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MEMORANDUM

To: Michael E. Horowitz
Inspector General
U.S. Department of Justice

Through: Raymond J. Beaudet
Assistant Inspector General for Audit

From: Armando O. Bonilla 
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Subject: Public Summary: Department of Justice's Response to the Office of the Inspector General's Draft Interim Audit Report entitled *Department of Justice's Handling of Known or Suspected Terrorists Admitted into the Federal Witness Security Program* (Apr. 19, 2013)

Thank you for the opportunity to respond to the Office of the Inspector General's April 19, 2013 draft interim audit report entitled *Department of Justice's Handling of Known or Suspected Terrorists Admitted into the Federal Witness Security Program (OIG Audit Report)*. The Department appreciates the OIG's role in periodically auditing the federal Witness Security Program (WitSec Program or Program),¹ and believes that, through our combined efforts, the Program has undergone significant improvements since the OIG first audited the Program in September 1993.

¹ The OIG previously audited the WitSec Program on several occasions, as documented in audit reports dated September 1993, November 1993, January 2002, March 2005, and October 2008. See *The Federal Bureau of Prisons Witness Security Program*, Audit Report 09-01 (Oct. 2008), available at <http://www.justice.gov/oig/reports/BOP/a0901/final.pdf>; *U.S. Marshals Service Administration of the Witness Security Program*, Audit Report 05-10 (Mar. 2005), available at <http://www.justice.gov/oig/reports/USMS/a05usms/final.pdf>; *The Federal Witness Security Program, Criminal Division*, Audit Report 02-05 (Jan. 2002), available at <http://www.justice.gov/oig/reports/OBD/a0205/intro.htm>; *U.S. Marshals Service's Responsibilities Under the Witness Security Program*, Audit Report 94-7 (Nov. 1993); *Admission into the Department of Justice's Witness Security Program by the Criminal Division*, Audit Report 93-24 (Sept. 1993).

For over 40 years, the WitSec Program has enabled the Government to bring to justice the most violent and dangerous criminals by providing critical protection for witnesses fearing for their safety. During the last two decades, as the Government has aggressively investigated and prosecuted those involved in domestic and international terrorism, the Program necessarily has included a small number of *former* known or suspected terrorists.² In the last six years, only two former known or suspected terrorists have been admitted into the Program and given a new identity and relocation services. As noted in the *OIG Audit Report*, these witnesses have provided essential assistance in a number of highly significant cases, such as the prosecutions arising from the 1995 bombing of the Alfred P. Murrah Federal Building in Oklahoma City.

Prior to being admitted into the Program, whether in a terrorism case or otherwise, the witness undergoes an intensive vetting process. Witnesses are admitted into the Program only if, and after, the sponsoring law enforcement agency – in most cases the Federal Bureau of Investigation (FBI) – the sponsoring United States Attorney, the United States Marshals Service (USMS), and the Criminal Division's Office of Enforcement Operations (OEO) have determined that the witness is suitable for the Program and the need to admit the witness outweighs the risk to the public and the relocation community. *See* 18 U.S.C. § 3521(c). Notably, in the 40-year history of the WitSec Program, no terrorism-linked witness ever has committed a single act of terrorism after entering the Program. And, as noted in the *OIG Audit Report*, the FBI's review of this matter has concluded that “none of these individuals have revealed a threat to national security at this time.”

The *OIG Audit Report* faults OEO and the USMS for not more fully involving national security stakeholders in the admission and monitoring of former known and suspected terrorists in the WitSec Program. As demonstrated by the Department's engagement with OIG throughout this audit, we agree that the suitability and monitoring requirements historically employed in administering the Program should be enhanced for terrorism-linked witnesses. When this audit commenced in October 2011, OEO, the USMS, and the FBI already were working to remedy, among the issues raised in the *OIG Audit Report*, the information sharing deficiencies between national security stakeholders concerning terrorism-linked witnesses admitted into the WitSec Program.

