



THE FEDERAL BUREAU OF INVESTIGATION'S TERRORIST WATCHLIST NOMINATION PRACTICES

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EXECUTIVE SUMMARY

The federal government's consolidated terrorist watchlist was created in March 2004 by merging previously separate watchlists that were once maintained by different agencies throughout the federal government.¹ The watchlist is managed by the Federal Bureau of Investigation (FBI), through its supervision of the Terrorist Screening Center (TSC). The watchlist is used by frontline screening personnel at U.S. points of entry and by federal, state, local, and tribal law enforcement officials.² The watchlist serves as a critical tool for these screening and law enforcement personnel by notifying the user of possible encounters with known or suspected terrorists and by providing instruction on how to respond to the encounter. Each day the watchlist is updated with new or revised biographical information on known or suspected terrorists gathered by U.S. intelligence and law enforcement agencies, including the FBI.

Within the FBI, submitting the name of a known or suspected terrorist to the consolidated terrorist watchlist is referred to as a watchlist nomination. In general, individuals who are subjects of ongoing FBI counterterrorism investigations are nominated for inclusion on the watchlist, including persons who are being preliminarily investigated to determine whether they have links to terrorism. In certain circumstances, FBI policy also allows for the nomination of an individual for whom the FBI does not have an open terrorism investigation.

Since the establishment of the watchlist in 2004, the FBI has nominated or processed the nominations for more than 68,000 known or

¹ On September 16, 2003, the President issued Homeland Security Presidential Directive 6 (HSPD-6), which mandated the development of the consolidated terrorist watchlist and required all federal law enforcement and intelligence agencies with terrorism information to share such information for purposes related to the watchlist. The consolidated terrorist watchlist is known as the Terrorist Screening Database (TSDB).

² The Terrorist Screening Center, which began operations in December 2003 and is managed by the FBI, was established to serve as the U.S. government's consolidation point for information about known or suspected international and domestic terrorists.

suspected terrorist identities.³ As of December 31, 2008, the consolidated terrorist watchlist contained more than 1.1 million known or suspected terrorist identities.⁴

Background

In March 2008, the Department of Justice Office of the Inspector General (OIG) issued an audit report that examined the terrorist watchlist nomination processes in use throughout the Department of Justice (DOJ).⁵ That audit, issued in conjunction with an inter-agency effort led by the OIG for the Office of the Director of National Intelligence, sought to examine the watchlist nomination procedures throughout the federal government's intelligence community. For its part, the DOJ OIG examined watchlist nomination policies and processes at several DOJ components, including the FBI. Overall, the OIG found that although other DOJ components shared terrorist-related information that they obtained, within DOJ only the FBI formally nominates known or suspected terrorists to the watchlist.

Our March 2008 audit found that the FBI had established criteria and quality controls to assist in the development of appropriate and accurate terrorist watchlist nominations. However, our audit found that initial watchlist nominations created by FBI field offices often contained inaccuracies or were incomplete, leading to delays in the inclusion of known or suspected terrorists on the watchlist. In addition, the audit determined that the FBI did not consistently update or remove watchlist records when appropriate. Finally, the audit determined that FBI field offices had, at

³ In 2005, the FBI began keeping statistics on the number of watchlist nominations it processed. Since 2005, the FBI has processed over 9,300 watchlist nominations related to opened FBI terrorism investigations. However, this number does not take into account records created prior to 2005, or an estimated 62,000 nominations processed by the FBI outside of the FBI's standard nomination process. The FBI is not certain how many nominations have been created through this non-standard process. Therefore, the actual number of individuals the FBI has nominated to the terrorist watchlist since its inception is unknown. Our best estimate is that the FBI has processed the nomination of between 68,000 and 130,000 known or suspected terrorist identities since 2003.

⁴ This number does not represent the number of individuals on the watchlist. One individual can have numerous records with each record providing information for a different identity the individual uses, such as aliases. The consolidated terrorist watchlist averages just over two records per individual watchlisted. The TSC estimated that, as of September 9, 2008, the total number of unique individuals on the watchlist was approximately 400,000.

⁵ U.S. Department of Justice Office of the Inspector General, *Audit of the U.S. Department of Justice Terrorist Watchlist Nomination Processes*, Audit Report 08-16 (March 2008).

times, bypassed some of the FBI's quality control mechanisms by excluding FBI headquarters and submitting watchlist nominations directly to the National Counterterrorism Center (NCTC).

The OIG's March 2008 audit report focused on the existence of overall watchlisting policies and processes within DOJ and made several recommendations to the FBI and other DOJ components for corrective action. The FBI agreed with our recommendations and began implementing corrective action. Our report also noted our intention to continue reviewing the FBI's watchlist nomination practices to further assess identified weaknesses and to determine the effect of these weaknesses. This audit continues our review of the FBI's watchlist practices and focuses specifically on watchlist nominations submitted by FBI field offices and headquarters divisions.

OIG Audit Approach

The objectives of this audit were to: (1) determine whether subjects of FBI terrorism investigations are appropriately and timely watchlisted and if these records are updated with new identifying information as required; (2) determine whether subjects of closed FBI terrorism investigations are removed from the consolidated terrorist watchlist in a timely manner when appropriate; and (3) examine the FBI's watchlist nomination practices for individuals that were not associated with current terrorism case designations.

To accomplish these objectives, we conducted over 100 interviews of employees and officials at FBI headquarters and FBI field offices as well as TSC and NCTC personnel who are involved in the processing of nominations to the consolidated terrorist watchlist. In addition, we reviewed DOJ and FBI policies and processes concerning FBI nominations to the terrorist watchlist and we performed tests of FBI watchlist nomination packages originating from three FBI field offices: Los Angeles, California; Miami, Florida; and Minneapolis, Minnesota.

In addition, we sampled 218 terrorism investigations that were either opened or closed by the three selected FBI field offices in fiscal years (FY) 2006, 2007, and the first half of FY 2008.⁶ For each sampled case, we reviewed the physical case file located at the FBI field office and analyzed the associated watchlist documentation at the Terrorist Review and Examination Unit (TREX), NCTC, and TSC to determine whether the

⁶ In our original sample, 2 of the 218 cases were included as both opened and closed terrorism cases. Therefore, we did not count these cases twice and tested a total sample of 216 cases.

nomination was submitted in accordance with FBI policy, updated as required, and when appropriate removed from the watchlist in a timely manner.⁷

We also sought to determine the number of individuals the FBI has nominated to the consolidated terrorist watchlist without having an open terrorism investigation, determine the process by which these subjects were nominated, and assess whether the nominations were made in compliance with FBI policy. Further, we tested the watchlist records for a sample of subjects whose watchlist records were not associated with current FBI terrorism case designations to determine whether FBI's nominations were appropriate and followed FBI policy.

Appendix I contains further description of our audit objectives, scope, and methodology.

OIG Results in Brief

We found that the FBI failed to nominate many subjects in the terrorism investigations that we sampled, did not nominate many others in a timely fashion, and did not update or remove watchlist records as required. Specifically, in 32 of the 216 (15 percent) terrorism investigations we reviewed, 35 subjects of these investigations were not nominated to the consolidated terrorist watchlist, contrary to FBI policy.⁸ We also found that 78 percent of the initial watchlist nominations we reviewed were not processed in established FBI timeframes.

Additionally, in 67 percent of the cases that we reviewed in which a watchlist record modification was necessary, we determined that the FBI case agent primarily assigned to the case failed to modify the watchlist record when new identifying information was obtained during the course of the investigation, as required by FBI policy. Further, in 8 percent of the closed cases we reviewed, we found that the FBI failed to remove subjects from the watchlist as required by FBI policy.⁹ Finally, in 72 percent of the

⁷ TREX is the FBI headquarters unit that is responsible for ensuring that all subjects of FBI international and domestic terrorism investigations are appropriately nominated to the consolidated terrorist watchlist.

⁸ Another government agency had watchlisted 1 of these 35 subjects.

⁹ One of these subjects was also watchlisted by another government agency.

closed cases reviewed, the FBI failed to remove the subject in a timely manner.¹⁰

Because the consolidated terrorist watchlist is used by government frontline screening personnel to determine how to respond when a known or suspected terrorist requests entry into the United States, the failure to place appropriate individuals on the watchlist, or the failure to place them on the watchlist in a timely manner, increases the risk that these individuals are able to enter and move freely about the country. In fact, we found that several persons with names matching the subjects who were not watchlisted or who were untimely watchlisted attempted to cross U.S. borders during the period the names were not watchlisted by the FBI.

FBI policy allows for the nomination of known or suspected international terrorists for whom the FBI does not have a terrorism investigation. All such nominations must be submitted through the Counterterrorism Division's (CTD) International Terrorism Operations Section (ITOS).¹¹ ITOS is then responsible for forwarding the nomination to NCTC. However, we found the controls over these types of nominations to be weak or nonexistent.

For example, we found that international terrorist nominations submitted by the FBI's Criminal Justice Information Services (CJIS) were not reviewed by ITOS personnel, as required by FBI policy, before they were submitted to NCTC. Instead, CJIS submitted nominations directly to NCTC, which forwarded the nominations to the TSC. Further, CJIS had no formal or active process to update or remove these watchlist records, and these records could remain on the watchlist for an indefinite period of time. We believe this is problematic because many of the nominations submitted directly to NCTC by CJIS were processed with little or no information explaining why the subject may have a nexus to terrorism (also known as "derogatory information").

We also found that between February 14, 2006, and April 9, 2008, the FBI nominated at least 73 individuals through the use of Information

¹⁰ Our reference to the sample of closed cases reviewed is limited to closed cases in which there was a nomination and to cases that had not been transferred and acted upon by another field office. Some cases in our sample were closed and because there had never been a watchlist nomination, there also was no watchlist removal.

¹¹ ITOS is responsible for program management of FBI international terrorism investigations.

Intelligence Reports (IIR).¹² Some of these nominations were based on information provided to FBI sources overseas. At least one of these nominations was an attempt to place a subject of a closed FBI investigation back on the watchlist, which is contrary to FBI policy. In addition, we found that the FBI does not have a process to modify or remove from the watchlist those subjects who were nominated via IIRs.

Finally, in February 2008, in response to our data request, we were provided a list of all terrorist identities sourced to the FBI in the consolidated terrorist watchlist. This list contained a total of 68,669 known or suspected terrorist identities. In analyzing this list, we found that 35 percent of these identities were associated with FBI cases that did not contain current international terrorism or domestic terrorism designations. Rather, many of these watchlisted records were associated with outdated terrorism case classifications or case classifications unrelated to terrorism and had been nominated by various FBI field offices and headquarters units. Our review of a sample of these nominations revealed that many of the records were for individuals who had originally been appropriately watchlisted but should have been removed from the watchlist after the case had been closed. In one instance, we identified a former subject who remained watchlisted for nearly 5 years after the case had been closed.

In our report, we make 16 recommendations relating to the FBI's management of its nominations to the consolidated terrorist watchlist. These recommendations include establishing timeframe requirements for headquarters units to process watchlist nominations, modifications, and removals; creation of a process to modify and remove known or suspected terrorists placed on the watchlist by CJIS and Legal Attachés; and re-evaluation of the watchlist records that are not sourced to a current terrorism case.

The remaining sections of this Executive Summary summarize in more detail our audit findings. Our report, along with the appendices, contains detailed information on the full results of our review of the FBI's watchlist nomination practices.

Overview of the FBI Watchlist Nomination Process

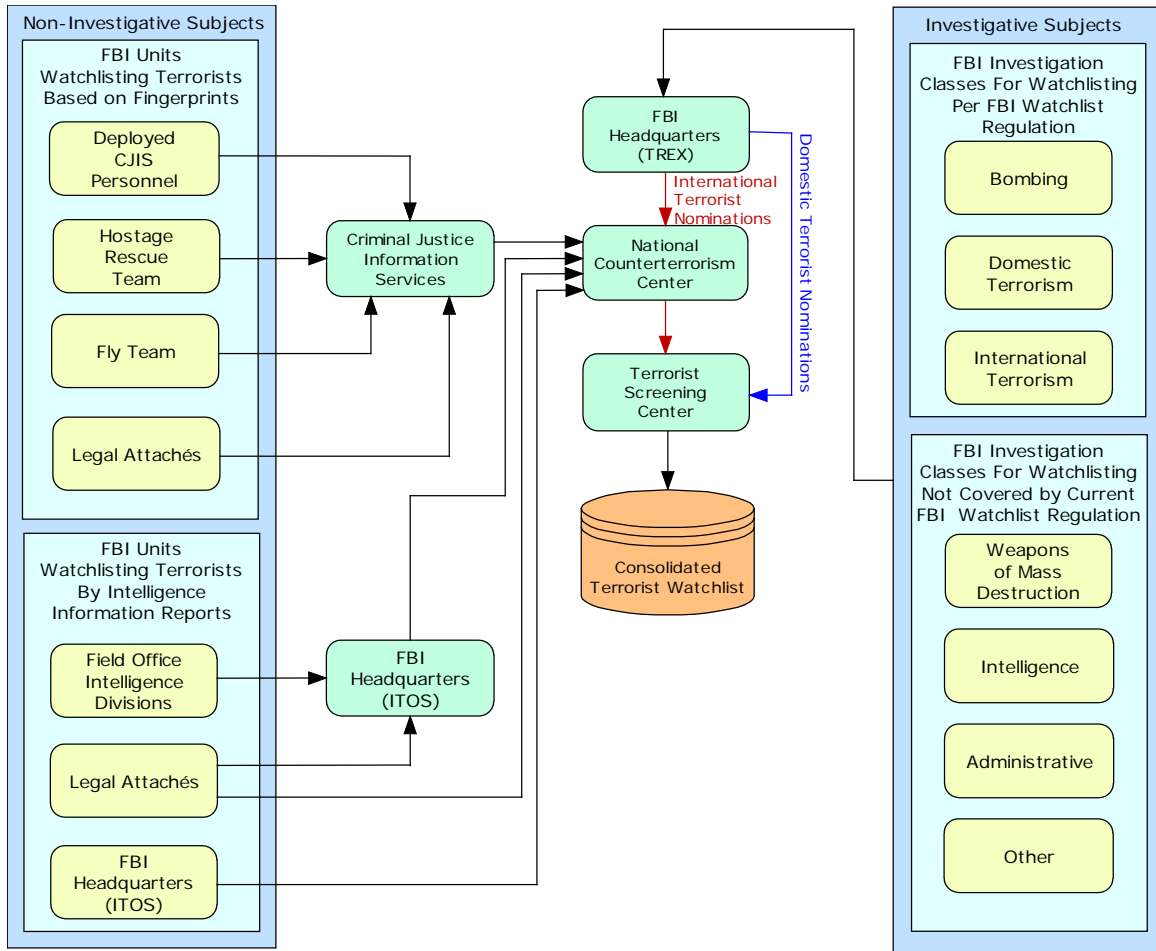
FBI policy requires that all subjects of international terrorism investigations be nominated to the consolidated terrorist watchlist. It also requires that any known or suspected domestic terrorist who is the subject of a

¹² IIRs are electronic messages that the FBI uses to share with other agencies intelligence that is obtained during operations.

full investigation be nominated to the watchlist.¹³ Under certain circumstances, FBI policy also allows for the nomination of known or suspected terrorists for whom the FBI does not have an open terrorism investigation.

The following graphic illustrates the various practices used by the FBI to nominate a known or suspected terrorist to the consolidated terrorist watchlist. Each practice is described in greater detail below.

FBI Watchlist Nomination Practices



Source: OIG analysis of the FBI nomination processes

Nomination Process for Subjects of FBI Terrorism Investigations

Whenever an FBI field office opens a preliminary or full international terrorism investigation or a full domestic terrorism investigation, the field

¹³ According to FBI policy, known or suspected domestic terrorists who are subjects of preliminary investigations may be nominated to the watchlist at the discretion of the responsible FBI field office.

office must notify TREX within 10 working days. TREX is the FBI headquarters' unit that serves as the processing unit for nearly all watchlist nominations resulting from FBI terrorism investigations. In order for TREX to process an initial watchlist nomination, the FBI field office must electronically submit copies of the opening electronic communication document (which formally opens the case within the FBI), the Notice of Initiation (which formally notifies DOJ of the case opening), and a watchlist nomination form.¹⁴ When these forms are received, TREX reviews each nomination for completeness and accuracy. When an *international* terrorist nomination is error-free, it is approved by TREX and forwarded to the NCTC within 24 hours of receipt.¹⁵ When TREX approves an error-free *domestic* terrorist nomination, these nominations are sent directly to the TSC.¹⁶

Upon receipt of the international terrorist nomination from TREX, the NCTC performs its own review of the nomination. Assuming there are no problems with the nomination, the NCTC enters the nomination into its Terrorist Identities Datamart Environment (TIDE) database within 24 hours of receipt from TREX.¹⁷ Each weeknight and twice on Friday, the data in TIDE is electronically exported to the TSC, where a final quality review of the nomination is conducted. Again, if there are no errors in the international terrorism nominations sent by the NCTC and the domestic terrorism nominations sent by TREX, the TSC enters the nominations into the consolidated terrorist watchlist within 24 hours of receipt. The TSC conducts a nightly electronic export of the consolidated terrorist watchlist to the

¹⁴ The same form is used for the initial nomination of the known or suspected terrorist to the watchlist, modification of the watchlist record, and removal of the watchlist record. Throughout this report, we refer to this multiple-use form as the nomination, modification, or removal form.

¹⁵ FBI watchlist submissions to NCTC are sent to a branch that is staffed by FBI personnel.

¹⁶ The NCTC is not involved in this process because its Terrorist Identities Datamart Environment (TIDE) database is prohibited from containing purely domestic terrorism information.

¹⁷ In August 2004, the President established the National Counterterrorism Center (NCTC) to serve as the primary organization in the U.S. government for integrating and analyzing all intelligence pertaining to terrorism and counterterrorism. The TIDE database is the U.S. government's central repository of information on international terrorist identities. The TIDE database includes, to the extent permitted by law, all information the U.S. government possesses related to the identities of individuals known or suspected to be or have been involved in activities constituting, in preparation for, in aid of, or related to terrorism, with the exception of purely domestic terrorism information.

various screening databases used by the U.S. government and some of its allies.¹⁸

Modification of Watchlist Records for Subjects of FBI Investigations

The FBI's watchlisting policy states that whenever a case agent obtains new identifying information on an international or domestic terrorism subject, the case agent must modify the associated watchlist record to reflect the newly acquired information. For example, if the case agent learns of a new passport number being used by the subject, that new information must be added to the watchlist record because such information can assist frontline screening personnel during an encounter with an individual that matches a watchlist record. In addition, new information can assist in preventing misidentification of individuals with the same or a similar name.

The process for submitting a watchlist record modification is essentially the same as the process for submitting an initial nomination. To modify a watchlist record, the responsible case agent must prepare and submit a modification form electronically to TRES. TRES then reviews and approves the modified nomination form and forwards international record modifications to the NCTC for processing, which in turn exports the new information to the TSC. Domestic terrorist watchlist record modifications are sent directly to the TSC. According to the FBI, it processed 1,225 watchlist record modifications in FY 2006; 1,475 in FY 2007; and 1,728 in FY 2008.

Removal of Watchlist Records for Subjects of FBI Investigations

When the FBI closes a terrorism investigation, FBI policy generally requires that the subject of the closed investigation be removed from the consolidated terrorist watchlist. However, in limited circumstances the FBI may leave a subject on the watchlist after the case has closed. For example, a subject may remain watchlisted if the individual is known to have left the United States and the FBI believes that the person may pose a continuing threat to national security.

¹⁸ The consolidated terrorist watchlist exports to downstream screening databases including the Department of Homeland Security's (DHS) Interagency Border Inspection System (IBIS); the Department of State's Consular Lookout and Support System (CLASS) passport and visa; DHS's Transportation Safety Administration's (TSA) No Fly and Selectee lists; the FBI's Violent Gang and Terrorist Organization File (VGTOF), and select foreign government watchlists. See Appendix II for further information regarding these screening databases.

Similar to the watchlist record modification process, the removal process is essentially the same as the initial nomination process. To process a removal, the responsible case agent must prepare and submit a removal form to TREX, which then reviews the form and forwards it to the NCTC branch staffed by FBI personnel for processing. Once NCTC processes the removal it is forwarded to the TSC and exported to the downstream databases. According to FBI headquarters, the FBI processed 2,579 watchlist record removals in FY 2006; 3,063 in FY 2007; and 2,488 in FY 2008.

Nomination Process for Non-investigative Subjects

In certain circumstances, FBI policy allows for the nomination of an individual for whom the FBI does not have an open terrorism investigation. FBI policy requires that, in order to process such a nomination, ITOS must be provided a detailed communication indicating the basis for the nomination. ITOS is then required to review the information and, if it agrees, prepare its own communication to the NCTC nominating the individual to the watchlist. For example, the FBI may obtain information about a known or suspected terrorist residing outside of the United States for whom it believes watchlisting is warranted, but for whom it has no open terrorism investigation because there is no known nexus to the United States.

Subjects Not Watchlisted

In total, we reviewed 216 terrorism investigations that were either opened or closed in FYs 2006, 2007, and the first half of FY 2008.¹⁹ In 15 percent of these cases, we found that, contrary to FBI policy, the FBI failed to nominate the subject or subjects of the case to the consolidated terrorist watchlist.²⁰ The length of time these subjects remained not watchlisted varied greatly. One case was opened then closed 33 days later

¹⁹ In our original sample, 2 of the 218 cases were included as both opened and closed terrorism cases. Therefore, we did not count these cases twice and tested a total sample of 216 cases.

²⁰ When we found during our preliminary review of these terrorism investigations that a subject had not been nominated to the watchlist, we promptly informed FBI headquarters officials of the finding so they could take appropriate action.

without the subject being nominated. In another case the subject was not nominated in an investigation that was open for almost 4 years.²¹

In at least three cases in which the subject was not watchlisted, individuals with names matching the subjects traveled into the United States during the period the subjects were not watchlisted by the FBI.²² At the time these individuals traveled, two of the subjects had no watchlist record at all. If these two subjects had been watchlisted by the FBI, screening personnel would have received a notification to contact the TSC, which could have provided a reason for frontline personnel to perform additional screening, which may have lead to the collection of information useful to U.S. intelligence and investigative efforts.

In each instance where an FBI field office failed to nominate a subject to the watchlist, we sought to determine the specific reasons for the omissions. In general, FBI case agents we interviewed understood the requirement to nominate international terrorism subjects.²³ However, we found that many of the agents assigned to domestic terrorism investigations were unaware of the watchlisting requirement for subjects of full domestic terrorism investigations. In other instances, we were informed by case agents that they did not have sufficient information to nominate their subjects, although our review of the case files suggested otherwise. In another instance, one case agent said that he simply forgot to do the paperwork. Other agents stated that because of their inexperience in counterterrorism and lack of training on the nomination process they did not fully understand the nomination process when the case was opened.

We believe that the FBI's failure to consistently nominate subjects of international and domestic terrorism investigations to the terrorist watchlist could pose a risk to national security. The failure to nominate terrorism subjects can also lead to missed opportunities in gathering important intelligence, and it can place front-line law enforcement and screening personnel at increased risk. Therefore, we recommend that the FBI strengthen existing internal control mechanisms to ensure that nominations are consistently and timely submitted by the field, implement mandatory

²¹ Our calculation of the number of days the subject should have been watchlisted is based on a January 2002 FBI internal communication that required the watchlisting of terrorism investigation subjects. See Appendix I for further explanation of our methodology and Appendix III for a timeline of events related to the FBI watchlist process.

²² One of these subjects was watchlisted by another government agency.

²³ We interviewed FBI Special Agents and non-FBI law enforcement personnel assigned to FBI-led Joint Terrorism Task Forces and responsible for FBI terrorism investigations. We collectively refer to this group of individuals as "case agents."

watchlist refresher training, and require counterterrorism supervisors to assess the watchlisting status for terrorism subjects during case file reviews.

Untimely Watchlist Nominations

During the time period covered by our review, FBI field offices were required to submit all initial watchlist nominations to TREX within 10 working days of opening a case.²⁴ The only exception to this rule is for nominations that are to be included on the TSA No Fly list. According to FBI policy, these No Fly list nominations must be submitted to TREX within 24 hours of the case initiation.

Once a nomination is submitted by a field office, officials at TREX, NCTC, and TSC said their respective processing times should not exceed 24 hours from receipt of the nomination.

To determine whether the FBI was submitting timely watchlist nominations, we reviewed 95 FBI terrorism investigations opened by the FBI field offices in Los Angeles, California; Miami, Florida; and Minneapolis, Minnesota during FYs 2006, 2007, and the first half of FY 2008.²⁵ For these 95 investigations, we sought to determine whether the associated nomination was sent to TREX within 10 working days of the case initiation, as required by FBI policy.

In instances where the subject was being nominated to the No Fly list, we sought to determine whether the subject was nominated by the field office within 24 hours, as required by FBI policy. We then reviewed documentation at TREX, NCTC, and TSC to determine whether they processed the nominations within their respective 24-hour timeframes.

In sum, we found that in 78 percent of these cases (74 of 95) the subjects were nominated to the watchlist in an untimely manner. On average, it took 42 days to complete the nomination process for these subjects.

²⁴ In August 2008, the FBI issued an internal communication stating that the field offices should nominate known or suspected terrorists within 10 days of opening a case. The prior policy specified 10 *working* days.

²⁵ We selected 110 terrorism investigations opened during FYs 2006, 2007, and the first half of FY 2008. However, the FBI failed to nominate to the watchlist subjects of some of these terrorism investigations as required by FBI policy. Therefore, we eliminated the 15 investigations for which there were no nominations, and we tested the timeliness of watchlist nominations in the remaining 95 investigations.

In examining the FBI's untimely watchlist nominations, we also attempted to determine if there was a particular step in the process that caused the majority of the delays. We found that significant delays occurred at each level. Delays in 11 of the 74 untimely nominations were delayed solely by the field offices, while 34 other cases were delayed by FBI headquarters only. These 34 cases generally included processing delays at TREX, the NCTC branch staffed by FBI personnel, or both of these offices. Finally, we found processing delays in both the field and one or more FBI headquarters units in the remaining 29 of the 74 cases.

We also determined that 9 persons with names matching the untimely watchlisted subjects attempted to cross a U.S. border at least 10 times during the period the subjects were not watchlisted by the FBI.²⁶ At the time these individuals traveled, eight of the subjects had no record in the consolidated terrorist watchlist.²⁷ If these subjects had been timely watchlisted by the FBI, screening personnel would have received a notification to contact the TSC, which could have provided a reason for frontline personnel to perform additional screening, detain the subject, or collect information useful to U.S. intelligence and investigative efforts.²⁸

As with the cases where the FBI failed to nominate subjects to the consolidated terrorist watchlist, we believe there is a national security risk when nominations are not timely submitted. Based upon the information we obtained from FBI personnel and our review of each of these case files, we believe there is a significant need to provide regular refresher training for all FBI field personnel on the importance of the terrorist watchlist and the

²⁶ Although we determined that the FBI was untimely in its nomination of these nine subjects to the consolidated terrorist watchlist, the FBI stated that three of these subjects were included in the FBI's VGTOF database prior to their travel. According to FBI officials, the potential threat posed by not including these individuals on the watchlist in a timely way was partly mitigated due to their inclusion in VGTOF. FBI personnel stated that a subject's inclusion in VGTOF would have lead to additional scrutiny during encounters that used VGTOF to screen individuals. However, because VGTOF is only one of several downstream databases fed by the consolidated terrorist watchlist, not including the subject on the watchlist could result in no screening of the individual. For example, encounters where downstream databases other than VGTOF are used would not result in screening personnel being alerted that the subject had been identified as a known or suspected terrorist.

²⁷ One of these subjects was watchlisted by another government agency.

²⁸ The information in the Treasury Enforcement Communications System (TECS) database showed that some of these subjects were screened when they traveled to the United States. However, it was not always apparent why they were screened. The screening may have resulted from another agency's terrorist record on the subject, random selection, or another reason, such as the subject displaying erratic behavior.

nomination process. Our findings also suggest a need for greater oversight of the initial nomination submissions in the field and at headquarters.

One TREX official estimated that 70 percent of the initial nominations submitted by the field offices contained errors. This official suggested that many of the delays that appeared to be occurring in TREX may actually be due to errors by the field offices that required correction and resubmission. While we have no reason to doubt that a portion of nominations require correction and resubmission by the field offices, TREX did not always have documentation supporting this assertion.

At the conclusion of our audit, FBI officials remarked to us that the 24-hour standard processing time at TREX was unrealistic. We were informed that TREX has recently increased its quality assurance work related to watchlist nominations and, as a result, the amount of time that the unit needs to process a nomination has grown. We believe that the quality of watchlist records is critical. However, we believe that the timeliness of records being added to the watchlist is also essential. Therefore, we believe that the FBI needs to evaluate the overall nomination process, determine the total amount of time that is needed and can be afforded to this process, and determine how much time should be allocated to each phase of the process.

