



U.S. Department of Justice Office of the Inspector General

Report to Congress on Implementation of Section 1001 of the USA PATRIOT Act

(as required by Section 1001(3) of Public Law 107-56)

August 2008

Section 1001 of the USA PATRIOT Act (Patriot Act), Public Law 107-56, directs the Office of the Inspector General (OIG) of the U.S. Department of Justice (DOJ or Department) to undertake a series of actions related to claims of civil rights or civil liberties violations allegedly committed by DOJ employees. It also requires the OIG to provide semiannual reports to Congress on the implementation of the OIG's responsibilities under Section 1001. This report – the thirteenth since enactment of the legislation in October 2001 – summarizes the OIG's Section 1001-related activities from January 1, 2008, through June 30, 2008.

I. INTRODUCTION

According to the Inspector General Act, the OIG is an independent entity within the DOJ that reports to both the Attorney General and Congress. The OIG's mission is to investigate allegations of waste, fraud, and abuse in DOJ programs and personnel and to promote economy and efficiency in DOJ operations.

The OIG has jurisdiction to review programs and personnel in all DOJ components, including the Federal Bureau of Investigation (FBI), the Drug Enforcement Administration (DEA), the Federal Bureau of Prisons (BOP), the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the U.S. Attorneys' Offices, and other DOJ components.¹

The OIG consists of the Immediate Office of the Inspector General and the following divisions and offices:

- **Audit Division** is responsible for independent audits of Department programs, computer systems, and financial statements.
- **Evaluation and Inspections Division** conducts program and management reviews that involve on-site inspection, statistical analysis, and other techniques to review Department programs and activities and make recommendations for improvement.
- **Investigations Division** is responsible for investigating allegations of bribery, fraud, abuse, civil rights violations, and violations of other criminal laws and administrative procedures that govern Department employees, contractors, and grantees.

¹ The OIG can investigate allegations of misconduct by any Department employee, except for allegations of misconduct "involving Department attorneys, investigators, or law enforcement personnel, where the allegations relate to the exercise of the authority of an attorney to investigate, litigate, or provide legal advice" See 5 U.S.C. App. 3 §8E(b)(3).

- **Oversight and Review Division** blends the skills of attorneys, investigators, and program analysts to investigate or review high profile or sensitive matters involving Department programs or employees.
- **Management and Planning Division** provides planning, budget, finance, personnel, training, procurement, automated data processing, computer network communications, and general support services for the OIG.
- **Office of General Counsel** provides legal advice to OIG management and staff. In addition, the office drafts memoranda on issues of law; prepares administrative subpoenas; represents the OIG in personnel, contractual, and legal matters; and responds to Freedom of Information Act requests.

The OIG has a staff of approximately 400 employees, about half of whom are based in Washington, D.C., while the rest work from 16 Investigations Division field and area offices and 7 Audit Division regional offices located throughout the country.

II. SECTION 1001 OF THE PATRIOT ACT

Section 1001 of the Patriot Act provides the following:

The Inspector General of the Department of Justice shall designate one official who shall —

- (1) review information and receive complaints alleging abuses of civil rights and civil liberties by employees and officials of the Department of Justice;
- (2) make public through the Internet, radio, television, and newspaper advertisements information on the responsibilities and functions of, and how to contact, the official; and
- (3) submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate on a semi-annual basis a report on the implementation of this subsection and detailing any abuses described in paragraph (1), including a description of the use of funds appropriations used to carry out this subsection.

III. CIVIL RIGHTS AND CIVIL LIBERTIES COMPLAINTS

Review information and receive complaints alleging abuses of civil rights and civil liberties by employees and officials of the Department of Justice.

The OIG's Special Operations Branch in its Investigations Division manages the OIG's investigative responsibilities outlined in Section 1001.² The Special Agent in Charge who directs this unit is assisted by three Assistant Special Agents in Charge (ASAC), one of whom assists on Section 1001 and DEA matters, a second who assists on FBI matters, and a third who provides support on ATF cases. In addition, five Investigative Specialists support the unit and divide their time between Section 1001 and FBI/DEA/ATF responsibilities.

