

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

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Department of Justice Inspector General Issues Report on Treatment of Aliens Held on Immigration Charges in Connection with the Investigation of the September 11 Terrorist Attacks

June 2, 2003 (Washington, D.C.) – Glenn A. Fine, Inspector General of the U.S. Department of Justice, today issued a report examining the treatment of aliens held on immigration charges in connection with the investigation of the September 11, 2001, terrorist attacks.

After the September 11 terrorist attacks, the Department of Justice (Department) used federal immigration laws to detain aliens in the United States who were suspected of having ties to the attacks or connections to terrorism, or who were encountered during the course of the Federal Bureau of Investigation's (FBI) investigation into the attacks. In the 11 months after the attacks, 762 aliens were detained in connection with the FBI terrorism investigation for various immigration offenses, including overstaying their visas and entering the country illegally.

The Office of the Inspector General (OIG) examined the treatment of these detainees, including their processing, bond decisions related to them, the timing of their removal from the United States or their release from custody, their access to counsel, and their conditions of confinement. The OIG's 198-page report focuses, in particular, on detainees held at the Federal Bureau of Prisons' (BOP) Metropolitan Detention Center (MDC) in Brooklyn, New York, and at the Passaic County Jail (Passaic) in Paterson, New Jersey, a county facility under contract with the Immigration and Naturalization Service (INS) to house federal immigration detainees. We chose these two facilities because they held the majority of September 11 detainees and also were the focus of many complaints of detainee mistreatment.

“While our review recognized the enormous challenges and difficult circumstances confronting the Department in responding to the terrorist

attacks, we found significant problems in the way the detainees were handled,” said Inspector General Fine.

Among the specific findings in the OIG’s report:

Arrest, Charging & Assignment to a Detention Facility:

- The FBI in New York City made little attempt to distinguish between aliens who were subjects of the FBI terrorism investigation (called “PENTTBOM”) and those encountered coincidentally to a PENTTBOM lead. The OIG report concluded that, even in the chaotic aftermath of the September 11 attacks, the FBI should have expended more effort attempting to distinguish between aliens who it actually suspected of having a connection to terrorism from those aliens who, while possibly guilty of violating federal immigration law, had no connection to terrorism but simply were encountered in connection with a PENTTBOM lead. [Chapter 4]
- The INS did not consistently serve the September 11 detainees with notice of the charges under which they were being held within the INS’s stated goal of 72 hours. The review found that some detainees did not receive these charging documents (called a “Notice to Appear” or NTA) for more than a month after being arrested. This delay affected the detainees’ ability to understand why they were being held, obtain legal counsel, and request a bond hearing. [Chapter 3]
- Aliens arrested in the New York City area generally were confined at the MDC, Passaic, or at another INS contract facility in northern New Jersey. While the INS made the ultimate decision where to house the September 11 detainees, it relied primarily on the FBI’s assessment of the detainees’ possible links to terrorism. FBI agents generally made this assessment without any guidance, and based on the limited information available at the time of the aliens’ arrests. Where a September 11 detainee was housed had significant ramifications on the detainee’s detention experiences, because a detainee held at the MDC experienced much more restrictive confinement conditions than those held at Passaic. [Chapter 2]
- The Department instituted a policy that all aliens in whom the FBI had an interest in connection with the PENTTBOM investigation required clearance by the FBI of any connection to terrorism before they could be removed or released. Although not communicated in writing, this “hold

until cleared” policy was clearly understood and applied throughout the Department. The policy was based on the belief – which turned out to be erroneous – that the FBI’s clearance process would proceed quickly. FBI agents responsible for clearance investigations often were assigned other duties and were not able to focus on the detainee cases. The result was that detainees remained in custody – many in extremely restrictive conditions of confinement – for weeks and months with no clearance investigations being conducted. The OIG review found that, instead of taking a few days as anticipated, the FBI clearance process took an average of 80 days, primarily because it was understaffed and not given sufficient priority by the FBI. [Chapter 4]

Bond and Removal Issues

- The Department instituted a “no bond” policy for all September 11 detainees as part of its effort to keep the detainees confined until the FBI could complete its clearance investigations. The OIG review found that the INS raised concerns about this blanket “no bond” policy, particularly when it became clear that the FBI’s clearance process was much slower than anticipated and the INS had little information in many individual cases on which to base its continued opposition to bond in immigration hearings. INS officials also were concerned about continuing to hold detainees while the FBI conducted clearance investigations where detainees had received a final removal or voluntary departure order. The OIG review found that the INS and the Department did not timely address conflicting interpretations of federal immigration law about detaining aliens with final orders of removal who wanted and were able to leave the country, but who had not been cleared by the FBI. [Chapter 5]
- In January 2002, when the FBI brought the issue of the extent of the INS’s detention authority to the Department’s attention, the Department abruptly changed its position as to whether the INS should continue to hold aliens after they had received a final departure or removal order until the FBI had completed the clearance process. After this time, the Department allowed the INS to remove aliens with final orders without FBI clearance. In addition, in many cases the INS failed to review the detainees’ custody determination as required by federal regulations. [Chapter 6]