Modifications to FBI Watchlist Records

According to FBI policy, the case agent is responsible for updating watchlist records associated with their investigations any time new identifying information is discovered. To process a watchlist record modification, the case agent must prepare a watchlist nomination form for the subject and mark the form as a modification. The case agent should also prepare an electronic communication explaining the new identifying information that triggered the modification. The nomination form and the electronic communication are submitted electronically to TREX in the same manner as initial nominations. However, unlike initial nominations, FBI policy does not identify timeliness requirements for submission of modifications to watchlist records.

To determine whether FBI field offices were preparing and submitting watchlist record modifications when appropriate, we reviewed 56 open cases in which the subject had already been watchlisted.²⁹ In 12 of the 56 cases, we found at least one government-issued identifier that was discovered by

²⁹ We limited our review of these case files to government-issued identifying information (such as passport numbers) that was discovered by the case agent after the initial nomination was submitted.

the case agent after the submission of the initial nomination. However, in 8 of these 12 cases (67 percent), the case agent failed to submit watchlist record modifications related to this newly discovered information.

During our fieldwork, we interviewed several FBI field personnel about their understanding of the watchlist nomination modification policy. Generally, we found that modification forms were not routinely submitted because case agents were uncertain of the type of information that required a modification. While most agents we spoke with recognized and understood their responsibility in the nomination process, many of them were unclear about the process as a whole. For example, many agents did not realize that the watchlist feeds several downstream databases used by other segments of the law enforcement community. Therefore, these agents did not fully understand how their discovery of a new passport number could greatly assist screening personnel who use the watchlist when attempting to confirm the identity of a known or suspected terrorist during an encounter.

We believe that FBI field offices' frequent failure to modify watchlist records indicates a problem with training on and understanding of the importance of the watchlist process. We believe that if case agents had a better understanding of the overall process and the investigative benefits that modifications to the watchlist can provide, they would be more likely to submit record modifications as required. We also believe that the implementation of a timeliness requirement would increase the number of appropriate modifications submitted by field offices.

FBI Watchlist Record Removal Process

FBI policy generally requires that subjects of closed terrorism investigations be removed from the consolidated terrorist watchlist.³⁰ The process of removing subjects from the watchlist is essentially the same as the initial nomination process. For both international and domestic terrorist removals, the case agent must submit the removal form with the closing electronic communication directly to TREX. TREX then forwards the removal request for international terrorism cases to the NCTC branch staffed by FBI personnel and to TSC for domestic terrorism cases. According to officials at TREX, NCTC, and TSC, assuming there are no problems with or errors in the removal documentation, these entities should complete their portion of the removal process within 24 hours.

³⁰ In limited circumstances, FBI policy allows for the continued watchlisting of subjects of closed full international terrorism investigations if the subject is believed to pose a continuing threat to national security. However, according to FBI policy, all domestic terrorism subjects and subjects of international terrorism preliminary investigations must be removed from the watchlist upon closure of the case.

During the time period covered by our review, the FBI did not have a timeliness requirement for the field offices' submission of watchlist removal forms to TRES. Therefore, in determining whether a watchlist removal was timely, we applied the 10 working day requirement that was in effect at the time of our review for initial watchlist nominations.³¹

Untimely Removals

We reviewed a sample of 85 cases that were closed by the three selected field offices in FYs 2006, 2007, and the first half of FY 2008 to determine whether the FBI removed the subjects from the watchlist when required and in a timely manner. Overall, we found that only 17 of these subjects were justifiably retained on the watchlist or met FBI removal standards. In seven other cases the subjects still remained on the watchlist, contrary to FBI policy. These are discussed in greater detail in the following section. In the remaining 61 cases the subjects were removed but in an untimely manner. In these 61 cases, we found that it took, on average, 60 days to remove the subjects from the watchlist.

Through our discussions with FBI headquarters and field personnel, we found that confusion existed as to when a watchlist removal form should be submitted to TRES. Some FBI personnel believed that they were required to wait for FBI headquarters to approve the case closure before submitting the watchlist removal form to TRES. Other FBI personnel believed that they were required to submit the removal form to TRES concurrently with their closure request to FBI headquarters. However, these agents also recognized a potential problem in that headquarters could deny the request for closure after TRES began the process of removing the subject from the watchlist. This is especially problematic in cases where FBI headquarters takes significant periods of time to review a closure request. FBI policy appears to require field offices to submit removal forms after ITOS has approved case closure. However, many FBI managers and personnel we interviewed did not describe the process this way, and other FBI documents are not clear on how the process should work. Considering the uncertainty that exists and the ramifications of the significant time that can elapse during the ITOS approval phase, we believe that the FBI should reexamine its watchlisting policy and practices during the closure request process to ensure that they are clear and appropriate.

³¹ In August 2008, the FBI issued a new policy that required watchlist removal forms to be submitted by field offices within 10 days after the closing communication was prepared.

Overall, our review of these untimely removals showed that 5 of the 61 were delayed in the field office, while 30 were delayed in headquarters. We found processing delays in both the field office and one or more headquarters units in the remaining 26 cases.

We also found that, as a result of these untimely removals, 9 of these individuals whose names should have been removed were encountered a total of 13 times during the time period they remained unnecessarily watchlisted by the FBI.³² These 13 encounters resulted in higher levels of scrutiny during the screening process. In the encounters related to travel, delays occurred in at least six instances. In addition, we were able to confirm that at least one individual was misidentified as one of these former subjects. Four of the subjects who were delayed were U.S. persons.

Through our discussions with FBI field office management and staff and our review of case files, we found that field personnel generally understood the requirement to remove the former subjects from the watchlist when their investigations were closed. However, during the time period of our review, the FBI issued no specific timeliness requirement for the removal of watchlist records. Although some case agents said that they normally prepared their removal form concurrently with their other closing documentation, we found that others did not treat the removal as a high priority. We are also concerned that the FBI does not have a policy regarding the update or removal of watchlist records for subjects that justifiably remained watchlisted after case closure. Because the underlying case is closed, these subjects potentially could remain watchlisted indefinitely. Accordingly, we recommend that the FBI develop a policy requiring a periodic review of such records to ensure that the watchlisting of the subject continues to be justified.

As with watchlist record modifications, we also found a general lack of understanding among field personnel of the entire watchlisting process. We believe that mandatory refresher training on the nomination and removal process would help many of these agents understand the importance of timely removals and how timely adherence to the removal process could also significantly improve the efficiency and effectiveness of the watchlist. We also believe that the FBI's recent action in requiring that watchlist removal forms be submitted to TRES within 10 days of the closing

³² Not every encounter involves an actual delay of the watchlisted individual. Some individuals are encountered and screened without their knowledge (the screening is behind the scenes), such as when individuals submit a visa application. Other encounters involve an actual exchange between a screener and a traveler that may delay the travel of the individual.

communications should help ensure that case agents understand the importance of promptly removing former subjects from the watchlist.

Subjects Remaining on the Watchlist

In limited circumstances, FBI policy allows for the continued watchlisting of subjects of closed full *international* terrorism investigations if, for example, the subject is known to have left the country and continues to pose a threat to national security. However, FBI policy requires that all domestic terrorism subjects and subjects of international terrorism preliminary investigations be removed from the watchlist upon closure of the case.

Overall, we found that in 5 of the 85 closed cases we reviewed the subjects were left on the watchlist without the required justification. During our review the FBI agreed these subjects should have been removed. Additionally, we found two subjects of closed cases in which the case agent had justified keeping the subject on the watchlist.³³ However, the closed cases were preliminary investigations and therefore FBI policy requires that the subjects be removed from the watchlist.

Transfer Cases

FBI policy requires that when a terrorism subject moves within the United States to an area outside of the original field office's geographic jurisdiction, that field office should transfer the case to the new field office with jurisdiction. During our review of the removal process for closed terrorism investigations we became aware of an issue regarding such "transfer cases." Although FBI policy does not set timeliness requirements for the transfer of cases, we found that two out of the five transfer cases we reviewed were not acted upon by the receiving field office for 361 and 307 days, respectively. In each case, the subjects had been watchlisted, although there was no activity in the investigation. We recommend that the FBI review its transfer policy to ensure that terrorism investigations are being transferred in an efficient and timely manner.

Non-investigative Subjects

In addition to the watchlist nomination process for its terrorism investigation subjects, the FBI uses other processes to nominate to the watchlist individuals who are not the subjects of FBI terrorism investigations. We found that the internal controls over these other processes are weak or

³³ One of these subjects was also watchlisted by another government agency.

nonexistent. As a result, numerous watchlist records nominated through these processes are not subjected to adequate initial review, periodically confirmed, or examined for potential removal.

In total, more than 62,000 watchlist records have been created using the FBI's processes for nominating individuals who are not being investigated for terrorism. Additionally, we found almost 24,000 FBI watchlist records that were based on an FBI investigation but not sourced to a current terrorism case classification. Many such watchlist records that we reviewed were based on cases that had been closed years ago and should have been removed at that time.

Nomination of Military Detainees

According to FBI officials, shortly after the initial United States invasion of Afghanistan in late 2001, the FBI decided to deploy Special Agents to Afghanistan in an effort to collect fingerprints and other identifying information from known or suspected terrorists operating inside Afghanistan and attempting to flee Afghanistan. Due to the initial success of the program and the issuance of directives by the Attorney General, the FBI's coordination with the U.S. Department of Defense (DOD) expanded, and CJIS began sending larger FBI teams to Afghanistan, and later to Iraq, to collect fingerprint data for known or suspected terrorists processed by the U.S. military.³⁴ The FBI also deployed its Hostage Rescue Teams (HRT) and Fly Team & Military Detention Unit (fly team) personnel to Afghanistan and Iraq.³⁵ These highly specialized units were embedded with U.S. military units in order to lend their expertise in evidence gathering and crime scene processing.

In total, these FBI deployments resulted in the collection of thousands of fingerprints of military detainees in Afghanistan and Iraq. Between 2002 and 2004, all of the fingerprints gathered through these initiatives were processed by CJIS and entered into the FBI's Integrated Automated

³⁴ CJIS was established in February 1992 to serve as the central repository for criminal justice information in the FBI. Among its many responsibilities, CJIS is responsible for the management of the FBI's VGTOF, IAFIS, and other databases.

³⁵ The FBI's HRT are full time, national-level tactical teams. The mission of HRT is to deploy to any location within 4 hours and conduct a successful rescue of U. S. persons and others who may be held illegally by a hostile force, either terrorist or criminal in nature. The FBI fly teams are small, specially trained groups of terrorism first responders, including agents and analysts based at FBI headquarters, that can be quickly deployed anywhere in the world.

Fingerprint Identification System (IAFIS).³⁶ Once the NCTC began its operations in 2004, all of the biographical information associated with these fingerprints was shared with the NCTC for watchlisting purposes.

This process changed in 2004 when the DOD implemented its own biometric database called the Automated Biometric Identification System (ABIS). We were informed that because of the FBI's expertise with biometrics, the FBI worked closely with the DOD in the development of ABIS, and ultimately the two agencies agreed to make ABIS interoperable with IAFIS. ABIS is housed at CJIS. Once ABIS was operational, the DOD began entering the biometric information for its detainees into ABIS and flagging those who were believed to be known or suspected terrorists. Those individuals who are flagged by the DOD as terrorists are now fed into the IAFIS database.

Following the implementation of ABIS in 2004, CJIS analysts shared relevant information on known or suspected terrorists that they receive through the ABIS-IAFIS interoperability with NCTC for watchlisting purposes. This sharing was still occurring when we contacted CJIS in August 2008 as part of this review. One CJIS official estimated that since the FBI began collecting fingerprints in Afghanistan in 2002, they had nominated approximately 50,000 military detainees to the watchlist.

However, this process used to nominate these individuals is not specifically addressed in the FBI's watchlisting policies. To obtain a better understanding of the processes that had been used since 2002, we interviewed officials at the CJIS and NCTC. According to CJIS officials, they did not consider the FBI to be the nominating agency for these military detainee records. Instead, they viewed CJIS as a conduit for DOD's nominations to the watchlist. These CJIS officials emphasized that the FBI was not reviewing each nomination and that the determination that these individuals as known or suspected terrorists was being made by the DOD using DOD criteria. CJIS officials stated that they were simply forwarding the information in accordance with Attorney General Directives.

However, when we inquired as to why the DOD did not submit these nominations on its own, CJIS officials could not provide a clear answer. In fact, one CJIS official remarked that during his relatively short tenure at CJIS he questioned the reasoning behind CJIS continuing to serve as a conduit for DOD nominations. Further, NCTC officials said that they were

³⁶ IAFIS contains the fingerprints and corresponding criminal history information for more than 55 million subjects. The fingerprints and corresponding criminal history information are submitted voluntarily by state, local, and federal law enforcement agencies.

concerned about the lack of information that accompanied these nominations. NCTC officials also expressed concern over the “ownership” of these records.

Following our inquiries into this matter, CJIS informed NCTC on October 23, 2008, that CJIS and DOD had met and agreed that DOD would process its own nomination records. CJIS also stated that the FBI would review all previous nominations to ensure that proper documentation had been completed and FBI procedures were followed. Further, CJIS indicated that existing records would be modified to appropriately reflect DOD ownership.

Hostage Rescue and Fly Team Nominations

According to FBI officials, the FBI continues to deploy HRT and fly teams throughout the world. In addition to being embedded with U.S. military units in Iraq and Afghanistan, these teams are also deployed to areas such as the Horn of Africa, South America, and the Philippines. In conducting some of their overseas operations, these teams gather fingerprints of known or suspected terrorists by utilizing Quick Capture Platforms (QCP). QCPs allow the teams to fingerprint subjects electronically and to transmit the biometric information back to CJIS for processing and entry into the IAFIS database. According to CJIS personnel, information they receive on known or suspected terrorists from HRT is forwarded directly to the NCTC for nomination purposes. Additionally, an NCTC official stated that the NCTC also receives CJIS nominations based on fingerprints collected by fly teams. According to NCTC personnel, these HRT and fly team nominations are sourced to the FBI, and CJIS personnel agree with this practice. Unlike the nominations for military detainees, the NCTC continues to process these nominations and forwards them to the TSC for inclusion on the terrorist watchlist. According to CJIS officials, they have nominated more than 2,800 subjects to the watchlist as a result of the information they have received from HRTs and fly teams.

We interviewed FBI officials from HRT and were told that they were aware that the data they collected was being provided to CJIS for inclusion into the IAFIS database. However, they did not know that their efforts resulted in watchlist nominations. As with the nomination of DOD’s military detainees, this nomination practice is not covered in FBI policy. As stated earlier, in certain circumstances FBI policy allows the FBI to nominate individuals to the watchlist who are not subjects of FBI investigations. That policy requires the nominating entity to draft a communication to ITOS in CTD for evaluation. ITOS then sends the nomination to the NCTC, if appropriate. We believe this policy provides an appropriate level of review

of potential nominations before they are sent to the NCTC for watchlisting purposes. However, CJIS's current practice of bypassing ITOS and sending nominations directly to the NCTC is contrary to FBI policy and fails to use a key internal control over such watchlist nominations. We recommend that the FBI review this practice to ensure that it is covered by FBI policy, an appropriate level of review is conducted on these nominations before they are forwarded to the NCTC, and the records are modified and removed when appropriate.

Legal Attaché Nominations

Our review determined that FBI Legal Attachés (LEGAT) currently use three different nomination processes. First, FBI policy allows a LEGAT to nominate a known or suspected terrorist to the watchlist by preparing a detailed electronic communication to the appropriate ITOS unit, which then submits the resulting nomination directly to the NCTC. Second, according to an April 2006 FBI directive, if a LEGAT obtains information on a known or suspected terrorist that does not include fingerprints, the LEGAT may submit a nomination directly to the NCTC, bypassing ITOS. Third, if a LEGAT obtains information from a host country on a known or suspected terrorist that includes fingerprints, the LEGAT is directed to submit the information to CJIS, which will then enter the fingerprints into the IAFIS database and submit the nomination to NCTC, again bypassing ITOS. According to data provided to us by CJIS, as of August 15, 2008, CJIS personnel have obtained more than 1,700 fingerprints on known or suspect terrorists from foreign countries and nominated these subjects to the watchlist.

According to NCTC officials, the LEGAT-generated nominations they receive directly from the LEGAT and CJIS often have limited or no derogatory information accompanying the nomination. This was confirmed by one CJIS official who stated that, depending upon the country from which the FBI received the information, little to no independent analysis is done by the FBI to determine whether the U.S. government should consider the individual to be a potential terrorist. CJIS simply adds the information it receives into the IAFIS database and forwards the relevant biographical information and any available derogatory information directly to the NCTC, bypassing the established internal review process in FBI policy. We recommend that the FBI reassess the practice of submitting watchlist nominations that bypass ITOS and ensure that there is a mechanism in place to update and remove these nominations when appropriate.

Nominations Via Intelligence Information Reports

In our March 2008 audit of the Terrorist Watchlist Nomination Processes, we found that Intelligence Information Reports (IIRs) generated by the FBI and shared with the U.S. intelligence community were considered watchlist nominations by the NCTC and sourced to the FBI, but that most of these IIRs were not intended by the FBI to be watchlist nominations. As a result of our audit, the NCTC recognized that most of these IIRs were not nominations and reclassified these nominations so that the FBI was not shown as the source of any resulting watchlist records.

However, between February 2006 and April 2008, the FBI intentionally nominated at least 73 known or suspected terrorist identities to the consolidated terrorist watchlist using IIRs. We found that at least one of these nominations was an attempt to place the subject of a closed FBI investigation back on the watchlist. FBI policy prohibits this practice, and FBI headquarters officials confirmed to us the re-nomination of a former subject in this manner would be inappropriate.

Watchlist Records with Non-terrorism Case Designations

On February 29, 2008, the TSC provided us a list of all terrorist identities sourced to the FBI in the consolidated terrorist watchlist. This list contained a total of 68,669 known or suspected identities, not including the identities nominated through CJIS. During our review of this list, we found that nearly 24,000 of these identities were associated with outdated or non-terrorism case designations. Many of these records were associated with case designations that are no longer used by the FBI. To assess whether these records were associated with current terrorism investigations, we reviewed a sample of them from FBI Headquarters and three field offices: Los Angeles, California; Miami, Florida; and Minneapolis, Minnesota.

Field Office Records with Non-terrorism Case Designations

In total, the three FBI field offices we visited accounted for 261 identities that were not associated with current FBI terrorism case designations. These 261 identities represented 101 known or suspected terrorists and were associated with 29 separate investigations.

For each of the 101 subjects, we compared the watchlist record with the information contained in the case file to determine if the subjects were still under investigation. If the subject was still being investigated for terrorist activities, we informed the FBI so the correct case designation could be added to the watchlist record. If the subject was no longer being

investigated, we asked the FBI to provide justification for continued watchlisting. In sum, the FBI was still investigating, or otherwise provided justification for the continued watchlisting for 39 of the 101 subjects.

For one additional subject, the FBI's investigation was closed because the U.S. Attorney's Office declined to prosecute. The FBI attempted to remove the subject from the watchlist, but NCTC personnel recommended that the FBI record remain on the watchlist. We believe that the FBI should document this information in the case file to justify the continued watchlisting of the subject.

We also found one case was transferred and the subject was removed in a timely manner. An additional record was based on a bad data import into the watchlist and FBI headquarters submitted paperwork to remove this record.

For the remaining 59 subjects, the FBI had either closed its investigation or could not provide justification for the continued watchlisting. Accordingly, the FBI removed these subjects from the watchlist.

We determined that, on average, these 59 subjects remained watchlisted 1,112 days after case closure. Our testing found that two of these subjects were deceased. Additionally, our testing revealed that 10 of these subjects had been encountered by screening personnel 49 times while unnecessarily watchlisted by the FBI.

Headquarters Records with Non-terrorism Case Designations

In addition to the FBI field office records discussed above, we selected 39 watchlist records for subjects watchlisted by FBI headquarters without current terrorism case designations. These 39 records were associated with case designations such as fingerprint, administrative, and intelligence matters.

Through our review of these cases, we found that in 31 instances the cases were either closed or the FBI could not otherwise determine why the subject had been watchlisted. For the remaining eight records, the subjects were part of a current terrorism investigation and only required a correction to the watchlist record so that it reflected the proper case designation.³⁷

³⁷ In these eight records, one record had been incorrectly sourced to the FBI. The reference to the FBI should be removed and the record should be sourced to the correct nominating agency.

Based on our review of this limited sample, we are concerned about the nearly 24,000 additional records with similar incorrect designations. Accordingly, we recommend that the FBI evaluate these records to confirm the watchlisting status of each subject.

Weapons of Mass Destruction Watchlist Records

All weapons of mass destruction (WMD) investigations within the FBI are now coordinated by the WMD Directorate, which was created in July 2006. To determine whether the subjects of these types of cases should be watchlisted, we spoke with officials from the WMD Directorate who stated that they have not fully considered whether, in general, the subjects of their investigations should be nominated to the watchlist. According to these WMD Directorate officials, the FBI is currently evaluating the possibility of applying FBI watchlist requirements to WMD cases.

Through our review of watchlisted records with non-terrorism case designations, we found that 16 subjects were associated with WMD cases. Based on information we received from WMD officials, we concluded that seven subjects have been or should be removed from the watchlist. WMD officials did not provide any information concerning the appropriate watchlist status of the remaining nine subjects. Because FBI policy does not currently cover WMD case designations, we recommend that the FBI clarify whether the subjects of these cases should be watchlisted.

Conclusion and Recommendations

Our review found that the FBI has not consistently nominated known or suspected terrorists to the consolidated terrorist watchlist in accordance with FBI policy. We found that the FBI failed to nominate the subjects in 15 percent of the sample of FBI terrorism investigations that we reviewed. We believe that this failure to consistently make such nominations can create a risk to national security. In addition, we found many watchlist nominations were processed in an untimely manner. On average these nominations took 42 days to process. We also found that many former subjects of FBI counterterrorism investigations were removed from the watchlist in an untimely manner. It took an average of 60 days to remove these former subjects from the watchlist. The processing delays we identified were attributable to both field offices and headquarters units. These problems can affect the ability of screening agents and law enforcement to identify known or suspected terrorists when they are encountered or avoid delaying other travelers who have names similar to the known or suspected terrorists.

In addition to its nomination process for investigative subjects, the FBI also uses other processes to nominate individuals to the terrorist watchlist. We found that the internal controls over these other processes are weak or nonexistent. As a result, numerous watchlist records nominated through these processes are not subjected to rigorous initial review, periodically confirmed, or examined for potential removal.

Our report made 16 recommendations to help the FBI improve its nominations to and removals from the consolidated terrorist watchlist.

THE FEDERAL BUREAU OF INVESTIGATION'S TERRORIST WATCHLIST NOMINATION PRACTICES

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INTRODUCTION

The consolidated terrorist watchlist, which is maintained by the Federal Bureau of Investigation (FBI), was created in March 2004 by merging separate watchlists previously maintained by different agencies throughout the federal government.³⁸ Within the FBI, the procedure for submitting known or suspected terrorists for inclusion on the consolidated terrorist watchlist is known as the nomination process. Through this process, the watchlist is updated daily with new or revised biographical information on known or suspected terrorists gathered by U.S. intelligence and law enforcement entities. Since the establishment of the watchlist, the FBI alone has submitted nominations for more than 68,000 terrorist identities.³⁹ According to the FBI, the consolidated terrorist watchlist contained 1,183,447 known or suspected international and domestic terrorist identity records as of December 31, 2008.⁴⁰

The watchlist is primarily used by frontline screening personnel at U.S. points of entry and by federal, state, local, and tribal law enforcement

³⁸ On September 16, 2003, the President issued Homeland Security Presidential Directive 6 (HSPD-6), which mandated the development of the consolidated terrorist watchlist and required all federal law enforcement and intelligence agencies with terrorism information to share such information for purposes related to the watchlist. The Terrorist Screening Center, which began operations in December 2003, is managed by the FBI. It consolidates information about known or suspected international and domestic terrorists.

³⁹ Since 2005, the FBI has processed over 9,300 watchlist nominations related to opened FBI investigations. However, this number does not take into account records created prior to 2005 or an estimated 62,000 nominations processed outside of the FBI's standard nomination process. Further, the FBI is not certain how many nominations have been created through this non-standard process. Therefore, the actual number of individuals that the FBI has nominated to the terrorist watchlist is unknown. We estimate that the FBI has processed the nomination of between 68,000 and 130,000 known or suspected terrorists since 2003.

⁴⁰ This number does not represent the number of individuals on the watchlist. One individual can have numerous records with each record providing information for a different identity the individual uses, such as aliases. The consolidated terrorist watchlist averages just over two records per individual watchlisted. According to a TSC estimate, as of September 9, 2008, the total number of unique individuals on the watchlist was approximately 400,000.

agencies.⁴¹ These screening and law enforcement personnel use the watchlist to determine how to handle encounters with known or suspected terrorists.⁴² For example, screeners use the information to help determine if an individual arriving at a U.S. point of entry should be granted admittance to the United States. The effectiveness of the watchlist as a law enforcement and intelligence gathering tool is dependent on the completeness and accuracy of the records within it.

In March 2008, the Department of Justice Office of the Inspector General (OIG) issued an audit report that examined the terrorist watchlist nomination processes in use throughout the Department of Justice (DOJ).⁴³ This report was issued in conjunction with an inter-agency effort led by the Office of the Inspector General for the Office of the Director of National Intelligence that sought to examine the watchlist nomination procedures throughout the federal government's intelligence community. The DOJ OIG examined watchlist nomination policies and processes at several DOJ components, including the Bureau of Alcohol, Tobacco, Firearms and Explosives; the Drug Enforcement Administration; the FBI; the Federal Bureau of Prisons; the DOJ's National Security Division; the U.S. National Central Bureau of INTERPOL; and the U.S. Marshals Service. Overall, our audit found that other DOJ components shared terrorist-related information and some of this information ultimately led to the creation of watchlist records, but the FBI is the only DOJ component that formally nominates known or suspected terrorists to the consolidated terrorist watchlist.

Our March 2008 audit also found that the FBI had established criteria and quality controls to assist in the development of appropriate and accurate terrorist watchlist nominations. However, the OIG audit determined that initial watchlist nominations created by FBI field offices often contained inaccuracies or were incomplete, delaying the inclusion of known or

⁴¹ "Screening" refers to a process that may include, but is not limited to, government officials searching for available information on an individual in various databases. For example, a person may go through a screening process when: (1) applying for a visa, (2) attempting to enter the United States through a point of entry, (3) being stopped by a local law enforcement officer for a traffic violation, or (4) attempting to travel internationally on a commercial airline.

⁴² "Encounter" means local, state, tribal, or federal law enforcement and homeland security screeners have come across a known or suspected terrorist during normal job duties (e.g., traffic stops, checking of airplane manifests, or evaluating an application for a U.S. passport or visa).

⁴³ See U.S. Department of Justice Office of the Inspector General, *Audit of the U.S. Department of Justice Terrorist Watchlist Nomination Processes*, Audit Report 08-16 (March 2008).

suspected terrorists on the consolidated terrorist watchlist. In addition, the audit found that the FBI was not always updating or removing watchlist records when appropriate. The audit also determined that FBI field offices had, at times, bypassed some of the FBI's quality control mechanisms by excluding FBI headquarters and submitting watchlist nominations for individuals for whom the FBI did not have an open terrorism investigation. The March 2008 audit report made several recommendations to DOJ components and the FBI, including recommending that FBI Supervisory Special Agents (SSA) in field offices review watchlist nomination forms before they are submitted to FBI headquarters for processing and that the FBI improve its policy regarding the watchlisting of individuals who are not subjects of FBI investigations. The FBI agreed with our recommendations and began implementing corrective action.

The March 2008 audit report noted that we intended to continue our review of the FBI's watchlist nomination practices to further assess the FBI's watchlist nomination practices and quality control weaknesses identified. The OIG's March 2008 audit report focused on the overall watchlisting policies and processes within DOJ. This audit continues our review and focuses on the watchlist nomination practices of the FBI, including actual nominations submitted by FBI field offices and headquarters divisions to the consolidated terrorist watchlist.

Overview of the FBI's Watchlist Nomination Processes

According to FBI policy, all subjects of FBI international terrorism investigations must be nominated to the consolidated terrorist watchlist, including persons who are being preliminarily investigated to determine whether they have a nexus to terrorism.⁴⁴ FBI policy also states that all known or suspected domestic terrorists who are subjects of FBI full

⁴⁴ The Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection, dated October 31, 2003, applied to international terrorism investigations and the Attorney General Guidelines on General Crimes, Racketeering Enterprise, and Terrorism Enterprise Investigations, dated May 30, 2002, applied to domestic terrorism investigations. These guidelines were in effect during the time period of this audit. However, they have since been combined and superseded by the Attorney General Guidelines for Domestic FBI Operations, which became effective on December 1, 2008. Both the new and former guidelines allow the FBI to open two types of international terrorism investigations referred to as preliminary or full investigations. In general, preliminary investigations are authorized when information or an allegation indicates that a threat to national security may exist. Full investigations are authorized when there are specific and articulable facts giving reason to believe that a threat to national security may exist.

investigations must be nominated to the watchlist.⁴⁵ Under certain circumstances, FBI policy also allows for the nomination to the watchlist of known or suspected terrorists for whom the FBI does not have an open international terrorism investigation. For example, the FBI may obtain information about a known or suspected terrorist residing outside of the United States for whom it believes watchlisting is warranted, but for whom it has no open terrorism investigation because there is no known nexus to the United States.