The Special Operations Branch receives civil rights and civil liberties complaints via mail, e-mail, telephone, and facsimile. The complaints are reviewed by an Investigative Specialist. After review, each complaint is entered into an OIG database and a decision is made concerning its disposition. The more serious civil rights and civil liberties allegations that relate to actions of DOJ employees or DOJ contractors normally are assigned to an OIG Investigations Division field office, where OIG special agents conduct investigations of criminal violations and administrative misconduct.³ Some complaints are assigned to the OIG's Oversight and Review Division for investigation.

Given the number of complaints received compared to its limited resources, the OIG does not investigate all allegations of misconduct against DOJ employees. The OIG refers many complaints involving DOJ employees to internal affairs offices in DOJ components such as the FBI Inspection Division, the DEA Office of Professional Responsibility, and the BOP Office of Internal Affairs for handling. In certain referrals, the OIG requires the components to report the results of their investigations to the OIG. In most cases, the OIG notifies the complainant of the referral.

Many complaints received by the OIG involve matters outside our jurisdiction. The ones that identify a specific issue for investigation are forwarded to the appropriate investigative entity. For example, complaints of mistreatment by airport security staff or by the border patrol are sent to the

² This unit also is responsible for coordinating the OIG's review of allegations of misconduct by employees in the FBI, DEA, and ATF.

³ The OIG can pursue an allegation either criminally or administratively. Many OIG investigations begin with allegations of criminal activity but, as is the case for any law enforcement agency, do not end in prosecution. When this occurs, the OIG is able to continue the investigation and treat the matter as a case for potential administrative discipline. The OIG's ability to handle matters criminally or administratively helps to ensure that a matter can be pursued administratively, even if a prosecutor declines to prosecute a matter criminally.

Department of Homeland Security (DHS) OIG. We also have forwarded complaints to the OIGs of the Department of Defense, the Department of the Interior, the Department of the Treasury, and the United States Postal Service. In addition, we have referred complainants to state Departments of Correction that have jurisdiction over the subject of the complaints.

When an allegation received from any source involves a potential violation of federal civil rights statutes by a DOJ employee, we discuss the complaint with the DOJ Civil Rights Division for possible prosecution. In some cases, the Civil Rights Division accepts the case and requests additional investigation either by the OIG or the FBI. In other cases, the Civil Rights Division declines prosecution and either the OIG or the appropriate DOJ internal affairs office reviews the case for possible administrative misconduct.

A. Complaints Processed This Reporting Period

From January 1, 2008, through June 30, 2008, the period covered by this report, the OIG processed **507** Section 1001-related complaints.⁴

Of these complaints, we concluded that **418** did not fall within the OIG's jurisdiction or did not warrant further investigation. Approximately 334 of these 418 complaints involved allegations against agencies or entities outside of the DOJ, including other federal agencies, local governments, or private businesses. When possible, we referred those complaints to the appropriate entity or advised complainants of the entity with jurisdiction over their allegations. The remaining 84 of the 418 complaints raised allegations that, on their face, did not warrant investigation. Complaints in this category included, for example, allegations that the FBI was harassing individuals through the use of electromagnetic, chemical, and electronic mind control weaponry.

The remaining **89** of the 507 total complaints involved DOJ employees or components and included allegations that required further review. We determined that **85** complaints raised management issues that generally were not related to our Section 1001 duties, and we referred these complaints to DOJ components for appropriate handling. Examples of complaints in this category included inmates' allegations about the general conditions at federal prisons and complaints that the FBI did not initiate an investigation into particular allegations.

The OIG identified the **4** remaining complaints as matters that we believed warranted an investigation to determine if Section 1001-related abuse occurred. One of the matters is being investigated by the OIG and 3 of the

⁴ This number includes all complaints in which the complainant makes any mention of a Section 1001-related civil rights or civil liberties violation, even if the allegation is not within the OIG's jurisdiction.

matters were referred to the BOP for investigation. We discuss the substance of these 4 complaints in the next section of this report.

