



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

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

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

March 2, 2007

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 tenth since enactment of the legislation in October 2001 – summarizes the OIG's Section 1001-related activities from July 1, 2006, through December 31, 2006.

## 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.<sup>1</sup>

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** provides an alternative mechanism to traditional audits and investigations to review Department programs and activities.
- **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.
- **Oversight and Review Division** blends the skills of attorneys, investigators, and program analysts to investigate or review high

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<sup>1</sup> The OIG can investigate allegations of misconduct by any Department employee, except for allegations of misconduct by attorneys (or investigators working under the direction of Department attorneys) acting in their capacity to litigate, investigate, or provide legal advice. See Pub. L. 107-273 § 308, 116 Stat. 1784 (Nov. 2, 2002).

profile or sensitive matters involving Department programs or employees.

- **Management and Planning Division** assists the OIG by providing services in the areas of planning, budget, finance, personnel, training, procurement, automated data processing, computer network communications, and general support.
- **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.<sup>2</sup> 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, four 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, the 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.<sup>3</sup> 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 (OIA) for appropriate 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

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

<sup>3</sup> 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 at the Department of State, Department of Defense, and Department of the Treasury. In addition, we have referred complainants to state and local 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, the complaint is discussed with the DOJ Civil Rights Division for possible prosecution. In some cases, the Civil Rights Division accepts the case and requests additional investigation by either the OIG or the FBI. In other cases, the Civil Rights Division declines prosecution.

### **A. Complaints Processed This Reporting Period**

From July 1, 2006, through December 31, 2006, the period covered by this report, the OIG processed **589** Section 1001-related complaints.<sup>4</sup>

Of these complaints, we concluded that **460** did not fall within the OIG's jurisdiction or did not warrant further investigation. Approximately **208** of these 460 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 **252** complaints raised allegations that, on their face, did not warrant investigation. For example, complaints in this category included frivolous allegations that FBI agents programmed the complainant with a human tracking system and that FBI agents and the President poisoned the complainant's food.

The remaining **129** of the 589 total complaints involved DOJ employees or components and included allegations that required further review. We determined that **122** complaints raised management issues that generally were not related to our Section 1001 duties, and we referred them to DOJ components for appropriate handling. Examples of complaints in this category included inmates' allegations about the general conditions at federal prisons or complaints that the FBI did not initiate an investigation into particular allegations.

**One** of the 159 complaints did not provide sufficient detail to make a determination whether an allegation of civil rights or civil liberties-related abuse occurred. We requested further information from this complainant but did not receive a response.

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<sup>4</sup> 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.

The OIG identified the **6** remaining complaints as matters that we believed warranted an investigation to determine if a Section 1001-related abuse occurred. **Three** of the matters are being investigated by the OIG, and **3** of the matters were referred to the BOP for investigation. We discuss the substance of these 6 complaints in the next section of this report.

None of the 589 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:

<b>Complaints processed:</b>	<b>589</b>
<b>Unrelated complaints:</b>	<b>460</b>
<b>Total complaints within OIG's jurisdiction warranting review:</b>	<b>129</b>
• <b>Management issues:</b>	<b>122</b>
• <b>OIG unsuccessfully sought further information:</b>	<b>1</b>
• <b>Possible Section 1001 matters warranting investigation:</b>	<b>6</b>

## **B. Section 1001 Cases This Reporting Period**

### **1. New matters**

During this reporting period, the OIG opened three new Section 1001 investigations. The OIG referred three other Section 1001-related complaints to the BOP for investigation and requested that the BOP provide the OIG with a copy of its investigative reports upon completion of these investigations. The three new matters opened by the OIG are:

- The OIG is investigating allegations from a BOP inmate that correctional officers came to his cell in a Special Housing Unit during a routine movement of the inmate to another cell and referred to the complainant and his cellmate as “camel jack and Saddam Hussein.” The inmate further alleged that when he asked the correction officers not to speak to him in that manner, they assaulted him. The complainant alleged that when he tried to file

a complaint with the BOP, he was told that an investigation could take up to 6 months and that during that time he would be placed in the general population where the word would get out that the inmate was a snitch. This OIG investigation is ongoing.