Watchlist Nomination Process

Whenever an FBI field office opens a preliminary or full international terrorism investigation or a full domestic terrorism investigation, the field office must notify certain DOJ and FBI headquarters units of the case opening within 10 working days. One of the FBI headquarters' units that must be notified is the FBI's Terrorist Review and Examination Unit (TREX). TREX is the FBI headquarters unit that serves as the processing unit for almost all FBI watchlist nominations resulting from open FBI terrorism investigations. In order for TREX to process an initial watchlist nomination, the assigned case agent must electronically submit copies of the opening electronic communication document (which formally opens the case within the FBI), the Notice of Initiation (which formally notifies DOJ of the case opening), and a watchlist nomination form.⁴⁶

For both international and domestic terrorist nominations, TREX is responsible for reviewing and approving each nomination. TREX's quality assurance review verifies that justification for the nomination exists, that the information submitted is complete and accurate, and that the criteria are met for inclusion of the subject in downstream databases.

Once TREX has reviewed and approved a watchlist nomination, it sends the nomination of known or suspected *international* terrorists to the National Counterterrorism Center (NCTC) branch staffed by FBI personnel, which reviews the nomination and enters it into its Terrorist Identities

⁴⁵ According to FBI policy, known or suspected domestic terrorists who are subjects of preliminary investigations and all subjects of bombing investigations may be nominated to the watchlist at the discretion of the responsible FBI field office.

⁴⁶ The same form is used for initial nominations to the watchlist, modifications of watchlist records, and watchlist record removals. Throughout this report, we refer to this form in its intended capacity as the nomination, modification, or removal form.

Datamart Environment (TIDE) database.⁴⁷ Each weeknight and twice on Fridays, the NCTC performs an electronic export of the known or suspected terrorist information in TIDE to the FBI's Terrorist Screening Center (TSC).⁴⁸ The TSC then performs one final quality review of the new records before importing them into the TSC's consolidated terrorist watchlist, which is also known as the Terrorist Screening Database (TSDB). Like the NCTC, the TSC conducts a nightly electronic export of the TSDB that sends the watchlist information to the various screening databases used by the U.S. government and some of its allies.⁴⁹

The nomination process for known or suspected *domestic* terrorists differs slightly in that TREX submits these nominations directly to the TSC. The NCTC is not involved in the process because its TIDE database is prohibited from containing purely domestic terrorism information.

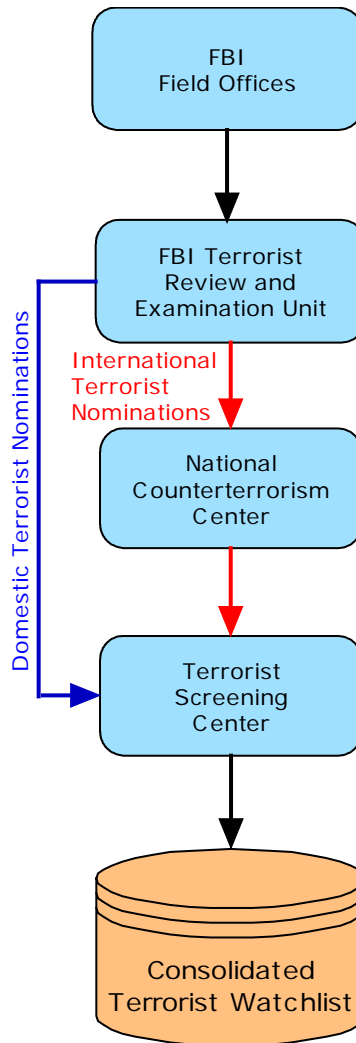
The following graphic illustrates the FBI's watchlist nomination process for subjects of international and domestic terrorism investigations.

⁴⁷ In August 2004, the President established the NCTC to serve as the primary organization in the U. S. government for integrating and analyzing all intelligence pertaining to terrorism and counterterrorism. The NCTC is the successor agency to the Terrorist Threat Integration Center, which was established on May 1, 2003. The TIDE database is the U.S. government's central repository of information on international terrorist identities. The TIDE database includes, to the extent permitted by law, all information the U.S. government possesses related to the identities of individuals known or suspected to be or have been involved in activities constituting, in preparation for, in aid of, or related to terrorism, with the exception of purely domestic terrorism information.

⁴⁸ We were told by a TSC official that in early FY 2009 the NCTC started exporting known or suspected terrorist information in TIDE twice on Fridays to the TSC. Before this change, the NCTC exported TIDE information once every weeknight to the TSC.

⁴⁹ The consolidated terrorist watchlist exports information to downstream screening databases, including to the Department of Homeland Security's (DHS) Interagency Border Inspection System (IBIS); the Department of State's Consular Lookout and Support System (CLASS); DHS Transportation Safety Administration's (TSA) No Fly and Selectee lists; the FBI's Violent Gang and Terrorist Organization File (VGTOF), and other select foreign government watchlists. IBIS is primarily used by the U.S. Customs and Border Protection to screen travelers attempting to cross U.S. borders or enter a U.S. point of entry. CLASS is used by U.S. Department of State personnel to screen individuals attempting to obtain a U.S. passport or visa. The No Fly and Selectee lists are used by the TSA to alert airlines of individuals who require secondary screening or who should be denied boarding on commercial flights. VGTOF records are accessed by federal, state, local, and tribal law enforcement using the FBI's National Crime Information Center (NCIC) database to help identify known or suspected terrorists that may be encountered during routine law enforcement activities. See Appendix II for further explanation of these screening databases.

FBI Watchlist Nomination Process for FBI Terrorism Investigation Subjects



Source: OIG depiction of the FBI watchlist process

Modification of Existing FBI Watchlist Records

The TSC Memorandum of Understanding (MOU) signed on September 16, 2003, by the Attorney General, Director of Central Intelligence, and the Secretaries of Homeland Security and State requires all information on known or suspected international terrorists to be shared with the NCTC and requires purely domestic terrorism information to be shared with the FBI. On November 6, 2006, "Addendum B" to this MOU was signed by the Attorney General and mandated that the FBI and other U.S. intelligence agencies share on an ongoing basis certain identifying

information related to terrorism subjects.⁵⁰ In addition to the requirements set forth in Addendum B, FBI policy states that whenever a case agent obtains new identifying information on an international or domestic terrorism subject, the case agent must modify the associated watchlist record to reflect the newly acquired information. For example, if the case agent learns of a new passport number being used by the subject, that new information must be added to the watchlist record. This new information assists frontline screening personnel in positively identifying terrorism subjects they may encounter. In addition, such new information can help frontline screening personnel lower the risk of misidentifying an individual with the same or a similar name as the known or suspected terrorist. Such misidentifications can cause other individuals to be delayed or inconvenienced unnecessarily.

The process the FBI uses to modify a watchlist record is essentially the same as the process used for initial watchlist nominations. The responsible FBI case agent must prepare a modification form and electronically submit it to TREX. TREX then reviews and approves the modified nomination form and forwards international record modifications to the NCTC branch staffed by FBI personnel, which in turn exports the new information to the TSC. Domestic terrorist record modifications are sent directly to the TSC. The TSC imports the new identifying information into the consolidated terrorist watchlist.

According to the FBI, it processed 1,225 watchlist record modifications in fiscal year (FY) 2006; 1,475 in FY 2007; and 1,728 in FY 2008.

Removal of Existing FBI Watchlist Records

Generally, FBI policy states that terrorism subjects should be removed from the consolidated terrorist watchlist when the underlying investigation is closed. However, in limited circumstances the FBI may leave a subject on the watchlist. For example, a subject may remain watchlisted if the individual is known to have left the United States and the FBI believes that the person may pose a threat to national security.

⁵⁰ Addendum B to the September 16, 2003, MOU requires that the following identifying information be shared with the NCTC (for international terrorism subjects) and the FBI (for domestic terrorism subjects): names, dates of birth, passport information, including passport number, and other identifiers that we do not list here because the TSC considers them too sensitive for public release. We were told that prior to the execution of Addendum B, it was unclear exactly which identifiers should be provided, if newly obtained information needed to be forwarded to update existing records, and if historical records should be examined for the existence of additional information fitting the new criteria.

Similar to the watchlist record modification process, the removal process mirrors the nomination process. The case agent is required to prepare a removal form that is electronically submitted to TRES. TRES reviews and approves the removal form and forwards international terrorist record removals to NCTC for entry into the TIDE database, which in turn exports the removal to the TSC. Domestic terrorist record removals are sent directly to the TSC. The TSC imports the removal information into the consolidated terrorist watchlist, thus removing the record from the watchlist and the associated downstream screening databases.⁵¹

According to the FBI, it processed 2,579 watchlist record removals in FY 2006, 3,063 in FY 2007, and 2,488 in FY 2008.

Nomination Process for Non-investigative Subjects

In certain circumstances, FBI policy allows for the watchlist nomination of an individual for whom the FBI does not have an open investigation. All non-investigative subject nominations must be submitted through the Counterterrorism Division's (CTD) International Terrorism Operations Section (ITOS).⁵² If ITOS concurs with the nomination, it is then responsible for forwarding the nomination to FBI personnel assigned to the NCTC.

For example, FBI Legal Attachés (LEGAT), who are located in foreign countries, may obtain information on a terrorism subject from the host country and nominate the subject to the watchlist.⁵³ This policy is consistent with a 2002 Attorney General Directive, which states that the FBI should obtain biographical and identifying information on known or suspected terrorists processed by foreign law enforcement when such information is available.⁵⁴ Additionally, the Attorney General Directive states that the FBI should coordinate with the Department of Defense (DOD) to obtain biographical and identifying information on known or suspected terrorists

⁵¹ This process only removes the FBI record from the watchlist. If another federal agency has watchlisted the same subject, then that record will remain on the watchlist until that federal agency decides to remove the record.

⁵² ITOS conducts program management of FBI international terrorism investigations.

⁵³ LEGATs are located in more than 70 cities worldwide, providing coverage of more than 200 countries, territories, and islands. According to the FBI, LEGATs: (1) coordinate international investigations with their colleagues, (2) cover international leads for domestic U.S. investigations, (3) link U.S. and international resources, and (4) coordinate FBI training classes for police in their geographic areas.

⁵⁴ Attorney General Directive, Coordination of Information Relating to Terrorism, April 11, 2002.

processed by the U.S. military. As a result, the FBI processed watchlist nominations based upon information obtained by the DOD for military detainees in Iraq, Afghanistan, and other locations.

OIG Audit Approach

The objectives of this audit were to: (1) determine whether subjects of FBI terrorism investigations are appropriately and timely watchlisted and if these records are updated with new identifying information as required; (2) determine whether subjects of closed FBI terrorism investigations are removed from the consolidated terrorist watchlist in a timely manner when appropriate; and (3) examine the FBI's watchlist nomination practices for individuals that were not associated with current terrorism case designations.

To accomplish these objectives, we conducted over 100 interviews of employees and officials at FBI headquarters and FBI field offices as well as TSC and NCTC personnel who are involved in the processing of watchlist nominations. In addition, we reviewed DOJ and FBI policies and processes concerning FBI nominations to the terrorist watchlist and performed tests of FBI watchlist nomination packages originating from three FBI field offices: Los Angeles, California; Miami, Florida; and Minneapolis, Minnesota.

In addition, we sampled terrorism investigations opened and closed in FYs 2006, 2007, and the first half of FY 2008 from the three selected FBI field offices. For each sampled case, we reviewed the physical case file located at the FBI field office and analyzed the associated watchlist documents at the TREX, NCTC, and TSC to determine whether the nomination was submitted in accordance with FBI policy, updated as required, and when appropriate, removed from the watchlist in a timely manner. In total, we reviewed 110 terrorism cases opened and 108 terrorism cases closed by the FBI. Details regarding our sample selection and populations are provided in Appendix I.

When we found subjects who were not nominated to the consolidated terrorist watchlist at the time of our testing or subjects who were untimely nominated, we sought to determine whether these subjects traveled during the time they should have been watchlisted.⁵⁵ The purpose of this testing was to determine whether screening agencies potentially missed opportunities to take appropriate action when the subject was encountered. In addition, when we found subjects who remained watchlisted without proper justification after

⁵⁵ Anytime we preliminarily identified a terrorism subject in an open case who appeared to have not been watchlisted, we promptly notified the FBI so the matter could be further investigated and corrected, if necessary.

the FBI investigation was closed, we searched their identity in the TSC's Encounter Management Application (EMA) database to determine whether the former subject or someone misidentified as the former subject had been encountered and unnecessarily delayed by law enforcement or screening personnel.⁵⁶ We also sought to determine whether these subjects filed a redress complaint with the TSC after their investigation was closed.⁵⁷

To determine whether the FBI was modifying watchlist records as necessary, we reviewed the case files at the selected field offices for 56 cases that had not yet been closed at the end of FYs 2006, 2007, or the first half of FY 2008. We reviewed these files for evidence of additional government-issued identifying information that was acquired by the FBI after the subject was initially nominated and could be useful to those persons utilizing the watchlist.⁵⁸ The identifiers we searched for included passport numbers and other identifiers considered sensitive by the FBI. If we found that additional government-issued identifying information had been obtained by the case agent sometime after the submission of the initial watchlist nomination form, we determined whether these identifiers were ultimately reflected in the subject's terrorist watchlist record.

For objective number three, we examined watchlisted subjects who were unrelated to current FBI terrorism case designations. In each of these cases, we sought to determine if there was a related FBI investigation and if the underlying investigations were terrorism investigations with the wrong case designation. Alternatively, we examined whether the case was a non-terrorism case for which the subjects should not have been nominated to the watchlist. Next, we sought to determine the number of individuals the FBI has watchlisted without the existence of an open terrorism investigation. Finally, we documented the process the FBI uses to nominate known or suspected terrorists to the watchlist in response to a 2002 Attorney General directive and the number of these nominations processed by the FBI.

⁵⁶ When we preliminarily determined during our field work that the FBI failed to remove a known or suspected terrorist from the watchlist, we notified the FBI so that action could be taken, if appropriate. EMA is a database that documents every encounter call that the TSC receives from state, local, tribal, and federal law enforcement and homeland security screening personnel.

⁵⁷ In 2005, the TSC created a process for resolving complaints from individuals who were adversely affected by terrorist watchlist-related screenings and who were seeking relief or "redress."

⁵⁸ In accordance with FBI policy, case agents are required to use the modify process to update a subject's watchlist record when new identifying information is discovered. We limited our testing to government-issued identifiers, such as passport numbers, because they are more useful in identifying a known or suspected terrorist.

FINDINGS AND RECOMMENDATIONS

I. SUBJECTS NOT WATCHLISTED

The FBI has not consistently nominated known or suspected terrorists to the consolidated terrorist watchlist in accordance with FBI policy. We found that the FBI failed to nominate the subjects in 15 percent of the sample of FBI terrorism investigations that we reviewed. We believe that this failure to consistently make such nominations can create a risk to national security. Additionally, the failure to appropriately nominate terrorism subjects could place frontline screening and law enforcement personnel at increased risk of harm and possibly result in missed opportunities to screen suspected terrorists and gather information useful to U.S. intelligence and investigative efforts.

Internal FBI Watchlist Processes

The FBI has established internal controls and processing requirements for FBI field offices and for FBI headquarters departments when terrorism investigations are opened. These controls are supposed to ensure that the case agent has the required evidence to open an investigation on a terrorism subject and that the case agent promptly submits the known or suspected terrorist's name for inclusion on the consolidated terrorist watchlist. By placing the subject's name and identifying information on the watchlist, the subject's watchlist record alerts law enforcement and screening personnel to take appropriate action because of the subject's possible nexus to terrorism.

Whenever an FBI field office opens a preliminary or full terrorism investigation, the responsible case agent must obtain supervisory approval to open the investigation. These approvals are required to ensure that the case agent has developed sufficient information to establish a link to terrorism and that the link is clearly stated in the case opening documentation.

Upon the initiation of a case, FBI policy requires that the case agent notify FBI headquarters within 10 working days and at the same time prepare the FBI's electronic watchlist nomination form, which must be e-mailed to TREX. The only exception to this 10-day rule is when the terrorism subject is being nominated to the TSA's No Fly list. In such cases, FBI policy requires that these subjects be nominated to the watchlist within

24 hours.⁵⁹ Along with the nomination form, the case agent is also required to e-mail a copy of the opening electronic communication approved by FBI field office management and a copy of the Notice of Initiation, which notifies DOJ headquarters of the investigation.⁶⁰

For both international and domestic terrorist nominations, TREX is responsible for reviewing and approving each nomination. This quality assurance review is intended to verify that justification for the nomination exists, that the information submitted is accurate and complete, and that the criteria are met for inclusion of the subject in downstream databases. Upon receiving the electronic nomination form and the accompanying documentation, a TREX Technical Information Specialist (TIS) reviews the form and additional documentation to verify the link to terrorism and for complete and accurate information on the subject.⁶¹ Once a TREX TIS completes the initial review, the TIS sends the nomination package to a TREX supervisor for further review. The supervisor analyzes the information, reconfirms the link to terrorism exists, and verifies that the nomination package is complete and accurate. According to documents we received from the FBI and conversations we had with FBI officials, error-free watchlist nomination forms should be approved and processed by TREX within 24 hours of receipt.⁶²

After international terrorist watchlist nominations are reviewed and approved by TREX, they are forwarded to FBI personnel assigned to the NCTC.⁶³ The FBI analysts assigned to the NCTC enter the subject's information into NCTC's TIDE database. An NCTC supervisor conducts a

⁵⁹ Persons on the TSA No Fly list are not allowed to board commercial flights. The TSA's No Fly list includes names of individuals who meet certain criteria and these individuals will be denied transport on commercial flights. See Appendix II for further information on the No Fly list.

⁶⁰ We refer to the combination of the nomination form, electronic communication, and Notice of Initiation as the nomination package.

⁶¹ A nomination form for a known or suspected terrorist should contain all of the biographic and identifying information known on that subject that can be used by law enforcement and screening officials to identify the known or suspected terrorist when encountered and to avoid misidentification.

⁶² In July 2008, the FBI issued an internal communication stating that the standard processing time for TREX would be extended from 24 to 48 hours, and that any delay beyond 48 hours would require documentation of the reason for the processing delay. However, this rule was not applied to our testing because our case samples only covered FYs 2006, 2007, and the first half of FY 2008.

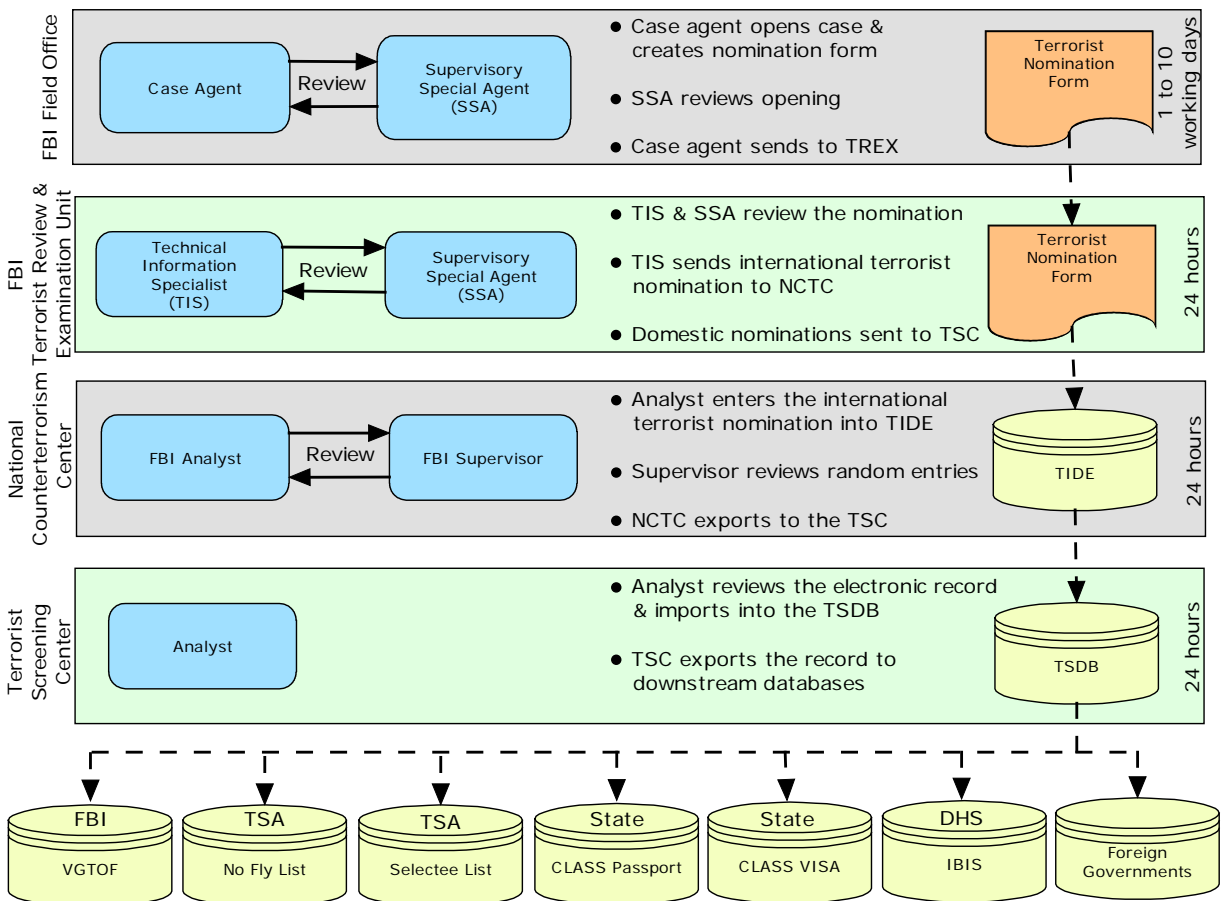
⁶³ As designed by HSPD-6, for domestic terrorist nominations TREX sends the nomination directly to the TSC, thereby bypassing NCTC.

random review of the records to confirm the FBI analyst's entry of data is complete and accurate, before releasing the records for nightly electronic export to the TSC. According to NCTC management, NCTC's standard is to process these nominations within 24 hours.

Before the consolidated terrorist watchlist feeds the appropriate downstream databases, each day TSC staff members perform one final quality check of each new record to help ensure the accuracy of the watchlist. The TSC's standard is to perform this check and complete the processing of the nomination within 24 hours.

The FBI's internal terrorist watchlist nomination process is depicted in the following diagram.

FBI Terrorist Watchlist Nomination Process



Source: OIG depiction of the FBI internal watchlist nomination process

The standard processing time for FBI watchlist nominations can take up to 20 calendar days when weekends and holidays are taken into

account.⁶⁴ This processing time includes up to 10 working days for the field office, 24 hours for TREX, 24 hours for NCTC, and 24 hours for the TSC.⁶⁵ However, if the subject is being nominated to the TSA's No Fly list, the FBI policy is to submit the nomination to TREX within 24 hours.

OIG Review of FBI Initial Watchlist Nominations

To determine whether the FBI was submitting watchlist nominations for its terrorism subjects, we selected 110 out of 854 opened and 108 out of 823 closed FBI terrorism cases that were initiated or closed by the Los Angeles, California; Miami, Florida; and Minneapolis, Minnesota field offices in FYs 2006, 2007, and the first half of FY 2008.⁶⁶

The following table shows the number of terrorism investigations opened and closed for each fiscal year and the sample size we selected for each type of investigation for the three audited FBI field offices.

⁶⁴ Domestic terrorist nominations are sent directly from TREX to the TSC and thus the process time may be 1 day shorter.

⁶⁵ FBI policy allowed field offices 10 working days to submit a nomination package to TREX. Therefore, for purposes of our testing we considered that 10 working days could include up to 2 weekends and federal holidays, depending upon the date and the day of the week the case was opened. For example, if a case was opened on a Wednesday (assuming no holidays) the nomination could be timely if submitted within 14 calendar days. Further, our testing of the 24-hour standard for TREX, NCTC, and TSC provided allowances for weekends and holidays. In August 2008, the FBI issued an internal communication stating that the standard processing time for the field office to nominate a known or suspected terrorist to TREX would be 10 days. This rule was not applied to our testing because at the time of our tests the FBI requirement was 10 *working* days.

⁶⁶ Appendix I includes an expanded discussion of the audit's scope and methodology, including details of our sample design.

**FBI Terrorism Investigations
OIG Sample and Population
for the Selected Field Offices
(by fiscal year)**

FY	CASE TYPE	Opened Cases		Closed Cases	
		Universe	Sample Size	Universe	Sample Size
2006	International Terrorism	316	41	314	37
	Domestic Terrorism	55	3	61	6
2007	International Terrorism	325	37	294	33
	Domestic Terrorism	47	7	48	10
2008	International Terrorism	92	18	94	21
	Domestic Terrorism	19	4	12	1
TOTALS		854	110	823	108

Source: OIG analysis of the FBI Terrorist Review and Examination Unit data

Subjects Not Watchlisted

During our review of 216 terrorism investigations, we found that the FBI failed to nominate a total of 35 subjects. These 35 subjects were identified from 32 out of 216 terrorism cases reviewed (15 percent).⁶⁷ In these cases, we identified 26 subjects who were not watchlisted for the duration of the case, and the case was closed at the time of our review.⁶⁸

For the other nine subjects, the associated cases were still open at the time of our testing. The FBI determined that three of these subjects should have been watchlisted and it nominated each of them. Although FBI policy indicated that the six other subjects should be nominated as well, for three of these subjects the responsible field offices concluded that

⁶⁷ In these 32 terrorism investigations, 1 investigation had 2 subjects and another investigation had 3 subjects. Therefore, 35 subjects were associated with the 32 cases reviewed and none of them were watchlisted when the terrorism investigations were opened or at any time during the course of the case. Additionally, two of the cases in our judgmental sample were included as both opened and closed terrorism cases. Therefore, we did not count these cases twice and tested a total sample of 216 cases.

⁶⁸ Another government agency had watchlisted 1 of these 26 subjects.

nominating the subjects was unnecessary.⁶⁹ For the remaining three subjects, who were all from the same case, the assigned agent was unavailable for us to interview, and we were not provided with an explanation for the field office’s decision not to watchlist the subjects. However, FBI managers in that field office agreed to look into the matter and take appropriate action.

Of the 35 subjects not watchlisted, 14 were from cases opened or closed in FY 2006; 18 were from FY 2007; and the remaining 3 were from the first half of FY 2008. The 35 subjects included both international and domestic terrorism subjects. We determined that some of these cases were open for several years.

The following table provides more detail on the 35 subjects that the FBI did not nominate to the terrorist watchlist.

Breakdown of Subjects Not Watchlisted

Type of Terrorism Subject	Number of Subjects	Minimum in Days	Maximum in Days	Average in Days	Median In Days
International Terrorism	13	33	1,457	381	261
Domestic Terrorism	22	70	1,162	393	313
Totals	35	33	1,457	389	313

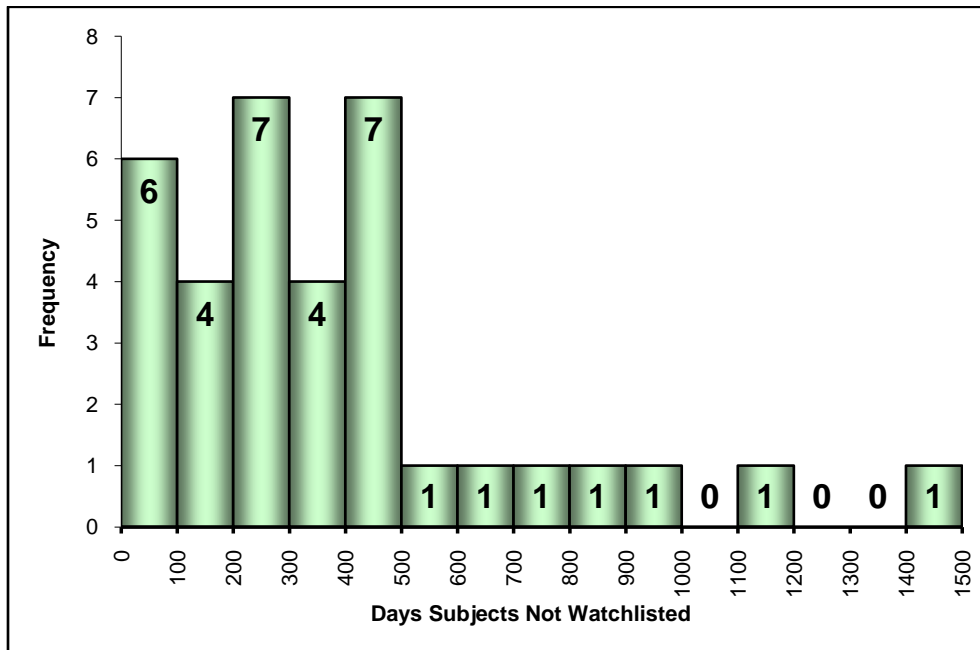
Source: OIG analysis of subjects the FBI did not watchlist

The following graphic shows the frequency of the number of subjects that fall within certain ranges of time for which subjects were not added to the watchlist while under investigation by the FBI. As seen on this chart, two subjects were not watchlisted for more than 1,100 days, and the majority of subjects were not watchlisted 500 days or less.⁷⁰

⁶⁹ In these three cases, the field offices determined that the subjects were in custody, awaiting trial, or already sentenced.

⁷⁰ Our calculation of the number of days the subject should have been watchlisted is based on a January 2002 FBI internal communication that required the watchlisting of terrorism investigation subjects. See Appendix I for further explanation of our methodology and Appendix III for a timeline of events related to the FBI watchlist process.

Frequency of Subjects Not Watchlisted



Source: OIG analysis of FBI terrorism investigation nominations

During the period that these FBI investigations were open and the subjects were not watchlisted, the individuals could have potentially moved freely within the United States and through U.S. points of entry. Further, if any of these subjects had been encountered by local, state, tribal, federal, or some foreign law enforcement personnel, these personnel would not have known that the subject was a known or suspected terrorist. Had the subjects been watchlisted, these subjects could have been denied a visa or a passport, which could have prevented their entry into the United States. In addition, the FBI's failure to appropriately nominate terrorism subjects could have resulted in missed opportunities to detain a suspected terrorist or gather information useful to FBI investigations and U.S. intelligence efforts. Finally, had these subjects been watchlisted, the watchlist record could have included important information affecting the safety of frontline personnel, such as whether the subject should be considered armed and dangerous.

We believe that the FBI's failure to appropriately nominate terrorism subjects presents a significant risk of danger to frontline screening personnel and potentially threatens our nation's security, especially if the FBI ultimately determines that the subject is a terrorist threat.

In each instance where the FBI field office failed to nominate the subject of the investigation to the watchlist, we sought the specific reason by speaking to the case agents, supervisors, and senior field management and

by reviewing the case files.⁷¹ In general, all of the personnel we interviewed understood the requirement to nominate international terrorism subjects to the watchlist. However, in each of the field offices we visited we found that several case agents assigned to domestic terrorism investigations were unaware of the requirement to watchlist subjects of full domestic terrorism investigations. One case agent stated that he simply forgot to do the paperwork.

Two agents in one field office expressed to us their frustration with the fact that the watchlist had prevented one of their subjects from reentering the country, which they believed halted their investigation. Other agents expressed concern that when the consolidated terrorist watchlist is shared, other government agencies may open their own cases based solely on the FBI's watchlist record for an individual. Also, an FBI supervisor reported that some case agents were reluctant to nominate subjects to the watchlist. We believe that some case agents do not understand the full value in watchlisting their subjects and appeared to consider watchlisting to be an administrative burden.

Several FBI supervisory agents and field personnel also suggested to us that a lack of training regarding changes in the watchlisting process through the years have led to frustration and confusion as to what is required. We found that since 2001 FBI headquarters has issued more than 35 internal communications to the field offices that inform field personnel of various aspects of the watchlist nomination process.⁷² Additionally, the form used to nominate, modify, and remove subjects from the watchlist has been changed from a one-page paper format to a lengthy electronic format.

Although we recognize that many of these changes were improvements to the watchlist process, we believe the general lack of training provided after these changes were implemented has left many field office personnel confused. These multiple revisions to the watchlist process made it difficult for field office managers and personnel to explain the process to us during our interviews. In addition, TREX management reported that it still receives some outdated nomination forms that are incomplete or inaccurate, which requires TREX to follow up with the case agent and delays processing of nominations.

⁷¹ We interviewed FBI Special Agents and non-FBI law enforcement personnel assigned to FBI-led Joint Terrorism Task Forces and responsible for FBI terrorism investigations. We collectively refer to this group of individuals as "case agents."

⁷² See Appendix III for a chronological listing of events related to the FBI's watchlist nomination policy.

Potential Missed Screening Opportunities

We searched the U.S. Department of Homeland Security's Treasury Enforcement Communications System (TECS) for the names of the subjects in our sample who were not watchlisted.⁷³ We performed this test to obtain examples of the effect of the FBI's failure to watchlist terrorism subjects. However, we did not attempt to obtain complete travel histories of the 35 not watchlisted subjects. As a result, how often the 35 subjects traveled into, out of, or within the United States is unknown. Our search of TECS records revealed that three persons with names matching the subjects traveled into the United States during the period the subjects were not watchlisted by the FBI.⁷⁴

At the time these individuals traveled, two of the subjects had no watchlist record at all. If these two subjects had been watchlisted by the FBI, screening personnel would have received a notification to contact the TSC, which could have, for example, provided information about the individual that may have affected the approval of an individual's visa or passport application. Also, such a notification could have provided a reason for frontline personnel to perform additional screening, which may have lead to the collection of information useful to U.S. intelligence and investigative efforts. In addition, if these subjects were watchlisted by the FBI, frontline personnel could have been made aware of safety risks, such as whether the FBI considered the subject armed and dangerous.

Improvements to the Nomination Process

In 2007, the FBI recognized that it did not have an internal control that ensures nominations are submitted for all international terrorism investigations that are initiated. As a result, in June 2007 TREX instituted a reconciliation process to identify international terrorism cases that were opened without a corresponding nomination. When TREX personnel find cases that lack a watchlist nomination, they are required to notify the responsible field office and request that a nomination be submitted.

However, our testing suggests that this TREX process does not ensure all international terrorism subjects are watchlisted. At least one TREX employee informed us that she did not always check for newly opened cases. We brought this to the attention of TREX management. In January

⁷³ The TECS database serves as the principal information system supporting border management and the law enforcement mission of the DHS's U.S. Customs and Border Protection (CBP) and other federal law enforcement agencies.

⁷⁴ One of these subjects was watchlisted by another government agency.

2008, TRES began requiring its supervisors to ensure that TRES personnel are performing the mandatory review of newly opened cases. In addition, we also found that in some instances the field offices failed to notify TRES of the initiation of new international terrorism cases. As a result, the TRES reconciliation process is unable to identify nomination omissions for cases of which TRES is not made aware. Further, the reconciliation process only applies to international terrorism cases, not domestic terrorism cases. Therefore, we recommend that the FBI strengthen its existing internal controls to ensure that TRES is notified of the initiation of all terrorism investigations so that TRES can monitor the field offices' efforts to submit watchlist nominations in a timely manner and in accordance with FBI policy.

In addition, beginning in May 2007 all new FBI Special Agents attending the FBI Training Academy at Quantico receive training on the watchlist nomination process. However, many new Special Agents are not immediately assigned to counterterrorism investigations and the Academy training may be outdated or forgotten by the time they may be assigned to counterterrorism matters. Further, many veteran Special Agents who currently are assigned to counterterrorism squads may be new to the counterterrorism arena. These Special Agents worked on white collar crime, bank robbery, or other criminal investigations and may have received little or no training on the watchlist process.

On September 16, 2008, the FBI implemented a one-time mandatory "virtual" academy training class on the watchlist nomination process for all of its field personnel working counterterrorism matters.⁷⁵ However, we believe that the FBI should also conduct periodic refresher training for its counterterrorism agents, task force officers, and supervisors. Such refresher training would help ensure that all personnel are kept current on changes to the nomination process and other watchlist policy as it continues to evolve. Further, we believe that when this refresher training is developed it should include a segment related to the benefits watchlisting provides, such as adding value to FBI investigations, enhancing the safety of frontline screening and law enforcement personnel, and improving overall U.S. government intelligence collection efforts.

In our March 2008 audit, we recommended that the FBI require its SSAs to ensure that watchlist nominations contain sufficient and accurate information. Additionally, we also believe that the FBI should require all SSAs to include watchlist nomination reviews as part of their 90-day file reviews of their assigned investigations. Similar file reviews in gang

⁷⁵ The FBI's "virtual" academy is a computer-based learning system that the FBI implemented in December 2002.

investigations include verification of whether the gang member subjects have been entered into the FBI's gang database and whether they should remain in that database. We believe a similar process should be instituted for counterterrorism investigations. Accordingly, we recommend that the FBI require its supervisors to assess the watchlisting status of terrorism subjects during their mandatory 90-day case file reviews.

Conclusion

The FBI failed to nominate known or suspected terrorists in 15 percent of the cases we reviewed. Although the FBI has instituted policies and procedures intended to ensure that eligible subjects are appropriately nominated in a timely fashion, our testing of a sample of 216 cases in three FBI field offices suggests weakness in the implementation of these policies.

In addition to the policy implementation weaknesses, we believe that confusion among field personnel and lack of training contributed to the FBI's failure to nominate the subjects in 15 percent of the cases we reviewed. While we note the FBI's efforts to improve the nomination process, we believe that field personnel will not remain current on these changes without regular refresher training. In addition, we found a lack of understanding among some field personnel regarding the importance of the watchlist nomination process. While most field personnel understood their role in the process, many did not have any understanding of the process beyond their initial nomination submission. We believe that an incomplete understanding of the full nomination process and the overall role of the watchlist in the U.S. government's counterterrorism efforts leads to a lack of appreciation for the crucial part FBI field personnel play as nominators. Accordingly, we recommend that the FBI include training on the importance of the watchlist when developing refresher training.

We recognize that many FBI terrorism investigations conclude with the determination that the particular subject poses no terrorist threat. However, we also believe that the FBI's failure to appropriately nominate terrorism subjects while the investigation is ongoing could have significant consequences if that subject presents a threat to our nation's security. Because the watchlist alerts frontline screening personnel and law enforcement of the need to collect potentially valuable intelligence during encounters, the failure to nominate subjects of FBI investigations could lead to missed investigative opportunities. In addition, the failure to nominate a subject places frontline screening and law enforcement personnel at a greater risk because they might be unaware that the individual encountered is a known or suspected terrorist.

Recommendations

We recommend that the FBI:

1. Strengthen its internal controls to ensure that TREX is notified of the initiation of all domestic and international terrorism investigations so that TREX can monitor the field offices' efforts to submit watchlist nominations in a timely manner and in accordance with FBI policy.
2. Implement periodic refresher training on significant changes that occur in the nomination process and on the overall benefits of watchlisting, such as adding value to FBI investigations, enhancing the safety of frontline screening and law enforcement personnel, and improving overall U.S. government intelligence collection efforts.
3. Require counterterrorism supervisors to assess the watchlisting status of all terrorism subjects during their mandatory 90-day case file reviews.

II. UNTIMELY WATCHLIST NOMINATIONS AND MODIFICATIONS

We found that 78 percent of the FBI terrorist watchlist nominations we reviewed were completed in an untimely manner. Further, at least 12 percent of these subjects possibly traveled into or out of the United States during the time period that they should have been watchlisted. Additionally, we found that the FBI failed to update watchlist records with new information about subjects in 67 percent of the terrorism investigations we reviewed. These problems affect the ability of screening agents and law enforcement to identify known or suspected terrorists when they are encountered or avoid delaying innocent travelers who have names similar to the known or suspected terrorists.

Subjects Untimely Watchlisted

The FBI requires its field offices to submit watchlist nominations to TREX within 10 working days, except for nominations that will also be sent to the TSA's No Fly list, which must be submitted within 24 hours. Each of the FBI headquarters' departments (TREX, the NCTC branch staffed by FBI personnel, and TSC) attempts to process these nominations within 24 hours. To determine whether the FBI was submitting timely watchlist nominations, we reviewed 95 FBI terrorism investigations.⁷⁶

For the 95 cases we reviewed, we sought to determine whether the FBI field office sent the watchlist nomination to TREX within 10 working days of the case opening, as required by FBI policy. For those nominations indicating that the subject should be placed on the TSA's No Fly list, we sought to determine whether the nomination was submitted within 24 hours. We then reviewed documentation at the TREX, NCTC, and TSC to determine whether each of these components processed the nominations within their standard 24-hour timeframes.

⁷⁶ We selected 110 open terrorism investigations out of a total of 854 investigations initiated by the Los Angeles, California; Miami, Florida; and Minneapolis, Minnesota field offices in FYs 2006, 2007, and the first half of FY 2008. However, as discussed in the previous chapter, the FBI failed to nominate subjects of some of these terrorism investigations. Therefore, we eliminated the 15 investigations for which there were no nominations, and we tested the timeliness of watchlist nominations in the remaining 95 investigations. Appendix I contains an expanded discussion of the audit's scope and methodology, including information related to our sample design.

In examining the timeliness of the FBI's watchlist nominations, we considered several key points in the watchlist nomination process. To examine the 10 working day requirement, we used the date shown on the electronic communication officially opening the case and compared it to the date TREX received a complete nomination package from the field office. If that period of time exceeded 10 working days, we considered the nomination to be untimely. Next, we considered the date TREX forwarded the nomination to the NCTC branch staffed by FBI personnel. Because we were told by TREX staff that the standard processing time was 24 hours, we considered the nomination to be untimely processed if it took TREX more than 2 working days to forward the nomination to the NCTC.⁷⁷ We applied the same time standard to the NCTC and TSC, since each of those components also have a 24-hour processing time standard.

In our review of the 95 case files, we found that only 21 of them satisfied the FBI's watchlisting timeliness standards. In total, 78 percent of the cases, or 74 subjects, were not nominated to the consolidated terrorist watchlist in a timely manner.⁷⁸ In the 74 instances where the nominations were untimely, it took an average of 42 days to add the known or suspected terrorists to the watchlist.⁷⁹ Of the 74 untimely nominations, 35 were from FY 2006, 23 were from FY 2007, and 16 were from the first half of FY 2008.

The following table illustrates the breakdown of the untimely watchlisted subjects and shows that the watchlist nomination processing delays were primarily for international terrorists.

⁷⁷ We calculated TREX's timeliness using the date that TREX received a complete, error-free nomination package from the field office. In cases without any evidence of work done to correct or complete a submission, we used the date the nomination package from the field office was received by TREX.

⁷⁸ For purposes of our testing we considered a subject to be untimely nominated if one or more of the entities involved in the nomination process exceeded its standard processing time. For example, if TREX processed a nomination in 2 working days and the nominating field office, NCTC, and TSC each processed the nomination within 1 working day; we considered such a nomination untimely.

⁷⁹ In 14 of the 74 instances where we considered the subject to be untimely nominated, the total processing time for the nomination was 14 calendar days or less. This is notable because at the time of our testing a field office could take up to 14 calendar days (excluding federal holidays) to submit a timely nomination. When these 14 cases are removed from our calculation, the average processing time increases to 50 days and the median processing time increased to 32 days.

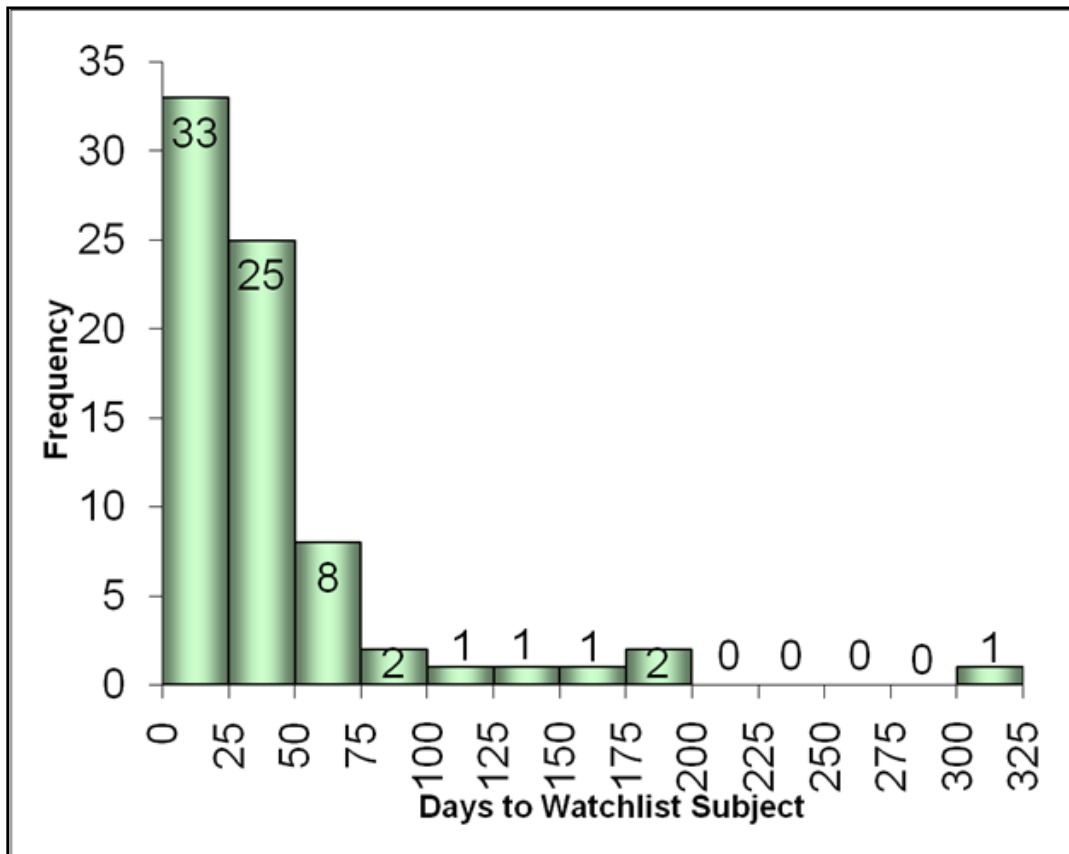
Breakdown of Untimely Watchlist Records

Type of Terrorist	Number of Subjects	Minimum in Days	Maximum in Days	Average in Days	Median in Days
International Terrorists	72	4	307	41	29
Domestic Terrorists	2	6	147	77	N/A
Totals	74	4	307	42	29

Source: OIG analysis of the untimely watchlisted subjects

The following graph illustrates the frequency of the untimeliness of the nominations. The graph shows that most of the untimely nominations were processed within 75 days of the opening of the investigation; however 8 of the nominations took more than 75 days.

Frequency of Untimely Watchlist Records



Source: OIG analysis of nominations to the watchlist

As with subjects who were never watchlisted, subjects who were not watchlisted in a timely manner could potentially travel freely into, within,

and out of the United States during the time they were not watchlisted. Although the FBI may have an active investigation on such a subject and included the subject in FBI databases, the FBI may not always be fully aware of the subject's whereabouts. Therefore, we believe that the FBI's failure to consistently nominate terrorism subjects to the consolidated terrorist watchlist in a timely manner could potentially put frontline screening personnel at greater risk, lead to missed intelligence gathering opportunities, and jeopardize the nation's security.

In examining the FBI's untimely watchlist nominations, we attempted to determine if there was a particular step of the process that caused the majority of the delays. We found that both FBI field offices and FBI headquarters were responsible for processing delays, and delays were encountered at each point of the process, as shown in the following table.

**Watchlist Nomination Delays by
FBI Field Offices and Headquarters**

Unit or Units Responsible for the Delay	Untimely Nominations per Unit	Minimum in Days	Maximum in Days	Average in Days	Median in Days
Field Offices	11	22	179	53	35
Headquarters	34	4	45	18	17
Field Offices & Headquarters	29	19	307	68	44
Totals	74	4	307	42	29

Source: OIG analysis of the untimely watchlisted subjects

As shown above, no one entity was responsible for all of the nomination processing delays. In 11 of the 74 untimely nominations, the delays were caused solely by the field offices, while 34 other nominations were delayed by FBI headquarters only. These 34 cases generally included processing delays at TREX, the NCTC branch staffed by FBI personnel, or both of these offices. We found processing delays in both the field and one or more FBI headquarters units in the remaining 29 of the 74 cases. We did not find excessive delays in nomination processing at the TSC.

Our review of the case files associated with these untimely watchlisted subjects revealed that there was a broad range in the potential level of risk to national security as a result of the subjects who were not timely watchlisted. For example, in one case the subject was placed on the watchlist 117 days after the opening of the investigation and the case ultimately closed because the investigation did not identify a nexus to terrorism. By contrast, another untimely watchlist nomination involved a suspected domestic terrorist who was a former Federal Air Marshal and

U.S. Army Special Forces soldier who was prosecuted for stockpiling stolen ammunitions, explosives, and firearms while in Afghanistan and shipping these items back to the United States. This suspect later pleaded guilty to stealing approximately 16,500 rounds of ammunition, C-4 explosives, various types of grenades, blasting caps, detonation cord, and firing devices. This subject's nomination was delayed in the field office and headquarters, and in total it took 147 days after the opening of the investigation before he was placed on the watchlist.

When TREX receives a nomination from an FBI field office, that nomination is forwarded to the employee responsible for that specific field office. However, this procedure becomes problematic when employees are unexpectedly absent. According to the TREX Unit Chief, TREX prepares for long term absences by temporarily reassigning the workload for that particular field office to another employee. However, if an employee is absent unexpectedly for a relatively short period of time, the nomination will likely be waiting for that employee upon their return. According to the TREX Unit Chief, if the unexpected absence approaches 5 working days, the unit will take action to reassign the pending nominations. Otherwise, the employee will catch up on processing their assigned FBI field office watchlist nominations upon their return.

TREX personnel believe that the system of assigning nominations based upon field location is beneficial because it allows the TREX employees to develop relationships with their assigned field offices. While we do not question TREX's decision to assign nominations based upon field office location, we are concerned that TREX does not have a plan to ensure timely processing of nominations should an unexpected absence occur. We recommend that TREX develop a more effective policy for reassigning nominations for unexpected employee absences so that nominations are processed in a timely manner.

One TREX official estimated that 70 percent of the initial nomination packages it receives from the field offices contain at least one deficiency. According to this official, these errors and omissions also delay the processing of the nomination because the TREX employee must communicate with the field office to resolve the issue before the nomination can be sent to NCTC for further processing. During our testing, we found that TREX did not always maintain documentation about these deficiencies or retain a documented history of communications with the FBI field offices regarding nomination problems. As a result, TREX was unable to provide evidence that many of the delays we attributed to TREX were actually due to deficiencies originating in the FBI field office. We believe that TREX should maintain adequate documentation of problematic nominations from the FBI

field offices. This documentation can help the FBI identify trends in incorrectly prepared nominations. If such trends emerge, the FBI can address them with targeted and specific training that focuses on the problematic FBI field offices or emphasize certain repeated deficiencies. In July 2008, TREX management formally instructed its personnel to document any delays beyond 48 hours.

At the conclusion of our audit, FBI officials remarked to us that the 24-hour standard processing time at TREX was unrealistic. We were informed that TREX has recently increased its quality assurance work to improve the completeness and accuracy of watchlist nominations and, as a result, the amount of time that the unit needs to process a nomination has grown. We believe that the quality of watchlist records is critical. However, the timeliness of records being added to the watchlist is also essential. Therefore, we recommend that the FBI evaluate the overall nomination process, determine the total amount of time that is needed and can be afforded to this process, and determine how much time should be allocated to each phase of the process.

Potential Missed Screening Opportunities

We searched TECS for the names of the subjects in our sample who were untimely watchlisted. We performed this test to obtain examples of the effect of the FBI's failure to watchlist terrorism subjects in a timely manner. However, we did not attempt to obtain complete travel histories of the 74 untimely watchlisted subjects. As a result, how often these subjects traveled into, out of, or within the United States is unknown. However, our search of TECS records revealed that 9 persons with names matching the untimely watchlisted subjects attempted to cross a U.S. border at least 10 times during the period the subjects were not watchlisted by the FBI.⁸⁰

At the time these individuals traveled, eight of the subjects had no record in the consolidated terrorist watchlist.⁸¹ If these subjects had been

⁸⁰ Although we determined that the FBI was untimely in its nomination of these nine subjects to the consolidated terrorist watchlist, the FBI informed us that three of these subjects were included in the FBI's VGTOF database prior to their travel. According to FBI officials, the potential threat posed by these subjects was mitigated due to their inclusion in VGTOF. FBI personnel stated that the subjects' inclusion in VGTOF would have led to additional scrutiny during encounters that used VGTOF to screen individuals. However, because VGTOF is only one of several downstream databases fed by the consolidated terrorist watchlist, encounters where the other downstream databases are used would not result in screening personnel being alerted that the subject had been identified as a known or suspected terrorist.

⁸¹ One of these subjects was watchlisted by another government agency.

timely watchlisted by the FBI, screening personnel would have received a notification to contact the TSC, which could have, for example, provided the screening personnel with information about the individual that may have affected the approval of an individual's visa or passport application. Also, such a notification could have provided a reason for frontline personnel to perform additional screening, which may have lead to the collection of information useful to U.S. intelligence and investigative efforts.⁸² In addition, if these subjects were watchlisted by the FBI, frontline personnel could have been made aware of safety risks, such as whether the FBI considered the subject armed and dangerous.

None of the subjects of the 74 untimely nominations had a federal arrest warrant pending. However, we found that 2 subjects were placed on the TSA's No Fly list and 24 were placed on the Selectee list when they were finally watchlisted.⁸³ These threat identifiers show that, for the period of time the subjects were supposed to be watchlisted, subjects considered by the FBI to be a potential threat to civil aviation could have traveled without TSA security receiving an alert to scrutinize these known or suspected terrorists or to prevent them from boarding aircraft.

FBI Field Office Response

As noted above, many FBI agents appeared not to understand the watchlisting requirements for domestic terrorism subjects, although they generally understood the requirement to watchlist subjects of international terrorism investigations. However, some agents were unclear about the specifics of the actual nomination process. Other agents stated that because of their inexperience in counterterrorism and lack of training on the nomination process they did not fully understand the nomination process when the case was opened. For example, some agents and managers in the field offices we visited did not understand that watchlist records are exported to downstream databases outside of the FBI, or understand that these downstream databases could potentially prevent their investigation's known or suspected terrorist from obtaining a U.S. visa or passport, crossing undetected through a U.S. point of entry, or help foreign allies in their investigations of the same subject. We found that the FBI has not

⁸² The information in the TECS database showed that some of these subjects were screened when they traveled to the United States. However, it was not always apparent why they were screened. The screening may have resulted from another agency's terrorist record on the subject, random selection, or another reason, such as the subject displaying erratic behavior.

⁸³ Persons on the TSA Selectee list require secondary screening when traveling via commercial or private aircraft. See Appendix II for more information on the Selectee list.

adequately communicated the investigative value of the watchlist to field agents so that they understand how watchlisting the subject is vital to the nation's security interests. Therefore, many agents also did not understand that watchlisting their subjects provides frontline screening personnel with additional identifying information should the subject be encountered. Additionally, many agents were unaware of the requirement to send the initial watchlist nomination to TREX within 10 working days. In fact, several case agents and SSAs we interviewed were unaware of the timeliness requirements for the submission of nomination packages and consequently submitted nominations when they felt it was appropriate.

We believe this lack of understanding of the importance of timely submitting watchlist information suggests a significant need for training for all FBI field personnel (case agents, supervisors, and task force officers) on the utility and importance of the terrorist watchlist and its nomination requirements. As discussed previously in this report, we recommended that the FBI implement periodic refresher training on the nomination process and on the overall benefits watchlisting affords FBI investigations, U.S. government intelligence collection efforts, and frontline screening and law enforcement personnel. We believe that the implementation of this recommendation will also help FBI field offices improve the timeliness of their watchlist nominations.

As stated in the OIG's March 2008 audit of the DOJ's Terrorist Watchlist Nomination Processes, we believe that the FBI's watchlisting deficiencies are also partly attributable to a lack of oversight at the field office level. Many of the untimely nominations could have been prevented if field office supervisors regularly reviewed the complete nomination packages for all newly opened terrorism investigations to ensure that the package was complete and accurate and may be efficiently processed by TREX.

Modifications to FBI Watchlist Records

According to FBI policy, the nominating case agent is responsible for updating watchlist records any time new identifying information on a subject is discovered. Identifiers (such as passport numbers and other information) for the subject can help law enforcement and screening personnel confirm the identity of the known or suspected terrorist or avoid misidentifying other individuals. Without the benefit of identifying information, it is more difficult for screening personnel to identify known or suspected terrorists attempting to enter the United States, given the number of travelers who enter the

United States. In FY 2008, over 396 million travelers entered the United States through 327 official points of entry.⁸⁴

To process a modification to the watchlist record, the case agent must prepare a new watchlist nomination form and mark it as a modification. When modifying a record, the case agent should prepare an electronic communication explaining the new identifying information that justifies the modification. The nomination form and the electronic communication are then submitted electronically to TREX in the same manner as initial nominations. In general, the process of modifying existing watchlist records with new identifying information is essentially the same as the process used in the submission of the initial nomination. However, FBI policy does not identify any timeliness standards for watchlist record modifications.

To determine whether the FBI was appropriately initiating and processing watchlist record modifications, we reviewed 56 of the 110 opened cases for which we reviewed the initial watchlist nominations.⁸⁵ We also reviewed the case files to determine if any government-issued identifiers, such as passport numbers and other information, were obtained after the submission of the initial watchlist nomination form. In 12 of the 56 cases, we found that the case agents discovered 22 additional government-issued identifiers that should have required a modification to the watchlist record. In four of these cases, the case agent had taken appropriate action and the record was modified. However, in the remaining eight cases (67 percent), the case agent failed to add at least one of the government-issued identifiers to the subjects' watchlist records. In total, we found that 55 percent of the government-issued identifiers that were discovered after the initial nomination were not added to the associated watchlist record as required by FBI policy. The following chart shows a breakdown of the number of identifiers that were not added to the watchlist record by type of identifier.

⁸⁴ FY 2008 statistics are found at the U.S. Customs and Border Protection website at www.cbp.gov, accessed on February 24, 2009.

⁸⁵ We excluded 54 cases from the 110 previously reviewed, including cases that were closed and cases where the subjects had not been watchlisted. See Appendix I for an expanded discussion of the audit's scope and methodology, including details on our sample design.

**Known or Suspected Terrorists Identifiers
Not Added to the Watchlist Records**

Government Issued Identifiers ⁸⁶	Identifiers Found in the Case File	Identifiers Not Added to the Watchlist Records
Identifier #1	1	1
Identifier #2	3	0
Identifier #3	1	1
Identifier #4	1	0
Identifier #5	2	1
Identifier #6	1	1
Passport Number	13	8
Totals	22	12

Source: OIG analysis of FBI open terrorism investigations case files and watchlist records

FBI Field Office Response

During our visits to field offices, we interviewed case agents, supervisors, and senior field managers to determine the reasons watchlist modification forms were not being submitted. Generally, we found that modification forms were not consistently submitted and case agents were uncertain about the type of information that would require a record modification. However, many of these agents did not realize that their subject’s watchlist record was being exported to various downstream databases used to screen persons entering the country, boarding airplanes, and being confronted by law enforcement personnel.

When case agents fail to modify and update watchlist records, screening opportunities can easily be missed. For example, if a case agent happens to discover that a subject of the investigation obtains a new passport under a different name and the agent fails to modify the corresponding watchlist record, the subject may travel without additional scrutiny because the new information has not been entered in the subject’s watchlist record.

We believe that the field offices’ frequent failure to modify watchlist records indicates a problem with watchlist-related training. If case agents received more training on the watchlisting process, they would have a better understanding about the necessity for updating watchlist records and the

⁸⁶ The TSC considers several of the identifiers that we tested too sensitive for public release, and therefore are not specifically named here.

investigative benefits such modifications provide. In addition, we believe that the FBI's lack of policy on timeliness requirements for watchlist modifications may lead to case agents assigning a low priority to preparing and updating watchlist records with new information. We recommend that the FBI develop timeliness requirements to help ensure that case agents timely submit known identifiers about a subject to the terrorist watchlist.

FBI Headquarters Response

The FBI headquarters' initial response to the findings within this chapter was to point to the FBI's intranet website that explains the watchlist process, and to identify the numerous electronic communications issued to the field offices notifying agents of the watchlist nomination process. Many of these electronic communications were developed to implement changes to the watchlisting process. Although these policy documents were intended to inform FBI personnel, we believe they ended up confusing some of them because of the numerous changes in the watchlist process over the years. For example, we found some case agents were still using old, out-of-date forms when performing watchlisting activities. Although the FBI has made the website available and sent out numerous communications, these methods have not, as our findings show, adequately addressed the ongoing watchlist nomination and modification deficiencies we found during our audit.

As noted previously in this report, the FBI recently provided a one-time mandatory training class to train FBI personnel on the watchlist nomination process. The class is intended to inform the field of the necessity to watchlist terrorism subjects and to update subjects' records when appropriate. We believe that increased training on the watchlisting process is an important element of the FBI's efforts to improve its watchlist activities, and we previously recommended that this training be provided on a periodic basis.

Conclusion

In total, 78 percent of the nominations we reviewed were processed in an untimely manner. We found that these untimely nominations took an average of 42 days to process. We believe that these processing times are excessive for a process that, when working correctly, can take less than a week. We did not find excessive delays in nomination processing at the TSC. However, we identified instances where nominations were significantly delayed by the field offices, by TREX, and by the NCTC branch staffed by FBI personnel. In many instances, more than one of these entities contributed to delays in the same case. Just as subjects that are never watchlisted pose

a potential threat to frontline screening and law enforcement personnel, subjects who are watchlisted in an untimely manner potentially pose the same threat and these watchlisting delays may result in missed intelligence gathering opportunities.

We believe these delays primarily result from weak implementation of existing policies and procedures as well as a lack of understanding in the field offices of the overall nomination process. In addition, we believe untimely nominations could be significantly reduced with improved communication and documentation of errors when they occur. As noted above, one TREX official estimated that 70 percent of the nominations TREX receives from the field contain errors that ultimately delay the process. However, when we requested documentation of these errors so that we could definitively determine the cause of the delay between the field and TREX, such documentation was not consistently available. As the processing hub for nearly all field office nominations and the only unit that has daily interaction with both the field and NCTC, we believe that TREX should require its personnel to document errors in the process, which will help TREX to identify problematic trends that could be addressed more promptly.

Finally, we found that the importance of the watchlist record modification process was not fully understood or appreciated by FBI field office personnel. Although we found that most field personnel understood the modification process and their obligation to modify their watchlist records, many field personnel we interviewed were uncertain as to when modifications are necessary. We believe modifications are crucial to the nomination process because outdated records may lead to missed screening opportunities of known or suspected terrorists. Because there are no timeliness requirements or regular supervisory review of watchlist modifications, we are concerned that they are not being submitted nearly as often as they should. Therefore, we believe that the FBI should review its current modification policy and consider the implementation of a timeliness requirement and supervisory review of watchlist record modifications. Such a requirement would help to emphasize the importance of watchlist record modifications and ensure that they are being processed as necessary.

Recommendations

We recommend that the FBI:

4. Develop a policy in TREX to reassign the responsibility for processing watchlist nominations when TREX personnel are unexpectedly absent to ensure timely processing.
5. Evaluate the overall watchlist nomination process, determine the total amount of time that is needed and can be afforded to this process, and determine how much time should be allocated to each phase of the process.
6. Monitor the timeliness of watchlist nominations and modifications to help ensure that FBI watchlist records are handled in a timely manner.
7. Review its current modification policy and consider implementing a timeliness requirement for and supervisory review of watchlist record modifications.

III. REMOVAL OF WATCHLISTED SUBJECTS

Although FBI policy generally requires FBI agents to remove subjects from the terrorist watchlist when the associated cases are closed, we found the FBI did not do so in eight percent of cases we reviewed. Moreover, we found that the FBI was untimely in its removal of the subjects in 72 percent of the cases we reviewed and when the FBI removed these subjects, it took, on average, 60 days to process the removal requests. As a result of the FBI's failure to remove the names in a timely manner, these subjects could be delayed unnecessarily by screeners or law enforcement personnel when they travel into or around the United States.

FBI Watchlist Record Removal Process

FBI policy generally requires that subjects of closed terrorism investigations be removed from the watchlist.⁸⁷ The process to remove subjects from the watchlist is similar to the nomination process, except that FBI headquarters' personnel have to approve the closing of the investigation.⁸⁸ Before approving the closure of an international terrorism case, ITOS personnel are responsible for verifying that all investigative techniques have been exhausted on the subject and for checking classified databases to make sure no additional information is available that would necessitate keeping the case open.⁸⁹

According to several FBI personnel, the amount of time it takes to obtain ITOS concurrence varies greatly. ITOS officials stated that depending

⁸⁷ In limited circumstances, FBI policy allows for the continued watchlisting of subjects of closed full international terrorism investigations if the subject is believed to pose a continuing threat to national security. However, all domestic terrorism subjects and subjects of international terrorism preliminary investigations must be removed from the watchlist upon closure of the case.

⁸⁸ For full international terrorism investigations, the field office must obtain concurrence for the case closure from the CTD's International Terrorism Operations Section (ITOS). For full domestic terrorism investigations, concurrence must be given by the CTD's Domestic Terrorism Operations Unit (DTOU), the unit responsible for conducting program management of domestic terrorism cases for the FBI at a national level.

⁸⁹ ITOS conducts program management of international terrorism cases for the FBI at a national level. When closing an international terrorism preliminary investigation the field office may close the case without requesting ITOS concurrence.

upon the investigation it could take months for ITOS personnel to review the case and provide concurrence to the field.

For both international and domestic terrorist removals, the case agent is required to submit the removal form with the closing electronic communication directly to TREX. TREX forwards the removal request for international terrorism subjects to the NCTC branch staffed by FBI personnel and then to the TSC in the same way that it does for initial nominations. For domestic terrorism subjects, removal forms are sent directly to the TSC. TREX, NCTC, and TSC each attempt to process the removals within 24 hours.

At the time of our audit, the FBI did not have a timeliness requirement for field offices to provide watchlist record removal paperwork to TREX. However, we believe that the removal process is an integral element of the watchlisting process because extraneous records can impede the effectiveness of the watchlist. When the terrorist watchlist contains identities for which the federal government no longer suspects a nexus to terrorism, there is an increased risk that individuals will be unnecessarily delayed during travel or other screening opportunities. The obsolete records can also make it more difficult to accurately identify positive matches to known or suspected terrorists because the old records may be similar to current entries. In the absence of an explicit FBI policy on the timing requirements for the submission of watchlist removals, we consulted FBI officials in headquarters and in field offices and tested the removal process using the same 10-working day requirement that we applied to our testing of the initial nominations. None of the officials we consulted objected to the 10-working day standard, and in fact in August 2008 the FBI issued an internal policy establishing a 10-day requirement for the submission of watchlist removals.

Subjects' Watchlist Records Removed Untimely

We evaluated 85 cases that were closed by the three field offices we visited, for FYs 2006, 2007, and the first half of FY 2008, to determine if the FBI removed the subjects from the watchlist in a timely manner or provided adequate justification for the subject to remain watchlisted.⁹⁰ According to FBI policy, when a counterterrorism case is closed the subject generally should be removed from the watchlist. However, in limited circumstances FBI policy allows for the continued watchlisting of the subject of a closed full

⁹⁰ The 85 cases reviewed were limited to closed cases in which there was a nomination and cases which were not transferred and acted upon by another field office.

international terrorism investigation. In these circumstances written justification must be documented in the case file.⁹¹

We found that 13 of these subjects met FBI removal standards and 4 more subjects were justifiably maintained on the watchlist after case closure. However, in total, the subjects of 61 of the 85 (72 percent) closed FBI counterterrorism investigations we analyzed were removed from the watchlist in an untimely manner (22 were from FY 2006, 26 from FY 2007, and 13 from the first half of FY 2008; a total of 46 of the untimely removed subjects were U.S. persons).⁹² Overall, it took an average of 60 days to remove these subjects from the watchlist.

The following table shows that untimeliness in the watchlist removal process occurred for both international terrorism and domestic terrorism cases and that many of the delays were significant.

Breakdown of Untimely Watchlist Removals

Type of Terrorism Subject	Number of Subjects	Minimum in Days	Maximum in Days	Average in Days	Median in Days
International Terrorism	56	6	589	58	27
Domestic Terrorism	5	7	344	82	14
Totals	61	6	589	60	26

Source: OIG analysis of the untimely removed subjects

In conducting our review, we began by examining the date on the closing electronic communication. We then determined the date TRES received the closing electronic communication and the watchlist removal form. If the time period between these two events was greater than 10 working days, we considered the field office's submission to be untimely. We then attempted to determine the date TRES forwarded the removal form to the NCTC for processing. Because TRES had a standard 24-hour processing time for removals, if it took more than 2 working days for TRES

⁹¹ The policy covering the circumstances for which subjects can remain watchlisted after case closure is classified.

⁹² Executive Order 12333 on United States Intelligence Activities (E.O. 12333) states that a U.S. person is a United States citizen, an alien known by the intelligence agency and considered to be a permanent resident alien, an unincorporated association substantially composed of United States citizens or permanent resident aliens, or a corporation incorporated in the United States, except for a corporation directed and controlled by a foreign government or governments.

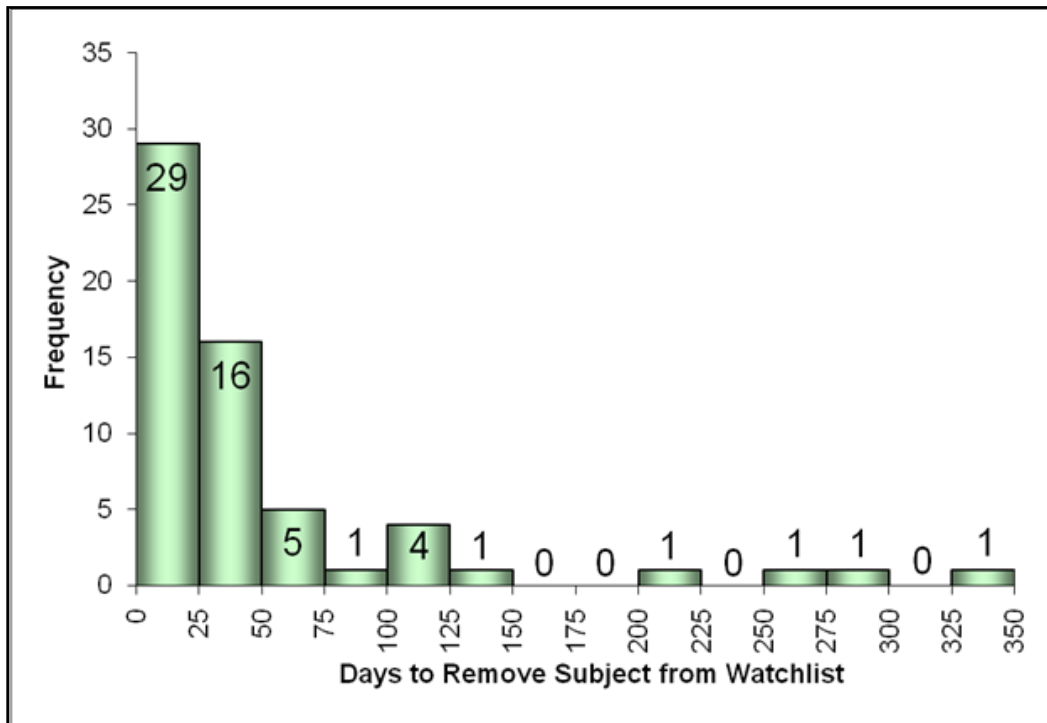
to forward the removal to the NCTC we considered TREX to be untimely in its processing. Again, we applied the same 24-hour standard to the NCTC and the TSC. Finally, if we determined that the subject should have been removed from the watchlist and had not been for any period of time, we sought to determine whether the subject was unnecessarily encountered by law enforcement or frontline screening personnel.

We found that confusion exists as to when a watchlist removal form should be submitted to TREX. Some FBI personnel believed that they were required to wait for case closure concurrence before removing the subject from the watchlist. Other FBI personnel submitted the removal paperwork at the same time they asked for closure concurrence. The possibility exists that ITOS or DTOU would not concur with a closure request and the subject would have already been removed from the watchlist. ITOS officials told us that after a case closure request is made by the field office, the approval process for case closure can take as long as 6 months. Thus, in cases where ITOS takes a long time to review the case and ultimately denies the closure request, the possibility exists that a known or suspected terrorist would have been removed from the watchlist for a significant period of time while the FBI field office waits for headquarters' response on its case closure request. In such cases, the case agent would be responsible for placing the subject back on the watchlist once the case agent was informed that the closure request had been denied. FBI policy appears to require field offices to submit removal forms after ITOS has approved case closure. However, many FBI managers and personnel we interviewed did not describe the process this way, and other FBI documents are not clear on how the process should work. Considering the uncertainty that exists and the ramifications of the significant time that can elapse during the ITOS approval phase, we believe that the FBI should reexamine its watchlisting policy and practices during the closure request process to ensure that they are clear and appropriate.

Distribution of the Subjects Removed in an Untimely Manner

The following chart illustrates the frequency of each untimely removal. We believe that the lengths of time displayed below far exceed a reasonable standard for removing a subject from the terrorist watchlist.

Frequency of Untimely Watchlist Removals⁹³



Source: OIG analysis of watchlist record removals

Like our work on the untimely initial watchlist nominations, we reviewed the untimely watchlist removals in an attempt to determine the source of the delay. The following chart illustrates that the delays occurred both in the field and in FBI headquarters.

Watchlist Record Removal Delays

Unit or Units Responsible for the Delay	Number for this Unit	Minimum in Days	Maximum in Days	Average in Days	Median in Days
Field Office	5	37	344	155	144
Headquarters	30	6	44	17	15
Both Field and Headquarters	26	22	589	91	50
Totals	61	6	589	60	26

Source: OIG analysis of the untimely removed subjects

⁹³ One untimely removal is not shown on this chart. This removal could be considered an outlier, because it took the FBI 589 days to remove the subject from the watchlist.

Unnecessary Watchlist Screenings

While terrorism subjects who were never watchlisted or watchlisted in an untimely manner could have freely traveled through U.S. points of entry without being flagged as known or suspected terrorists, former subjects of FBI investigations who should have been removed from the watchlist could potentially have the opposite experience. These former subjects may be unnecessarily screened or detained by frontline personnel who are still instructed to approach the individual as a known or suspected terrorist. This not only may be an inconvenience to the former subject, but it also may affect other individuals with similar names who are misidentified as the former subject.

To determine how often the 61 subjects who remained watchlisted when their names should have been removed were encountered by frontline screening personnel, we performed a search in the TSC's Encounter Management Application (EMA).⁹⁴ In total, we found that 9 individuals were encountered a total of 13 times during the time period they remained on the watchlist after their cases were closed.⁹⁵ We determined that during the encounters related to travel the subjects were delayed six times. In addition, at least one unrelated individual was misidentified as one of the former FBI terrorist subjects that were not removed from the watchlist in a timely manner; this individual was not inconvenienced. Furthermore, we found that four of the subjects delayed were U.S. persons.

Additionally, we evaluated the 61 untimely removed subjects from the watchlist to determine their threat identifiers, and we found that 14 of them were on the TSA Selectee list. These 14 subjects would have been sent to secondary screening at airport security prior to boarding flights. We determined that 2 of the 14 subjects traveled and were sent to secondary screening.

⁹⁴ Each of these encounters must be documented within EMA to show details of the encounter, including the subject's name, when the individual was encountered, where the event occurred, and the disposition of the encounter (e.g., the subject was arrested, questioned, or denied entry into the United States).

⁹⁵ Not every encounter involves an actual delay of the watchlisted individual. Some individuals are encountered and screened without their knowledge (the screening is behind the scenes), such as when individuals submit a visa application. Other encounters involve an actual exchange between a screener and a traveler that may delay the travel of the individual.

We examined all of the subjects that were removed untimely from the watchlist to determine if these subjects had filed a redress complaint.⁹⁶ We found that, as of September 2008, none of these individuals had filed a redress complaint.

FBI Field Office Reaction

We interviewed field office management and staff and performed case file reviews to determine why the untimely watchlist removals occurred. In general, field personnel understood the requirement to remove the subject from the watchlist when a terrorism investigation was closed. Although there is no specific time requirement for doing so, both supervisors and staff indicated that the removal form was generally prepared and submitted with the closing electronic communication. However, when we asked several case agents about specific delays in removing subjects from the watchlist or not removing the subject at all, only some of the case agents were able to provide an explanation for the delays we identified.

Of the explanations provided, one case agent informed us that his subject was supposed to remain watchlisted, but he had forgotten to include a justification for doing so in the case-closing electronic communication. Two case agents told us that they believed they had submitted the removal forms on time, while another case agent believed that the subjects of her two cases had been removed from the watchlist prior to the investigations being reassigned to her. One case agent stated that he must have forgotten to submit the removal form for one subject, and he attributed delays in removing two other subjects from the watchlist to the field office's management taking too long to approve closure of the underlying case.

However, our interviews led us to the conclusions that some case agents did not consider watchlist record removal to be a high priority and they did not always understand the ramification of untimely removals. Some case agents did not appear to understand that the watchlist is disseminated to other organizations. Therefore, we believe, these case agents did not recognize that the watchlisted individuals or others with similar names could be delayed, detained, or otherwise inconvenienced by law enforcement and screening personnel. We believe that the FBI should ensure case agents are trained on the importance of removing subjects from the watchlist once they are no longer under investigation. As discussed previously, we recommended that the FBI implement periodic refresher training on the nomination process and the importance, investigative value,

⁹⁶ Redress is a process by which individuals can seek relief if they feel they have been stopped unnecessarily or misidentified as a result of watchlisting.

and the overall impact of watchlisting. We believe that the implementation of this recommendation will also address untimely removals.

As previously noted, in August 2008, after we completed our field work, the FBI established a time requirement of 10 days for submitting removal paperwork to FBI headquarters upon case closure. We believe that this new timeframe will communicate to the field offices the importance of removing subjects from the watchlist in a timely manner. We also believe the FBI's required 90-day SSA file review would be a good opportunity for the FBI to evaluate whether all subjects of closed FBI counterterrorism investigations have been removed from the watchlist by their case agents, as appropriate. However, we recommend that the FBI develop policies requiring SSAs to review case closure documentation to ensure the removal form was submitted timely or that the file contains justification for the subject to remain on the watchlist.

Subjects Remaining on the Watchlist

As previously noted, FBI policy allows agents to leave certain subjects on the watchlist after the related cases are closed. We discussed with the FBI the results of our review of 78 cases for which the FBI had either removed the subject from the watchlist or justified the retention of the watchlist record after case closure. In seven additional cases, the subjects remained watchlisted. In five of these cases, the FBI could not provide any documentation or justification that it had purposely kept these individuals on the watchlist and ultimately took action to remove these subjects. However, the remaining two individuals who were not removed were subjects of preliminary investigations and FBI policy requires that these subjects be removed from the watchlist.⁹⁷

We found that the FBI currently does not have a policy that addresses the future of the record when a field office justifies retaining a subject on the watchlist after case closure. If the FBI justifies leaving certain subjects on the watchlist after a case has been closed, there is no requirement for these records to be reviewed at a later date to determine if the subjects should be removed from the watchlist. Additionally, there is no requirement for these records to be updated with any new identifying information on the subjects. We believe that the FBI needs to enhance its policies related to these watchlisting issues to help ensure that all of the FBI's watchlist records are complete and appropriate. Specifically, we recommend that the FBI develop a policy to review justifications for retaining the watchlisting status of subjects of closed cases. In addition, for any records that are retained after

⁹⁷ One of these two subjects was also watchlisted by another government agency.

the associated case is closed, the FBI should develop a policy to ensure regular reviews of the record to determine if it should be modified or removed.

We further evaluated a majority of the subjects who were not removed from the watchlist to determine if these subjects had filed a redress complaint. We found that, as of September 2008, none of these individuals had filed a redress complaint.

Transfer Cases

During our review of the FBI's watchlist record removal process, we became aware of an issue regarding "transfer cases." FBI policy requires the current field office investigating a subject to transfer the case to a new field office when a subject moves to a new field office's geographic area of responsibility. Five of the closed cases that we reviewed were transfer cases. Although there are no set timeframes for transferring cases, we found that two out of the five transfer cases we reviewed were not acted upon by the receiving FBI field office within what we consider to be a reasonable timeframe. These two cases remained in a transfer status for 307 and 361 days. For one of these cases, the original field office was submitting a watchlist record removal request. Although the original field office has since submitted the removal paperwork, at the conclusion of our field work that removal form had not been processed by TREX for 125 days.

We recommend that the FBI develop internal controls and timeframes to help ensure that cases transferred from one field office to another are acted upon by the receiving field office in a timely manner and that any watchlisting matters associated with the transferred cases are handled appropriately.

Conclusion

Although the FBI has developed internal policies and procedures designed to ensure proper removal of former subjects from the watchlist, the FBI had no timeliness requirement for the removal of former subjects from the watchlist. As a result, we determined that the FBI failed to remove the former subjects in a timely manner in 72 percent of the cases we reviewed. On average it took 60 days to remove these subjects from the watchlist. During the course of this audit, the FBI implemented a new requirement that field offices submit watchlist removals within 10 days of the case closure request. We believe that, if enforced, this policy will substantially reduce the average processing time for removals. However, we believe that the FBI should take an additional step and require supervisory

review of all removals to ensure that the newly implemented timeliness requirements are met.

In addition to the lack of a timeliness requirement, we found confusion as to when watchlist removal forms should be submitted to TREX. Considering the uncertainty that exists and the ramifications of the significant time that can elapse during the ITOS approval phase, we believe that the FBI should reexamine its watchlisting policy and practices during the closure request process to ensure that they are clear and appropriate.

Lastly, we believe that the FBI should review its case transfer policy. Although we did not review this policy in depth in this audit, we found that two of the five transfer cases we selected for review were picked up by the receiving field office in what we consider an unreasonable amount of time.

Recommendations

We recommend that the FBI:

8. Reexamine its watchlisting policy and practices during the closure request process to ensure that they are clear and appropriate considering the significant time that can elapse during the ITOS approval phase.
9. Develop policy to require SSAs to review their squads' closed cases to ensure that subjects are timely removed from the watchlist or justification is made to maintain the watchlist record.
10. Develop policy to review justifications for retaining watchlist status of subjects of closed investigations. This policy should also address the regular review of these records to determine if they should be modified or removed.
11. Monitor the timeliness of watchlist removal requests to help ensure that the records are deleted in a timely manner.
12. Develop internal controls and establish policy to ensure that cases are transferred from one field office to another field office in a timely manner and that any watchlisting matters associated with the transferred cases are handled appropriately.

IV. NON-INVESTIGATIVE SUBJECTS

In addition to its nomination process for investigative subjects, the FBI also uses other processes to nominate individuals to the terrorist watchlist. We found that the internal controls over these other processes are weak or nonexistent. As a result, numerous watchlist records nominated through these processes are not subjected to rigorous initial review, periodically confirmed, or examined for potential removal. In total, more than 62,000 watchlist nominations have been made by non-standard FBI nomination processes. We also found almost 24,000 FBI watchlist records that were not sourced to a current terrorism case classification. Many of the records we tested were based on cases that had been closed years ago and should have been removed at that time. These records caused individuals to be screened unnecessarily by frontline screening personnel.

Military-related Watchlist Nominations

According to FBI officials, shortly after the U.S. invasion of Afghanistan in late 2001 the FBI deployed Special Agents to Afghanistan in an effort to collect fingerprints and other identifying information from known or suspected terrorists operating inside Afghanistan and attempting to flee Afghanistan. In April 2002, the Attorney General issued a directive stating that the FBI shall “coordinate with the Department of Defense to obtain, to the extent permitted by law, on a regular basis the fingerprints, other identifying information, and available biographical data of known or suspected foreign terrorists who have been processed by the U.S. Military.”⁹⁸ The directive went on to state that the information gathered “shall be placed into the [FBI’s] Integrated Automated Fingerprint Identification System (IAFIS) and other appropriate law enforcement databases to assist in detecting and locating foreign terrorists.”⁹⁹

As a result of the Attorney General’s directive, the FBI’s coordination with DOD expanded and former FBI Criminal Justice Information

⁹⁸ Attorney General Directive, Coordination of Information Relating to Terrorism, April 11, 2002.

⁹⁹ IAFIS contains the fingerprints and corresponding criminal history information for more than 55 million subjects. The fingerprints and corresponding criminal history information are submitted voluntarily by state, local, and federal law enforcement agencies.

Services (CJIS) officials told us that they began sending larger FBI teams to Afghanistan, and later to Iraq, to collect fingerprint data for known or suspected terrorists processed by the U.S. military.¹⁰⁰ These efforts initially were focused on U.S. detention facilities. However, the FBI also deployed its Hostage Rescue Team (HRT) and Fly Team & Military Detention Unit (fly team) personnel to Afghanistan and Iraq. These personnel were embedded with U.S. military units in order to lend their expertise in evidence gathering and crime scene processing. These FBI deployments resulted in the collection of thousands of fingerprints of known or suspected terrorists in Afghanistan and Iraq. These fingerprints were processed and entered into IAFIS by CJIS and later shared with the NCTC for watchlisting purposes.¹⁰¹

DOD considered the development of its own biometric database after it recognized the need to store biometric data on its military detainees. Because of the FBI's expertise in the area, the FBI and the DOD decided to work together to develop what became known as the DOD's Automated Biometric Identification System (ABIS).¹⁰² ABIS is housed at CJIS, and is interoperable with IAFIS.

