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-- FREEDOM OF INFORMATION APPEAL --

April 21, 2010

Director, Office of Information Policy
U.S. Dep't of Justice
1425 New York Avenue, NW
Suite 11050
Washington, DC 20530-0001

Re: Appeal of FOIA Request No. 1141753-00

Dear Sir or Madam,

This letter constitutes an appeal pursuant to 6 C.F.R. § 5.9 of the determination in response to request number 1141753-00. The underlying request for “records identifying each federal, state or local agency other than the FBI that participates in the JTTF” was made jointly by the American Civil Liberties Union Foundation of Massachusetts (ACLUM) and Political Research Associates (PRA) on December 30, 2009. Exhibit A.

The Federal Bureau of Investigation denied this request citing 5 U.S.C. § 552(b)(2) and § 552(b)(7)(E). Exhibit B. For the following reasons, we appeal that determination.

I. FOIA PRESUMES THAT DOCUMENTS ARE NOT EXEMPT FROM DISCLOSURE

The purpose of FOIA is “to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.” NLRB v. Robbins Tire & Rubber Co., 437 U.S. 214, 242 (1978). FOIA is premised on the notion that “the people are the only legitimate fountain of power, and it is from them that the constitutional charter, under which the several branches of government hold their power, is derived.” A. Michael's Piano, Inc. v. FTC, 18 F.3d 138, 140 (2d Cir. 1994) (quoting The Federalist No. 49, at 313-14 (James Madison) (Clinton Rossiter ed., 1961). “[O]ur government, relying as it does on the consent of the governed, may not succeed unless its ‘people who mean to be their own governors ... arm themselves with the power knowledge gives.’” Id. at 140-41 (quoting S.Rep. No. 813, 89th Cong., 1st Sess. 2, 3 (1965)).

FOIA “adopts as its most basic premise a policy strongly favoring public disclosure of information in the possession of federal agencies.” Halpern v. FBI, 181 F.3d 279, 286 (2d Cir. 1999). While there are nine exemptions that allow an agency to withhold information, see 5 U.S.C. §§ 552(a)(4)(B) & (b)(1)-(9), the exemptions are narrowly construed and the government bears the burden of proving that any one applies. See Halpern, 181 F.3d at 287; see also Dep’t of Interior v. Klamath Water Users Protective Ass’n, 532 U.S. 1, 7-8 (2001) (FOIA exemptions are narrowly construed); John Doe Agency v. John Doe Corp., 493 U.S. 146, 151-52 (1989); DOJ v. Reporters Committee for Freedom of the Press, 489 U.S. 749, 755 (1989). It is well established that these “limited exemptions do not obscure the basic policy that disclosure, not secrecy, is the dominant objective of the Act.” Klamath Water Users, 532 U.S. at 7-8. For this

reason, any reasonably segregable portion of any record must be released. See 5 U.S.C. § 552(b).

Consistent with the statute and a renewed commitment to open government, on January 21, 2009, President Obama issued a memorandum to the heads of all departments and agencies on the Freedom of Information Act (FOIA) directing that FOIA “should be administered with a clear presumption: In the face of doubt, openness prevails.”

Memorandum from President Barack Obama to Heads of Executive Departments and Agencies (Jan. 21, 2009) available at http://www.whitehouse.gov/the_press_office/Freedom_of_Information_Act/. Moreover, the President instructed agencies to “adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA.” Id.

The agency’s response indicates that it did not follow this statutory requirement and executive guidance regarding a presumption in favor of disclosure. With little explanation, the agency denied the request, simply pasting the text of the exemptions and then asserting that the release of the information could “reasonably be expected to interfere with the enforcement proceedings and risk circumvention of the law.” Exhibit B.

For the following reasons, the agency erred in this determination.

II. EXEMPTION 2 DOES NOT BAR DISCLOSURE OF THIS DOCUMENT

“Exemption 2” permits the withholding of documents “related solely to the internal personnel rules and practices of an agency.” 5 U.S.C. § 552(b)(2). It was created to apply purely to internal matters in which the public has no interest. The document requested does not fit into the exempted category for two reasons. First, it is not purely internal. Second, it is a matter of great public interest.

A. The number of federal, state and local agents participating in JTTFs is not a housekeeping matter

“[T]he general thrust of the exemption is simply to relieve agencies of the burden of assembling and maintaining for public inspections matter in which the public could not reasonably be expected to have an interest.” Dep’t of Air Force v. Rose, 425 U.S. 352, 369-70 (1976). Thus, the Exemption “relates to information concerning those rules and practices that affect the internal workings of an agency, and therefore, would be of no genuine public interest.” Massey v. FBI, 3 F.3d 620, 622 (2d Cir. 1993) (internal quotations omitted).

In essence, Exemption 2 applies to “trivial” or “housekeeping” matters. Schiller v. NLRB, 964 F.2d 1205, 1208 (D.C. Cir. 1992) (internal deadlines and instructions about which agency officials to contact for assistance are “housekeeping matters” not subject to disclosure).