- The OIG investigated allegations from a BOP inmate that he was being mentally and physically abused by BOP personnel because of his religion and culture. Specifically, the inmate alleged that BOP staff spread a rumor that he was an Al Qaeda member; called him a terrorist and a radical Muslim in front of other inmates; placed him in the Special Housing Unit ten separate times without cause; refused to provide him with adequate medical treatment; questioned him about his convictions; and tampered with his mail. The OIG investigation did not substantiate any of the inmate's allegations.
- The OIG initiated an investigation based on allegations from a BOP inmate's mother that her son was assaulted by correctional officers while he was restrained. The inmate's mother further alleged that the assault was just one of a series of incidents with staff because of her son's Iranian ethnicity. The OIG interviewed the inmate, who stated that his mother misunderstood his conversation with her, and that he did not believe he was assaulted because of his ethnicity. Instead, the inmate stated that officers used undue force to subdue him during an incident at the prison. According to correctional officers interviewed by the OIG, the inmate became combative after refusing an order by a correctional officer, and officers used physical force to subdue the inmate. The OIG investigation did not substantiate that undue force was used or that the officers involved acted improperly.

The following complaints were referred to the BOP for investigation:

- An inmate alleged that he was unjustly placed in the Special Housing Unit for 25 days after he reported that he was harassed by another inmate. The inmate further alleged that he has been "mentally tortured" because he is Muslim and his name is Mohammad. The BOP investigation is ongoing.
- An inmate alleged that he is being harassed and discriminated against by BOP correctional officers because he is Muslim and of Pakistani origin. Specifically, the inmate alleged that his telephone privileges were suspended because of his language; he was placed in the Special Housing Unit without explanation; his non-English mail was delayed for up to 2 months; and he was forced to work at

his job for long periods, which did not leave him with enough time to practice his religion. This BOP investigation is ongoing.

- An inmate alleged that he was verbally abused by a BOP correctional officer and called a “terrorist.” He also claimed that when this correctional officer was on duty, his hot food tray was always served cold. The investigation is ongoing.

## **2. Investigations closed during this reporting period**

- The BOP investigated allegations from an inmate that a BOP employee called the inmate Osama bin Laden and suggested that he was going to post the inmate’s picture at the post office next to the pictures of other wanted terrorists. The BOP investigation found insufficient evidence to substantiate the allegations.
- The BOP investigated allegations made by a Muslim inmate that after his family members mistakenly left their personal identification cards at a BOP facility following a visit, BOP staff destroyed the cards. The Muslim inmate also alleged that he had been singled out for harassment and that his civil rights were being violated by the BOP not allowing him to meet with his attorney because he refused to submit to strip searches, a practice he claimed violated his Muslim beliefs. The BOP found insufficient evidence to substantiate the allegations.
- The BOP investigated an inmate’s allegations that a correctional officer refused to serve Muslim inmates their Ramadan meals and verbally abused them. The inmate also alleged that he was assaulted and threatened by a correctional officer. The BOP found insufficient evidence to substantiate the allegations.
- The BOP investigated allegations from a Muslim inmate that correctional officers told him he was going to receive the same treatment as Muslim prisoners in Iraq. The BOP found insufficient evidence to substantiate the allegations.

## **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. Using this approach, the OIG has initiated or continued several special reviews that relate to the OIG’s duties under Section 1001. In this section of the report, we also discuss a DOJ Office of Professional Responsibility review that was closed during this reporting period.



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

As directed by the USA Patriot Improvement and Reauthorization Act of 2005 (Public Law 109-177) (Patriot Reauthorization Act), the OIG initiated a review examining 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 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 directs 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 authorities 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 conducting this review, the OIG examined FBI investigative files, interviewed FBI and DOJ officials, visited several FBI field offices, and analyzed the FBI's use of these authorities in 2003-2005. The OIG is completing its reports on the FBI's use of national security letters and Section 215 orders. In March 2007, the OIG will provide the full report to Congress and an unclassified version of the report publicly.