Once the database became operational in November 2004, DOD began entering the biometric information for its military detainees into ABIS and flagging those detainees who were known or suspected terrorists.¹⁰³ Any of the entries that were entered into ABIS and flagged as known or suspected terrorists were fed into the FBI's IAFIS database. Analysts at CJIS received a daily feed from IAFIS of all newly entered known or suspected terrorist information. CJIS analysts then shared the relevant information with the NCTC for the purpose of placing these individuals on the consolidated terrorist watchlist. This process, which formally began on October 1, 2005, was still in

¹⁰⁰ CJIS was established in February 1992 to serve as the focal point and central repository for criminal justice information within the FBI. CJIS is responsible for the housing and database management of the VGTOF and IAFIS databases.

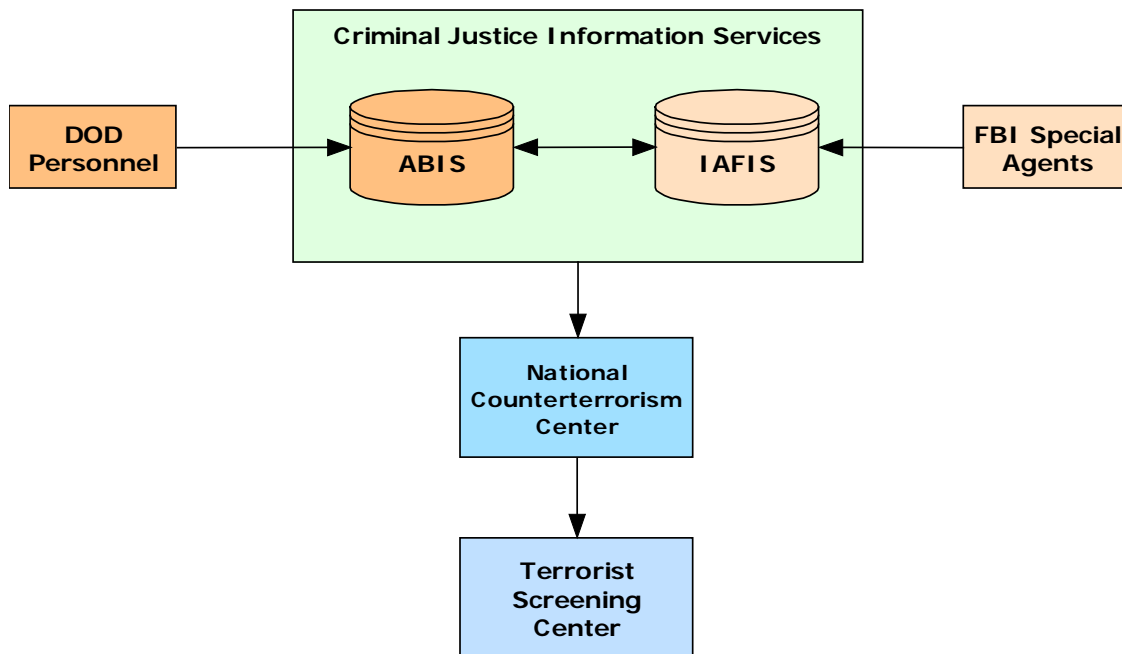
¹⁰¹ Prior to the creation of ABIS, all of the fingerprints gathered through these initiatives between 2002 and 2004 were processed by CJIS and entered into the FBI's IAFIS.

¹⁰² DOD entered into a contract on September 23, 2004, to develop its biometric system. ABIS became operational on November 12, 2004. Prior to the creation of ABIS, all military detainee nominations were collected by FBI CJIS SSAs and sent to the NCTC. These records reflect the FBI as the source of the information.

¹⁰³ In our discussions with FBI personnel about the watchlist nominations discussed in this section of the report, the records were consistently referred to as "military detainee" records. However, we do not know if the individuals were all detainees, the length of time anyone may have been detained, the location of detainees, or the current detention status of the individuals.

use when we contacted CJIS in August 2008 as part of this review.¹⁰⁴ One CJIS official estimated that approximately 50,000 military detainees had been nominated to the watchlist under this process. The following graphic illustrates the sharing of information between the DOD and FBI.

Watchlist Nomination Process Used by FBI Criminal Justice Information Services



Source: OIG analysis of CJIS nomination process

However, we found that the FBI’s practice of working with the DOD and submitting military detainee nominations directly to NCTC is not addressed in the FBI’s watchlisting policies. To gain a better understanding of the practice, we interviewed officials at the CJIS and NCTC. CJIS officials told us that they did not consider the FBI to be the nominating agency for these watchlist records. Instead, they viewed CJIS as a conduit for DOD’s nominations of known or suspected terrorists to the watchlist. These CJIS officials emphasized that the FBI was not reviewing each nomination and the determination that these individuals were known or suspected

¹⁰⁴ Prior to October 1, 2005, CJIS processed all military detainee and other nominations that they received through this fingerprint process directly into the VGTOF. In August 2004, when the NCTC began operations all VGTOF records were imported into TIDE when that database was created. One TSC official estimated this VGTOF batch included 9,000 military detainees. Additionally, the records received by CJIS between August 2004 and September 30, 2005, were sent to NCTC to be included into TIDE in one group. This last batch of records (approximately 5,300 CJIS nominations) had not been fully processed as of May 9, 2008.

terrorists was made by the DOD using DOD criteria. CJIS officials stated they were simply forwarding the information in accordance with the Attorney General's Directive. When we inquired why the DOD did not submit these nominations directly to the NCTC, CJIS officials said they were not sure of the specific reasons but believed it was originally done this way for timeliness and efficiency purposes. In fact, one CJIS official remarked that during his relatively short tenure at CJIS he questioned the reasoning behind CJIS continuing to serve as a conduit for DOD nominations.

In July 2008, we were informed by NCTC officials that they temporarily halted the practice of forwarding to the watchlist the DOD-related records received from CJIS. NCTC officials stated that they were concerned about the lack of information accompanying these nominations to explain why the subject may have a nexus to terrorism (also known as "derogatory information"). When we asked CJIS officials about the lack of such information, they stated that it was their understanding that the Defense Intelligence Agency was subsequently providing NCTC with the necessary information to support the individual's nomination to the watchlist. However, NCTC officials stated to us that this was not occurring and that although they requested additional information from the DOD, they could not get an update on the status of these detainees. NCTC officials also expressed concern over the ownership of these records. According to NCTC officials, when CJIS first began sending these nominations no distinction was made between military detainee nominations and nominations that resulted from other FBI fingerprint gathering initiatives, such as nominations made by Legal Attachés (LEGAT). All nominations received from CJIS were sourced to the FBI at that time.

According to FBI policy, all non-investigative subject nominations are to be submitted through ITOS and forwarded to the NCTC. However, the nominations submitted by CJIS were not reviewed by any ITOS personnel. Instead, they were submitted from CJIS directly to the NCTC and then forwarded to the TSC. We believe that, as a result of bypassing ITOS on military detainee watchlist nominations, the FBI may have missed significant opportunities to further research these individuals to identify any potential connections to existing FBI terrorism investigations.

Following our inquiries into this matter, CJIS informed NCTC on October 23, 2008, that CJIS and DOD had met and agreed that DOD would process its own nomination records. CJIS also stated that the FBI would review all previous nominations to ensure that proper documentation had been completed and FBI procedures were followed. Further, CJIS indicated that existing records would be modified to reflect DOD "ownership." We believe that this is appropriate because the FBI was unaware of the status of these watchlisted individuals (e.g., still detained, released, dead). In

addition, many of these nominations were processed with little or no derogatory information and there was no formal process for the FBI to regularly review the records or to modify and remove the watchlist records. Therefore, we believe it is appropriate for the FBI to no longer be involved in the processing of DOD watchlist nominations.

Hostage Rescue Team and Fly Team Nominations

The FBI continues to deploy HRTs and fly teams overseas, and many of these teams are embedded with U.S. Special Forces in Iraq and Afghanistan.¹⁰⁵ These teams are also deployed outside of these current war zones in areas such as the Horn of Africa, South America, and the Philippines. In conducting their missions overseas, the teams obtain fingerprints of known or suspected terrorists by utilizing Quick Capture Platforms (QCP). QCPs allow the teams to fingerprint known or suspected terrorists electronically and to transmit the biometric information back to CJIS for processing and entry into IAFIS. According to CJIS personnel, information they receive on known or suspected terrorists from HRT are forwarded directly to the NCTC branch staffed by FBI personnel for nomination purposes. Additionally, an NCTC official stated that they also receive CJIS nominations based fingerprints collected by fly teams. According to NCTC personnel, these nominations are sourced to the FBI and CJIS personnel agree with this practice. Unlike the nominations for military detainees, the NCTC continues to process these nominations and forward them to the TSC for inclusion on the terrorist watchlist.

To obtain a better understanding of these nomination practices, we interviewed FBI officials from the HRT and the fly team. The HRT told us they understood that the data they collected was being provided to CJIS for inclusion into IAFIS. However, they did not realize that their efforts also resulted in watchlist nominations. According to CJIS officials, CJIS has nominated more than 2,800 known or suspected terrorists to the watchlist as a result of the information they have received from HRTs and fly teams.

Similar to the nomination of DOD's military detainees, FBI policy allows the FBI to nominate individuals who are not subjects of FBI investigations to the watchlist. However, that policy requires the nominating entity (FBI headquarters or field offices) to draft an electronic communication to the appropriate ITOS unit to evaluate the information. ITOS then sends any

¹⁰⁵ The FBI's HRTs are full time, national-level tactical teams. The mission of HRT is to deploy to any location within 4 hours and conduct a successful rescue of U. S. persons and others who may be held illegally by a hostile force, either terrorist or criminal in nature. The FBI Fly Team is a small, specially trained group of terrorism first responders, including agents and analysts based at FBI headquarters, that can be quickly deployed to anywhere in the world.

resulting nominations to the NCTC with the appropriate information. We believe this policy requiring nominations to go through ITOS provides an appropriate level of review to ensure that only appropriate watchlist nominations are submitted. However, CJIS's current practice of sending nominations directly to the NCTC is not in compliance with FBI policy and bypasses a key internal control over these nominations. Therefore, we recommend that the FBI review CJIS's current practice of sending nominations directly to the NCTC branch staffed by FBI personnel and ensure that the appropriate level of review is conducted before forwarding such nominations.

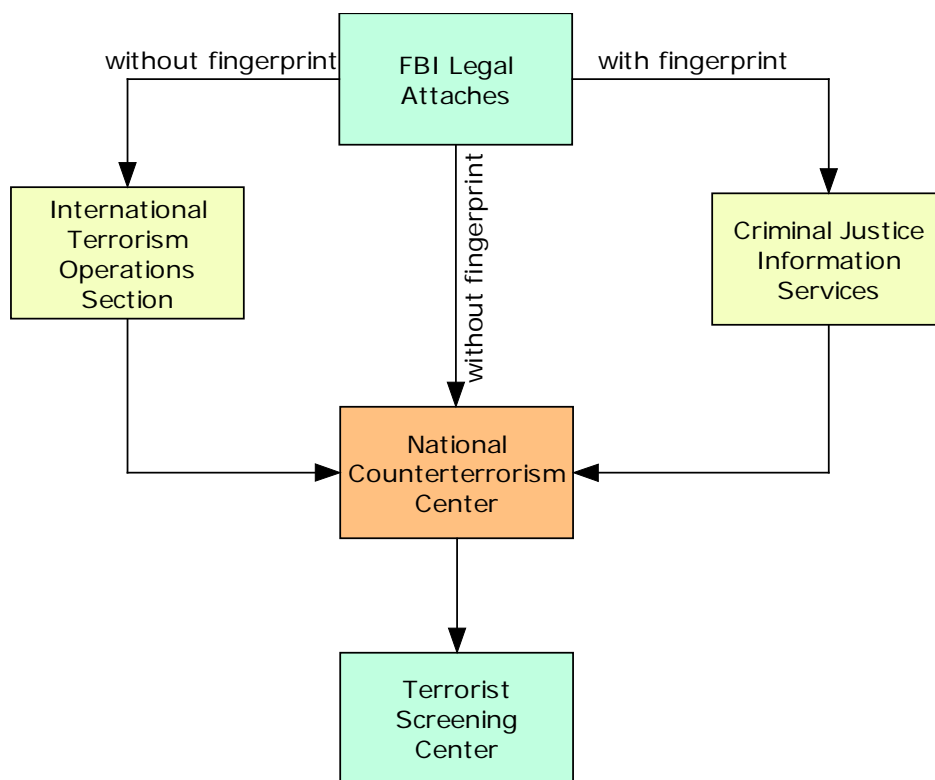
As the OIG reported in its March 2008 audit on the watchlist nomination processes, we have additional concerns about the FBI's policy for watchlisting individuals who are not the subject of an FBI investigation. FBI policy governing the nomination of known or suspected international terrorists not under FBI investigation does not describe procedures for modifying or removing watchlist records created by this process. Additionally, FBI policy does not define quality control procedures to help ensure the accuracy and completeness of the information submitted to the NCTC for watchlist nominations. In contrast, the FBI's policies for nominating its investigative subjects include quality control procedures to help ensure watchlist records are modified and removed as appropriate. As the OIG recommended in the March 2008 audit, we believe the FBI should develop appropriate procedures to modify or remove watchlist records for non-investigative subject nominations, including military detainees. In our previous audit, we were not informed that CJIS was also using fly team and HRT-provided information to nominate individuals to the watchlist. Therefore, in this audit we recommend that the FBI ensure that its newly developed procedures for nomination of non-investigative subjects also apply to these nominations.

LEGAT Nominations

FBI LEGATs use one of three internal nomination processes to nominate a known or suspected terrorist to the consolidated terrorist watchlist. First, FBI policy allows a LEGAT to nominate a known or suspected terrorist by preparing a detailed electronic communication to ITOS who will submit the resulting nomination to the NCTC. Second, according to an April 2006 FBI directive, if a LEGAT obtains information on a known or suspected terrorist (and the information does not include fingerprints), the LEGAT may submit a nomination directly to the NCTC, thereby bypassing ITOS. Third, if a LEGAT obtains information from a host country (and the information includes fingerprints), the LEGAT should submit the information to CJIS, who will enter the fingerprints into IAFIS and submit the nomination to the NCTC branch staffed by FBI personnel. As discussed below, we believe that each of these processes have internal control weaknesses.

The following diagram illustrates each of the internal nomination processes available to LEGATs.

LEGAT Terrorist Watchlist Nomination Processes



Source: OIG analysis of FBI LEGAT internal watchlist nomination policy

As stated in the April 2002 Attorney General Directive, the FBI shall, through its LEGATs, “establish procedures to obtain on a regular basis the fingerprints, other identifying information, and available biographical data of all known or suspected foreign terrorists who have been identified and processed by foreign law enforcement agencies.” According to CJIS officials, CJIS has deployed personnel to foreign countries in coordination with LEGATs to obtain fingerprints and other identifying information on known or suspected terrorists processed by foreign governments. According to data provided to us by CJIS, as of August 15, 2008, CJIS personnel have obtained 1,728 fingerprints of known or suspect terrorists from foreign countries and nominated these known or suspected terrorists to the consolidated terrorist watchlist through the same process that it uses to nominate military detainees, HRT, and fly team nominations.

According to NCTC officials, these LEGAT-generated nominations, like the military detainee nominations, often have limited or no derogatory information accompanying the nomination. In fact, according to CJIS officials, depending upon the country from which the FBI received the information, little or no independent analysis may be done on the information to determine whether the individual should be considered by the United States to be a known or suspected terrorist. Like the nominations of military detainees, CJIS enters the information it receives into IAFIS and forwards the relevant information, including available derogatory information, directly to NCTC, again bypassing the established internal review process conducted by ITOS.

Although many LEGAT nominations are processed through CJIS, we also found that LEGATs sent at least 489 nominations directly to the NCTC or through ITOS. We reviewed 11 of these LEGAT nominations and found that the current LEGAT did not know why the previous LEGAT had nominated these individuals. Therefore, we were unable to determine if these resulting 11 watchlist records should be retained on the watchlist or if they should be removed.

We recommend that the FBI develop a process to support, review, update, and remove nominations for non-investigative subjects made by CJIS that resulted from LEGAT submissions. We also recommend that the FBI evaluate existing watchlist records created from LEGAT nominations submitted directly to NCTC or ITOS to determine whether these nominations should be retained or removed from the watchlist.

Nominations Made by Intelligence Information Reports

In our March 2008 audit, we found that terrorist data in Intelligence Information Reports (IIR) generated by the FBI and shared with the U.S. intelligence community were considered watchlist nominations by the NCTC and sourced to the FBI.¹⁰⁶ However, most of these IIRs were not intended by the FBI to be watchlist nominations. As a result of that audit, the NCTC recognized that most of these IIRs were not nominations, and the NCTC reclassified these nominations so that the FBI was not shown as the source of any watchlist records for which the NCTC analysts made a decision to submit a nomination using FBI data.

However, in addition to the nominations that resulted from the FBI's general IIRs, we found that the FBI also sent IIRs to the NCTC that

¹⁰⁶ IIRs are electronic messages that the FBI uses to share with other agencies intelligence that is obtained through operations.

contained specific language requesting the nomination of an individual named in the IIR to the watchlist. We found 73 of these nominations dated between February 14, 2006, and April 9, 2008. Some of these nominations were based on information provided to the FBI by sources overseas on individuals not previously considered by the U.S. government as known or suspected terrorists.

However, in at least one circumstance, an IIR was used to place the subject of a closed investigation back on the watchlist. FBI headquarters officials stated that “back dooring” a nomination in this manner would be an inappropriate practice and expressed surprise that such a practice might be occurring. FBI policy prohibits this practice.

Similar to the nominations processed by CJIS, the FBI’s policies regarding watchlist nominations for individuals who are not subjects of current FBI investigations do not fully address the FBI’s responsibilities for maintaining the resulting watchlist records. The FBI’s watchlisting policies do not address the need to update these records, and as a result it is unlikely that these records would be modified or removed from the watchlist. We recommended in our previous audit that the FBI improve its policies concerning subjects not under investigation that the FBI nominates to the consolidated terrorist watchlist, including adding a requirement for the modification and removal of non-investigative subjects from the watchlist. An FBI official told us that the FBI is in the process of updating its watchlisting policy for subjects not under investigation in response to our previous audit and the new Attorney General Guidelines.

Non-terrorism Investigation Watchlist Records

On February 29, 2008, in response to our data request, we were provided by the Terrorist Screening Center with a list of consolidated terrorist watchlist identities sourced to the FBI. This list contained a total of 68,669 known or suspected terrorist identities and did not include all of the records watchlisted through CJIS.¹⁰⁷ We determined that 23,911 of these identities (35 percent) were based upon FBI cases that did not contain a current international terrorism, domestic terrorism, or bombing case designation. Many of these watchlisted records were nominated using case classifications that were subsequently superseded. We tested a sample of these records to determine if there was a current justification for maintaining the names on the watchlist.

¹⁰⁷ The consolidated terrorist watchlist has one record for each identity of a known or suspected terrorist. One known or suspected terrorist could have multiple identities and thus multiple records based on aliases and combinations of identifiers.

Field Office-watchlisted Subjects

The three field offices we visited accounted for 261 of the FBI-originated watchlist records that were not associated with current FBI terrorism case designations. These watchlist records represented 101 known or suspected terrorists with multiple identities and were associated with 29 separate investigations. For each of the 101 watchlisted known or suspected terrorists, we compared the subject's watchlist record with the information contained in the case file to determine if these investigations had incorrect case designations. If the case was a terrorism investigation but carried an incorrect case designation, we then determined if the terrorism case was still open. If the case was closed, we attempted to determine if the FBI had justified the continued watchlisting of the subject or if the record should have been removed from the watchlist.

For 39 of the 101 subjects, the FBI still had ongoing terrorism investigations or was able to provide documented justification for keeping the subject watchlisted even though the case had been closed. However, the FBI needed to modify these records to identify the FBI's current or most recent case on the subject and remove the non-terrorism case designation.

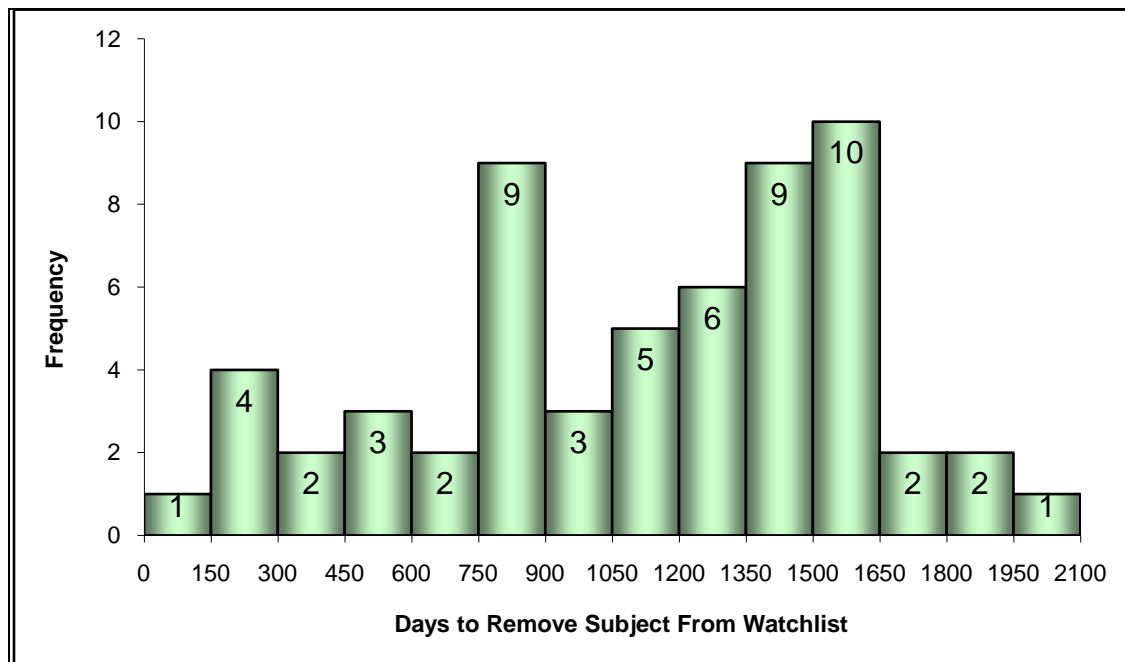
For one additional subject, the FBI's investigation was closed because the U.S. Attorney's Office declined to prosecute. The FBI attempted to remove the subject from the watchlist, but NCTC personnel recommended that the FBI record remain on the watchlist. We believe that the FBI should document this information in the case file to justify the continued watchlisting of the subject. We also found one case was transferred and the subject's record was correctly processed by the FBI. An additional record was based on bad data imported into the watchlist, and FBI headquarters submitted paperwork to remove this record.

We found that the remaining 59 known or suspected terrorists should no longer be watchlisted because there was no active terrorism investigation and the file did not provide justification for the continued watchlisting of the individual. These terrorism investigations were closed as far back as April 15, 2003, and as recently as February 26, 2008. The average number of days these 59 subjects improperly remained on the watchlist was 1,112 days. For one subject, the case was closed in September 2003 and the subject died in early 2007. Another case was closed in April 2004 and that subject died in June 2004.

We determined the date that these 59 records became eligible for removal and calculated the number of days that the records had not been

removed from the watchlist. The frequency of these untimely removals is shown in the following graph.

Non-Terrorism Investigation Watchlist Records Requiring Removal Days Since Removal Eligibility



Source: OIG analysis of FBI watchlist records

We discussed these records with the responsible FBI officials, and they agreed with our analysis and removed the subjects from the consolidated terrorist watchlist. Records like these that remain on the watchlist past the time necessary can cause not only the former subject but also other individuals who have similar names to experience delays during any screening situations they encounter.

We found that 26 of these 59 subjects were nominated to the TSA's Selectee list. Therefore, in the event these individuals attempted to fly on a commercial airline while they were improperly watchlisted, they should have been stopped at the airport, secondarily screened, and potentially questioned. To determine whether these individuals had in fact been encountered, we queried the TSC's EMA. Our testing revealed that the TSC had evidence that 10 of these subjects had been encountered a total of 49 times. In addition, 8 of the 10 subjects that were encountered by law enforcement are U.S. persons. Most of these encounters occurred with various local police departments or by Department of Homeland Security personnel. However, one individual was encountered at the White House by the Secret Service

prior to a pre-arranged meeting with the President and another individual was encountered when that individual applied for a gun permit.

FBI Headquarters-watchlisted Subjects

FBI field offices were not the only source of watchlist records. In the 23,911 not sourced to a current FBI terrorism investigation, we found that some of these records were sourced to FBI headquarters. We selected 39 of these records to determine if the subject’s watchlist record should be removed or if the FBI investigation reference should be changed. Our sample of 39 cases included the following types of FBI case designations: fingerprint matters, miscellaneous, administrative matters, intelligence, and unknown case designations. During our review of these cases, we found that 31 of the 39 records should have been removed because the investigation was closed or FBI personnel could not otherwise determine why the subject was watchlisted. In the remaining eight cases, the subjects were part of a current terrorism investigation or the subject was a top ten most wanted terrorist and the watchlist record should be modified to reflect the correct case designation.

The following table illustrates the breakdown of these 39 cases based upon their case designation and the action to be taken by the FBI to address the records.

**FBI Headquarters-watchlisted Subjects
Requiring Removal or Modification**

Investigation Type	Subjects in Sample	Subjects to be Removed¹⁰⁸	Subjects to be Modified
Fingerprint Matters	2	2	0
Miscellaneous	1	1	0
Administrative Matters	5	4	1
Intelligence	16	15	1
Unknown	14	8	6
Other ¹⁰⁹	1	1	0
TOTAL	39	31	8

Source: OIG analysis of FBI headquarters investigations

¹⁰⁸ The FBI, at the time of our testing, was not able to support the reason these subjects were watchlisted. If they find support for these watchlisted subjects, then the FBI should modify the record to a current terrorism case classification.

¹⁰⁹ The NCTC determined that this watchlist record was incorrectly sourced to the FBI. The reference to the FBI should be removed and the record should be sourced to the correct nominating agency.

Weapons of Mass Destruction Cases

Through our review of watchlist records with non-terrorism case designations, we found that 16 subjects were watchlisted based upon the FBI's Weapons of Mass Destruction (WMD) case designation. All WMD investigations within the FBI are now overseen by the WMD Directorate, which was created in July 2006. To determine whether subjects of these cases should be watchlisted, we interviewed officials from the WMD Directorate. These officials stated that they had not fully considered whether the subjects of WMD investigations should be nominated to the consolidated terrorist watchlist. The officials stated that they did not believe that subjects of old WMD investigations should be watchlisted because these investigations were reactive to an event and did not focus on individuals. However, these officials said that in the future the FBI plans to have more proactive WMD investigations and watchlisting in these cases may be appropriate.

We provided WMD officials with information on the 16 records that were watchlisted based on WMD investigations. Based on information we received in response, we concluded that seven subjects have been or should be removed from the watchlist. WMD officials did not provide any information concerning the appropriate watchlist status of the remaining nine subjects.

We recommend that the FBI evaluate the 23,911 watchlist nominations created by FBI headquarters or field offices that appear to have case designations that are not addressed by FBI policy, including WMD-related cases. The FBI should determine whether the subjects should remain watchlisted, if records should be modified to reflect different case numbers, or if the FBI's policy needs to be updated to include additional case designations.

Conclusion

We are concerned about the number of watchlist nominations processed directly through CJIS and the lack of a clear policy regarding these nominations. As we first addressed in our March 2008 audit, FBI policy allows for the nomination of individuals to the watchlist who are not the subject of FBI investigations. According to that policy, the nominator must submit the nomination request to ITOS for review. If ITOS determines that the subject should be nominated, it prepares a nomination and submits it to NCTC. Although this policy lacks a mechanism for modifying or removing resulting records, it at least provides for secondary review of the nomination.

However, the thousands of nominations processed directly by CJIS for military detainees, and those submitted by FBI HRTs, fly teams, and LEGATs received no such review. This is problematic because these nominations were often accompanied by little derogatory information, and there was no formal process in place to update or remove these records when appropriate.

NCTC officials acknowledged that beyond the initial submission of nominations for military detainees, they had little knowledge of the status of these individuals. Further, CJIS officials repeatedly stated that the FBI only served as a conduit for these DOD nominations. We recognize that there may have been reasons why CJIS would serve as a conduit for DOD nominations during the time the DOD was developing its biometrics capabilities. However, we think it is appropriate that, following our inquiries, the FBI recently discontinued this practice. In addition, we believe that the FBI should review CJIS's role in processing nominations for FBI HRTs, fly teams, and LEGATs and consider whether ITOS review of these nominations is appropriate.

Finally, we found approximately 24,000 watchlist records sourced to the FBI that are associated with case classifications other than those currently applied to FBI terrorism investigations. Although some of these subjects are justifiably on the watchlist, we believe that the records should be modified to reflect the current case designations and to ensure the accuracy of the watchlist record. In addition, we also found that many of these subjects remained inappropriately watchlisted long after their cases had closed. We believe that the FBI should review these records to ensure that the subjects are appropriately watchlisted and take immediate action to remove those individuals who should no longer be on the watchlist.

Recommendations

We recommend that the FBI:

13. Ensure that previously nominated DOD military detainee records are modified and no longer reflect FBI ownership.
14. Review CJIS's practices of sending HRT and fly team nominations of known or suspected terrorists directly to NCTC and ensure that these practices are covered by FBI policy, provide for adequate review of the nominations, and records are modified and removed when appropriate, including pre-existing records.

15. Develop a process to review, update, or remove known or suspected terrorist watchlist nominations made by CJIS for the LEGATs. Additionally, the FBI should evaluate existing watchlist records created from LEGAT nominations submitted directly to NCTC or through ITOS to determine whether these nominations should be retained or removed from the watchlist.
16. Evaluate the watchlist nominations created by FBI headquarters or field offices that appear to have case designations that are not addressed by FBI policy, including WMD-related cases. The FBI should determine whether the subjects should remain watchlisted, whether records should be modified to reflect different case numbers, and whether the FBI's policy needs to be updated to include additional case designations.

STATEMENT ON COMPLIANCE WITH LAWS AND REGULATIONS

As required by the *Government Auditing Standards*, we reviewed and tested, as appropriate given our audit scope and objectives, selected transactions, records, procedures, and practices, to obtain a reasonable assurance that FBI's management complied with federal laws and regulations, for which noncompliance, in our judgment, could have a material effect on the results of our audit. FBI's management is responsible for ensuring compliance with federal laws and regulations applicable to the FBI watchlist nominations and practices. In our audit, we identified the following laws, regulations, and policy that concern the operations of the FBI and that were significant within the context of the audit objectives.

- 28 C.F.R. § 0.85
- Homeland Security Presidential Directive 6
- Executive Order 13388 on Further Strengthening the Sharing of Terrorism Information To Protect Americans
- Attorney General's Guidelines on General Crimes, Racketeering Enterprise, and Terrorism Enterprise Investigations
- Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection
- FBI's National Foreign Intelligence Program Manual

Our audit included examining, on a test basis, compliance with the aforementioned laws, regulations, and policy that could have a material effect on the FBI's operations, through interviewing FBI personnel; analyzing watchlist nominations, modifications, and removals; assessing internal controls watchlist procedures, and examining the FBI practices in relation to nominations of known or suspected terrorists. As noted and discussed in the Findings and Recommendations section of this report, we found that the FBI did not always, as set out in their policies, nominate known or suspected terrorists to the watchlist when required or in a timely manner; modify watchlist records when new identifying information was obtained; and remove individuals when appropriate.

STATEMENT ON INTERNAL CONTROLS

As required by the *Government Auditing Standards*, we tested as appropriate, internal controls significant within the context of our audit objectives. A deficiency in an internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to timely prevent or detect: (1) impairments to the effectiveness and efficiency of operations, (2) misstatements in financial or performance information, and (3) violations of laws or regulations. Our evaluation of the FBI's internal controls was *not* made for the purpose of providing assurance on its internal control structure as a whole. FBI's management is responsible for the establishment and maintenance of internal controls.

As noted in the Findings and Recommendations section of this report, we identified deficiencies in the FBI's internal controls that are significant within the context of the audit objectives and based upon the audit work performed that we believe adversely affect the FBI's ability to ensure that the subjects of terrorism and other investigations were appropriately watchlisted and watchlist records were complete and accurate.

Because we are not expressing an opinion on the FBI's management internal control structure as a whole, this statement is intended solely for the information and use of the FBI. This restriction is not intended to limit the distribution of the report, which is a matter of public record. However, we are limiting the distribution of this report because it contains sensitive information that must be appropriately controlled.

AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

Audit Objectives

The objectives of our audit were to: (1) determine whether subjects of FBI terrorism investigations are appropriately and timely watchlisted and if these records are updated with new identifying information as required, (2) determine whether subjects of closed FBI terrorism investigations are removed from the consolidated terrorist watchlist in a timely manner when appropriate, and (3) examine the FBI's watchlist nomination practices for individuals that were not associated with current terrorism case designations.

Scope and Methodology

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based upon our audit objectives. Our audit focused on, but was not limited to, the period of October 1, 2005 to March 31, 2008.¹¹⁰

In the course of our prior audit of the Department of Justice's watchlist nominations process, we obtained an understanding of the FBI's formal procedures for terrorist watchlist nominations.¹¹¹ To accomplish the objectives of this audit, we conducted more than 100 interviews. At FBI headquarters we interviewed personnel at the: Counterterrorism Division, International Terrorism Operations Sections, Terrorist Review and Examination Unit (TREX), Domestic Terrorism Operations Unit, Weapons of Mass Destruction (WMD) Directorate, Critical Incident Response Group, and Criminal Justice Information Services (CJIS). We also interviewed personnel at the National Counterterrorism Center (NCTC), Terrorist Screening

¹¹⁰ All of our testing of selected opened and closed terrorism investigations for the first half of FY 2008 was for FY 2008 to date, at the time of selection, which included terrorism cases opened or closed up to February 13, 2008, except for the cases opened by the Minneapolis field office which were up to April 25, 2008. For our third objective, we included all non-terrorism and non-investigative FBI watchlist records as of February 29, 2008, and August 15, 2008, respectively.

¹¹¹ U.S. Department of Justice Office of the Inspector General, *Audit of the U.S. Department of Justice Terrorist Watchlist Nomination Processes*, Audit Report 08-16 (March 2008).

Center (TSC), and FBI field offices in Los Angeles, California; Miami, Florida; and Minneapolis, Minnesota.

To evaluate the FBI's compliance with laws, regulations, and internal policies, we reviewed watchlist records, files, and other records and reports, as applicable, related to a judgmentally selected sample of all terrorism cases opened or closed by the three selected field offices during the period reviewed, all watchlist nominations generated by the three field offices that were associated with cases with classifications other than domestic or international terrorism investigations, and a judgmental sample of watchlist records related to cases opened by FBI headquarters. We designed our testing methodology to provide us with a broad exposure to the FBI's watchlisting practices. Our sample selection methodology was not designed with the intent of projecting our results to the population of terrorism investigations.

Appropriateness and Timeliness of Field Office Watchlist Nominations

According to FBI policy, the subjects of all international terrorism investigations and the subjects of all full domestic terrorism investigations must be watchlisted. To assess the appropriateness and timeliness of the field offices' watchlist nomination actions, we judgmentally selected a sample of 110 cases from the 854 terrorist investigations opened by the Los Angeles, California; Miami, Florida; and Minneapolis, Minnesota field offices in FY 2006, 2007, and the first half of FY 2008 for testing.¹¹² Because our review period spanned two and one-half FYs, our sample was designed so that 40 percent of the sample was selected from cases opened in FY 2006, 40 percent was selected from cases opened in FY 2007, and 20 percent was selected from cases opened in FY 2008. Our testing entailed:

- At the field offices, we reviewed investigative case files and determined when each sample case was opened, the date the nomination form was prepared, and whether there was any evidence to show the date the nomination form was submitted to

¹¹² Our sample for the FBI Los Angeles field office was selected from a population that we limited to international and domestic terrorism cases designated as assigned to the Los Angeles office and its Santa Ana sub-office; cases designated as assigned to other Los Angeles sub-offices were not included in the population. Our sample for the Miami field office was selected from a population that we limited to international terrorism cases designated as assigned to the Miami office (not including sub-offices) and, due to a shortage of domestic terrorism cases in this field office, any full domestic terrorism investigations designated as assigned anywhere within the jurisdiction of the Miami field office. Our sample for the Minneapolis field office was selected from a population that we limited to international and domestic terrorism cases designated as assigned to the Minneapolis office.

the FBI Terrorist Review and Examination Unit (TREX) for processing.

- At TREX, we reviewed logs, emails, and nomination forms electronically maintained by TREX to determine: (1) if and when it received the nomination packet from the field offices and (2) the date TREX completed processing the form and when they forwarded the nomination to the NCTC branch staffed by FBI personnel (international terrorism nominations only) or to the TSC (domestic terrorism nominations only).
- At the NCTC branch staffed by FBI personnel, we reviewed Terrorist Identities Datamart Environment (TIDE) records to determine when the international terrorist subject was entered into NCTC's database and when it was forwarded to the TSC for entry into the Terrorist Screening Database (TSDB).
- At the TSC, we reviewed watchlist records to determine the date the subject's record was entered into the TSDB.
- Using the dates noted for each step of the process, we calculated processing times and evaluated the timeliness of the subject's watchlisting, by each office and unit involved in the process.
- Our calculations for subjects who were not watchlisted are based on when the subjects should have been watchlisted to the date when the case was closed or our field work ended at the particular field office.

Modification of Watchlist Records

We limited our modification testing to 56 out of our sample of 110 cases that were opened in FY 2006, 2007, and the first half of FY 2008. All of the 56 cases selected were still open when we began on-site work at the three field offices. To determine whether the field offices were timely updating watchlist records with new identifying information, we performed the following tests:

- At the field offices, we reviewed case file documents for evidence of any new government-issued identifying information obtained after the initial watchlist nomination was submitted. These identifiers included passport numbers and other identifiers that the TSC considers sensitive information. For those subjects for whom we found additional government-issued identifiers, we reviewed case

file documents to determine whether the case agent had submitted a modification form or other communication to TREX to modify the subject's watchlist record.

- At the TSC, we obtained an "Identity Analysis History Import Report" for each of the subjects whose watchlist records should have been updated. We reviewed these reports, which show all changes between versions of a subject's watchlist record, to determine whether the records had been modified to reflect the newly discovered information.

Removal of Subjects from the Watchlist

In general, FBI policy requires agents to remove a subject from the watchlist when the terrorism investigation is closed. To assess the timeliness of the field offices' watchlist removal actions, we selected a judgmental sample of 108 cases from the 823 terrorist investigations closed by the Los Angeles, California; Miami, Florida; and Minneapolis, Minnesota field offices in FYs 2006, 2007, and the first half of FY 2008.¹¹³ Because our review period spanned two and one-half FYs, our test sample was stratified so that 40 percent of the sample was selected from cases opened in FY 2006, 40 percent was selected from cases opened in FY 2007, and 20 percent was selected from cases opened in FY 2008. The following tests were performed for each case in our audit sample:

- At the field offices, we reviewed case files to determine when each sample case was closed, when the removal form was prepared, and whether there was any evidence to show when the removal form was submitted to TREX for processing. We used this information to calculate the number of days it took the field office to prepare and submit the form to remove the subject from the watchlist. For those subjects who were not removed from the watchlist after the investigations were closed, we also reviewed the closing communications to determine whether the case agents had properly justified keeping the subjects watchlisted.

¹¹³ Our sample for the FBI Los Angeles field office was selected from a population that we limited to closed international and domestic terrorism designated as assigned to the Los Angeles office and its Santa Ana sub-office; cases designated as assigned to other Los Angeles sub-offices were not included in the population. Our sample for the Miami field office was selected from a population that we limited to international terrorism cases designated as assigned to the Miami office (not including sub-offices) and, due to a shortage of domestic terrorism cases in this field office, any full domestic terrorism investigations designated as assigned anywhere within the jurisdiction of the Miami field office. Our sample for the Minneapolis field office was selected from a population that included cases closed by the Minneapolis office and all of its sub-offices.

- At TREX, we reviewed logs, emails, and nomination forms maintained by TREX to determine: (1) if and when it received the removal form from the field offices, and (2) when TREX completed processing the form and forwarded it to NCTC, for international terrorist nominations, or the TSC, for domestic terrorist nominations. We used this information to calculate the number of days it took the field office to submit the watchlist removal form and the number of days it took TREX to process it.
- At the NCTC branch staffed by FBI personnel, we searched TIDE source records to determine when NCTC received and processed the removal form. We used this information to calculate the number of days it took the FBI personnel at NCTC to process the watchlist removal. In addition, we searched TIDE to determine whether all FBI sourced records related to the case subject had been deleted.
- At the TSC, we reviewed watchlist records to determine if and when the subject's record was removed from the TSDB. We used this information to calculate the number of days it took the TSC to delete the subject after it received the international terrorist removal from NCTC or the domestic terrorist removal form from TREX.
- Our calculations for subjects who were not watchlisted are based on when they should have been watchlisted to the date when they were no longer the subject of an investigation.

Military Detainee and Other Remaining Watchlist Nominations

Related to our third audit objective, we performed a limited review of documents supporting watchlist nominations submitted by CJIS and WMD nominations submitted by field offices. We also performed a limited review of all Information Intelligence Reports identified by the NCTC as the source for FBI watchlist nominations not related to open terrorism investigations.

APPENDIX I

Further, we reviewed all watchlist records based on 30 FBI cases that did not contain current terrorism case designations as of February 29, 2008, and were sourced to the three selected FBI field offices. We reviewed the associated case files to determine whether the investigation was still open. If the case was still open, we asked local FBI personnel to determine if the office was going to modify the record to identify a current FBI case classification. If the case was closed, then we asked the FBI to provide justification for continued watchlisting or removal documentation.

Finally, we judgmentally selected 50 watchlist records sourced to FBI headquarters that did not contain current terrorism case classifications as of February 29, 2008. We reviewed the associated case files to determine whether the investigation was still open. If the case was still open, we asked the FBI to determine if they were going to modify the record to a current FBI case classification. If the case was closed, we then asked the FBI to provide justification for continued watchlisting or removal documentation.

DOWNSTREAM SCREENING DATABASES

- Violent Gang and Terrorist Organizations File – The FBI's Violent Gang and Terrorist Organizations File (VGTOF), created in October 1995 to track individuals associated with gangs and terrorist organizations, is a component of the National Crime Information Center (NCIC).¹¹⁴ Each record within the file is identified as either a gang or a terrorist record. The universe of terrorist records in the NCIC/VGTOF file represents individuals of interest to law enforcement due to suspected or known ties to international or domestic terrorism.
- Interagency Border Inspection System – The Interagency Border Inspection System (IBIS) resides on the Department of Homeland Security's Treasury Enforcement Communications System (TECS), a large computerized information system containing more than a billion records in 700 tables, designed to identify individuals, businesses, and vehicles suspected of or involved in violation of federal law. TECS is also a communications system permitting message transmittal between law enforcement offices and other federal, state, and local law enforcement agencies. The database provides access to the FBI's NCIC. The TECS database serves as the principal information system supporting border management and the law enforcement mission of the DHS's U.S. Customs and Border Protection (CBP) and other federal law enforcement agencies.

CBP personnel located at air, land, and sea points of entry, as well as law enforcement and regulatory personnel from more than 20 other federal agencies or bureaus, can access IBIS. The IBIS system is used to expedite the clearance process at points of entry and to keep track of information on suspect individuals, businesses, vehicles, aircraft, and vessels. Therefore, IBIS is considered a watchlisting system.

- Consular Lookout and Support System – The Consular Lookout and Support System (CLASS) is the State Department's tool for vetting foreign individuals applying for visas to the United States and for individuals applying for U.S. passports. Maintained by the Bureau of Consular Affairs, the CLASS visa database provides information on

¹¹⁴ NCIC is a nationwide information system maintained by the FBI that provides the criminal justice community with immediate access to information on various law enforcement data, such as criminal history records and missing persons. The FBI's Criminal Justice Information Services Division (CJIS), is responsible for managing the NCIC database.

aliens that is used in the determination of whether visa issuance is appropriate.

- No-Fly List – The Transportation Security Administration’s (TSA) No Fly list includes names of individuals that are to be denied transport on commercial flights because they are deemed a threat to civil aviation. The criteria for No Fly list is defined by the Homeland Security Council Deputies Committee. The original criteria were established by the committee on October 21, 2004. On February 8, 2008, this committee established revised criteria for the No Fly list which are not listed here because the criteria has been deemed sensitive by TSA.

The No Fly list is disseminated to airlines on a daily basis to be used as a watchlist for comparison against passenger manifests for all flights that enter or depart U.S. airspace.

- Selectee List – The TSA Selectee list includes names of individuals whom air carriers are required to “select” for additional screening prior to permitting them to board an aircraft. The list is disseminated to airlines on a daily basis to be used as a watchlist for comparison against passenger manifests for all flights that enter or depart U.S. airspace. The criteria for the Selectee list was established by the Homeland Security Council Deputies Committee on October 21, 2004. The criteria are not listed here because the criteria has been deemed sensitive by TSA.

TIMELINE OF THE FBI WATCHLIST NOMINATION PROCESS

Since September 11, 2001 (9/11), the FBI has frequently changed, and implemented certain improvements to, the watchlist nomination process. The following timeline highlights FBI watchlist nomination policy changes and major milestones in the creation and maintenance of a consolidated terrorist watchlist. As shown below, this process has evolved from a simple process to a more complex process.

- October 1, 1995 – VGTOF became fully operational after receiving the Attorney General’s approval on July 22, 1994, and the FBI Director’s approval on April 26, 1994. VGTOF was created to identify violent gang members and terrorist organizations to local, state, and federal law enforcement personnel.
- December 10, 2000 – the VGTOF entry form was proposed and it was approved on January 2, 2001.
- January 10, 2002 – all subjects of open domestic terrorism and international terrorism cases (preliminary and full investigations) must be entered in VGTOF by close of business February 1, 2002.
- March 20, 2002 – FBI senior management determined that the field offices and agents needed guidance and protocols to clarify what names and identifying information should be placed into VGTOF.
- June 10, 2002 – the FBI issued new guidance and protocol to field offices and agents and required all full investigation subjects of both international and domestic terrorism investigations to be entered into VGTOF. The field offices could at their discretion watchlist subjects of preliminary investigations. Additionally, all field offices were required to review all their current terrorist records in VGTOF and cancel or modify any records that did not meet the new criteria.
- April 2003 – the GAO reports that the U.S. government has 12 different terrorist watchlists, including VGTOF.¹¹⁵
- April 30, 2003 – the FBI issued instructions for preparing the one-page VGTOF nomination form. It instructed FBI personnel to use the new

¹¹⁵ *Information Technology: Terrorist Watch Lists Should Be Consolidated to Promote Better Integration and Sharing*, Government Accountability Office (GAO-03-322, April 2003).

form and to retain copies of the completed forms in an administrative file for all known or suspected terrorists entered into VGTOF. Further, it required all supervisors to validate entries into VGTOF as part of their standard 90-day case file reviews.

- May 1, 2003 – the Terrorist Threat Integration Center (TTIC), precursor to National Counterterrorism Center (NCTC), was established to develop comprehensive threat assessments through the integration and analysis of terrorist information collected domestically and abroad by the U.S. government.
- June 9, 2003 – the FBI made it mandatory that all watchlist records for U.S. persons added to the No Fly or Selectee lists be reviewed every 120 days.
- September 16, 2003 – HSPD-6 is signed requiring the consolidation of terrorist watchlists and setting the identifying information on known or suspected terrorists that must be shared between agencies.
- October 21, 2003 – the FBI required field offices to review closed cases (including weapons of mass destruction investigations) back to January 1, 1990, to determine if any subjects might continue to pose a threat to national security and should be added to VGTOF.
- December 1, 2003 – the TSC began operations.
- December 15, 2003 – the TSC notified field offices that the TSC's operations had been adversely affected by incorrect or incomplete data that field offices had entered into VGTOF. The TSC required all field offices to review all of its VGTOF entries for complete and accurate information.
- January 23, 2004 – the FBI required the field offices to watchlist all subjects of preliminary international terrorist investigations. This policy reiterated that the FBI field offices could either enter known or suspect terrorists directly into VGTOF or submit an electronic communication and nomination form to the Terrorism Watch and Warning Unit (TWWU), precursor to the Terrorist Review and Examination Unit (TRES).
- February 5, 2004 – the FBI required field offices to include U.S. person status and country of citizenship in the miscellaneous field on the nomination form.

APPENDIX III

- March 10, 2004 – the TSC required all FBI Special Agents in Charge to verify and certify that all subjects of full and preliminary international terrorism investigations have been entered into VGTOF.
- March 12, 2004 – the Terrorist Screening Database (TSDB) was launched and populated with data from individual watchlist systems, including VGTOF.
- July 15, 2004 – FBI headquarters required field offices and case agents to submit all nominations and removals to TWWU by electronic communication with an attached nomination form. It did not set policy for the modification of records.
- August 27, 2004 – NCTC is established by Executive Order and all functions and activities of the TTIC were transferred into the new agency.
- April 20, 2005 – FBI headquarters created a time limit of 24 hours for nominations to the TSA's No Fly list. Field offices and case agents were required to call TWWU with nomination information, fax the nomination to TWWU, and then follow-up with an electronic communication and an attached nomination form.
- September 1, 2005 – the nomination form is expanded to three pages to include more required identifying information.
- February 15, 2006 – FBI headquarters issued domestic terrorism investigation policy that required all field offices and case agents to obtain concurrence from the Domestic Terrorism and Organization Unit at FBI headquarters prior to submitting case closure paperwork and requesting removal of the subject's record from the consolidated terrorist watchlist.
- April 24, 2006 – the FBI created the electronic nomination form and required the field offices and case agents to use this form to nominate, modify, or remove individuals from the watchlist by emailing this nomination form to TREX. Additionally, the FBI allowed FBI LEGATs to submit watchlist nominations with fingerprints to CJIS and watchlist nominations without fingerprints directly to NCTC.
- July 14, 2008 – the FBI required all FBI divisions and headquarters units to review records they had watchlisted in VGTOF to ensure all subjects of closed terrorism investigations had been removed from VGTOF. Additionally, the FBI required all FBI divisions and

headquarters units to review the VGTOF records to ensure all identifying information had been included in these records.

- August 1, 2008 – the FBI changed the processing time from 10 *working* days to 10 *calendar* days for the field office to submit watchlist nominations or removals to TREX. Additionally, the FBI requested that all FBI Supervisory Special Agents review each watchlist nomination, modification, and removal to ensure that all watchlist nominations are made within 10 days, watchlist records are updated with new identifying information, and all watchlist removals are made within 10 days.

FEDERAL BUREAU OF INVESTIGATION'S RESPONSE



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535-0001

April 24, 2009

Mr. Raymond J. Beaudet
Assistant Inspector General for Audit
Office of the Inspector General
United States Department of Justice
Suite 6100
1425 New York Avenue, NW
Washington, DC 20530

RE: THE FEDERAL BUREAU OF INVESTIGATION'S TERRORIST WATCHLIST NOMINATION PRACTICES

Dear Mr. Beaudet:

The Federal Bureau of Investigation (FBI) appreciates the opportunity to review and respond to the Office of the Inspector General (OIG) report entitled, "The Federal Bureau of Investigation's Terrorist Watchlist Nomination Practices" (hereinafter, "Report").

As the OIG notes, this report follows a March 2008 OIG report on Department of Justice watchlist nomination practices. In response to the earlier report and issues raised during the course of this audit, the FBI implemented reforms to improve watchlisting practices. The data used in your current report predates the reforms; accordingly the data reported does not reflect the current state of watchlisting within the FBI.

Improvement efforts taken after your March 2008 report include:

- Between August 2008 and the present, 100% of all personnel working on terrorism matters (over 10,000 individuals) have completed an online training course that includes detailed information on submitting watchlist nominations, modifications, and removals in a timely manner.
- Supervisory Special Agents are now required to assess the watchlisting status of all terrorism subjects during each 90-day case file review.
- Primary and Alternate Watchlist coordinators have been established at each of the 56 FBI Field Offices to ensure compliance with all watchlisting policies.

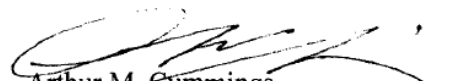
APPENDIX IV

The data used to support this report's conclusions is from 2006, 2007 and the first-half of 2008, and therefore does not reflect the implementation of the changes noted above. An FBI audit of all field offices for the months of January and February 2009 reflects significant improvements in the timeliness of the FBI's watchlist submissions. The FBI will continue to audit watchlisting practices to increase timeliness.

The FBI also believes it is important to clarify aspects of this Report which may lead to some confusion. First, the report states in text that the Terrorist Screening Database contains 1.1 million "terrorist identities." In a footnote, the OIG clarifies that this represents an estimated 400,000 individuals, the overwhelming majority of whom are not U.S. persons. This is an important clarification knowing the OIG shares our desire to ensure accuracy in public discussions of the Terrorist Screening Center. Second, the Report contains a statement that the FBI has "processed" over 68,000 nominations to the watchlist. The OIG recognizes, however, that only a small fraction of those were actual FBI nominations (a huge percentage were incorrectly attributed to the FBI). In fact, the current number of individuals on the watchlist attributed to the FBI is approximately two percent of the estimated 400,000 individuals on the watchlist.

Based on a review of the Report, the FBI concurs with all of the recommendations made and, for the reasons stated above, has already implemented measures to resolve all of the issues discussed in the report. In conclusion, the FBI appreciates the professionalism exhibited by your staff in working with our representatives throughout this audit process. Enclosed herein is the FBI's response to the report. Please feel free to contact me should you have any questions.

Sincerely yours,



Arthur M. Cummings
Executive Assistant Director
for the National Security Branch

**The Federal Bureau of Investigation’s (FBI) Response to the
Office of the Inspector General’s Audit of the Federal Bureau of Investigation’s
Terrorist Watchlist Nomination Practices, Assignment Number “Undetermined”**

OIG Audit of the FBI's Watchlist Nomination Process (#2)

Recommendation #1: *Strengthen its internal controls to ensure that TREX is notified of the initiation of all domestic and international terrorism investigations so that TREX can monitor the field offices’ efforts to submit watchlist nominations in a timely manner and in accordance with FBI policy.*

FBI Response to Recommendation #1: Agree – Resolved

The Terrorist Review & Examination Unit (TREX) has instituted several methods to ensure that TREX is notified of the initiation of all domestic and international terrorism investigations. First, all personnel working terrorism matters including field office, Headquarters, and Legat personnel, were required in August 2008 to complete a mandatory training class on the watchlisting process via the FBI Virtual Academy. This training includes detailed information on submitting nominations in a timely manner and in accordance with FBI policy. To date, 100% of all personnel working on terrorism matters (10,846 individuals) have completed the Virtual Academy watchlist training. This training is updated when policy changes warrant (but must be updated no less than once a year). Second, the sample case opening electronic communication (EC) maintained on the Counterterrorism Division (CTD) Intranet site includes an action lead for TREX to process the FD-930 and add the subject to the Terrorist Screening Database (TSDB). This sample is widely used by case agents as a reference tool for opening a Counterterrorism case. Third, the TREX intranet site is viewable by all FBI personnel and includes timely information on trends and common problems in a “Frequently Asked Questions” format along with best practices observed from divisions with excellent compliance rates. Finally, TREX established the requirement for each field office to name a Supervisory Special Agent Primary and Alternate Watchlist Coordinator who is the single point of contact for the respective field office on all watchlist matters. When compliance issues arise, these coordinators are contacted to ensure that the required FD-930s are submitted promptly, and they will be asked to address any systemic issues that cause delays at their field offices.

To ensure that these efforts are having their intended effect, TREX now monitors, once a week, field office efforts to submit watchlist nominations in a timely manner and in accordance with FBI policy. Once a week, TREX completes a query of the FBI Automated Case System (ACS) looking for newly opened and closed cases. The results are provided to individual Technical Information Specialists (TIS) by the newly-formed TREX Metrics Team in order to identify when the field has not yet sent an FD-930. The Metrics Team is solely focused on monitoring field office compliance with established watchlist policies and timelines. Over time, TREX anticipates that the frequency of ACS checks for newly opened or closed cases will increase to more than one time per week.

The FBI requests that this recommendation be closed.

Recommendation #2: *Implement periodic refresher training on significant changes that occur in the nomination process and on the overall benefits of watchlisting, such as adding value to FBI investigations, enhancing the safety of frontline screening and law enforcement personnel, and improving overall U.S. government intelligence collection efforts.*

FBI Response to Recommendation #2: Agree - Resolved

The FBI has put into place extensive refresher training on the watchlisting process and benefits of watchlisting. Field office watchlist coordinators will conduct refresher training for all personnel working terrorism. As a best practice, TREX recommends that watchlist coordinators consider a short review of the TREX Quarterly Trend Summary and policy update at required quarterly field office legal training. In addition, TREX has also provided refresher training at a number of different forums over the past year and is aggressively seeking other opportunities. Some of these include New Agent training, the Counterterrorism Investigation & Operations Course, National Joint Terrorism Task Force conferences, Legal Attache (Legat) Conferences, Airport Liaison Agent conferences, etc. To ensure that training remains a focus of TREX's compliance efforts, one TIS has now been assigned to work full-time to conduct training, keep all training materials updated, ensure the TREX intranet site is current, and to maintain the TREX Standard Operating Procedures.

The FBI requests that this recommendation be closed.

