



Office of the Inspector General
United States Department of Justice

Statement of Michael E. Horowitz
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before the

Senate Committee on Appropriations
Subcommittee on Commerce, Justice, Science
and Related Agencies

concerning

The Department of Justice's
Fiscal Year 2014 Budget Request

June 6, 2013

Chairwoman Mikulski, Senator Shelby, and Members of the Subcommittee:

Thank you for inviting me to testify about the activities and oversight work of the Office of the Inspector General (OIG) for the Department of Justice (Department or DOJ). It has been just over one year since I was sworn in as the Department's Inspector General, and it has been an extraordinarily busy time for me and the Office.

The OIG's Work Over the Past Year

Our office has issued numerous important reports during the past year. For example, our report on the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) Operation Fast and Furious and Operation Wide Receiver detailed a pattern of serious failures in both ATF's and the U.S. Attorney's Office's handling of the investigations, as well as the Department's response to Congressional inquiries about those flawed operations. Our report on improper hiring practices in the Justice Management Division (JMD) found problems with nepotism in multiple offices in JMD. Our report on the Department's handling of the Clarence Aaron clemency request found that the Department's Pardon Attorney did not accurately represent material information to the White House in recommending that the President deny Aaron's clemency petition. And just three weeks ago, we issued an interim report on the Department's handling of known or suspected terrorists in the federal Witness Security (WITSEC) Program that detailed significant information sharing failures which allowed WITSEC Program participants who were on the Transportation Security Administration's No Fly list to fly on commercial airplanes using their new government-issued identities.

We also issued reports on such diverse topics as the Department's coordination of its efforts to disrupt terrorist financing; the Federal Bureau of Investigation's (FBI) Foreign Terrorist Tracking Task Force's sharing of information; the FBI's activities under Section 702 of the *Foreign Intelligence Surveillance Act (FISA) Amendments Act*; ATF's efforts to conduct periodic inspections of explosives and firearms licensees; and the Federal Bureau of Prisons' (BOP) compassionate release program. That latter review was particularly troubling, as we found that the compassionate release program has been poorly managed and implemented inconsistently, resulting in ad hoc decision making that has likely resulted in eligible inmates not being considered for release and terminally ill inmates dying before their requests were decided.

In addition, we completed many reports that did not necessarily make headlines but that will help make the Department's operations more effective and efficient, and result in important savings of taxpayer dollars. In the past year, we issued more than 70 audits, which included annual financial

statement audits, information security audits, audits of grant recipients, and audits of state and local participants in the FBI's Combined DNA Index System. Further, we issued reports on the Department's handling of suspension and debarment, the FBI's implementation of the Sentinel project, the FBI's handling of its forensic DNA case backlog, the U.S. Marshals Service's (USMS) management of its procurement activities, and the Executive Office for Immigration Review's management of immigration cases. Additionally, during this time, our Investigations Division received approximately 10,000 complaints, had dozens of arrests and convictions involving corruption or fraud offenses, and investigated allegations that resulted in well over 100 administrative actions against Department employees.

I am particularly proud of having appointed the DOJ OIG's first-ever whistleblower ombudsperson, and I am committed to ensuring that whistleblowers in the Department can step forward and report fraud, waste, and abuse without fear of retaliation. During my tenure, I have seen first-hand the important role that whistleblowers play in advancing the OIG's mission to address wasteful spending and improve the Department's operations. We will continue to do all we can to ensure that we are responsive to complaints that we receive, and to ensure that allegations of retaliation are thoroughly and promptly reviewed.

Past Work of the OIG and the Impact of Sequestration

While the past year has been a remarkably busy time, I have learned that it is typical of the extraordinary work that the DOJ OIG regularly produces, and indicative of the return on investment that the taxpayers receive from our office. Over the past 10 fiscal years, the OIG has identified nearly \$1 billion in questioned costs – far more than the OIG's budget during the same period. In addition, we have identified over \$250 million in taxpayer funds that could be put to better use by the Department, and our criminal and administrative investigations have resulted in the imposition or identification of more than \$100 million in civil, criminal, and nonjudicial fines, assessments, restitution, and other recoveries over that period.

Moreover, when we issue our audits and reviews, we regularly make recommendations to the Department on how it can reduce costs and improve ineffective or inefficient programs. The Department must redouble its efforts to adopt and implement these OIG recommendations. Hundreds of OIG recommendations to the Department remain open, and our FY 2012 audits and related single audits identified approximately \$25 million in questioned costs that the Department should make every effort to resolve and, if necessary, recover. I intend to make this issue a priority for my office.