² The *OIG Audit Report* identifies these individuals as “known or suspected terrorists,” citing the Terrorist Screening Center's (TSC) Watchlisting Guidance. In doing so, the *OIG Audit Report* fails to take into account the extensive vetting these WitSec Program participants undergo before being formally sponsored, and then admitted, into the Program, and the fact that these individuals are cooperating with the government, and often testify in terrorism-related prosecutions. Additionally, throughout this audit, the Department and the OIG have used a much broader definition than that contained in the TSC Watchlisting Guidance to identify the universe of Program participants in issue. For these reasons, these WitSec Program participants are more accurately described as “*former* known or suspected terrorists.”

In May 2012, OEO, the USMS, the FBI, and the TSC, in consultation with the Department's National Security Division and the National Joint Terrorism Task Force (NJTTF), finalized and simultaneously implemented formal protocols to provide for specialized handling for former known or suspected terrorists in the WitSec Program. Recognized in the *OIG Audit Report* as a "significant milestone," these protocols require the robust and real-time sharing of information between all national security stakeholders. Since that time, the FBI, the TSC, and the NJTTF have had complete access to the OEO and USMS files of each Program participant who is linked to a terrorism crime. Additionally, OEO and the USMS have disclosed to the FBI, the TSC, and the NJTTF the true and new identities and known aliases and other relevant information of *all* identified former known or suspected terrorists admitted into the WitSec Program.

The Department has identified, located, and minimized the threat of all former known or suspected terrorists admitted into the WitSec Program during its 40-year history. OEO and the USMS have worked together, along with our national security partners, to identify all former known or suspected terrorists ever admitted into the Program. For example, after developing the necessary security protocols, the USMS ran the true and new names and known aliases of all 18,000-plus WitSec Program participants and their dependents – dating back to the creation of the Program in the 1970s – through the Terrorist Screening Database (TSDB), which includes the Consolidated Terrorist Watchlist (Watchlist). OEO, in turn, is performing a manual review of all 18,000-plus case files to ensure that all former known or suspected terrorists ever admitted into the Program have been identified. With the assistance of the USMS, OEO already has completed its audit of all case files for the last 18 years (*i.e.*, 1996 to 2013) and has not identified a single additional former known or suspected terrorist.³ In addition, contrary to the suggestion in the *OIG Audit Report*, through the coordinated investigative efforts of the USMS and the FBI, the location of all identified former known or suspected terrorists has been resolved. All of this information is being shared among the national security stakeholders. And, as noted in the *OIG Audit Report*, for the past year under the new protocols, the Department has adopted a formal policy that prohibits *without exception* WitSec Program participants with a Watchlist status of "No Fly" from traveling on commercial flights.

The Department has actively worked with the OIG to improve the WitSec Program and agrees with the 16 recommendations proposed in the *OIG Audit Report*. In fact, as detailed in our separate response to the recommendations made in the *OIG Audit Report*,⁴ the Department already has completed action on 15 of those recommendations. With regard to the final

³ Throughout this process, consistent with the May 2012 information sharing protocols, OEO has referred a small number of case files to the NJTTF for additional review even though the WitSec Program participants do not have Watchlist status.

⁴ Due to the extensive law enforcement sensitive information contained in the Department's responses to the specific OIG recommendations, they are being submitted under separate cover and not being made public.

recommendation, as noted above, the Department has completed its manual review of nearly two decades of WitSec Program files. The Department remains committed to closely monitoring this invaluable program, maintaining the security of witnesses and cooperators who have provided critical assistance to the United States, and preserving the safety of the public.