None of the 507 complaints we processed during this reporting period specifically alleged misconduct by DOJ employees relating to use of a provision in the Patriot Act.

The following is a synopsis of the complaints processed during this reporting period:

Complaints processed:	507
Unrelated complaints:	418
Total complaints within OIG's jurisdiction warranting review:	89
• Management issues:	85
• Possible Section 1001 matters warranting investigation:	4

B. Section 1001 Cases This Reporting Period

1. New matters

During this reporting period, the OIG opened one new Section 1001 investigation. Additionally, the OIG referred three Section 1001-related complaints to the BOP for investigation.

The following is a summary of the new matter opened by the OIG during this reporting period:

- The OIG investigated an inmate's allegations that a BOP employee called an inmate a "nigger" and a "towelhead Taliban," punched him in the face, and shoved him into a shower stall. The inmate further alleged that he requested an injury assessment but did not receive one. During the course of the investigation, the inmate refused to submit to a polygraph examination and admitted that he had fabricated the allegations. The investigation of this matter is completed and it is awaiting administrative closure.

The following three complaints were referred by the OIG to the BOP for investigation during this reporting period. The investigations of these matters are continuing. For each of these referrals, we requested that

the BOP provide the OIG with a copy of its investigative reports upon completion of the investigations.

- An inmate complained to BOP and in a lawsuit he filed in federal court that BOP officials unfairly classified him as an Islamic extremist and placed him on the “International Terrorist Watch List” in retaliation for his Islamic writings. The inmate complained further that after the court ordered that he be transferred to another facility so he could be closer to his family, BOP increased his security classification, rendering him ineligible for the transfer. The inmate also alleged that when he filed a complaint with BOP he was told by BOP officials that it would be months before the error, if one existed, would be corrected.
- The wife of a Muslim inmate alleged that BOP staff wrongly reported that she and her husband had engaged in a sexual act while in the visiting room of a BOP facility, which resulted in the complainant losing her visitation rights and her husband being placed in the Special Housing Unit. The complainant alleged that the BOP was discriminating against her and her husband because of their Islamic faith.
- An inmate alleged that a BOP Physician’s Assistant refused to provide him with medical treatment and called him a terrorist. The inmate further alleged that the Physician’s Assistant made false entries to his medical records chart that tarnished his character.

2. Cases opened during previous reporting periods that the OIG continues to investigate

- The OIG is investigating allegations that a BOP inmate was physically and verbally abused by correctional officers because of his Arab ethnicity and Muslim faith. The complaint includes allegations that correctional officers pushed the inmate against a wall, placed him in a cold cell with water on the floor, confiscated his undergarments and gave him undergarments with holes instead, and confiscated his legal documents and “misplaced” them. The OIG investigation is ongoing.

3. Investigations closed during this reporting period

- The OIG investigated allegations that BOP employees violated the civil rights of the spouse of a Muslim inmate when she visited her husband at a BOP facility. The complainant alleged that she was unfairly targeted for personal searches and unnecessary document requests because of her Muslim faith and attire. The complainant

also alleged that the denial of her husband's request for relocation to a satellite camp at the facility was denied due to religious discrimination. The OIG investigation did not find evidence supporting the allegations of civil rights violations or discrimination by BOP personnel based upon the complainant's or her husband's religious affiliation.

- The OIG investigated allegations made by a BOP inmate that correctional officers came into his Special Housing Unit cell during a routine movement of the inmate and referred to the complainant and his cellmate as "camel jack" and "Saddam Hussein." The inmate further alleged that when he asked the correctional officers not to speak to him in that manner, they assaulted him. However, the inmate refused to cooperate with investigators, and the OIG investigation found insufficient evidence to substantiate the allegations.
- The OIG referred to the BOP for investigation allegations that when a Muslim inmate returned to his cell after it had been searched, he discovered that his Koran had been moved to the floor and stepped on. The BOP interviewed the correctional officers who were involved in the search and stated that they had not left the complainant's Koran on the floor of his cell and had not stepped on it. The BOP concluded that there was insufficient evidence to support the allegations.
- The OIG referred to the BOP for investigation allegations made by a Muslim inmate that he was threatened by BOP staff and subjected to "administrative sanctions and racial epithets" on an ongoing basis from the time he arrived at a BOP facility. When the complainant was interviewed by BOP's Office of Internal Affairs he requested to withdraw his complaint, saying that his allegations were false or incorrect.

IV. OTHER ACTIVITIES RELATED TO POTENTIAL CIVIL RIGHTS AND CIVIL LIBERTIES ISSUES

The OIG conducts other reviews that go beyond the explicit requirements of Section 1001 in order to implement more fully its civil rights and civil liberties oversight responsibilities. The OIG has initiated or continued several such special reviews that relate to the OIG's duties under Section 1001. These reviews are discussed in this section of the report.

A. Review of the FBI's Use of National Security Letters and Ex Parte Orders for Business Records

In March 2008, as required by the USA PATRIOT Improvement and Reauthorization Act of 2005 (Public Law 109-177) (Patriot Reauthorization Act), the OIG issued two follow-up reports that examined the FBI's use of two authorities established or amended by the Patriot Act:

(1) the FBI's authority to issue national security letters to obtain – without a court order – certain categories of records from third parties, including telephone toll billing records, electronic communication transactional records, financial records, and credit information; and

(2) the FBI's authority to obtain business records from third parties by applying for ex parte orders issued by the Foreign Intelligence Surveillance Court pursuant to Section 215 of the Patriot Act.

The Patriot Reauthorization Act directed the OIG to review the extent to which the FBI has used these authorities; any bureaucratic impediments to their use; how effective these authorities have been as investigative tools and in generating intelligence products; how the FBI collects, retains, analyzes, and disseminates information derived from these authorities; whether and how often the FBI provided information derived from these authorities to law enforcement officials for use in criminal proceedings; and whether there has been any improper or illegal use of these authorities. See Sections 106A and 119 of Public Law 109-177.

In March 2007, the OIG had issued our first report on the FBI's use of national security letters (NSL). In it, we reviewed the FBI's use of NSLs from 2003 through 2005. We found serious and widespread misuse of NSL authorities, such as issuing NSLs without proper authorization, making improper requests under the statutes cited in the NSLs, and conducting unauthorized collection of telephone or Internet e-mail transactional records.

Our March 2007 report on the FBI's use of its authority to obtain ex parte orders for business records under Section 215 of the Patriot Act was also issued in March 2007. It examined the FBI's use of this authority from 2002

through 2005. We found two instances involving improper use of Section 215 orders in 2005 and significant delays within the FBI and the Department in processing requests for Section 215 orders throughout the time period that we reviewed.

The OIG's March 2008 follow-up reports examined the FBI's use of NSLs and Section 215 orders during 2006. The March 2008 NSL report also described and assessed the measures that the FBI and the Department have implemented or proposed to address the serious misuse of NSL authorities that our March 2007 NSL report described. The OIG produced classified reports on the use of NSLs and Section 215 authority and provided these classified reports to Congress and to the Intelligence Oversight Board of the President's Intelligence Advisory Board. We also released publicly unclassified versions of these reports.

1. Report on the FBI's Use of National Security Letters in 2006

In our March 2008 follow-up report, we determined that the FBI and the Department have made significant progress implementing recommendations in our first report and adopting corrective actions to address the serious problems we identified. Measures implemented by the FBI include a new NSL data system designed to facilitate the issuance and tracking of NSLs and ensure accurate reports to Congress and the public on NSL usage, issuing NSL guidance memoranda and conducting training of field and headquarters personnel, and creating a new Office of Integrity and Compliance modeled after private sector compliance programs. We also found that the FBI has devoted substantial time, energy, and resources ensuring that its field managers and agents understood the seriousness of the FBI's shortcomings in its use of NSLs and their responsibility for correcting these deficiencies. In addition, the Department's National Security Division has instituted periodic national security reviews of FBI field and Headquarters divisions to assess whether the FBI was using various intelligence techniques, including NSLs, in accordance with applicable laws, guidelines, and policies.

