



# governmentattic.org

*"Rummaging in the government's attic"*

Description of document: Department of Justice (DOJ) Office of the Inspector General (OIG) Investigative Report Pertaining to DEA Mistreatment of Detainee Daniel Chong, 2012-2013

Request date: December 2013

Released date: 25-July-2014

Posted date: 05-January-2015

Source of document: Freedom of Information Act Request  
Department of Justice  
Office of the Inspector General  
Office of General Counsel  
950 Pennsylvania Ave., NW  
Room 4726  
Washington, DC 20530  
Fax: 202-616-9152  
Email: [oigfoia@usdoj.gov](mailto:oigfoia@usdoj.gov)

The governmentattic.org web site ("the site") is noncommercial and free to the public. The site and materials made available on the site, such as this file, are for reference only. The governmentattic.org web site and its principals have made every effort to make this information as complete and as accurate as possible, however, there may be mistakes and omissions, both typographical and in content. The governmentattic.org web site and its principals shall have neither liability nor responsibility to any person or entity with respect to any loss or damage caused, or alleged to have been caused, directly or indirectly, by the information provided on the governmentattic.org web site or in this file. The public records published on the site were obtained from government agencies using proper legal channels. Each document is identified as to the source. Any concerns about the contents of the site should be directed to the agency originating the document in question. GovernmentAttic.org is not responsible for the contents of documents published on the website.



U.S. Department of Justice

Office of the Inspector General

July 25, 2014

Subject: Freedom of Information/Privacy Act Request [14-OIG-191]

This responds to your request under the Freedom of Information Act for access to records maintained by the Office of the Inspector General (OIG). Specifically, you seek a copy of an OIG investigative report pertaining to detainee Daniel Chong. The documents responsive to your request have been reviewed. It has been determined that certain portions of such documents be excised in part pursuant to the Freedom of Information Act, 5 U.S.C. §552(b)(6) and (7)(C). Consequently, please find enclosed that information which can be released pursuant to your request.

If you are dissatisfied with my action on this request, you may appeal from this denial by writing to the Director, Office of Information Policy, U.S. Department of Justice, 1425 New York Avenue, Suite 11050, Washington, D.C. 20530, within 60 days of the date of this letter. Both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." In the event you are dissatisfied with the results of any such appeal, judicial review will thereafter be available to you in the United States District Court for the judicial district in which you reside or have your principal place of business, or in the District of Columbia, which is also where the records you seek are located.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

Sincerely,

A handwritten signature in black ink, reading "Deborah M. Waller", is written over the typed name.

Deborah M. Waller

Government Information Specialist  
Office of the General Counsel

**REPORT OF INVESTIGATION**

<b>SUBJECT</b> [REDACTED] et al. San Diego Field Division San Diego, California		<b>CASE NUMBER</b> 2012-006865
<b>OFFICE CONDUCTING INVESTIGATION</b> Los Angeles Field Office		<b>DOJ COMPONENT</b> Drug Enforcement Administration
<b>DISTRIBUTION</b> <input checked="" type="checkbox"/> Field Office <input checked="" type="checkbox"/> AIGINV <input checked="" type="checkbox"/> Component DEA <input type="checkbox"/> USA <input type="checkbox"/> Other	<b>STATUS</b> <input type="checkbox"/> OPEN <input type="checkbox"/> OPEN PENDING PROSECUTION <input checked="" type="checkbox"/> CLOSED <b>PREVIOUS REPORT SUBMITTED:</b> <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO Date of Previous Report:	

**SYNOPSIS**

This investigation was initiated based on an anonymous call received on April 27, 2012, by the Office of the Inspector General's (OIG) Los Angeles Field Office. The caller alleged that Drug Enforcement Administration (DEA) San Diego Field Division (SDFD) Special Agents and state of California law enforcement officers had arrested, and then and forgotten about a person, leaving him detained in a DEA SDFD holding cell for days. The caller said the individual had not been charged with any offense, and when he was discovered by DEA, he had to be hospitalized in an Intensive Care Unit (ICU). The caller alleged that the DEA "was trying to contain this matter locally." In days following the anonymous call, the OIG received two complaints from citizens through the OIG's web-based General Hotline, and the Civil Rights and Civil Liberties Hotline. The complaints identified news stories reporting on DEA's alleged illegal detention of Daniel Chong.

In the ensuing investigation, the OIG learned that on April 21, 2012, Narcotics Task Force Team-5 (NTF-5) conducted a narcotic enforcement operation at [REDACTED] that resulted in Chong's detention. During that operation and other related operations that followed on that date, nine subjects, including Chong, were arrested or detained and brought to the DEA SDFD. Once at the holding facility, Chong was placed in a cell. When the case agents returned from the field, Chong's handcuffs were removed, and he was brought from a holding cell to an adjacent interview room to be questioned about his involvement in narcotics trafficking. After the interview, the case agents informed him he would be released shortly. Chong was then returned to a holding cell where he remained, in handcuffs behind his back, and without food or water, for parts of 5 days until he was discovered on April 25, 2012, by several DEA personnel who had not been involved in the operation. Chong was immediately transported by San Diego paramedics to Sharp Memorial Hospital, where he was diagnosed as suffering from dehydration, kidney failure, and contusions on his wrists. Chong was subsequently released from the hospital on

<b>DATE</b> June 5, 2014	<b>SIGNATURE</b> [REDACTED]
<b>PREPARED BY SPECIAL AGENT</b>	
<b>DATE</b> June 5, 2014	<b>SIGNATURE</b> [Signature]
<b>APPROVED BY SPECIAL AGENT IN CHARGE</b> Ronald S. Powell	

April 29, 2012. Last year, the Department of Justice entered into a settlement with Chong as a result of these actions and agreed to a settlement payment of \$4.1 million.

The OIG investigation identified the NTF-5 members who handled the Chong interview and detention and the others present in the holding/processing cell area. DEA Special Agent [REDACTED] Task Force Officer (TFO) [REDACTED] of the U.S. Border Patrol, and TFO [REDACTED] of the San Diego Police Department were the three case agents for the April 21, 2012, operation. The agents were assisted during Chong's interview by DEA Intelligence Research Analyst [REDACTED]. The on-scene commander in the holding/processing cell area was DEA Group Supervisor (GS) [REDACTED].

Separately, the three agents told the OIG that after completing Chong's interview, they decided that Chong would be released with no charges filed against him. They said they jointly walked him out of the interview room and back to the processing/holding cell area, where [REDACTED] and [REDACTED] loudly announced to those in the holding/processing area, including to [REDACTED] that they had decided that Chong should not be charged and that he should be released. The three case agents were unable to specify to whom they had handed off Chong, and that their attention was immediately diverted from Chong by a potential investigative development relating to another detainee.

Chong, a fifth-year University of California at San Diego Structural Engineering student, told the OIG that he was interviewed on April 21 by at least four people. He was asked questions concerning his reasons for being in the apartment when it was raided by the NTF-5 and his involvement in narcotics trafficking. He said that at the conclusion of his interview, the agents told him he was going to be released. Three or more agents, including one whom he identified as [REDACTED] and a female agent (Chong's description of whom matched [REDACTED] appearance), then escorted him back to the cell area, where one or more of the same three agents who had interviewed him, had him sign a property receipt, handcuffed him behind his back, placed him in a cell, and locked the cell door. Chong recalled that before the door was locked and while he sat inside the cell, he asked [REDACTED] and the female agent ([REDACTED]) why he was being placed back into the holding cell if he was going to be released. He said they replied that it was policy, but that he would only be in the cell for a couple of minutes.

When interviewed by the OIG on May 3, 2012 (4 days after being released from the hospital) and on April 10, 2013, Chong said that [REDACTED] had handed him a piece of paper with [REDACTED] name and telephone number on it. He said [REDACTED] had told him that he could possibly give him a ride home. During his April 10, 2013, interview, Chong also told the OIG he recalled yelling [REDACTED] name and banging on the door after [REDACTED] had locked him in the cell. Chong said that [REDACTED] then opened the cell door and spoke to Chong about a firearm found at the apartment. According to Chong's April 10, 2013, statement, it was during this encounter that [REDACTED] handed Chong a piece of paper with [REDACTED] name and telephone number and asked that Chong provide the name and number to Chong's friend who owned the firearm.

Chong described himself as being calm when [REDACTED] closed the cell door, but as time passed, he became increasingly agitated and angry at not being able to get anyone's attention, despite periodically yelling for help and pounding on the cell door, and he also said he became despondent. Chong said he initially fell into what he called a light sleep, which he guessed was about 5 to 10 minutes in duration, and then awoke and heard people leaving through the main processing area door and did not hear any noise after that for several hours. Chong said he assumed it was late Saturday (April 21) at that point although he had no concept of day or night. Chong said he found a powdery white substance in a blanket that was in the cell

and that he ingested the substance and began hallucinating shortly thereafter and over the period of his detention. Chong added that he was forced to resort to drinking his own urine to avoid dehydration and had to defecate in the cell. According to Chong, after a few days, he attempted to commit suicide.

The OIG investigation concluded that the three NTF-5 case agents -- [REDACTED], [REDACTED], and [REDACTED] -- left Chong handcuffed in a holding cell after interviewing him in an interview room and after telling him he was going to be released shortly. Case agents [REDACTED], [REDACTED], and [REDACTED] were responsible for the safe handling and welfare of all detainees/arrestees during the narcotic enforcement operation, including Chong. Their failure to ensure that Chong was released from custody after deciding that he would not be charged resulted in Chong's unjustified incarceration for parts of 5 days, from April 21 to April 25, and in his need for significant medical treatment.

The OIG concluded that in addition to the three case agents, [REDACTED] was responsible for the safe handling and welfare of all detainees during the narcotic enforcement operation on April 21, 2012, and was also accountable for Chong's extended detention. As the on-scene commander in the holding and detention area, [REDACTED] should have ensured that all detainees, including Chong, were either released or charged at the conclusion of the investigative operation on April 21. [REDACTED] stated that he did not inspect the holding cell area for persons in a locked holding cell. He said he did not open Chong's cell door. His failure to do so resulted in Chong's unjustified detention for parts of 5 days, from April 21 to April 25, and in his need for significant medical treatment.

We further found that [REDACTED] violated DEA policy and showed poor judgment by initiating an investigation of the incident without management's approval in the immediate aftermath of Chong being discovered in the holding cell, and by assigning [REDACTED] and [REDACTED] to process the holding cell where Chong had just been discovered. This was in violation of DEA policy that requires the field divisions to notify DEA OPR so that the OIG can determine whether OIG or DEA OPR will investigate the allegations. This policy is particularly important when an incident involves conduct that could be subject to criminal prosecution, as this incident was, because an investigation by management could be construed as compelling employees' cooperation, thereby adversely affecting the admissibility of statements gathered under such circumstances. Moreover, [REDACTED] and [REDACTED] had a clear conflict of interest because they were among the agents whose conduct contributed to the improper detention of Chong for parts of 5 days and whose conduct was, therefore, under scrutiny.

The OIG also concluded that DEA management in the field and at headquarters improperly initiated a management review of the incident before notifying the OIG. This action was contrary to Department of Justice and DEA policy, resulted in a delay of the OIG's investigation, and could have caused harm to a potential criminal prosecution.

The OIG investigation also established that several systemic deficiencies in the operation of the detention cell caused Chong's improper detention. For example, there were no methods or procedures in place to keep track of detainees or watch their activities while in detention. If such methods and procedures had been in place, the risk of Chong or any other detainee being left in a locked holding cell for 5 days, handcuffed, and without food and water, would have been reduced substantially or eliminated.

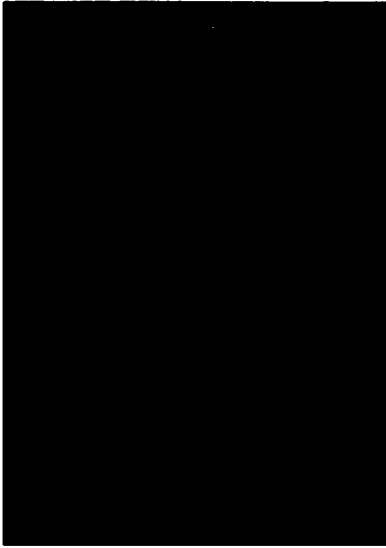
The OIG determined that deficiencies in the operation of the holding cell and its processes had been brought to DEA SDFD management before Chong's improper detention. A Special Agent in the division had

suggested that management should improve the camera system and visibility within the holding cells. Then Acting Special Agent in Charge (SAC) William Sherman told the OIG that he was aware of the suggested improvements, agreed with them, and had started the process of implementing them before the Chong incident occurred. He said that if the changes had been implemented, Chong's improper detention could have been prevented. The OIG concluded that Sherman, who was on leave during the operation resulting in Chong's detention, was not at fault for the improper detention, and had begun to take steps to improve systemic deficiencies in the holding cell area before Chong's detention occurred.

The United States Attorney's Office for the Southern District of California declined prosecution in this matter.

The OIG has completed its investigation and is providing this report to the DEA for appropriate action.

## **ADDITIONAL SUBJECTS**





## DETAILS OF INVESTIGATION

### Predication

This investigation was initiated based on an anonymous call received by the OIG's Los Angeles Field Office on April 27, 2012. The call alleged that Drug Enforcement Administration (DEA) Special Agents and state of California law enforcement officers had arrested an individual and left the handcuffed arrestee in a DEA San Diego Field Division (SDFD) holding cell for 5 days. According to the caller, the DEA simply forgot the arrestee in the holding cell. The caller said that the arrestee was in a San Diego area hospital Intensive Care Unit and also said, "He may not make it." The caller added that no DEA charges were filed against "the victim" and that it appeared to the caller that "the DEA was trying to contain this matter locally."

In the days following the anonymous call to the OIG's Los Angeles Field Office, the OIG General Hotline and the OIG Civil Rights and Civil Liberties Hotline each received a complaint from citizens addressing news stories of Daniel Chong's detention and a need to investigate DEA's actions.

### Investigative Process

The OIG investigation consisted of interviews of the following individuals:

- DEA Acting Special Agent in Charge (SAC) William Sherman
- DEA Assistant Special Agent in Charge (ASAC) [REDACTED]
- DEA contractor [REDACTED]
- DEA Special Agent (SA) [REDACTED]
- DEA SA [REDACTED]
- DEA SA [REDACTED]
- DEA SA [REDACTED]
- DEA SA [REDACTED]
- DEA SA [REDACTED]
- DEA SA [REDACTED]
- DEA SA [REDACTED]
- DEA SA [REDACTED]
- DEA SA [REDACTED]
- DEA SA [REDACTED]
- DEA Investigative Assistant (IA) [REDACTED]
- DEA Group Supervisor (GS) [REDACTED]
- DEA SA [REDACTED]
- DEA SA [REDACTED]
- DEA GS [REDACTED]
- DEA SA [REDACTED]
- DEA SA [REDACTED]
- DEA SA [REDACTED]
- DEA SA [REDACTED]
- DEA SA [REDACTED]
- DEA SA [REDACTED]
- DEA SA [REDACTED]





requirements to OPR, a review of DEA Planning and Inspection Manual Section 8307 - Procedures for Managers in Reporting Allegations or Complaints to OPR, and a review of Chong's medical records from Sharp Memorial Hospital.

## **Background**

According to the details of the DEA operation, on April 21, 2012, NTF-5 conducted a narcotics enforcement action at [REDACTED]. During the operation, which included actions at other locations on the same date, nine subjects, including Chong were arrested or detained and brought to the DEA SDFD for processing.

Chong was not a target of the DEA operation. When NTF-5 executed the search warrant for drugs at the [REDACTED] apartment, Chong and three other individuals were present. Agents seized 18,000 ecstasy pills, \$58,000 in cash, a small amount of other illicit drugs, and five firearms in conducting the search of the premises. When interviewed on April 21, 2012, Chong confirmed information relevant to narcotics trafficking at the apartment.

## **Detention/Holding Cells and Processing Area**

The DEA SDFD detention cells and processing area are located on the second floor of the DEA SDFD, accessible from the lower level by elevators. The detention area is comprised of five cells, numbered 214 to 218 from left to right. Each cell measures approximately 10 feet deep and 5 feet wide; the ceiling is about 9 or 10 feet high; and a metal bench is attached to the left wall. There is a flat sprinkler head attached to the ceiling, and there are two air vents. A light operated by a switch outside the cell is affixed where the right side wall meets the ceiling, and there is a panoramic view peephole on each cell door. Directly across from the cells is a processing area that contains a computer terminal and a scanner used for fingerprinting those arrested or detained. Only one of the cells, number 218, has a toilet and a sink. Each cell can only be opened from the outside with a key, which is issued to DEA agents and some TFOs.

### ***Card Swipe Entry and a Period of Lock Malfunction***

All DEA SAs and TFOs have access cards that they use in a card reader for entry into the detention area. Although the cell access swipe mechanism was functional between April 21 and April 25, 2012, the door locking mechanism at the entrance to the detention area was not functioning properly. The door could be opened by simply pushing on the door; an access card was not required to open the door. Accordingly, the OIG was not able to determine from electronic entry records who entered the holding cell area during Chong's detention.

### ***No Personnel, Detainee, or Cell Logs***

In April 2012, there was no sign-in or log-in sheet that agents were required to annotate when entering the detention area. There was no log used to enter the name or time a detainee arrived at the DEA SDFD or what time they left. In April 2012, there was no official method in place to log which detainees were kept in which cells at any given time.

### ***Detention Area's Video Surveillance Camera***

In April 2012, the detention area had a nonrecording camera mounted in the upper corner of the area that was being monitored from the Radio Room on weekdays during normal business hours. The camera, which monitored the general area outside of the detention cells, had no audio features. No cameras were inside the individual holding cells. According to a management review report written by the DEA's LAFD, on April 11, 2012, Acting SAC Sherman had approved a request previously made for an enhanced closed-circuit camera system in the detention cell area and a white board system for identifying persons in detention cells.

### ***No Training or Official Policy Regarding Holding Cell Procedures***

According to the DEA SDFD management, personnel, and TFOs interviewed during this OIG investigation, there was no official policy or procedures in place at the time of Chong's detention regarding the operation of the DEA SDFD holding cells. In addition, those interviewed said that there was also no official training provided regarding operation of the holding cells or the handling of detainees. We have been advised by DEA Headquarters that there is no DEA-wide policy or training regarding holding cell procedures.

### ***Conclusion as to Holding Cell Procedures***

The OIG investigation developed evidence that the holding cell area lacked recordkeeping methods to track detainee movements. There was no form of log that recorded when a detainee arrived in the holding cell area and who was responsible for the detainee, no log of which cell the detainee was placed in, no log of a detainee's movement within the holding cell area and interview room, no log of when a detainee was removed from the holding cell area and when a detainee was returned to the area, no log of a detainee's movement to different cells, no log of which detainees were being released and which were to be transported to a jail facility, and no log of when or by whom those duties were completed. Additionally, although there was a camera in the holding cell area, it did not have recording capabilities, the individual cells did not contain cameras, and the one camera that was present was monitored by the Radio Room operator, who had many other responsibilities to attend to. There was also no check of the holding cells required at the end of a day to ensure that all detainees had been properly processed, either for arrest or release. In addition, there was no official DEA policy or training regarding the operation of the holding cell area.

The OIG recommends that DEA implement holding cell procedures in all of its facilities detention areas, to include the following:

- Upon entering the holding cell area, a log book will be completed by the arresting agent/TFO showing the detainee's name and time entered. Upon the detainee leaving the area, the time of transport to other custody, or release from custody will be noted.
- All holding cell doors will remain open when the cell is not in use.
- Holding cell doors should be equipped with a means (e.g., erasable white boards) of identifying the detainee in the cell, the case agent and the Team/Group responsible for the detainee, and the date and time the detention began.
- An agent/TFO will be assigned to the holding cell area whenever a cell is occupied.

- The responsibilities of the agent/TFO assigned to the holding cell area shall include ensuring, before leaving the area, that all cells are empty, all cell doors are open, and entries in the detainee log book show the disposition of the detainee. The assigned agent/TFO should be required to follow up with the case agent on any incomplete log book entries for detainees no longer in a holding cell.
- In the event that a detainee remains in a holding cell, and there is no case agent in the area, the assigned agent/TFO shall promptly determine the status of the detainee, by checking on his or her welfare, and contacting the agent/TFO or supervisor responsible for the detainee.
- All newly appointed agents and TFOs will receive formal training on holding cell procedures.

## **The Detention, Interview, and the Decision to Release Chong**

According to [REDACTED] he handcuffed Chong at the search location and Chong was subsequently transported to the DEA holding cells by San Diego Police Department officers. [REDACTED] [REDACTED] and IA [REDACTED] recall interviewing Chong and that he was very calm and cooperative. [REDACTED] only participated in Chong's interview and did not return to the holding cell area afterward. [REDACTED] [REDACTED] and [REDACTED] recalled deciding during or shortly after the interview that Chong was going to be released. All three walked Chong back to the holding cell area and recalled being advised by SA [REDACTED] that [REDACTED] wanted to speak to them. [REDACTED] recalled announcing as they walked back into the holding cell area and before he went to [REDACTED] cell, that Chong was free to go. [REDACTED] recalled hearing [REDACTED] announce that Chong was free to go. [REDACTED] recalled hearing [REDACTED] make the announcement that Chong was going to be released. [REDACTED] recalled making the announcement as she and the other case agents returned Chong to the holding cell area. All three went to [REDACTED] cell and spoke with him. [REDACTED] [REDACTED] and [REDACTED] each advised the OIG they lost sight of Chong when they went to [REDACTED] cell and never saw Chong after that. [REDACTED] [REDACTED] and [REDACTED] did not confirm that Chong had been released and all just assumed that he had been.

## **Operation Oversight**

During his OIG interview, [REDACTED] said that in addition to being the NTF-5 supervisor on April 21, 2012, his other assignment for that day was serving as the official Acting Assistant Special Agent in Charge (Acting ASAC) for the DEA SDFD Narcotics Task Force. [REDACTED] said his role for the enforcement operation at [REDACTED] was the on-scene supervisor. Once back at the holding cell area, [REDACTED] told the OIG he moved a chair to the end of the room and sat down in a position where he could observe all the holding cell doors and the detainees who were being processed. [REDACTED] continued as the on-scene supervisor for the operation. [REDACTED] stated that he did not participate in any interviews or with the processing of any detainees. He said the three case agents, [REDACTED], [REDACTED], and [REDACTED] and an intelligence analyst conducted all the interviews. [REDACTED] said that NTF-5 members [REDACTED] [REDACTED] and [REDACTED] were processing some of the detainees.

[REDACTED] recalled that Chong was the last detainee interviewed. According to [REDACTED] before the agents returned from the interview room with Chong, a detainee who was going to be transported to jail, and whose cell door was open for that reason, became argumentative and began insisting on speaking again with the case agents. [REDACTED] said he was concerned about the disruptive behavior of this detainee, and moved to a position closer to his cell. According to [REDACTED] as he was walking toward the detainee's cell, he noticed that the interview with Chong was ending. From his position, [REDACTED] said he heard the interview room door open, and although he could not see the case agents and Chong because he had his back to

them, he heard [REDACTED] informing Chong that he was going to be released. [REDACTED] stated he heard [REDACTED] ask Chong if he had a ride, but he did not hear Chong's response.

