the Diversion Control Division.

Recommendation: The DEA Administrator should establish outcome-oriented goals and associated measurable performance targets related to opioid diversion activities, using data it collects, to assess how the data it obtains and uses supports its diversion control activities.

Action Needed: DOJ neither agreed nor disagreed with this recommendation but DEA stated in November 2019, that it recognizes that measurable performance targets related to opioid diversion activities can serve as leading practices at different organizational levels including the program, project, or activity level. Our recommendation is intended to ensure that DEA can demonstrate the usefulness of the data it collects and uses to support its opioid diversion control activities. Based on our review of DEA's existing performance goals and targets for its opioid diversion efforts, as well as our previous work on performance measurement, we believe that in order for DEA to address this recommendation, DEA should consider further development of related performance goals and targets as they relate to its use of industry-reported data, which could potentially improve the usefulness of the data DEA collects and uses in support of its diversion control program efforts.

Recommendation: The DEA Administrator, in consultation with industry stakeholders, should identify solutions to address the limitations of the ARCOS Enhanced Lookup Buyer Statistic Tool, to ensure registrants have the most useful information possible to assist them in identifying and reporting suspicious orders to DEA.

Action Needed: DOJ agreed with this recommendation and in November 2019, stated it has consulted with industry stakeholders and identified solutions to address the limitations of the tool. In order for DEA to fully address this recommendation, it should continue its consultation with industry stakeholders to understand their needs and further identify solutions for addressing these needs, which could help ensure registrants have the information necessary to help them identify and report suspicious opioid orders.

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Cybersecurity

Cybersecurity: Agencies Need to Fully Establish Risk Management Programs and Address Challenges. GAO-19-384. Washington, D.C.: July 25, 2019.

Recommendation: The Attorney General should develop a cybersecurity risk management strategy that includes the key elements identified in this report.

Action Needed: DOJ did not state whether or not it concurred with this recommendation. In January 2020, the department reported that it had an integrated strategy for identifying, prioritizing, assessing, responding to, monitoring, and reporting on cybersecurity risks. To fully implement this recommendation, the department needs to ensure that its cyber risk management strategy addresses key elements such as a statement of risk tolerance and risk mitigation strategies.

Recommendation: The Attorney General should fully establish and document a process for coordination between cybersecurity risk management and enterprise risk management (ERM) functions.

Action Needed: DOJ did not state whether or not it concurred with this recommendation. In January 2020, the department reported that it is developing an ongoing mechanism to institutionalize coordination between its cybersecurity and ERM functions in fiscal year 2020. To

fully implement this recommendation, the department needs to fully establish and document its process for coordination between cybersecurity risk management and ERM functions.

High Risk Area: Ensuring the Cybersecurity of the Nation

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Improper Payments

Improper Payments: Selected Agencies Need Improvements in Their Assessments to Better Determine and Document Susceptibility. [GAO-19-112](#). Washington, D.C.: January 10, 2019.

Recommendation: The Attorney General should revise DOJ's process for conducting improper payment risk assessments for law enforcement to help ensure that it results in a reliable assessment of whether the program is susceptible to significant improper payments. This should include preparing sufficient documentation to support DOJ's risk assessments.

Action Needed: DOJ disagreed with this recommendation when we issued our GAO report and in January 2020, DOJ reiterated that it continues to disagree with the recommendation. DOJ believes (1) its risk assessment methodology provides DOJ management with a reasonable basis for determining whether the Law Enforcement program is susceptible to significant improper payments and (2) its risk assessment documentation is adequate and meets all of the requirements in the Improper Payments Information Act of 2002, as amended. We continue to believe that full implementation of this recommendation is warranted to help ensure that DOJ's risk assessment reliably results in determining whether the Law Enforcement program may be susceptible to significant improper payments. In order for DOJ to address this recommendation, DOJ needs to maintain risk assessment documentation that adequately demonstrates how DOJ determined the weighting of the risk factors or the numerical risk level ranges or whether a program is or is not susceptible to significant improper payments.

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