Our report also analyzed three NSL reviews conducted by the FBI following the release of our first report. One review examined a random 10 percent sample of counterterrorism, counterintelligence, and foreign computer intrusion cyber investigation case files active in FBI field offices between 2003 and 2006. This review confirmed the types of NSL-related deficiencies and possible intelligence violations that we identified in our first report. The FBI's statistically valid sample of field case files found a rate of NSL violations (9.43 percent) higher than what we found (7.5 percent) in the non-statistical sample of NSLs we examined in our first report.

Regarding NSL usage in 2006, we found a continued upward trend in the use of NSLs, with 49,425 NSL requests issued in 2006 – a 4.7 percent increase from the previous year. For the 4-year period, from 2003 through 2006, the FBI issued more than 192,000 NSL requests. On average, approximately one-third of all counterterrorism, counterintelligence, and cyber investigations that were open at any time during 2006 employed NSLs. Our review also found that the percentage of NSL requests related to investigations of U.S. persons continued to increase, from approximately 39 percent of all NSL requests in 2003 to approximately 60 percent in 2006.

In response to the directive in the Patriot Reauthorization Act to identify any “improper or illegal” use of NSLs, we described 84 possible intelligence violations involving the use of NSLs in 2006 that were self-reported to FBI Headquarters. Of these 84 possible violations, the FBI concluded that 34 needed to be reported to the President’s Intelligence Oversight Board (IOB) in 2006. The 34 matters that were reported included errors, such as issuing NSLs without proper authorization, improper requests, and unauthorized collection of telephone or Internet e-mail records. We found that 20 of these violations were attributable to mistakes made by the FBI, while 14 resulted initially from mistakes by recipients of NSLs. The number of possible intelligence violations identified by FBI personnel in 2006 was significantly higher than the 26 violations reported from 2003 through 2005, of which 19 were reported to the IOB. We believe that the increase may be due in large part to the attention garnered by our first NSL review and to increased training, guidance, and oversight by the FBI. Although the number of self-reported violations increased, the large number of unreported violations found during the FBI’s three NSL reviews demonstrated that the overwhelming majority of violations were not identified and self-reported by the FBI.

As directed by the Patriot Reauthorization Act, we also examined whether NSLs issued after the effective date of the Patriot Reauthorization Act contained the required certifications to impose non-disclosure and confidentiality requirements on NSL recipients. In the random sample of NSLs we reviewed, we found that 97 percent of the NSLs imposed non-disclosure and confidentiality requirements and almost all contained the required certifications. We found that a small percentage of the justifications for imposing this requirement were perfunctory and conclusory, and a small number of the NSL approval memoranda failed to comply with internal FBI policy.

We made 17 additional recommendations to help improve the FBI’s use and oversight of NSLs, including: providing additional guidance and training for FBI agents on the proper use of NSLs and on the reviewing, filing, and retention of NSL-derived information; reinforcing the need for FBI agents and supervisors to determine whether there is adequate justification for imposing non-disclosure and confidentiality requirements on NSL recipients; regularly

monitoring the preparation and handling of NSLs; and providing timely reports of possible intelligence violations to FBI Headquarters. The FBI agreed with the recommendations and said it would implement additional actions to address our findings.⁵

2. Report on the FBI's Use of Section 215 Orders in 2006

Our March 2008 follow-up review of the FBI's use of Section 215 orders in 2006 to obtain business records found that FBI agents encountered similar processing delays for Section 215 applications as those identified in our previous report. Our review did not identify any illegal use of Section 215 orders in 2006. However, we found two instances when the FBI received more information than it requested in the Section 215 orders. In one case, approximately 2 months passed before the FBI recognized it was receiving additional information that was beyond the scope of the Foreign Intelligence Surveillance Court order. In the other case, the FBI quickly determined that it inadvertently received information not authorized by the Section 215 order and isolated the records. However, the FBI subsequently concluded that it should be able to use the material as if it were "voluntarily produced" because the information was not statutorily protected. We disagreed with this conclusion, and our report recommended that the FBI develop procedures for identifying and handling information that is produced in response to, but outside the scope of, the Section 215 order.

