

DHS/HSI Trying to Get Title 21 Authority (Federal Drug Statutes)

By Gary Fouse

Recently, I posted an article in [New English Review](#) on how then-California Attorney General Kamala Harris and then-Governor Jerry Brown presided over the dissolution of the California Bureau of Narcotics Enforcement (BNE) in 2012. It brings to mind how my former agency, the US Drug Enforcement Administration (DEA), has survived attempts by previous administrations to merge DEA into the FBI. It took intensive lobbying campaigns by DEA leadership and their allies in state and local police agencies to convince the Justice Department that it was a bad idea.



Image of rainbow fentanyl

But DEA is hardly out of the woods. Under Homeland Security Director, Alejandro Mayorkas, who is nonchalantly presiding over an open border and the deadly fentanyl epidemic that has

gone with it, DHS and its main investigative agency, Homeland Security Investigations (HSI), are engaged in a blatant effort to obtain full [authority](#) to enforce US Code Title 21 statutes. (Title 21 is the part of the federal criminal code that deals with drug trafficking and distribution of controlled substances. Presently, it is DEA/DOJ's authority to grant Title 21 powers to agents from other agencies, like HSI, when they are working with DEA on cases.)

According to my sources, as part of his campaign to expand his empire, Mayorkas is trying to make the case that DEA is failing in its efforts in the war on drugs. He conveniently ignores the fact that our open border with Mexico, which he is charged with securing, is a major cause of the drug smuggling problem from Mexico including fentanyl.

This has predictably led to friction and anger on the part of DEA personnel, both at the managerial level and among the rank-and-file agents. They complain that HSI is not only attempting a hostile takeover of Title 21 authority but also often tries to steal credit from cases that were made principally by DEA, something the FBI has long been notorious for among other law enforcement agencies. It goes without saying that Mayorkas is not held in high esteem by the employees of DEA.

At the risk of digressing, a little background is necessary regarding the FBI's history with DEA. During the early Reagan administration, there was consideration of merging DEA into the FBI. While that was ultimately rejected by then-Attorney General William French Smith, the FBI was given joint jurisdiction over Title 21 in 1982. The result? Inter-agency turf battles of the type that had previously led President Nixon to create DEA in 1973, mainly to eliminate duplication of efforts and turf battles between the predecessor Bureau of Narcotics and Dangerous Drugs (BNDD) under DOJ, and US Customs, which was then under the Treasury Department. In that reorganization, 500 Customs agents (including myself) were transferred to the newly created DEA to join with former BNDD personnel. During the Clinton administration in the 1990s, there again was consideration of merging DEA into the FBI. (Both agencies were and are still under the DOJ.) Ultimately, Attorney General Janet Reno [decided](#) against it.

Previously, DEA's Office of Training was located at the Federal Law Enforcement Training Center at Glynco, Georgia, along with most other federal law enforcement training

offices. As part of the second contemplated merger, DEA's Office of Training was moved to the FBI Academy at Quantico, Virginia Marine Corps Base, in 1985 where it remained until 1999. I myself spent the last 5-1/2 years of my DEA career as a trainer at Quantico (1990-1995). After Reno ultimately decided against the merger, the FBI informed DEA that they would need to start looking elsewhere for a training facility. Then DEA Administrator, Jack Lawn, obtained a commitment from then-Marine Corps Commandant, General Alfred M. Gray, to give DEA space at Quantico for its own academy. When other government agencies tried to butt in and exercise some degree of control over the planned facility, General Gray bluntly informed all concerned that either the land would go to DEA or it would go to nobody. As a result, DEA now has its own [facility](#) down the road from the FBI Academy. The facility opened on April 28, 1999.