I. Evolution of the WitSec Program to Include Terrorism Prosecutions

Created by Congress over 40 years ago as part of the Organized Crime Control Act of 1970⁵ to combat organized crime syndicates, the WitSec Program has played a crucial role in the protection of witnesses to violent crimes, enabling law enforcement officials and federal prosecutors to bring to justice some of the world's most dangerous criminals. The Program successfully has protected an estimated 18,300 participants – including innocent victim-witnesses and cooperating defendants and their dependents – from intimidation and retribution. No witness or family member of a witness who has followed Program guidelines ever has been seriously injured or killed as a result of his or her cooperation. This vital and effective prosecution tool allows the government to protect witnesses whose assistance is necessary as part of criminal investigations and whose testimony is critical to secure convictions in United States courts of law, military tribunals, and even foreign prosecutions.

Over the last 20 years, as the government has devoted more resources to the prosecution of terrorism cases, the WitSec Program has evolved to include witnesses in domestic and international terrorism prosecutions.⁶ The Department's prosecution of terrorists requires providing protection for a small number of former known or suspected terrorists and their family members, as well as innocent victims of and eyewitnesses to planned and executed acts of terror, whose cooperation is essential to securing criminal convictions of those responsible for planning and committing acts of terror.⁷ Of note, over 60% of the identified former known or suspected

⁵ See Pub. L. No. 91-452, §§ 501-04, 84 Stat. 922, 933-34 (1970) (current version codified at 18 U.S.C. §§ 3521-28).

⁶ See *The Effectiveness of the Department of Justice Witness Security Program Created Under the Organized Crime Act of 1970 to Protect Witnesses Who Testify Against Traditional Organized Crime Figures: Hearing Before the Senate Committee on the Judiciary*, 104th Cong. 873, at 43 (1996) (statement of John C. Keeney, Acting Assistant Attorney General, Criminal Division, U.S. Department of Justice) ("Although our efforts continue to focus on the type of traditional organized criminal activity, the detection and neutralization of other types of very dangerous criminal organizations, such as *terrorist groups*, international narcotics traffickers, and violent street gangs, became an unfortunate reality for federal law enforcement. Obtaining the cooperation of insiders is crucial to the successful prosecution of these organizations. Securing the testimony of insider witnesses is often impossible without the Witness Security Program.") (emphasis added), available at <http://www30.us.archive.org/stream/oversightofdepar00unit#page/n0/mode/1up>.

⁷ Given the number of participants since the WitSec Program's inception, terrorism-linked witnesses represent less than a fraction of 1% of the total Program population.

terrorists were admitted into the Program *prior to* September 11, 2001. In contrast, just two former known or suspected terrorists have been admitted into the Program and given a new identity and relocation services in the last six years.

The former known or suspected terrorists admitted into the Program have provided invaluable assistance to the United States and foreign governments in identifying and dismantling terrorist organizations and disrupting terror plots. Among other investigations and prosecutions, Program participants have provided essential cooperation and testimony regarding: the 1993 World Trade Center bombing and “Blind Sheik” prosecutions; the 1995 bombing of the Alfred P. Murrah Federal Building in Oklahoma City; the 1998 East Africa Embassy bombings; the 2000 Millennium terror plot; the 2007 plot to bomb the John F. Kennedy International Airport; and the 2009 New York City subway suicide-bomb plot. Each of these prosecutions resulted in the conviction of individuals responsible for committing or attempting to commit terrorist attacks against United States citizens.⁸ As these cases show, the WitSec Program has been a key law enforcement tool in securing cooperation from those witnesses who are necessary to the successful prosecution of cases that are integral to the Government’s counter-terrorism mission and to the security of the United States.