In response to the Patriot Reauthorization Act's directive to identify any "noteworthy facts or circumstances" related to the use of Section 215 orders, our report discussed another case in which the Foreign Intelligence Surveillance Court twice refused to authorize a Section 215 order based on concerns that the investigation was premised on protected First Amendment activity. The FBI subsequently issued NSLs to obtain information based on the same factual predicate and without a review to ensure the investigation did not violate the subject's First Amendment rights. We questioned the appropriateness of the FBI's actions because the NSL statute contains the same First Amendment caveat as the Section 215 statute.

Finally, as directed by the Patriot Reauthorization Act, we examined the interim procedures adopted by the Department for Section 215 orders to minimize the retention and prohibit the dissemination of non-publicly available information about U.S. persons. We concluded that the interim procedures adopted in September 2006 do not provide specific guidance for minimization that the Patriot Reauthorization Act appeared to contemplate. The OIG report recommended that the Department develop specific minimization procedures related to Section 215 orders.

⁵ We also are completing a detailed investigation of the FBI's use of exigent letters, a practice that we generally described in our first NSL report. The results of that investigation will be described in a separate report, which will be completed in the next several months.

B. Review of FBI Conduct Relating to Detainees in Military Facilities in Guantanamo Bay and Iraq

In May 2008, the OIG issued a report that examined the FBI's involvement in and observations of detainee interrogations in Guantanamo Bay, Afghanistan, and Iraq. The OIG review examined whether FBI agents participated in any detainee abuse, witnessed incidents of detainee abuse in the military zones, or reported abuse to their superiors or others. The review also examined how FBI reports of abuse were handled within the FBI and the Department of Justice. In addition, the OIG examined the adequacy of the policies, guidance, and training the FBI provided to the agents it deployed to the military zones.

As part of its review, the OIG distributed a detailed survey to over 1,000 FBI employees deployed to one or more of the military facilities under the control of the Department of Defense (DOD) between 2001 and 2004. Among other things, the team's survey sought information regarding observations or knowledge of various interrogation techniques, including using water to create the sensation of drowning ("waterboarding"), using military dogs to frighten detainees, and mistreating the Koran. During the investigation, the team interviewed more than 230 witnesses and reviewed over 500,000 pages of documents provided by the FBI, other DOJ components, and the DOD. In addition, team members made two trips to Guantanamo to tour the detention facilities, review documents, and interview witnesses, including five detainees held there.

The OIG's report described the concerns raised by FBI agents who were involved in the early interrogations of two high value detainees, Abu Zubaydah and Muhammad Al-Qahtani. FBI agents assisting with the Zubaydah interrogations at an overseas facility observed Central Intelligence Agency (CIA) interrogators use harsh techniques. As a result, FBI Director Robert Mueller ultimately decided in approximately August 2002 that the FBI would not participate in joint interrogations of detainees with other agencies in which techniques not allowed under FBI policy would be employed. Later in 2002, FBI agents at Guantanamo became concerned when the military announced a plan to keep Al-Qahtani awake during continuous 20-hour interviews every day for an indefinite period and when the FBI agents observed military interrogators use increasingly harsh and demeaning techniques on Al-Qahtani and others. Several FBI agents raised concerns with DOD and FBI Headquarters, and some of these concerns were communicated to senior officials in the DOJ Criminal Division and ultimately to the Attorney General. We found no evidence that the FBI's concerns influenced DOD interrogation policies, however.