A note about Jack Lawn: In the 1980s, Lawn, a former Marine and FBI official, was transferred to the position of DEA administrator, according to many, to oversee the transition of DEA into the FBI. However, Lawn became an opponent of the merger and successfully defended and saved DEA. To this day, he is almost universally regarded by retired agents as DEA's greatest administrator. On the other hand, former FBI official, Oliver "Buck" Revell, in his memoirs, wrote that while he was a senior FBI official at HQs, the FBI all but had DEA absorbed until "Jack Lawn went native".

That brings us to the present day. Alejandro Mayorkas, who has shamelessly turned our Border Patrol into little more than Walmart greeters and destroyed that agency's morale in the process, not only openly lies (even under oath) about the border being secure, but (according to my sources) blames DEA for the drugs flowing across, including the deadly fentanyl, which is claiming hundreds of thousands of American lives every year. The precursors to produce fentanyl are primarily produced in China and smuggled to Mexican traffickers who

finish the product and smuggle it over the border into the US. DEA has no jurisdiction over border enforcement. That comes under DHS. Along with the millions of illegal aliens, the crimes, the murders, the rapes, terrorists, gangs, and other drugs, the fentanyl epidemic is directly attributable to Mayorkas and his bosses in the White House. DEA does its part with an office in Beijing working to get cooperation from the Chinese authorities, whose cooperation is, frankly, a mixed bag.

As a side note, DHS is not the only federal law enforcement entity suffering from bad morale. Not surprisingly, the Secret Service is also suffering from poor morale, exacerbated by the recent attempts on former President Trump. Many agents are seeking jobs elsewhere in law enforcement, including with DEA.

Of course, if Kamala Harris is elected president in November, one can only speculate how she would treat the Mayorkas-DEA matter. Given her track record with California BNE, I fear that she would be very receptive to whatever Mayorkas has to say. In my view, throwing federal drug enforcement into multi-mission agencies like the FBI or DHS/HSI is a bad idea. The FBI, since 9-11, has rightfully cut back drastically on its drug investigations in favor of counter-terrorism. DEA is a single-mission agency and has established great relations and respect with not only other US police agencies but foreign police agencies as well. Handing drug enforcement over to DHS under a corrupt, incompetent, and dishonest figure like Alejandro Mayorkas is a recipe for disaster.

As just another example of Mayorkas' malfeasance, this week, Aaron Heitke, a retired Border Patrol supervisor, who was in charge of the San Diego sector, [testified](#) this week before the House Committee on Homeland Security that he was ordered by the Biden administration not to speak publicly about the illegal migrant problems. More specifically, he testified that most of their manpower was shifted away from their normal border posts to other sectors to process all the illegal

migrants. As we know, so many of these were turning themselves into Border Patrol officers, requesting asylum, being processed, and being sent on their way to who knows where. I bring that up because DHS is claiming that 90% of the fentanyl seizures occur at ports of entry as opposed to isolated areas with no authorized ports of entry. Even if that figure is correct, Heitke's testimony would suggest that ports of entry are not being manned sufficiently to do more effective border inspections.

This is not to suggest that DEA and DHS agencies shouldn't work together. Customs and Border Protection certainly has a role to play at the border and frequently encounters drug smugglers. If they make an arrest or seizure at the border, the case is turned over to the local DEA office for further investigation and prosecution, which was the case between Customs and DEA after the 1973 merger. In addition, I have no objection to having DHS agencies participating in federal drug task forces with DEA, but DEA is the lead agency when it comes to federal drug enforcement, and it should stay that way as opposed to creating more interagency turf battles-which are all too frequent as it is. DHS and HSI are presenting this as a common-sense move to add more manpower and resources to fighting drugs, but as they tout their successes and capabilities, barely mentioning what DEA is already doing domestically and internationally worldwide, this smacks of a naked power grab by Mayorkas, a political hack who has no credibility as it is. If DHS/HSI can make such a great contribution, one wonders why they have failed so miserably at the southern border. Under Mayorkas and the Biden-Harris administration, they have taken a serious situation and only made it worse. They hardly represent the solution.