Like other Inspectors General offices, our office has been impacted significantly by sequestration. We received as a result of sequestration a 5

percent reduction to our FY 2012 base this fiscal year, and are scheduled to receive an additional 2.3 percent reduction in FY 2014. Because approximately 79 percent of our expenditures are related to personnel and another 13 percent represents fixed rent, security, utilities, and other mandatory costs, a budget reduction of over 7 percent equates to a permanent reduction of approximately 35 FTEs, or nearly 8 percent of our workforce.

As you would expect from careful stewards of taxpayer money, we planned for the possibility of sequestration months before it went into effect. As a result, we already are approximately 25 FTEs below our FTE hiring level when I became Inspector General in April 2012, and we expect to further restrict our spending for the remainder of the fiscal year in order to meet the budget reduction. It also is requiring us to reevaluate the number of audits and investigations we will be able to conduct in the future given our substantially reduced staffing levels, and to consider travel costs in considering whether to undertake certain audits and investigations. Nevertheless, I am confident that the dedicated professionals in the DOJ OIG will continue to provide extraordinary service to the American public.

Future Work and Top Challenges Facing DOJ

Now that I have outlined for you some of our prior work, let me look forward to our future work.

Each year since 1998, the OIG has compiled a list of top management and performance challenges for the Department of Justice for use by the Attorney General and top DOJ officials. We identified the major challenges for the Department in 2013 as Safeguarding National Security, Enhancing Cyber Security, Managing the Federal Prison System, Leading the Department in an Era of Budget Constraints, Protecting Civil Rights and Civil Liberties, Restoring Confidence, Coordinating Among Law Enforcement Agencies, Enforcing Against Fraud and Financial Offenses, Administering Grants and Contracts, and Ensuring Effective International Law Enforcement. In my testimony today, I will highlight the first three of the challenges on our list. The full list, along with a detailed discussion of our assessment of each, is available on our website at <http://www.justice.gov/oig/challenges/2012.htm>.

Overall, I believe that the Department has made progress in addressing many of its top challenges, but significant and immediate improvement is still needed in some crucial areas.

National Security Remains a Top Challenge

April's bombing of the Boston Marathon tragically demonstrated why safeguarding national security has appropriately remained the Department's highest priority and the focus of substantial resources. The Department's

efforts in this regard have consequently been a priority of the OIG's oversight work, which has consistently shown that the Department faces many persistent challenges in its efforts to protect the nation from attack.

One such challenge is ensuring that national security information is appropriately shared among Department components and the intelligence community so that responsible officials have the information they need to act in a timely and effective manner. Our interim report on the federal WITSEC Program last month demonstrated the stakes of this challenge. That review found that because the Department did not authorize the disclosure to the Terrorist Screening Center of the new identities provided to known or suspected terrorists and their dependents in the WITSEC Program, it was possible for known or suspected terrorists, using their new government-issued identities, to fly on commercial airplanes and evade one of the government's primary means of identifying and tracking terrorists' movements and actions.

The OIG is currently conducting numerous other reviews related to the sharing of national security information. For example, we are working with the Inspectors General of the Intelligence Community, the Central Intelligence Agency, and the Department of Homeland Security to conduct a coordinated and independent review into the U.S. Government's handling of intelligence information leading up to the Boston Marathon Bombing. We also are examining the Department's management of the consolidated terrorist watchlist, and we recently issued a report assessing the Department's efforts to investigate terrorist financing. Each of these critical functions requires careful coordination between Department components and other agencies to ensure that the Department has every opportunity to prevent terrorist attacks before they occur.

In addition to the challenges of information sharing, the Department faces the challenge of ensuring the appropriate use of tools used to monitor and detect national security risks and threats. The importance of this challenge was demonstrated by our prior OIG reviews assessing the FBI's use of national security letters (NSLs), which allow the government to obtain information such as telephone and financial records from third parties without a court order. These reviews found that the FBI had misused this authority by failing to comply with important legal requirements designed to protect civil liberties and privacy interests, and we therefore made recommendations to help remedy these failures.

The FBI has implemented many of these recommendations and continues to make progress in implementing others. However, some recommendations remain outstanding, and we are now conducting our third review of NSLs to assess the FBI's progress in responding to those recommendations and to evaluate the FBI's automated system for tracking NSL-related activities and ensuring compliance with applicable laws. This

review also includes the OIG's first review of the Department's use of pen register and trap-and-trace devices under FISA.

On a related note, the OIG also completed its review of the Department's use of Section 702 of the *FISA Amendments Act* (FAA), which culminated in a classified report released to the Department and to Congress. Especially in light of the fact that Congress reauthorized the FAA for another five years last session, we believe the findings and recommendations in our report will be of continuing benefit to the Department as it seeks to ensure the responsible use of this foreign intelligence tool.

Cyber Security is of Increasing Importance

The Department and the Administration have increasingly turned their attention to the problem of cyber security, which has quickly become one of the most serious threats to national security. Computer systems that are integral to the infrastructure, economy, and defense of the United States face the constant and rapidly growing threat of cyber intrusion and attack, including the threat of cyber terrorism. The Department also faces cyber threats to its own systems.

While the number of cyber security incidents directly affecting the Department remains classified, a recent study by the Government Accountability Office (GAO) found that the number of such incidents reported by federal agencies increased by nearly 680 percent from 2006 to 2011. The Department will continue to face challenges as it seeks to prevent, deter, and respond to cyber security incidents – both those targeting its own networks and those that endanger the many private networks upon which the nation depends.

In recognition of this trend, the Department has identified the investigation of cyber crime and the protection of the nation's network infrastructure as one of its top priorities. The Department has sought to strengthen cyber security by responding to recommendations made in OIG reports relating to cyber security, including our September 2011 report examining the operations of the Justice Security Operations Center, and our April 2011 audit report assessing the National Cyber Investigative Joint Task Force and the capabilities of FBI field offices to investigate national security cyber intrusion cases. The Department has also substantially increased its requested budget for programs designed to combat cyber crime and defend its information networks: its FY 2014 request of \$668 million in cyber resources represents an increase of \$92.6 million over its FY 2013 cyber budget and includes an increase of \$86.6 million to support the FBI's Next Generation Cyber Initiative, which is focused on preventing intrusions into government and industry computer networks.

The challenges posed by cyber crime multiply as cyber threats grow in number and complexity. Of central importance to any cyber security strategy is working effectively with the private sector. The Department not only has an interest in the private sector investing in the security of its own networks, but also in conducting outreach to the private sector to assure potential victims of cyber crime that proprietary network information disclosed to law enforcement will be protected. Even a modest increase in the rate at which cyber crimes are reported would afford the Department invaluable opportunities to learn the newest tactics used by an unusually dynamic population of criminals and other adversaries, and to arrest and prosecute more perpetrators.

Cyber intrusion and attack also pose risks to the security of the Department's information, the continuity of its operations, and the effectiveness of its law enforcement and national security efforts. The OIG annually conducts *Federal Information Security Management Act* audits, which include testing the effectiveness of information security policies, procedures, and practices of a representative subset of the Department's systems. The OIG recently reviewed the security programs and a selection of individual systems for six components: the FBI, JMD, BOP, USMS, Criminal Division, and Tax Division. These audits identified deficiencies that included inadequate configuration management settings that exposed workstations to cyber security threats; inadequate identification and authentication controls that increased the risk of inappropriate or unauthorized access to information systems; audit and accountability controls that decreased the timely identification of operational problems and unauthorized activity; and inadequate contingency planning that increased the risk that information systems would not continue to operate during an emergency. In addition, the Civil Division has yet to complete corrective actions in response to a 2009 OIG audit report finding significant vulnerabilities in its laptop computer encryption policies and practices. The Department must strive to correct these deficiencies.

The Department Must Address its Growing Cost Structure, Particularly the Federal Prison System

While the Department's mission has remained substantially unchanged since the attacks of September 11, 2001, the budgetary environment is changing dramatically, presenting critical challenges for the Department. From FY 2001 through FY 2011, the Department's discretionary budget grew by more than 41 percent in real dollars, to \$28.9 billion. In FY 2012, however, the Department's discretionary budget decreased by more than 7 percent (to \$26.9 billion), and in FY 2013, the Department's discretionary budget decreased again, this time by 5.9 percent (to \$25.3 billion). Under these circumstances, the Department needs to redouble its efforts to evaluate spending in every program area to ensure that duplicative functions are streamlined, inefficient programs are remedied, and wasteful spending is eliminated.

One area where the Department needs to carefully evaluate both its short-term and long-term plans is the federal prison system. Even as the Department's overall budget is now shrinking, the BOP continues to consume an ever-increasing share of that budget. The statistics present a clear picture of the unsustainable path that the Department is facing. Fifteen years ago, the BOP's budget was \$3.1 billion, which represented approximately 14 percent of the Department's budget. By FY 2013, the BOP's budget has grown to \$6.8 billion, which represents nearly 25 percent of the Department's budget. Moreover, the President's FY 2014 budget projects the budget for federal correctional activities to rise to \$7.6 billion by FY 2018, which, if the Department's budget were to remain flat, would represent fully 30 percent of the Department's budget. Today, the BOP already accounts for roughly one-third of all Department employees, more than the FBI or any other DOJ component.

The reason for the growth in the BOP's budget is obvious: according to statistics published by the Executive Office for United States Attorneys, the number of criminal cases filed in U.S. District Court increased by more than 60 percent from FY 1997 through 2012. And with a conviction rate of greater than 90 percent, more prosecutions have translated into more prisoners and the need for more bed space. Indeed, the number of federal defendants sentenced rose from approximately 60,000 in FY 2001 to more than 84,000 in FY 2012, according to the U.S. Sentencing Commission. During that same period, the number of federal prison inmates has increased from approximately 157,000 to more than 218,000.