## **B. Recommendations in the September 11 Detainee Report**

In June 2003, the OIG issued a report entitled, "The September 11 Detainees: A Review of the Treatment of Aliens Held on Immigration Charges in Connection with the Investigation of the September 11 Attacks." In that report, the OIG made 21 recommendations related to issues under the jurisdiction of the FBI, the BOP, and leadership offices at the DOJ, as well as immigration issues now under the jurisdiction of the DHS. As of this reporting period, 20 of the recommendations have been resolved. The one open recommendation calls for the Department and the DHS to enter into a memorandum of understanding (MOU) to formalize policies, responsibilities,

and procedures for managing a national emergency that involves alien detainees. After the OIG's issuance of the report, the DOJ and DHS agreed with the recommendation and began negotiating over language in the MOU to implement the recommendation. However, more than 3 years after the OIG made the recommendation and the DOJ and DHS agreed to implement the regulation, the MOU still has not been completed. As of January 2007, we were informed that discussions between the Department and the DHS over the language of this MOU remain ongoing.

### **C. September 2005 Shooting Incident Involving the FBI and Ojeda Rios**

In August 2006, the OIG issued a report examining the September 2005 shooting incident involving the FBI and long-time fugitive Filiberto Ojeda Rios, leader of a clandestine Puerto Rican pro-independence organization that claimed credit for violent crimes during the 1970s and 1980s. On September 23, 2005, FBI agents approached a residence in western Puerto Rico to arrest Ojeda. The operation resulted in an exchange of gunfire between Ojeda and the FBI in which one FBI agent was seriously wounded. The exchange was followed by a standoff during which FBI agents unsuccessfully tried to persuade Ojeda to surrender. Later, an FBI agent observed Ojeda with a gun in his hand and fired three shots, one of which struck Ojeda. Although several agents heard Ojeda cry out and fall, none entered the house until the next day, at which time FBI agents found Ojeda dead on the floor.

The FBI Director requested that the OIG conduct an investigation to determine the facts and circumstances of the Ojeda shooting incident and to make recommendations regarding what actions, if any, the FBI should take in connection with it.

The OIG concluded that the FBI agents' use of force in the Ojeda operation did not violate the Department's Deadly Force Policy, which states that Department law enforcement officers may use deadly force when the officer "has a reasonable belief that the subject of such force poses an imminent danger of death or serious physical injury to the officer or to another person." The OIG found that Ojeda became aware that the FBI was coming to arrest him, made preparations to resist arrest, and opened fire on the agents as they attempted to enter the residence and before any agents had discharged their weapons. The OIG concluded that once Ojeda began firing he posed an imminent danger to the agents, and the agents were justified in returning fire.

The OIG also determined that the FBI's cautious approach toward entering the residence after Ojeda was shot was motivated by considerations of agent safety, not by any desire to withhold medical treatment from Ojeda. The FBI's concern during this period was that Ojeda might not be incapacitated and there might be a second gunman inside the house because the arrest team

believed that more than one weapon had been fired at them during the initial gunfight. FBI Headquarters officials also were concerned that it would be difficult to detect improvised explosive devices inside the house at night. Moreover, the OIG found that the decision to delay entry until the next day likely had no impact on Ojeda's death. The forensic pathologist from the Puerto Rico Institute of Forensic Sciences who performed the autopsy estimated that Ojeda died from blood loss approximately 15 to 30 minutes after being shot.

However, the OIG report cited deficiencies in several aspects of the planning and execution of the attempted arrest. For example, the investigation determined that the decision to conduct an emergency daylight assault to arrest Ojeda was extremely dangerous and was not the best option available. The OIG concluded that a strategy of surrounding the residence and calling for Ojeda to surrender, with the option of using chemical agents such as tear gas to force Ojeda outside, would have been a safer and more effective strategy. The report made 10 recommendations intended to improve the planning and conduct of future FBI arrest operations, including ensuring the reconsideration of all relevant tactical options when circumstances change and ensuring that negotiations are integrated into tactical planning for operations in which a standoff is a foreseeable contingency.

The FBI responded to our recommendations in November 2006. The FBI's response indicates that the FBI is implementing measures to address concerns raised by the report. However, several responses did not address the recommendations with sufficient specificity or disagreed with our analysis of deficiencies we identified in the planning and execution of the Ojeda operation. The FBI also disagreed in full with one recommendation. We will continue to monitor the FBI's response to our recommendations.