Recommendation #3: *Require counterterrorism supervisors to assess the watchlisting status of all terrorism subjects during their mandatory 90-day case file reviews.*

FBI Response to Recommendation #3: Agree – Resolved

Counterterrorism Supervisory Special Agents (SSAs) are now required to assess the watchlisting status of all terrorism subjects during the mandatory 90-day case file reviews. Beginning in August 2008, TREX ensured that a statement is included in each terrorism file review printout which is completed quarterly by the field supervisor. This "Case Review Sheet" now contains a section in which the supervisor must state whether the appropriate "nomination/modification/removal FD-930 and supporting documents" have been submitted to TREX. The supervisor must also initial the form to confirm that this portion of the review has been conducted. The requirement for supervisory review and responsibility for compliance is also an area TREX will highlight with watchlist coordinators on a regular basis in its Quarterly Trend Summaries.

The FBI requests that this recommendation be closed.

Recommendation #4: *Develop a policy in TREX to reassign the responsibility for processing watchlist nominations when TREX personnel are unexpectedly absent to ensure timely processing.*

FBI Response to Recommendation #4: Agree – Resolved

In part to ensure the prompt processing of watchlist nominations when TREX personnel are unexpectedly absent, the TREX unit has been reorganized. A copy of the current organizational chart is provided as attachment 1. The main features of this reorganization are the pooling of TIS's into a Nominations Team and a Modify/Removal Team, which more efficiently utilizes available manpower to match constantly changing work flow. This team approach allows the supervisor to not only ensure work is distributed evenly despite peaks in submissions, but also allows redistribution of work if an unexpected absence occurs.

The FBI requests that this recommendation be closed.

Recommendation #5: *Evaluate the overall watchlist nomination process, determine the total amount of time that is needed and can be afforded to this process, and determine how much time should be allocated to each phase of the process.*

FBI Response to Recommendation #5: Agree – Resolved

The FBI has re-evaluated the overall watchlisting process to determine the total amount of time that is reasonable and necessary to ensure a timely but thorough watchlisting process. It should first be noted that expedited nominations processes have been in existence for those instances when circumstances require expedited processing (such as when a person is believed to present an imminent threat). In such cases, field offices have been instructed to e-mail the FD-930 to TREX with “Expedited Nomination” in the subject line. These nominations are processed immediately by TREX and are submitted directly to the Terrorist Screening Center (TSC) for entry into the TSDB. In such cases, persons have been nominated to the watchlist within a few hours of the opening of a case.

For non-expedited cases, the FBI has determined that the field should submit the FD-930 to TREX within 48 hours after the SSA approves the opening of the case, if the FBI has sufficient identifying information (i.e., name and date of birth) to support a nomination at that time. After careful examination of the expanded role TREX now plays in independently verifying the accuracy of each identifier on the FD-930 and searching relevant databases (including intelligence community records) for additional identifiers, the FBI has determined that five business days is a reasonable and necessary period of time within which TREX should complete its work and submit the nomination to National Counterterrorism Center (NCTC). These revised time frames are contained in a draft comprehensive Watchlisting Guidance EC to be disseminated to the field. Both NCTC and the TSC concur with the time frames determined by the FBI for FBI field offices and TREX to complete their portion of the nomination process. Neither the NCTC nor the TSC plan to alter their current internal 24-hour timeline. Thus, in most non-expedited cases, the FBI expects that where there is sufficient identifying information to support a nomination to the watchlist at the time the SSA approves the case to be opened, the nomination into the TSDB will be accomplished in under two weeks.

Recommendation #6: *Monitor the timeliness of watchlist nominations and modifications to help ensure that FBI watchlist records are handled in a timely manner.*

FBI Response to Recommendation #6: Agree – Resolved

As outlined above, the TREX Metrics Team has been monitoring compliance with nomination and timeliness requirements. In addition, the team will conduct periodic random checks of case files to determine if required modifications have been submitted in a timely fashion. The 56 field offices will be divided so a random sampling of terrorism cases in approximately five field offices will be completed each month to look for additional unreported identifiers. If a field office is having problems with compliance, TREX will provide additional training, and, if warranted, will conduct an office visit to provide a more thorough review of case files, the watchlist process, and compliance metrics. Negative trends for a field office identified by the Metrics Team may also be cause for a deeper review of open terrorism cases for unreported identifiers with results reported to the Assistant Director in Charge (ADIC) or Special Agent in Charge (SAC) of that field office.

Recommendation #7: *Review its current modification policy and consider implementing a timeliness requirement for and supervisory review of watchlist record modifications.*

FBI Response to Recommendation #7: Agree – Resolved

The FBI has determined that all watchlist modifications should occur within 10 days of the date the field office receives the additional information warranting the modification, or within 10 days of the determination to change a subject’s status. Such modifications shall be reviewed by an SSA before being submitted to TREX. This time frame is contained in a draft comprehensive Watchlisting Guidance EC to be disseminated to the field. As noted above in response to Recommendation #3, SSAs are also required at a minimum to review the case file every 90 days to ensure the subjects of investigations are properly watchlisted and all identifiers have been reported via FD-930 to TREX for inclusion in the NCTC database and the TSDB.

Recommendation #8: *Reexamine its watchlisting policy and practices during the closure request process to ensure that they are clear and appropriate considering the significant time that can elapse during the ITOS approval phase.*

FBI Response to Recommendation #8: Agree – Resolved

The FBI has reexamined its watchlisting policy and practices during case closures. The FBI has determined that when a determination is made to close an investigation, removal of a subject from watchlisting is required, with limited exceptions. A comprehensive draft Watchlisting Guidance EC to be disseminated to the field states that within 10 business days of receiving concurrence from FBI headquarters to close a case, the field shall submit a removal FD-930 to TREX, except in limited circumstances. The guidance further states that, if Headquarters concurrence is not provided within 30 days of the field’s notice of intent to close the case, the case agent must submit the FD-930 through his supervisor for approval and submission to TREX. In addition, the TREX Metrics Team’s weekly ACS review of opened and closed cases, described above, will identify when the case has formally closed and will trigger TREX to request an FD-930 if one has not already been received. The FBI comprehensive draft Watchlisting Guidance EC will set forth the limited circumstances and necessary approvals required for maintaining a person on the watchlist after case closure. The FBI will also establish effective controls to ensure that such watchlist entries are modified and removed when appropriate.

Recommendation #9: *Develop policy to require SSAs to review their squads’ closed cases to ensure that subjects are timely removed from the watchlist or justification is made to maintain the watchlist record.*

FBI Response to Recommendation #9: Agree - Resolved

The FBI has developed policies and procedures to ensure that subjects of closed cases are timely removed from the watchlist, as described in the response to Recommendation #8.

Recommendation #10: *Develop policy to review justifications for retaining watchlist status of subjects of closed investigations. This policy should also address the regular review of these records to determine if they should be modified or removed.*

FBI Response to Recommendation #10: Agree – Resolved

As noted above in response to Recommendation #8, the FBI has determined that no subjects of closed FBI terrorism investigations shall remain watchlisted, except in limited circumstances. The FBI

will also establish effective controls to ensure that such watchlist entries are modified and removed when appropriate.

Recommendation #11: *Monitor the timeliness of watchlist removal requests to help ensure that the records are deleted in a timely manner.*

FBI Response to Recommendation #11: Agree - Resolved

This recommendation is addressed through the weekly review of closed cases conducted by the TREX Metrics Team, as described in the response to Recommendation #8.

The FBI requests that this recommendation be closed.

Recommendation #12: *Develop internal controls and establish policy to ensure that cases are transferred from one field office to another field office in a timely manner and that any watchlisting matters associated with the transferred cases are handled appropriately.*

FBI Response to Recommendation #12: Agree – Resolved

The FBI has developed internal controls and established policy to ensure that watchlisting matters associated with transferred cases are handled in a timely fashion. This policy is contained in a comprehensive draft Watchlisting Guidance EC to be disseminated to the field. In situations where a subject moves from one FBI field office jurisdiction to another, FBI policy requires that the original field office notify the new field office of this information. Individuals remain on the watchlist in connection with the original field office's case until the new case is opened by the receiving field office. Thus, these individuals fall within the 90-day file reviews conducted by the original field office SSAs, as described above. Once the new case is opened in the receiving field office, the receiving office is required to submit an FD-930 to modify the subject's nomination to remove the original field office case number and include the receiving field office case number. If a field office incorrectly submits an FD-930 seeking to remove a subject from the watchlist on the basis of a case transfer where no new case has been opened by the receiving office, TREX no longer processes that FD-930. Instead TREX contacts the substantive desk within CTD to request that they intervene and resolve the issue. TREX then monitors the nomination until the issue is resolved.

Recommendation #13: *Ensure that previously nominated DOD military detainee records are modified and no longer reflect FBI ownership.*

FBI Response to Recommendation #13: Agree – Resolved

In September 2008, Criminal Justice Information Services (CJIS) coordinated with the Department of Defense (DOD) to take responsibility for records derived from military operations where the FBI was the conduit to provide these records to NCTC. CJIS also followed up with NCTC by sending a letter dated October 23, 2008, in which they requested NCTC to change the sourcing of these records from FBI to DOD. A copy of this letter is provided as attachment 2.

The FBI requests that this recommendation be closed.

Recommendation #14: *Review CJIS's practices of sending HRT and fly team nominations of known or suspected terrorists directly to NCTC and ensure that these practices are covered by FBI policy, provide for adequate review of the nominations, and records are modified and removed when appropriate, including pre-existing records.*

FBI Response to Recommendation #14: Agree - Resolved

CJIS is no longer sending HRT and fly team nominations directly to the NCTC. Per an EC to CTD dated November 10, 2008, and in accordance with FBI policy, information on all individuals with supporting derogatory information reported to CJIS Division from the Hostage Rescue Team, Fly Team, or any other identity collection efforts of CJIS personnel will be submitted to CTD for review, determination, and possible forwarding, as appropriate, to the CIA. A copy of this EC is provided as attachment 3.

The FBI requests that this recommendation be closed.

Recommendation #15: *Develop a process to review, update, or remove known or suspected terrorist watchlist nominations made by CJIS for the LEGATs. Additionally, the FBI should evaluate existing watchlist records created from LEGAT nominations submitted directly to NCTC or through ITOS to determine whether these nominations should be retained or removed from the watchlist.*

FBI Response to Recommendation #15: Agree - Resolved

CJIS is no longer making nominations to the watchlist. As noted above in Recommendation #14, by an EC to CTD, dated November 10, 2008, information on all individuals with derogatory information reported to CJIS, including those received from Legats, will be submitted to CTD for review, determination, and possible forwarding, as appropriate, to the CIA. Furthermore, CTD has conducted a review of all previously submitted LEGAT identities to determine if they should be retained or removed from the watchlist. This review was part of a “legacy scrub” consisting of a review of information relating to approximately 12,000 individuals which was examined to ensure that the individuals warrant continued watchlisting. Several thousand individuals were removed from the watchlist during this process, and the current number of individuals on the watchlist attributed to the FBI is approximately two percent of the estimated 400,000 individuals on the watchlist. A portion of this reduction came from Legat-derived information which did not meet the required criteria to remain on the watchlist.

The FBI requests that this recommendation be closed.

Recommendation #16: *Evaluate the watchlist nominations created by FBI headquarters or field offices that appear to have case designations that are not addressed by FBI policy, including WMD-related cases. The FBI should determine whether the subjects should remain watchlisted, whether records should be modified to reflect different case numbers, and whether the FBI’s policy needs to be updated to include additional case designations.*

FBI Response to Recommendation #16: Agree - Resolved

The FBI has evaluated watchlist nominations created by FBI headquarters or field offices that have case designations that are not addressed by FBI policy, and has removed those identities from the watchlist where appropriate. As noted in response to Recommendation #15, the FBI conducted a “legacy scrub” of information relating to approximately 12,000 individuals. This information was examined to ensure that the individuals warrant continued watchlisting. Several thousand individuals were removed from the watchlist during this process, and the current number of individuals on the watchlist attributed to the FBI is approximately two percent of the estimated 400,000 individuals on the watchlist. A portion of this reduction came from removal of records with case designations outside those permitted for watchlisting. Over time, the FBI has increased its oversight of watchlist nominations and does not allow

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nominations in non-terrorism cases. In instances when the subject of a Weapons of Mass Destruction (WMD) case is believed to be involved in terrorism, a companion terrorism case is opened and the subject is watchlisted in connection with the terrorism case in accordance with CTD watchlisting policy. In addition, NCTC no longer accepts FBI nominations from any entity other than TREX, which does not submit nominations in matters outside those permitted by FBI policy.

OFFICE OF THE INSPECTOR GENERAL ANALYSIS AND SUMMARY OF ACTIONS NECESSARY TO CLOSE THE REPORT

The OIG provided a draft of this audit report to the FBI, and the FBI's response is included as Appendix IV of this final report. The following provides the OIG's analysis of the response and summary of actions necessary to close the report.

Analysis of FBI's Response

In response to our audit report, the FBI concurred with all of our recommendations and discussed the actions it will implement in response to our findings. However, the FBI also made introductory comments in its response that we believe need clarification. We therefore address these statements before discussing the FBI's specific responses to each of our recommendations and the actions necessary to close those recommendations.

The FBI's response suggests that the information in this report is obsolete because the FBI has sufficiently addressed deficiencies in its watchlisting practices. Further, the FBI's response provides three specific examples of corrective actions it has undertaken and suggests that these efforts were initiated to address deficiencies identified in a separate March 2008 report on the Department's overall watchlist nomination process.

First, it is important to note that the corrective actions initiated by the FBI were influenced by the findings in this audit, which we shared with FBI officials on an ongoing basis during this current review. In many of these discussions we identified for the FBI the internal control weaknesses we were finding, as well as the extent and causes of these weaknesses. This feedback, provided before we completed the audit, gave the FBI the ability to immediately address critical deficiencies to better ensure an accurate, current, and complete terrorist watchlist.

For example, the FBI's response states that following our previous March 2008 report it provided training to all personnel working on terrorism matters. In fact, this training occurred after our field office reviews and discussions with FBI officials in this current audit during which we informed the FBI of the deficiencies we were identifying. Moreover, based on the results of this audit, we also believe that case agents in field offices need training on a regularly scheduled basis rather than as a one-time event

because the watchlisting process continues to change and will likely evolve as the FBI continues to address its counterterrorism mission. Providing training as a one-time event does not ensure that future changes to the process will be understood or that new staff will have sufficient ability to accurately follow the policies. The FBI's response to the current audit indicates that it will provide such training annually, which we believe is an important improvement.

We also agree with the FBI's efforts to establish watchlist coordinators in all field offices. We believe that it is likely that this action will improve field office efforts to provide complete, accurate, and timely watchlist nominations, modifications, and removals. However, field offices were not directed to establish such positions until February 3, 2009, almost 1 year after we initiated work on this audit. In fact, the directive stated:

A Department of Justice, Office of Inspector General (OIG) audit [referring to the current audit] identified problems relating to oversight of FBI watchlist records consisting of lengthy delays in adding new subjects to the watchlist, inaccurate or outdated records when the field had new identifiers, and subjects remaining on the watchlist even though the case was closed. In particular, initial nomination submissions from field offices were often incomplete or contained inaccuracies which delayed the nomination process.

Further, the February 2009 directive also states "[d]espite a significant education campaign over a period of months, Terrorist Review and Examination (TREX) Unit continues to receive [watchlist nomination forms] with errors and incomplete information." Therefore, as of February 2009 the state of watchlisting in the FBI was similar to the conditions we identified during our current audit.

FBI officials also informed us that our results encouraged them to perform their own audit of watchlist nominations initiated by the three field offices that we reviewed. This review, conducted after February 15, 2009, tested 1 month of data to timeliness standards that the FBI was considering adopting, not the standards in place at the time of our audit. Specifically, the information the FBI provided to us indicated that the testing performed in its internal review allowed TREX 5 days to process nominations instead of the 24-hour standard in effect during our testing. Yet, even with this expanded time allowance, TREX's compliance rate was only about 80 percent. Further, the FBI's review indicated the compliance rate for field offices (which were tested at the original 10-day standard for that phase of the process) was a little over 60 percent. Not only is a 60-percent

compliance rate not adequate, it indicates that the FBI will likely have great difficulty instituting the new standard identified in the FBI's response to recommendation number 5, which will limit the field offices to 48 hours for submitting watchlist nominations. If the FBI had tested this new 48-hour standard, we believe that the field office compliance rate would have been markedly lower.

Therefore, while we recognize that the FBI has already initiated some changes to its watchlisting practices, the impact of these initiatives is yet to be determined. We do not believe that it is accurate to suggest that the FBI's initiatives have been fully implemented and successful in rectifying all of the issues we identified in this audit and our March 2008 review. For example, of the 16 recommendations that we make in this report, the FBI's response indicates that 7 recommendations will be addressed, at least in part, by the issuance of a new policy entitled "*Watchlisting Guidance*." However, the FBI's response indicates that this document is still in draft and has not yet been disseminated to case agents.

Finally, the FBI's response states that our report identifies that the consolidated terrorist watchlist contains 1.1 million terrorist identities representing an estimated 400,000 individuals. It is important to note that the number of individuals on the watchlist is an *estimate*, while the number of identities (or records) is an *actual number* and reflects the level of effort required to maintain an accurate, current, and complete watchlist. We also believe that we have accurately characterized the FBI's nomination activities, particularly as they relate to non-terrorism subjects, such as military detainees.

In sum, we are encouraged by the FBI's commitment to improving its watchlist policies and practices. To their credit, FBI officials often took action to attempt to correct watchlist omissions or delayed removals and to improve watchlisting policies and procedures based upon the information we provided throughout this audit. Nevertheless, the FBI's own review and our work in this audit indicate that weaknesses continue to exist, that significant improvements are still necessary, and that it is too early to tell whether the deficiencies identified in this audit have been fully addressed.

Summary of Actions Necessary to Close Report

1. **Resolved.** The FBI concurred with our recommendation to strengthen its internal controls to ensure that TREX is notified of the initiation of all domestic and international terrorism investigations. The FBI's response indicated that TREX has instituted the following methods to

ensure that TREX is notified of the initiation of all terrorism investigations:

- In August 2008, all field and headquarters personnel working terrorism matters completed a mandatory training class on the watchlisting process.
- The sample case opening electronic communication maintained on the Counterterrorism Division (CTD) intranet site identifies that TREX should get notification to process the watchlist nomination form and to add the subject to the Terrorist Screening Database.
- The TREX intranet site will include timely information on trends, common problems, and best practices related to watchlist nominations.
- Each field office is required to establish a primary and alternate watchlist coordinator who is the single point of contact on all watchlist matters.
- TREX is performing weekly monitoring activities to ensure field offices submit watchlist nominations in a timely manner and in accordance with policy.

This recommendation can be closed when the FBI provides evidence that: (1) all personnel working terrorism matters completed the August 2008 watchlist training, (2) all personnel working terrorism matters have been directed to use the sample forms on the CTD and TREX intranet sites, (3) all the primary and secondary watchlist coordinator positions have been established and staffed, and (4) TREX is performing weekly monitoring of field office nomination submissions.

2. **Resolved.** The FBI concurred with our recommendation to implement periodic refresher training on significant changes that occur in the watchlist nomination process and on the overall benefits of watchlisting. The FBI's response indicated that field office watchlist coordinators will conduct refresher training for all personnel working terrorism investigations. TREX has recommended that the coordinators use pre-established quarterly field office legal training to discuss watchlist trend summaries and policy updates prepared by TREX. Also, TREX has already provided refresher training at a number of FBI conferences and new FBI agent classes. Finally, one TREX Technical Information Specialist (TIS) has been assigned to work

full-time on training matters and is required to maintain the currency of all training materials, the TREX website, and the TREX standard operating procedures.

This recommendation can be closed when the FBI provides copies of its correspondence with field office watchlist coordinators that include instructions to conduct quarterly refresher training and documentation of the periodic refresher training already provided in Los Angeles, Miami, and Minneapolis. The FBI must also provide evidence that a TIS in TREX has been assigned the full-time responsibility of conducting training and maintaining current watchlist training materials.

3. **Resolved.** The FBI concurred with our recommendation to require FBI counterterrorism supervisors to assess the watchlisting status of all terrorism subjects during their mandatory 90-day case file review. The FBI also stated that its Case Review Sheet now contains a section on whether the appropriate nomination, modification, or removal documents were submitted to TREX. However, we have not received a copy of the new requirement or the revised Case Review Sheet. This recommendation can be closed when the FBI provides documentation indicating that SSAs are required to conduct these assessments as part of the 90-day case file review, the instructions provided to the SSAs, and examples of completed Case Review Sheets.
4. **Resolved.** The FBI concurred with our recommendation to develop a policy in TREX to reassign the responsibility for processing watchlist nominations when TREX personnel are unexpectedly absent. The FBI's response also indicated that TREX has been reorganized into teams to utilize available manpower to match constantly changing work flow. This recommendation can be closed when we receive the policy that describes how the newly reorganized TREX distributes and prioritizes incoming watchlist nominations to ensure that they are processed in a timely manner.
5. **Resolved.** The FBI concurred with our recommendation to evaluate the overall watchlist nomination process to determine the amount of time that is needed and can be afforded to each phase of the nomination process. The FBI's response stated that the field offices should complete non-expedited nominations of known or suspected terrorists within 48 hours of receiving SSA approval to open the case. Further, the FBI determined that TREX needs 5 business days to fully process these nominations. The NCTC and TSC concurred with these timeframes and did not alter the 24-hour standard currently allotted to

- those 2 phases of the nomination process. According to the FBI, the revised timeframes are contained in a *draft* watchlisting guidance document to be disseminated to the field once finalized. The FBI has not yet provided a copy of this document to the OIG. This recommendation can be closed when we receive a copy of the FBI's finalized watchlisting policy document, which includes policy as stated by the FBI to establish time standards for each phase of the process.
6. **Resolved.** The FBI concurred with our recommendation to monitor the timeliness of watchlist nominations and modifications to help ensure that FBI watchlist records are handled in a timely manner. The FBI stated that TREX has established a Metrics Team to monitor compliance with nomination timeliness requirements, including conducting random checks of case files. If a field office is having compliance issues, TREX will provide that field office with additional training and, if warranted, an office visit. Compliance issues may also result in a deeper review of a particular field office's open terrorism cases. This recommendation can be closed when we receive evidence of the establishment of the TREX Metrics Team, a description of the work this team is performing, the methodology used, and evidence of the monitoring performed by the Metrics Team, including a report on the timeliness of recent nominations and the thresholds triggering increased training.
 7. **Resolved.** The FBI concurred with our recommendation to review its current watchlist record modification policy and consider implementing a timeliness requirement for the supervisory review of watchlist modifications. The FBI stated that it determined that all modifications should occur within 10 days of receipt of information initiating the need for a modification and that the modifications should be reviewed by a supervisor. Supervisors are also required to review the need for watchlist modifications during 90-day case file reviews. According to the FBI, this new time requirement is included in its draft watchlisting guidance document. This recommendation can be closed when we receive a copy of the FBI's finalized watchlisting policy document, which includes policy as stated by the FBI to establish timeliness requirements for watchlist record modifications.
 8. **Resolved.** The FBI concurred with our recommendation to reexamine its watchlisting policy and practices during the closure request process to ensure that they are clear and appropriate considering the significant time that can elapse during the ITOS approval phase. The FBI stated that the new process established in the draft watchlisting guidance document will require field offices to submit watchlist record removal paperwork to TREX within 10 days of receiving case closure

approval from FBI headquarters, or after 30 days if no response is received from FBI headquarters. This recommendation can be closed when we receive a copy of the FBI's finalized watchlisting policy document, which includes policy as stated by the FBI to clearly address the timeliness requirements for the removal of terrorist watchlist records following case closure.

9. **Resolved.** The FBI concurred with our recommendation to require closed cases to be reviewed to ensure that subjects are timely removed from the watchlist or justification is made to maintain the watchlist record. The FBI's response stated that the TREX Metrics Team will review closed terrorism investigations to ensure that all removal requests have been submitted. This recommendation can be closed when the FBI provides evidence of the requirement for the TREX Metrics Team to conduct these reviews and specific comments addressing how this oversight will be accomplished.
10. **Resolved.** The FBI concurred with our recommendation to develop policy to review the justifications for retaining on the watchlist certain subjects of closed investigations, including regularly reviewing these records to determine if they should be modified or removed. The FBI stated that it determined that, except in limited circumstances, no subjects of closed terrorism investigations shall remain watchlisted. The FBI stated that the watchlisting guidance document, currently in draft form, will address the limited circumstances under which the FBI can leave known or suspected terrorists on the watchlist after case closure. The FBI also stated that this practice will be governed by effective controls to ensure such records are modified and removed when appropriate. This recommendation can be closed when we receive a copy of the FBI's finalized watchlisting policy document, which includes policy as stated by the FBI that addresses the circumstances for deliberately retaining subjects on the watchlist after case closure. The FBI must also provide documentation of the internal controls it will employ to ensure that these records are modified and removed, as appropriate.
11. **Resolved.** The FBI concurred with our recommendation to monitor the timeliness of watchlist removal requests to help ensure that the records are deleted in a timely manner. The FBI stated that the TREX Metrics Team will conduct regular monitoring through its weekly review of closed cases. This recommendation can be closed when the FBI provides evidence of the TREX Metrics Team's on-going weekly closed case file reviews.

12. **Resolved.** The FBI concurred with our recommendation to develop internal controls and establish policy to ensure that cases are transferred from one field office to another in a timely manner and that any watchlisting matters associated with the transferred cases are handled appropriately. The FBI stated that it has developed internal controls and policy to ensure that watchlisting matters associated with transferred cases are handled in a timely fashion. The FBI stated that the policy will be included in the comprehensive watchlisting guidance document, and it will require the transferring field office to keep the subject watchlisted until the new field office opens an investigation. Once the new field office opens its investigation, it should then modify the existing record to document its assignment of the case. The FBI's response also states that the watchlisting status of these subjects will be reviewed during the 90-day case file reviews. As a result, we believe that watchlist records related to transfer cases will be less likely to remain in an indeterminate state for an extended period of time. To close this recommendation, the FBI should provide the final watchlisting policy as evidence that these transfer protocols have been communicated to the field offices.
13. **Resolved.** The FBI concurred with our recommendation to ensure that previously nominated military detainee records are modified and no longer reflect FBI ownership. The FBI states that the Criminal Justice Information Services (CJIS) Division has coordinated with the Department of Defense (DOD) to take over the nomination of these known or suspected terrorists and that CJIS has notified the National Counterterrorism Center (NCTC) to change the sourcing of these terrorist records from the FBI to the DOD. This recommendation can be closed when the FBI provides confirmation that the NCTC has changed the sourcing of these military detainee records and documentation of DOD's agreement to take over all nomination activities for military-related watchlist nominations.
14. **Resolved.** The FBI concurred with our recommendation related to CJIS's practices of sending Hostage Rescue Team (HRT) and fly team nominations of known or suspected terrorists directly to NCTC. The FBI stated that CJIS is no longer sending HRT and fly team nominations to the NCTC. Further, the FBI now requires that any new information generated by HRT, fly team, or other such efforts must be sent to the CTD for evaluation. However, the FBI's response did not address the evaluation of the pre-existing watchlist records that were created based upon HRT or fly team activities. This recommendation can be closed when the FBI provides us with the policy and guidance that states CJIS will no longer nominate known or suspected terrorists

to the watchlist based on HRT and fly team information and that any of these potential nominations must be sent to CTD for evaluation. Furthermore, the FBI should provide us with its plan for evaluating the pre-existing records.

15. **Resolved.** The FBI concurred with our recommendation related to CJIS's practice of processing watchlist nominations for Legal Attachés (LEGAT). The FBI stated that CJIS is no longer making watchlist nominations. Additionally, the CTD has conducted a review of approximately 12,000 watchlisted individuals and removed thousands of individuals from the watchlist, including some that were based on LEGAT information. This recommendation can be closed when the FBI provides documentation that all watchlist records based on LEGAT information were evaluated, the total number of LEGAT records that were removed, and the justification used for each of the LEGAT records that were retained on the watchlist. For those retained watchlist records, the FBI should provide us with documentation of the policy established to maintain and remove these records, when appropriate.
16. **Resolved.** The FBI concurred with our recommendation related to watchlist records that appear to have case designations that are not addressed by FBI policy, including weapons of mass destruction (WMD) cases. As noted above, the FBI stated that it has evaluated over 12,000 watchlisted individuals and this evaluation resulted in thousands of individuals being removed from the watchlist, including those with case designations outside those permitted for watchlisting. Additionally, the FBI stated that when subjects of WMD investigations are believed to be associated with terrorism, the FBI will open companion terrorism cases. However, the FBI's review of 12,000 individuals appears incongruent with the approximately 24,000 identities that we identified as associated with case designations that are not covered by FBI policy. This recommendation can be closed when the FBI provides us a report from the consolidated terrorist watchlist that identifies all records with referenced FBI case classifications that are not appropriate for watchlisting. If this is not possible due to changes in how the watchlist records are stored at the Terrorist Screening Center, we will work with the FBI to provide a sample of the 24,000 previously-identified records to ascertain the current watchlist status of the records. Additionally, the FBI should provide the OIG with its policy requiring field offices to open companion terrorism cases when the subject of a WMD investigation is believed to be associated with terrorism.