Unfortunately, despite the substantially increased spending on the federal prison system, the BOP's prisons remain well over rated capacity. Since FY 2006, federal prisons have moved from approximately 36 percent over rated capacity to approximately 37 percent over rated capacity as of March 2013, with medium security facilities operating at approximately 44 percent over rated capacity and high security facilities operating at approximately 54 percent over rated capacity. Moreover, the Department's own outlook for the federal prison system remains bleak: the BOP projects system-wide crowding to go up to 44 percent over rated capacity by 2018. In addition, since FY 2000, the BOP's inmate-to-staff ratio has increased from about four-to-one to a projected five-to-one in FY 2013.

The Department, during both the prior administration and the current administration, has itself recognized the budgetary and capacity problems associated with a rapidly expanding prison population. The Department first identified prison overcrowding as a programmatic material weakness in its FY 2006 Performance and Accountability Report, and it has been similarly identified in every such report since, including last year's FY 2012 report. In fact, prison overcrowding was the Department's only identified material performance weakness last year. Yet, despite the recognition of this significant

problem for the past 7 years, the conditions in the federal prison system have continued to decline even as the BOP's budgetary needs have continued to increase.

Given the current budget environment, the Department will likely need to carefully assess all aspects of its enforcement and incarceration policies in order to address this issue, including which criminal cases should be brought in federal court, whether performance metrics are aligned with the Department's enforcement priorities and measure the quality of cases brought rather than just the number of cases filed, and whether existing incarceration programs are being used effectively.

The OIG and the GAO have both recently issued reports concerning existing detention programs and found that the Department has not used them as effectively as they could. For example, in December 2011, the OIG reviewed the Department's International Prisoner Treaty Transfer Program, which permits certain foreign national inmates from treaty nations to transfer from the United States to their home countries to serve the remainder of their prison sentences. With approximately 26 percent of BOP inmates being non-U.S. nationals, and with approximately 46 percent of federal defendants sentenced in FY 2012 being non-U.S. nationals, the potential impact of the appropriate use of this program is readily apparent. However, the OIG's review found that, from FY 2005 to FY 2010, the BOP and the Criminal Division's International Prisoner Transfer Unit rejected 97 percent of inmates' transfer requests, and, in FY 2010, approved requests for transfer from only 299 inmates, or slightly less than 1 percent of the 40,651 foreign national inmates in the BOP's custody. While some factors that reduce the number of inmates eligible for transfer are beyond the Department's control, the OIG found that if only 5 percent of eligible inmates who had never previously applied were transferred to their home countries, the BOP would remove 1,974 inmates from its prisons and save up to \$50.6 million in annual incarceration costs. The Department is now implementing the OIG's 14 recommendations to manage the program more effectively.

The BOP also should continue its efforts to address the OIG's recent recommendations to improve its poorly run Compassionate Release Program, as well as to use and improve the programs identified in a February 2012 GAO report assessing BOP detention programs, which include the Residential Drug Abuse Treatment Program, residential reentry centers, home detention, and the BOP's statutory authorities to request a court to release certain elderly prisoners who no longer pose a threat to the community. Regardless of how large the cost and capacity savings may be, given the serious budget and capacity issues facing the BOP, we believe the Department must effectively use every program that the Congress has authorized it to use.

The OIG is in the process of conducting multiple reviews that could identify other opportunities to reduce overcrowding and save costs, including an audit of the Department's Pre-Trial Diversion and Drug Court Programs with the federal judiciary, which provide alternatives to traditional sentencing and incarceration of offenders. Both programs have received Congressional support. The OIG also is conducting an audit of the BOP's efforts to improve its acquisition processes through the use of strategic sourcing.

In an era when the Department's overall budget is likely to remain flat or decline, at least in the short-term, it is clear that significant steps must be taken to address these BOP cost and capacity issues. Continuing to spend more money each year to operate more federal prisons will require the Department to make cuts to other important areas of its operations. The Department must therefore articulate a clear strategy for addressing the underlying cost structure of the federal prison system and ensuring that the Department can continue to run our prisons safely and securely without compromising the scope or quality of its many other critical law enforcement missions.

Conclusion

In sum, the Department has made progress in addressing many of the top management challenges the OIG has identified and documented through its work, but improvements are needed in important areas. These issues are not easily resolved and will require constant attention and strong leadership by the Department. To aid in this effort, the OIG will continue to conduct vigorous oversight of Department programs and provide recommendations for improvement.

This concludes my prepared statement, and I would be pleased to answer any questions that you may have.