The OIG also examined the guidance and training that the FBI provided to its agents. We found that the FBI did not issue specific guidance to its agents relating to the joint interrogation of detainees until after the Abu Ghraib disclosures in April 2004, and that the policy that the FBI issued in May 2004 did not adequately address agent concerns regarding such matters as defining when FBI agents should report abuse or mistreatment by other agencies' interrogators.

The OIG survey of over 1,000 FBI employees who served at Guantanamo or in Afghanistan or Iraq during 2001 to 2004 found that most agents did not report seeing or hearing about the use of aggressive interrogation techniques. However, over 300 agents said they did see or hear about military interrogators using a variety of harsh interrogation techniques on detainees. The most commonly reported techniques included sleep deprivation or disruption (sometimes involving loud music or bright lights), short-shackling, stress positions, prolonged isolation, and hooding or blindfolding. Although some agents made reports of these matters to their supervisors, others said they did not make such reports because they understood these techniques to have been approved for other agencies' interrogators.

The OIG also investigated allegations that particular FBI agents participated in abuse of detainees in the military zones. In general, we did not find support for the allegations that FBI agents participated in abuse of detainees. In a few instances, FBI agents used or participated in interrogations during which techniques were used that would not normally be permitted in the United States. These incidents were infrequent and were sometimes related to the unfamiliar circumstances agents encountered in the military zones. The incidents in no way resembled the incidents of detainee mistreatment that occurred at the Abu Ghraib prison in Iraq.

In sum, the OIG found that the vast majority of the FBI agents deployed in the military zones dealt with tensions related to the use of aggressive interrogation techniques by separating themselves from interrogators using non-FBI techniques and by continuing to adhere to FBI policies. We believe that while the FBI could have provided clearer guidance earlier, and while the FBI could have pressed harder for resolution of concerns about detainee treatment by other agencies, the FBI should be credited for its conduct and professionalism in detainee interrogations in the military zones in Guantanamo Bay, Afghanistan, and Iraq and in generally avoiding participation in detainee abuse.

C. Review of the Department's Involvement with the National Security Agency's Terrorist Surveillance Program or Warrantless Surveillance Program

The OIG is reviewing the Department's involvement with the National Security Agency (NSA) program known as the "terrorist surveillance program" or "warrantless surveillance program." This ongoing review is examining the Department's controls and use of information related to the program and the Department's compliance with legal requirements governing the program.

The Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2008 requires intelligence community inspectors general, including the Department of Justice OIG, to conduct a comprehensive review of the terrorist surveillance program. The recently enacted law specifies that the Inspectors General avoid duplication and delay by coordinating their reviews of the program. The Inspectors General involved have begun coordination to comply with the requirements of the Act.

D. Audit of the Department's Watchlist Nomination Process

In March 2008, the OIG completed an audit of the processes used throughout the Department for nominating individuals to the consolidated terrorism watchlist maintained by the TSC. This audit examined the specific policies and procedures of Department components for nominating individuals to the consolidated watchlist. In addition to evaluating DOJ's nomination processes, this audit also examined the DOJ's processes for ensuring the accuracy of the nominations and modification of those records; removing watchlist records when appropriate; and the sharing of international and domestic counterterrorism information in the possession of DOJ components. The audit also reviewed the training provided to the individuals who are involved in the nominating process. The Department components we reviewed included the FBI, the DEA, the ATF, and the United States Marshals Service.

The FBI is the only DOJ component that formally nominates known or suspected terrorists for inclusion on the consolidated terrorist watchlist. Although ATF, DEA, BOP, and the U.S. Marshals Service do not formally nominate individuals to the consolidated terrorist watchlist, terrorist-related information may come into their possession through their day-to-day operations. In these cases, we found that these components generally shared information with the FBI in an informal manner.

Between January 1, 2005, and November 29, 2007, the FBI processed over 8,000 watchlist nominations. The OIG audit found that FBI had developed a formal policy for nominating known or suspected terrorists to the watchlist, had sound record management procedures for its standard watchlist

nominations, and had provided basic training on the watchlist nomination process to its staff. In addition, the audit found that the FBI had established criteria and quality controls to assist in developing proper and accurate watchlist nominations.

However, the OIG audit also found that FBI case agents did not always update watchlist records when new information became known and that the FBI did not always remove watchlist records when it was appropriate to do so. Moreover, watchlist nomination submissions from field offices were often incomplete or contained inaccuracies, causing delays in the processing of nominations. Additionally, FBI field offices at times bypassed FBI headquarters and the internal controls in the FBI process by submitting nominations directly to National Counterterrorism Center (NCTC). This practice could affect the completeness of FBI records that support the nominations forwarded for inclusion on the watchlist. Moreover, the FBI prepares and disseminates terrorist-related intelligence reports throughout the Intelligence Community. Our audit found that although the FBI did not intend for these reports to be official watchlist nominations, the NCTC used information from these FBI intelligence reports to create watchlist records that were sourced to the FBI. Because the FBI was not aware of this NCTC practice, the FBI did not monitor these records to ensure that they were updated or removed when appropriate.

The OIG made seven recommendations to the Department and individual components to help improve watchlist nomination policies, processes, and practices. The Department and the components agreed to implement the recommendations.

We conducted this review in conjunction with other Intelligence Community OIGs, who also examined the watchlist nomination process in their respective agencies.

E. Follow-up Audit of the Terrorist Screening Center

In September 2007, the OIG completed a follow-up to our 2005 audit of the Terrorist Screening Center (TSC), a multi-agency effort administered by the FBI to consolidate terrorist watchlists and provide 24-hour, 7-day a week responses for screening individuals. The follow-up audit concluded that the TSC has made improvements since our previous audit, but weaknesses still exist in several watchlist processes and significant deficiencies remain in the data contained in the consolidated terrorist watchlist. The OIG made 18 recommendations to help the FBI improve TSC operations and the quality of its watchlist data. The FBI has taken sufficient actions to address 13 of the 18 recommendations. The FBI has initiated corrective action on the remaining five

recommendations, but additional work is needed to fully address these recommendations. These open recommendations relate to the development of a streamlined FBI watchlist nomination process, the development of a comprehensive plan to complete the record-by-record quality assurance review of the Terrorist Screening Database, development of proactive methods for ensuring that the TSC receives data related to other screening agency encounters, development of timeliness measures for the FBI's internal redress process, and the incorporation of these measures into the TSC strategic plan.

F. The FBI's Watchlist Nomination Practices

The OIG is currently conducting an audit that relates to our March 2008 audit of the Department's processes for nominating individuals to the consolidated terrorism watchlist maintained by the TSC. This audit will determine whether subjects of open FBI cases are appropriately and timely watchlisted and whether watchlist records are updated with new identifying information as required. The audit will also examine whether subjects of closed FBI investigations are appropriately removed from the consolidated terrorist watchlist in a timely manner.

G. The FBI's Terrorist Threat and Suspicious Incident Tracking System

The OIG is completing an audit that evaluates the policies and procedures the FBI uses to identify, assess, and track terrorist threats and suspicious incidents. After the September 11 terrorist attacks, the FBI required that every terrorism-related lead from its own sources or from its federal, state, or local partners be addressed. The FBI's principal automated system to track terrorist threats and suspicious incidents is its Guardian Threat Tracking System (Guardian). This audit is examining the development, implementation, and maintenance of Guardian.

V. EXPENSE OF IMPLEMENTING SECTION 1001

Section 1001 requires the OIG to:

Submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate on a semi-annual basis a report...including a description of the use of funds appropriations used to carry out this subsection.

During this reporting period, the OIG spent approximately \$1,513,934 in personnel costs, \$3,009 in travel costs (for investigators to conduct interviews), and \$29,529 in miscellaneous costs, for a total of \$1,546,472 to implement its responsibilities under Section 1001. The total personnel and travel costs reflect the time and funds spent by OIG special agents, inspectors, and attorneys who have worked directly on investigating Section 1001-related complaints, conducting special reviews, and implementing the OIG's responsibilities under Section 1001.