[REDACTED] told the OIG he next heard [REDACTED] tell Chong to "hold tight" and that he would get him a ride. In addition, he heard [REDACTED] announce that Chong was good-to-go for release. According to [REDACTED] right after [REDACTED] announcement, one of the agents processing the detainee, [REDACTED] notified the case agents that a detainee wanted to speak to them. [REDACTED] said that the case agents then made a "beeline" for that detainee's cell, where a short conversation ensued.

According to [REDACTED], when he saw Chong at that time, his hands were in his pockets, apparently not handcuffed. He recalled seeing the 3 case agents follow Chong into the holding cell area and headed toward cell 217. However, he did not see them actually go into cell 217.

### ***Behavior and Handling of Other Detainee***

[REDACTED] told the OIG that he did not see anyone handcuff Chong and lock him in a cell; in fact, he did not recall seeing Chong at all. [REDACTED] only recalled hearing [REDACTED] tell Chong as they were walking back from the interview room that they were going to release him. [REDACTED] also said he ordered one of the agents to handcuff the other detainee who had asked to talk to the case agents. He did not recall who did it, but after the other detainee was handcuffed, [REDACTED] said he felt better about his argumentative behavior.

### ***Accounting for the Detainees***

[REDACTED] recalled he was keeping a mental tally of how many people had been arrested or detained. [REDACTED] advised that earlier in the day one of the detainees had been released, so he was able to check him off his mental list. [REDACTED] recalled that as things were winding down that day, he started "doing the math." He said he knew [REDACTED] had transported some detainees; and [REDACTED] had transported a female detainee. He said that at the time [REDACTED] and [REDACTED] were being or about to be transported and he believed that Chong had been released, although he could not recollect who had done so. [REDACTED] said he was standing in the holding cell area with [REDACTED], [REDACTED], and [REDACTED] discussing what they were to do next. [REDACTED] said they decided to process the evidence from the day's enforcement operations. According to [REDACTED] prior to leaving the holding cell area, he looked around primarily to make sure they did not leave behind guns, radios, cell phones, or documents. [REDACTED] said he then did his final walk of the area that night. [REDACTED] stated that he looked first inside the cell with the toilet (cell 218) and, being that the cell door was open, noticed it was empty. [REDACTED] stated the door of the second cell (217) was closed and locked. He said he looked through the peephole, which he said he had brought the issue of its limited view to the attention of DEA management several weeks prior, and noticed the light was off, so he turned the light on and recalled seeing only a blanket on the bench and nothing else, so he turned the light off. According to [REDACTED], the door of the third cell (216) was also closed and locked with the lights inside on, so he quickly checked and did not see anyone inside. [REDACTED] recalled that the doors of last two cells (215 and 214) were open, so he looked inside those cells and noticed they were both empty. He stated that the holding cell area was very quiet, so the agents all left and walked toward the elevators. [REDACTED] told the OIG that there was no policy in place at that time regarding whether holding cells doors needed to remain open or closed when unoccupied, but his personal policy was to leave the doors open. However, he admittedly did not do so on that particular night.

█████ reiterated that there was a detainee from the █████ location who was released earlier that day, but he was not present when that occurred. █████ stated that there is no set policy on how to release a detainee who is not going to be arrested, but he said that a detainee should be handcuffed when escorted out of the SDFD building for officer safety reasons.

## **Chong's Estimated Timeline of Events**

During this investigation, the OIG interviewed Chong on May 3, 2012, and April 10, 2013. Both interviews were conducted at the offices of Chong's attorney, who was present on both occasions. During the interviews, Chong recounted the events that occurred during his detention from April 21, 2012, to April 25, 2012. The dates below are based on Chong's best effort to approximate the sequence and dates of events he recalled.

### ***Saturday, April 21, 2012 – Chong Placed in Cell 217 After Being Questioned by Agents***

During his May 3, 2012, OIG interview, which was 4 days after he was released from the hospital following this incident, Chong said that after being transported to the DEA and questioned by the agents, he was escorted to the holding cell area. Chong stated that while being escorted, an agent he identified as █████ and a female agent who fits the description of █████ told him that he would be released shortly and that █████ might be able to give Chong a ride home. Chong said he knew █████ name because █████ had provided it, and his telephone number, on the day he was detained. Chong said that █████ told him he had to handcuff him and temporarily place him back in the holding cell until they released him. Chong said he put his shoes back on. According to Chong, █████ handcuffed him with his hands behind his back, and placed him in cell 217. Before █████ closed the cell door, Chong asked █████ and the female agent (whom he described as consistent with █████ appearance), why he had to be placed back in the cell if he was going to be released. He said █████ responded that it was policy and that it would only be for a matter of minutes.

In his May 3, 2012, interview, Chong told the OIG that he sat on a bench in the cell and fell asleep. When re-interviewed by the OIG almost 1 year later, on April 10, 2013, Chong stated that approximately a minute after █████ and █████ closed the cell door, he began yelling through the cell door to get █████ attention because he had more information on one of the firearms that agents found in his friend's apartment. Chong recalled that █████ opened the door and that they spoke, and then █████ handed him a piece of paper with █████ name and telephone number on it. Chong said █████ asked him to have his friend call about the firearm. Chong kept the piece of paper during the 5 days he was in the holding cell and memorized █████ telephone number as █████. During the May 3, 2012, interview, which occurred just 4 days after Chong was released from the hospital, Chong told the OIG that █████ gave him the note with his name and telephone number because █████ said he was going to be released shortly and that █████ could possibly give Chong a ride home. Based on what █████ told him, Chong said he expected to be released a short time after being returned to the holding cell, and that he would get a ride home from █████. He said he was calm when █████ closed the cell door and when he heard people leaving. He sat down on the bench and fell into what he called a light sleep, which he guessed was about 5 to 10 minutes in duration. When he awoke, he heard people leaving through the main processing area door. After that, he did not hear any noise for several hours. He assumed it was late Saturday, April 21. Chong also said that notwithstanding being handcuffed behind his back, he managed to move his arms so that they were in front of his body.

***Sunday, April 22, 2012***

Chong said that while in the cell, he thought about television shows and stories about contraband being found in cells, which caused him to look in his cell for contraband. Chong said he soon noticed that the corner of the blanket in his cell was slightly ripped and had what appeared to be a hole in the corner. He said that when he felt near the hole in the blanket, he discovered a clear plastic bag. Chong described the bag's contents as a white powdery substance. He recalled the bag appeared to have a knot tied in it, keeping the contents secured inside. Chong said he became excited and began pounding on the metal cell door to inform the agents of what he had found in the cell, but after he did not hear anything, he stopped pounding on the cell door. Chong stated he became restless waiting for what felt like several hours and then "freaking out." He estimated that it was then about 3:00 a.m. or 4:00 a.m. on Sunday morning. Chong said he then came to the conclusion that the agents were not coming to get him, and he assumed they went home and would let him out in the morning.

Chong said he guessed that the substance he said he found in the blanket was either cocaine or methamphetamine, and he said he sampled it. Chong said that after ingesting some of the substance, he soon noted an increase in his energy level. He described the effect as similar to drinking coffee. Chong added that he did not want to sleep for fear of missing the agents when they returned, so he ingested more of the substance to help him stay awake.

Chong said he became angrier as time went on. By what he estimated to be Sunday evening, Chong said he had yelled and kicked the cell door, asked for water, and got angry when there was no response, even though he heard the main door to the processing area open. He recalled hearing keys rattling and the cell door next to his open (the cell with the bathroom, cell 218) and the toilet flush. Chong recalled he continued kicking the door and screaming for help. He said he heard a female voice from the cell next door to his, telling him to shut up. Chong recalled he eventually gave up kicking and screaming but continued grunting and whining. He became angrier and refused to sleep because he did not want to miss the agents if they returned. He also said he began to hallucinate, seeing what he referred to as gases and shadows in his cell.

***Monday, April 23, 2012***

Chong said that at some point, he began losing sense of what day or time it was, but he said he recalled continuing to beg for water and trying to get someone's attention. Chong said he eventually tired but continued hitting the cell door despite not hearing anyone in the processing area or the other cells. Chong added that he began trying to set the sprinkler off with his shoe but was unsuccessful. He said he was growing increasingly desperate for water. Chong said he was loudly threatening to break the sprinkler, hoping to attract attention.

Chong described urinating and defecating in the cell. He said he decided to drink his urine to avoid dehydration. He said he urinated into the blanket, took two large drinks of his urine from the blanket, and felt enough relief in his throat to continue the intervals of banging on the cell door and screaming.

Chong said he ripped his clothes and passed the torn pieces of his blue jacket and white shoelace under the cell door to try to attract someone's attention. He stated that from under the door, he could see shadows moving around the processing area when agents were in there, and recalled hearing keys and voices near



his cell door. He said whenever he heard those noises; he began banging on the cell door. Chong said he remained afraid to go to sleep for fear of missing the cell door being opened.

Chong described the hallucinations he experienced on what he estimated to be Monday evening. Among other hallucinations, he said he hallucinated that there was a college student sitting behind a desk just outside of his cell.

Chong said that at intervals, he continued to bang on the cell walls, scream for help, and talk. Chong said that when he urinated again, he had "wasted" the urine by not being able to drink it, became angry, and started tearing everything apart in his cell. Chong said he was despondent and accepted that he was going to die in the cell and began talking to the items in his cell and praying.

#### ***Tuesday, April 24, 2012***

Chong said that sometime on what he estimated to be Tuesday, the light in his cell was turned off. Chong said he heard a male's voice say something like, "Since this guy is making so much noise, let's turn the light off." Chong said he could not recall the exact wording but shortly afterward heard a loud sound and the lights went out. With the lights out, Chong said everything was blurry and that he hallucinated lights on the ground and gas in the cell and was convinced agents were going to gas him in the cell. He said he began devising ways to kill himself, including using his eyeglasses lenses to cut his wrists. Chong said he tried to suffocate himself with shoelaces, but he could not manage it and abandoned the idea. He said that he also swallowed a piece of the lenses from his eyeglasses and attempted to carve a message to his mother on his arm. Chong said he continued screaming for help in the dark at different intervals and recalled he eventually slipped his right hand out of the handcuff.

#### ***Wednesday, April 25, 2012***

Chong recalled the cell light went on for a split second, then off, and finally back on again, and the door opened. Chong said he saw five or six male agents standing at the door and recalled that one of the agents asked him where he came from and how he got in the cell. Chong said he told the agents that he had been in the cell since the "bust" and that one of the agents asked him the address where the bust occurred.

### **The Discovery of Chong and His Transport to Hospital on April 25**

On April 25, 2012, SA [REDACTED] initially discovered Chong in cell 217, and [REDACTED] next encountered Chong a few minutes later while [REDACTED] was in the Radio Room attempting to ascertain who was responsible for Chong being in the cell. [REDACTED] and [REDACTED] said they discovered Chong when they were at the DEA SDFD on April 25, 2012, to attend a meeting and debrief an informant on the second floor, the same floor where the holding cells were located. During the meeting, when [REDACTED] needed to fingerprint the informant, he walked to the holding cell area to take the fingerprints.

According to [REDACTED] at about 4:17 p.m., he heard someone calling out from inside the only holding cell with a closed door. [REDACTED] said that he could not make out what he was hearing, but he definitely believed the person in the cell wanted to get his attention. [REDACTED] recalled asking, "Is somebody in there?" After hearing a knocking response, [REDACTED] said he told the detainee that he was going to find out who put him in there.

█████ said that he heard what he believed was a voice or muffling sound coming from inside the cell, but he could not see anything because the lights were off. █████ also recalled hearing the person inside the cell say "Just let me out; let me out." After opening the door, █████ said he saw a disheveled detainee and noted his shirt was torn and that the cell smelled. █████ said he observed broken eyeglasses on the floor, the detainee's shoes, shoelaces, and other personal effects in the cell and that the detainee had handcuffs only on one hand.

Based on the OIG's interviews of those present with information about the discovery of Chong on April 25, 2012, the OIG concluded that [REDACTED] and [REDACTED] the agents who discovered Chong, assessed the situation correctly and acted quickly and properly in seeking 911 assistance and in identifying the NTF-5 as the group responsible for Chong's detention.

The OIG conducted a review of Chong's medical records from Sharp Memorial Hospital from April 25 to April 29, 2012, obtained with his permission. The diagnoses and treatment records were consistent with the experiences Chong described during the period of his detention at the SDFD. Among other things, Chong was severely dehydrated, with hyperthermia. [REDACTED]

Operations Assistant (OA) [REDACTED] told the OIG that she was on duty April 23, 24, and 25, 2012, and that some of her duties in the Radio Room included monitoring the holding cell area via a camera installed in the holding area. [REDACTED] said she did not recall seeing anything out of the ordinary in the holding cell area while monitoring the video of the area on April 23, 24, and 25, 2012. She said the

lights were off in the holding cell area as well as in each cell. ██████ said she noted that the door to cell 217, located next to the bathroom cell (218), was definitely closed and that she did not have anyone check the cells with closed doors on April 23, 24, and 25, 2012; because she did not see that the lights were on in the cells. Additionally, ██████ said she noted that she did not observe any personal property outside the cells, such as a detainee's shoes, which would have signaled that the cell was occupied.

██████ told the OIG that he was assigned to the Radio Room on April 24 and 25, 2012, on his regular work schedule of 12 noon to 8 p.m. and that one his duties in the Radio Room included monitoring the camera in the holding cell area. ██████ said that he did not note anything out of the ordinary during his monitoring of the holding cell area on April 24, 2012, but on April 25, 2012, he observed several agents from DEA's San Ysidro office, including SA ██████ in the holding cell area via the monitor.

### **DEA Personnel Who Encountered Chong in Detention**

The OIG interviewed all DEA personnel it was able to identify, either from the limited available access card swipe data or otherwise, as having entered the holding cell area between April 21 and April 25, 2012, and determined that four persons had seen or heard the detainee, Chong, in cell 217.

██████ entered the holding cell area on April 22, 2012, at approximately 1:32 p.m. and again at 4:14 p.m. ██████ who was at the office working on an ongoing wiretap, told the OIG he entered the holding cell area on the two occasions to use the restroom in cell 218. According to ██████ the door to cell 217 was closed, so he looked into the peephole and observed a male, who he later learned was Chong, sitting on the bench with his elbows resting on his knees. ██████ did not speak to Chong, and Chong did not appear to him to be in any form of distress. ██████ said he assumed that whoever arrested Chong was nearby and would return shortly.

██████ entered the holding cell area on April 23, 2012, at approximately 10:35 a.m. He told the OIG he was with ██████ who said he believed there might be someone in one of the holding cells. ██████ said he looked through the peephole in the cell's closed door and observed an individual sitting on the bench. Although the cell's lights were on, he could not determine the person's sex. The person in the cell was not making any noise. ██████ said he assumed that whoever placed the person in the cell would return soon.

██████ entered the holding cell area on April 25, 2012, at approximately 11:29 a.m. and again at 11:42 a.m. ██████ said she was scanning a new informant's fingerprint cards into the system when she heard someone say, "This is bullshit." ██████ looked into the peephole of the locked cell, but the room was dark. She said that she could not see anyone, and she did not say anything to the person in the cell. ██████ said she assumed that whoever placed the person in the cell would return momentarily.

██████ entered the holding cell area on April 25, 2012, at approximately 3:39 p.m. and again at 3:59 p.m. ██████ said he was assisting another agent with fingerprinting an individual for a background investigation when he heard a noise coming from one of the cells. ██████ stated that he approached the cell and heard someone speaking but could not make out what the person was saying. ██████ said he looked through the peephole of the closed cell and observed someone sitting on the bench. ██████ told the OIG that he said, "Hey," and the person in the cell stood up but did not say anything. ██████ said he took no further action and assumed that the person in the cell had just been brought in and was waiting to be processed.

During this investigation, the OIG learned of the large workspace, located directly behind the rear wall of holding cell 217, where numerous DEA personnel had workstations. The OIG conducted and documented an examination of this workspace to determine whether persons working in the large workspace could hear noises from inside the holding cells, specifically cell 217. While one OIG investigator stood inside cell 217, the other stood in the middle of the workspace on the other side of the cell's rear wall. The OIG investigator inside cell 217 banged on the cell walls and door and spoke loudly, as Chong had described his conduct while in the cell. The OIG investigator in the workspace in the adjoining space clearly heard the banging and yelling. Based on that finding, the OIG interviewed all DEA personnel whose workstations were in the adjoining workspace. None of the 25 employees interviewed recalled hearing any unusual noises, such as banging or yelling, coming from the holding cell area.

## **Post-Incident Investigation by the San Diego Field Division and Subsequent Management Review**

### ***Investigation Immediately After Chong Discovered***

█████ said he was notified by Resident Agent in Charge █████ on April 25, 2012, that Chong was found in a holding cell earlier that day. According to █████ he went to the holding cell area and contacted █████ and █████ and instructed them to process the cell Chong was found in for evidence. █████ said that █████ had gone to the hospital in the ambulance with Chong.

According to documents reviewed by the OIG, █████ had agents prepare a timeline of events for April 25, 2012, after Chong had been discovered and transported to the hospital. He assigned █████ and █████ to process holding cell 217, collecting evidence as if the cell was a crime scene. After photographing the cell, █████ and █████ noted there were no obvious markings or scratches on the walls. They also took possession of the clear plastic bag containing a white powdery substance recovered from cell 217. DEA █████ field tested the substance the same day and reported it tested positive for methamphetamine or MDMA. █████ placed the substance and testing kit in an evidence bag and gave it to █████ and █████ and █████ also found a pair of eyeglasses, the handcuffs taken off of Chong, a piece of paper with █████ name and telephone number handwritten on it, a pair of Nike shoes, and a blanket. █████ and █████ also collected a specimen of Chong's saliva from the cell floor.

The OIG determined that although holding cell 217 seemed to have been processed for evidence properly and without incident, █████ showed poor judgment and violated DEA policy by leading an investigation to determine what happened in the immediate aftermath of Chong being discovered, and by assigning █████ and █████ to process holding cell 217. █████, █████ and █████ all had a clear conflict of interest because they were among the agents whose conduct contributed to the improper detention of Chong for parts of 5 days and whose conduct was, therefore, under scrutiny. █████ should not have been involved in the investigation, and DEA SDFD should have immediately notified DEA OPR of the circumstances so that OIG could be notified and an objective investigation conducted from the outset.

█████ said he called a meeting in his office with NTF-5 members on April 26, 2012, to determine what happened. He said that they reached no conclusion and that no one on the team could specifically remember placing Chong in the holding cell. █████ added that as the GS, he was responsible for what occurred with Chong. █████ stated that he let the members of NTF-5 down. According to █████ whether



or not one of the NTF-5 members handcuffed Chong and placed him in the cell, the fact remained that Chong was left in the cell and [REDACTED] did not catch it at the end of the night.

### ***Subsequent Management Review***

During his OIG interview, Acting SAC William Sherman confirmed he first learned of Chong's detention from ASAC [REDACTED] on April 25, 2012, and that he attempted to contact DEA Deputy Administrator Thomas Harrigan late in the day Chong was discovered. Harrigan contacted Sherman early the next morning and he fully briefed Harrigan about the situation. Harrigan advised Sherman he was going to discuss the situation with the Administrator.

Subsequently, based on a determination by DEA Headquarters management, on April 26 and 27, 2012, LAFD Riverside District Office ASAC [REDACTED] (currently Deputy SAC of LAFD) and [REDACTED] conducted a Management Review to document the events regarding Chong's detention by members of the DEA SDFD. As part of the review, [REDACTED] and [REDACTED] conducted interviews of NTF-5 members and those SAs, TFOs, and maintenance personnel that swiped their access cards and gained entry into the holding cell area between April 22 and April 25, 2012. The LAFD's review could not determine who handcuffed Chong and locked him in cell 217 for 5 days. All NTF-5 members interviewed denied any knowledge of who handcuffed Chong and who locked him in the cell. [REDACTED] and [REDACTED] did not interview Chong as part of their review. The final review memorandum reached no conclusions and made no recommendations.

DEA management's decision to conduct a management review instead of ensuring that the matter was promptly referred to the OIG was troubling. The decision was made based on an apparent assumption, without any independent factual gathering or assessment, that the conduct which resulted in Chong's detention did not amount to misconduct and was not criminal. We believe it should have been readily apparent to DEA management immediately following Chong's discovery that jailing an individual without justification for parts of 5 days with no food or water, and that resulted in the individual's hospitalization, may have been the result of misconduct, at a minimum.

This DEA management review violated Department of Justice and DEA policy requiring notification to the OIG of allegations of misconduct so that the OIG could determine whether it or the DEA OPR would conduct the investigation of the incident and ensure that a potential criminal investigation is not compromised by statements compelled by, or construed as being compelled by, management. Indeed, in this case, because of the LAFD review and associated interviews, the OIG investigation was delayed while the U.S. Attorney's Office took steps to ensure that any potential criminal prosecution was not tainted by the LAFD review.

### **Post-Incident Detention Procedures Established by DEA SDFD Management**

On May 4, 2012, the OIG met with Sherman and ASAC [REDACTED]. During the meeting, Sherman fully acknowledged to the OIG that NTF-5 made a mistake in leaving detainee Daniel Chong in the holding cell but also said leaving Chong in the cell was not done on purpose or with any ill intent. Sherman acknowledged that throughout the duration of the incident, from April 21, 2012 to April 25, 2012, the DEA SDFD did not have adequate procedures and safeguards in place to have prevented it. During an April 30, 2012, interview conducted as part of the DEA's Management Review of the Chong incident,

Sherman stated that in early to mid-April, 2012, he requested several price quotes for the installation of surveillance cameras in the fingerprint area, the holding cell area, and in each cell. The improvements, however, were not in place at the time Chong was locked in the holding cell.

Sherman further acknowledged the following:

- Logs were not required in the processing/holding cell area to keep track of which detainees were in which cell or who was responsible for a specific detainee.
- The individual holding cells did not have cameras installed.
- Each holding cell door was normally kept closed, whether it was occupied or not.
- No procedures were in place in the processing/holding cell area at the end of each day to ensure detainees were not inadvertently left unaccounted for in a holding cell.
- SDFD had processed thousands of detainees since opening its facility, and no incident resembling this one had ever occurred.

ASAC [REDACTED] provided the OIG with a photocopy of a Divisional Order implemented on May 3, 2012, that SAC Sherman implemented following the Chong incident. The order referenced DEA Agents Manual Section 6641.3; Processing Defendants, which provides general procedures on how to process defendants but offers no policy on how to keep track of defendants once they are in custody in a DEA holding cell. According to [REDACTED], the order established clear procedures to follow when processing detainees at the DEA's SDFD facilities. [REDACTED] also provided the OIG a memorandum written by NTF-5 [REDACTED]. According to [REDACTED], immediately following the Chong incident he had [REDACTED] write a timeline of all activities regarding the investigation that led to Chong's detention and processing.

### **Declination of Prosecution**

On January 3, 2013, Southern District of California Assistant U.S. Attorney [REDACTED] declined criminal prosecution in this matter, stating that there was insufficient evidence to pursue a criminal prosecution. [REDACTED]