Courts have upheld the withholding of such housekeeping matters that are of no public interest as FBI file numbers; computer codes; internal report numbers; informant and violator codes; FBI handling and dissemination instructions; and Bureau of Prisons internal markings. See McCoy v. Moschella, No. 89-2155, 1991 U.S. Dist. LEXIS 13618

(D.D.C. Sept. 30, 1991); Wightman v. Bureau of Alcohol, Tobacco and Firearms, 755 F. 2d 979, 982 (1st Cir. 1985); Texas Instruments, Inc. v. Customs Serv., 479 F.Supp. 404 (D.D.C. 1979); Albuquerque Publ'g Co. v. DOJ, 726 F. Supp. 851 (D.D.C. 1989); Meeropol v. Smith, No. 75-1121, slip op. (D.D.C. Feb. 29, 1984), aff'd in relevant part & remanded sub nom. Meeropol v. Meese, 790 F.2d 942 (D.C. Cir. 1986).

The request asked for “records identifying each federal, state or local agency other than the FBI that participates in the JTTF and the number of employees of each such agency assigned to JTTF” Exhibit A. This list is not simply a “housekeeping matter.” There is nothing “trivial” about the staffing of the JTTF and the role played by other federal agencies, state and local law enforcement in partnership with the FBI. Unlike lists of computer codes or file numbers, the requested list refers to agents who are fully-functioning parts of our communities, working hand-in-hand with the FBI and carrying out operations in New England. The staffing breakdown affects persons outside of the agency on a daily basis as JTTF agents carry out investigations and process information throughout our region.

B. Even if considered predominantly internal, the document must be disclosed because it is a matter of public interest and its disclosure would not circumvent any agency regulation.

If the threshold test of predominant internality is met, an agency may withhold the requested material “by proving that either [1] ‘disclosure may risk circumvention of agency regulation,’ or [2] ‘the material relates to trivial administrative matters of no genuine public interest.’” Schiller, 964 F.2d at 1207 (citing Schwanner v. Department of

Air Force, 898 F.2d 793, 794 (D.C. Cir.1990)). Matters that are of no genuine public interest are generally referred to as “Low 2” while matters that are in the public interest but would risk circumventing agency regulations if disclosed are referred to as "High 2." Id. at 207.

Assuming, arguendo, that the responsive documents are a purely internal matter, they fit the “High 2” category because there is a clear and demonstrated public interest in

matters relating to the JTTFs.¹ The records are needed because the system of government

¹ See e.g. Colin Moynihan, *Activist Unmasks Himself as Federal Informant in G.O.P. Convention Case*, N.Y. TIMES, Jan 5, 2009; Denny Walsh, *Student's Path to FBI Informant*, SACRAMENTO BEE, Sept. 12, 2007; Pachuco, *Joint Terrorism Task Force Questions Professor*, March 13, 2006, <http://la.indymedia.org/news/2006/03/150016.php>; *FBI paid controversial NJ blogger for help*, ASSOCIATED PRESS, November 29, 2009; Stephanie Ebbert, *Fusion Center takes aim at terror, But secrecy alarms civil libertarians*, BOSTON GLOBE, September 26, 2005; T.J. Greaney, *'Fusion center' data draws fire over assertions: Politics, banners seen as suspect*, COLUMBIA DAILY TRIBUNE, March, 14, 2009; Hilary Hylton, *Fusion Centers: Giving Cops Too Much Information?*, TIME MAGAZINE, March 9, 2009; Robert O'Harrow, Jr., *Centers Tap Into Personal Databases, State Groups Were Formed After 9/11*, WASH. POST, April 2, 2008; Ryan Singel, *Fusion Center Cash Infusion*, Wired Magazine, March 14, 2007; Brent Kendall, *FBI to Assess Actions Before Hood Shooting*, WALL. ST. J., December 9, 2009; Anderson, Jennifer, *New Council Inherits Task Force Decision*, PORTLAND TRIBUNE Dec. 21, 2004; *Activists Announce Letter to Governor Demanding Complete Investigation of Spying*, MD. NEWS, Aug. 12, 2008; David E. Kaplan, *Spies Among Us*, US NEWS AND WORLD REPORT, May 8, 2006; Erin Rosa, *Colorado Fusion Center to Step Up Intelligence Gathering During DNC*, COLO. INDEPENDENT, July 30, 2008; Bures, Frank, *City's split: fear for safety vs. fear for rights*, CHRISTIAN SCIENCE MONITOR, Oct. 17, 2001; Nakashima, Ellen, *\$1 billion FBI database will track physical characteristics of millions*, BOSTON GLOBE, Dec. 23, 2007; Lisa Myers, *Is the Pentagon Spying on Americans?* MSNBC, Dec. 14, 2005; *Fusion Center Meltdown: Feds stifling open government in VA?* ARS TECHNICA, March 24, 2008; Joseph Straw, *Fusion Centers and Civil Rights*, SECURITY MANAGEMENT, August 2008; Rogers M. Smith, *Civil Liberties in the Brave New World of Antiterrorism*, 93 RADICAL HISTORY REVIEW at 170-85, Fall 2005; James Casey, M.A., *Managing Joint Terrorism Task Force Resources*, FBI ENFORCEMENT BULLETIN, November 2004, at 1-6; Roberto Lovato, *Building the Homeland Security State*, NACLA REPORT ON THE AMERICAS, Vol. 41, No. 6, Nov/Dec 2008, at 15-20; Christopher Ortiz, Nicole Hendricks & Naomi Sugie, *Policing Terrorism: The Response of Local Police Agencies to Homeland Security Concerns*, CRIMINAL JUSTICE STUDIES, Vol 20, No. 2, June 2007, at 91-109; