



Department of Justice

STATEMENT OF

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BEFORE THE

**SUBCOMMITTEE ON CRIME, TERRORISM, HOMELAND SECURITY
AND INVESTIGATIONS
U.S. HOUSE OF REPRESENTATIVES**

ENTITLED

**"KNOWN OR SUSPECTED TERRORISTS IN THE FEDERAL
WITNESS SECURITY PROGRAM"**

PRESENTED

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Subcommittee on Crime, Terrorism, Homeland Security and Investigations
Committee on the Judiciary
U.S. House of Representatives

“Known or Suspected Terrorists in the Federal Witness Security Program”
June 4, 2013

Chairman Sensenbrenner, Ranking Member Scott, and distinguished Members of the Subcommittee:

Thank you for the opportunity to allow the Department of Justice to submit a statement regarding the admission of former known and suspected terrorists into the federal Witness Security Program (WitSec Program or Program) and the recent audit report issued by the Department's Office of the Inspector General (OIG). The Department appreciates the OIG's role in periodically auditing the WitSec Program, and believes that, through our combined efforts, the Program has undergone significant improvements since the OIG first audited the Program in September 1993. The Department further agrees with all sixteen recommendations made in the audit report and has fully implemented fifteen of them. With regard to the final recommendation – requiring the manual review of all 18,300 WitSec files – the Department has completed its review of nearly 20 years of those files, and is continuing its review of the remaining files.

The Department of Justice shares the Subcommittee's deep commitment to public safety, homeland security, and combatting terrorism. As demonstrated by the significant corrective actions taken to date, the Department takes the OIG's report very seriously and values the work of the audit team. For over a year, the Department has had in place new WitSec Program protocols addressing the issues raised by the OIG. These formal protocols require prompt and robust information sharing with all law enforcement national security stakeholders, including the Federal Bureau of Investigation (FBI), regarding all terrorism-linked witnesses in the Program. The protocols also impose an absolute ban on the use of commercial flights for WitSec Program participants with a Watchlist status of “No Fly.”

It is important to note that the number of former known or suspected terrorists admitted into the Program is a fraction of 1% of the total WitSec population, the majority of who were admitted *prior to* September 11, 2001. In contrast, just two former known or suspected terrorists have been admitted into the WitSec Program and given a new identity and relocation services in the last six years. Moreover, in the course of this audit,

the Department has identified, located, and minimized the threat of all former known or suspected terrorists admitted into the Program during its 40-year history. To date, the FBI has not identified a national security threat tied to the participation of terrorism-linked witnesses in the WitSec Program.

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 1970 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 has successfully protected an estimated 18,300 participants – including innocent victim-witnesses and cooperating defendants and their dependents – from intimidation and retribution. No Program participant who has followed Program guidelines has ever been seriously injured or killed as a result of their cooperation while in the Program. This vital and effective law enforcement 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.

As previously reported to Congress, 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.¹ 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 – whose cooperation is necessary to successfully prosecute those who pose the most significant threat to our national security. The prosecution of these cases 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 convictions of those responsible for planning and committing acts of terror.

The former known or suspected terrorists admitted into the WitSec Program have

¹ 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>.

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. As these cases show, the WitSec Program has been a key law enforcement, counter-terrorism, and national security tool for 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.

II. There is No Threat to Public Safety

To date, the FBI has not identified a national security threat tied to the participation of terrorism-linked witnesses in the WitSec Program. Moreover, in the more than 40-year history of the WitSec Program, no terrorism-linked witness has ever committed an act of terrorism after entering the Program. These two facts are a testament to the careful vetting all WitSec Program participants undergo before they are admitted into the Program. 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 federal law enforcement agency investigating the underlying criminal conduct; the U.S. Attorney for the district prosecuting the underlying criminal conduct; the U.S. Marshals Service (USMS), which protects witnesses who require a change of identity and relocation services; and Department’s Office of Enforcement Operations (OEO), which oversees the WitSec Program. Thus, 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, a witness may be admitted into the Program only if, and after, 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*. As required by law, the risk assessment includes a full psychological evaluation 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. 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.

III. 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 the 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. The OEO Director then initiated a series of reforms, including mandated information sharing between law enforcement national security stakeholders and improved tracking and recordkeeping of terrorism-linked witnesses admitted into the Program.

In May 2012, OEO, the USMS, the FBI, and the Terrorist Screening Center (TSC), in consultation with the Department's National Security Division (NSD) and the National Joint Terrorism Taskforce (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 law enforcement national security stakeholders. In effect for a year now, the enhanced protocols mandate:

- Complete information sharing between the USMS, OEO, FBI, TSC, and NJTTF, including full access to the USMS and OEO case files for all terrorism-linked witnesses.
- A risk assessment to be conducted by the FBI to determine Program suitability in all cases – even in cases when FBI is not the sponsoring law enforcement agency.
- Consultation with the NSD prior to admitting a terrorism-linked witness into the Program.
- Running every new applicant through the Terrorist Screening Database (TSDB) and the National Criminal Instant Background Check (NCIC) database before any decision is made to authorize Program services.
- An absolute ban on the use of commercial flights for WitSec Program participants with a Watchlist status of "No Fly."
- 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.

- 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.
- In cases where WitSec Program participants are foreign nationals, the Department of Justice coordinates closely with the Department of Homeland Security.

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, counter-terrorism, and national security 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.

IV. Conclusion

The Department of Justice remains committed to closely monitoring the invaluable WitSec Program, maintaining the security of witnesses and cooperators who have provided critical assistance to the United States and, above all, preserving the safety of the American public and our nation's borders. The Department thanks the Subcommittee for its interest in these critical issues.