#### **D. Review of the FBI's Investigation of Certain Domestic Advocacy Groups**

In June 2006, the OIG initiated a review to examine allegations that the FBI targeted domestic advocacy groups for scrutiny based solely upon their exercise of rights guaranteed under the First Amendment of the United States Constitution. The review is examining allegations regarding the FBI's investigation, and the predication for any such investigation, of groups such as the Thomas Merton Center, Greenpeace, and People for the Ethical Treatment of Animals (PETA). Our review of the domestic advocacy groups will be similar in focus to the OIG's April 2006 review of the FBI's investigation of potential protesters at the 2004 Democratic and Republican National Conventions.

## **E. Review of FBI Conduct Relating to Detainees in Military Facilities in Guantanamo Bay and Iraq**

The OIG is reviewing FBI employees' observations and actions regarding alleged abuse of detainees at Guantanamo Bay, Abu Ghraib prison, and other venues controlled by the U.S. military. The OIG is examining whether FBI employees participated in any incident of detainee abuse, whether FBI employees witnessed incidents of abuse, whether FBI employees reported any abuse, and how those reports were handled by the FBI.

In this review, the OIG has interviewed detainees, FBI employees, and military personnel at Guantanamo. In addition, the OIG has administered a detailed questionnaire to more than 1,000 FBI employees who served assignments at Guantanamo Bay, in Iraq, and in Afghanistan. The questionnaire requested information on what the FBI employees observed, whether they reported observations of concern, and how those reports were handled. The OIG received over 900 responses to its questionnaire. The OIG investigative team is in the process of drafting the report summarizing the results of the investigation.

## **F. FBI's Reporting of Possible Intelligence Violations to the President's Intelligence Oversight Board**

In the OIG's March 2006 Section 1001 report, we described our examination of the FBI's process for reporting possible violations involving intelligence activities to the Intelligence Oversight Board (IOB). The examination focused on fiscal years 2004 and 2005. As set forth in the last report, the FBI made 108 reports of possible violations to the IOB for fiscal years 2004 and 2005.

The FBI's reports to the IOB describe incidents that generally fell into one or more of the following three categories: (1) improper utilization of authorities under FISA; (2) failure to adhere to Attorney General Guidelines or implementing FBI policy; and (3) improper utilization of authorities involving National Security Letters. The matters reported to the IOB encompassed a broad range of intelligence activities used by the FBI, although most of the possible violations involved electronic surveillance.

The OIG is currently conducting a follow-up review of the FBI's handling of IOB matters for fiscal year 2006.

## **G. Material Witness Warrants**

As we described in previous reports, DOJ OPR was conducting an inquiry regarding the DOJ's use of material witness warrants. This review was initiated in response to complaints from the American Civil Liberties Union and

Human Rights Watch that the DOJ had abused material witness warrants. The two organizations detailed their complaints in a report in June 2005 entitled “Witness to Abuse: Human Rights Abuses under the Material Witness Law since September 11.” That report reviewed several material witness cases and a series of allegations that the material witness law had been misused to hold suspects in cases where there was insufficient evidence to charge them criminally; witnesses were not brought promptly before a judge, were denied counsel, or were not provided with the reason for their arrest; and that many judicial proceedings were improperly conducted in secret.

Based on the allegations in the report, DOJ OPR opened an inquiry regarding the allegations concerning 13 separate individuals and one group of 8 individuals detained together. According to DOJ OPR, some of these matters involved allegations that individuals were held for long periods of time on material witness warrants with no effort to obtain their testimony. Several of these individuals were later charged criminally or deported based on immigration violations. Other matters involved the alleged failure to bring individuals before a court within the required time frame and the failure to inform witnesses of the basis for their arrest. OPR recently reported to the OIG that its inquiry is complete and that based on the results of its investigation, OPR concluded that the material witness statute was not misused in any of the cases it reviewed.

#### **H. Review of the Department’s Involvement with the National Security Agency’s Terrorist Surveillance Program or Warrantless Surveillance Program**

The OIG has initiated a program review of the Department’s involvement with the National Security Agency (NSA) program known as the “terrorist surveillance program” or “warrantless surveillance program.” This review will examine the Department’s controls and use of information related to the program and the Department’s compliance with legal requirements governing the program.

#### **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 \$1,197,396 in personnel costs, \$4,419 in travel costs (for investigators to conduct interviews), and \$1,245 in miscellaneous costs, for a total of \$1,207,132 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.