The Government generally cannot choose its witnesses. This is particularly true in cases involving terrorism, where our witnesses are often former known or suspected terrorists, or individuals who are close enough to terrorists to have information about them, their organizations, and their plans, but whose cooperation is necessary to successfully prosecute those who pose the most significant threat to our national security. Regardless of the prosecution’s target, however, no witness – in a terrorism case or otherwise – is admitted into the Program without being subject to an intensive vetting by: the FBI or other sponsoring law enforcement agency investigating the underlying criminal conduct; the United States Attorney for the district prosecuting the underlying criminal conduct; the USMS, which protects and monitors witnesses who require a change of identity and relocation services; and OEO, which oversees the WitSec Program. Thus, as noted above, national security stakeholders such as the FBI have been deeply involved in the Program admission process – often as the party *sponsoring* a terrorism-linked witness’s admission into the Program – even before the Department began implementing changes to the Program’s treatment of terrorism-linked witnesses. Indeed, of the identified universe of terrorism-linked witnesses, the FBI sponsored nearly 80% of these witnesses into the Program.

Moreover, “terrorism-linked witnesses” is a broad phrase that includes both innocent bystanders (*e.g.*, flight attendants on hijacked airplanes) and former known and suspected terrorists.

⁸ *E.g.*, *In re Terrorist Bombings of U.S. Embassies in East Africa*, 552 F.3d 93 (2d Cir. 2008); *United States v. Rahman*, 189 F.3d 88 (2d Cir. 1999); *United States v. McVeigh*, 153 F.3d 1166 (10th Cir. 1998); *United States v. Ibrahim*, No. 07-CR-543 (DLI), 2011 WL 4975291 (E.D.N.Y. Oct. 19, 2011); *see also United States v. Medunjanin*, No. 10 CR 019, 2012 WL 1514766 (E.D.N.Y. May 1, 2012).

Moreover, a witness may be admitted into the Program only if the sponsoring law enforcement officials can demonstrate through a thorough risk assessment that the witness's value to the prosecution, the need to protect the witness, and the witness's suitability to the Program *outweigh any potential risks to public safety*. The risk assessment includes an extensive interview of the applicant by a USMS Inspector, a full psychological evaluation of the witness, and detailed consideration of the witness's criminal history, his or her value to the underlying prosecution, the nature of the threat against the witness, and the risk that the witness might pose to the relocation community. *See* 18 U.S.C. § 3521(c). Thus, the Department has *always* considered the potential risk to the public posed by the entry of a former known or suspected terrorist into the WitSec Program. As a result of this comprehensive risk assessment and the cultivated relationship between the Program participant and law enforcement, the Department is unaware of any instance in which a terrorism-linked witness has committed an act of terrorism after entering the Program.⁹ Indeed, as previously noted and recognized in the *OIG Audit Report*, the FBI's review of this matter has not identified an immediate national security threat directly tied to the participation of terrorism-linked witnesses in the Program.¹⁰

II. Completion of, and Significant Action Taken on, the OIG Recommendations

Despite the WitSec Program's demonstrated value and remarkable success over the last four decades, in May 2010 – prior to the commencement of this OIG audit – new leadership at OEO recognized that the Program's handling of terrorism-linked witnesses needed to be improved. At that time, the newly appointed OEO Director, in consultation with the USMS and FBI, identified several areas in which the management of terrorism-linked Program participants required significant changes and enhanced oversight.¹¹ The OEO Director then initiated the

⁹ Complementary public safety measures include: the supervision by the United States Probation Office of certain Program participants who are on supervised release; and the routine review, including terrorist database checks, of certain Program participants by the Department of Homeland Security's Immigration and Customs Enforcement in connection with any evaluation of immigration status.

¹⁰ The *OIG Audit Report* notes that a USMS Inspector once suspected a Program participant "was trying to gather intelligence on sensitive policies and procedures of the[] WitSec Program for militant Muslim groups," and that the USMS failed to share this information with the FBI. A USMS review of this matter concluded that the Program participant's questions about the Program's administration were for the purpose of gathering information to support the witness's pending financial support (*i.e.*, clothing allowance) grievance and were not an effort to infiltrate the Program. The NJTTF has reviewed the USMS field report regarding this incident and concurred with USMS's conclusion there was no factual basis for believing the Program participant was attempting to glean intelligence about the WitSec Program.

¹¹ In March 2011, in order to ensure meaningful oversight of the Program by a Senior Executive Service manager, the Assistant Attorney General for the Criminal Division executed an order elevating the management of the WitSec Program to the OEO Director. Prior to the order, Program oversight had been delegated to an OEO Associate Director.

following reforms prior to the commencement of this audit:

- Detailed an experienced prosecutor, subsequently named Chief of the OEO Special Operations Unit, to review policies and make recommendations concerning the admission of former known or suspected terrorists into the WitSec Program.
- Mandated that the FBI be notified in all cases whenever a former known or suspected terrorist is admitted into the Program.
- Began developing a master list of all former known or suspected terrorists ever admitted into the Program, including those who were admitted prior to the creation of the TSC, the TSDB, and the Watchlist.
- Coordinated with the USMS, the FBI, and the NJTTF to develop formal procedures to manage former known or suspected terrorists admitted into the Program.

The Department developed formal protocols, implemented in May 2012, that provide for greater oversight of the evaluation and screening of Program applicants, as well as for enhanced monitoring of former known or suspected terrorists admitted into the Program.

As noted above and detailed in our responses to the 16 recommendations made in the *OIG Audit Report*, the Department already has completed action on 15 recommendations and taken significant action on the sole remaining recommendation. For example, despite the *OIG Audit Report's* suggestion to the contrary, and as documented in reports provided to the OIG throughout this audit, OEO and the USMS have disclosed to the FBI, the TSC, and the NJTTF the WitSec Program status and the true and new, government-provided identifying information for *all* identified former known or suspected terrorists admitted into the Program. Going forward, the formal protocols require notification to the FBI and the TSC whenever a former known or suspected terrorist enters the Program, is provided with a new identity, is provided with relocation services, or leaves the Program. The Department also has developed and put into effect more stringent monitoring protocols different from those used to manage traditional organized crime or gang members admitted into the Program. Among other things, the enhanced protocols adopted by the Department – and in effect for nearly a year – mandate the following:

- Information about terrorism-linked applicants to the Program must be shared among OEO, the USMS, the FBI, and the TSC.
- In cases where an agency other than the FBI is sponsoring a terrorism-linked witness for relocation services, OEO also shall request that the FBI conduct a risk assessment to be used by the OEO Director in determining Program suitability.
- OEO must consult with the Department's National Security Division prior to admitting a terrorism-linked witness into the Program.

- Every new applicant must be run through the TSDB before any decision is made to authorize Program services.
- All National Criminal Instant Background Checks runs on WitSec Program applicants must include a Query Gang Member search which identifies gang membership, terrorist organization affiliation, and Watchlist status.
- OEO and the USMS must share new identity information for terrorism-linked witnesses with the FBI and the NJTTF and, for watchlisting purposes, the TSC.
- The USMS must conduct regular computer indices checks on each terrorism-linked Program participant who is currently in the Program or being provided with immigration or identity support services, unless otherwise directed by the OEO Director.
- The USMS must conduct face-to-face meetings several times a year with terrorism-linked Program participants who are currently in the Program or being provided with immigration or identity support services, unless otherwise directed by the OEO Director.
- The FBI and the TSC must be granted full access to OEO and USMS case files for terrorism-linked witnesses.
- Quarterly meetings between OEO and the USMS – also attended by the FBI, the TSC, and the NJTTF – must be held to ensure proper oversight and coordination, as well as information sharing between and among these national security stakeholders.
- The TSC must notify the NJTTF, the USMS, and OEO of all encounters of former known or suspected terrorists that have been watchlisted.

These are some of the important changes to the WitSec Program that the Department has implemented to maintain its reliability and value as a law enforcement tool while simultaneously protecting our citizens and our Nation from potential future harm. The Department agrees that the recent protocol changes were necessary, will ensure the WitSec Program's continued vitality, and will provide additional security to the public.