The FBI’s initial assessment of the September 11 detainees’ possible connections to terrorism and the slow pace of the clearance process had

significant ramifications on the detainees' conditions of confinement. Our review found that 84 September 11 detainees were housed at the MDC in Brooklyn under highly restrictive conditions. These conditions included "lock down" for at least 23 hours per day; escort procedures that included a "4-man hold" with handcuffs, leg irons, and heavy chains any time the detainees were moved outside their cells; and a limit of one legal telephone call per week and one social call per month.

Among the OIG review's findings regarding the treatment of detainees held at the MDC and Passaic are:

Conditions of Confinement

- BOP officials imposed a communications blackout for September 11 detainees immediately after the terrorist attacks that lasted several weeks. After the blackout period ended, the MDC's designation of the September 11 detainees as "Witness Security" inmates frustrated efforts by detainees' attorneys, families, and even law enforcement officials, to determine where the detainees were being held. We found that MDC staff frequently – and mistakenly – told people who inquired about a specific September 11 detainee that the detainee was not held at the facility when, in fact, the opposite was true. [Chapter 7]
- The MDC's restrictive and inconsistent policies on telephone access for detainees prevented some detainees from obtaining legal counsel in a timely manner. Most of the September 11 detainees did not have legal representation prior to their detention at the MDC. Consequently, the policy developed by the MDC that permitted detainees one legal call per week – while complying with broad BOP national standards – severely limited the detainees' ability to obtain and consult with legal counsel. In addition, we found that in many instances MDC staff did not ask detainees if they wanted their one legal call each week. We also found that the list of pro bono attorneys provided to the detainees contained inaccurate and outdated information. [Chapter 7]
- With regard to allegations of abuse at the MDC, the evidence indicates a pattern of physical and verbal abuse by some correctional officers at the MDC against some September 11 detainees, particularly during the first months after the attacks and during intake and movement of prisoners. Although the allegations of abuse have been declined for criminal prosecution, the OIG is continuing to investigate these matters administratively. [Chapter 7]

- The OIG review found that certain conditions of confinement at the MDC were unduly harsh, such as subjecting the September 11 detainees to having two lights illuminated in their cells 24 hours a day for several months longer than necessary, even after electricians rewired the cellblock to allow the lights to be turned off individually. We also found that MDC staff failed to inform MDC detainees in a timely manner about the process for filing formal complaints about their treatment. [Chapter 7]
- By contrast, the OIG review found that the detainees confined at Passaic had much different, and significantly less harsh, experiences than the MDC detainees. According to INS data, Passaic housed 400 September 11 detainees from the date of the terrorist attacks through May 30, 2002, the largest number of September 11 detainees held at any single U.S. detention facility. Passaic detainees housed in the general population were treated like “regular” INS detainees who also were held at the facility. Although we received some allegations of physical and verbal abuse, we did not find the evidence indicated a pattern of abuse at Passaic. However, the INS did not conduct sufficient and regular visits to Passaic to ensure the September 11 detainees’ conditions of confinement were appropriate. [Chapter 8]

“The Justice Department faced enormous challenges as a result of the September 11 terrorist attacks, and its employees worked with dedication to meet these challenges,” Fine said. “The findings of our review should in no way diminish their work. However, while the chaotic situation and the uncertainties surrounding the detainees’ connections to terrorism explain some of the problems we found in our review, they do not explain them all,” Fine said.

In Chapter 9 of the report, the OIG offers 21 recommendations dealing with issues such as the need to develop uniform arrest and detainee classification policies, methods to improve information sharing among federal agencies on detainee issues, improving the FBI clearance process, clarifying procedures for processing detainee cases, revising BOP procedures for confining aliens arrested on immigration charges who are suspected of having ties to terrorism, and improving oversight of detainees housed in contract facilities.

The OIG completed its report on April 29, 2003, after which time it underwent an extensive review process within the Department, the FBI, and

other Department components prior to its public release. Today, the Inspector General is releasing the OIG's full report with only a few words or phrases that contain specific identifying information "redacted" (blacked out) because they are considered Law Enforcement Sensitive by the Department and the FBI.

**The full report is available on the OIG's website at
"www.usdoj.gov/oig" under the headings "What's New"
and "Special Reports."**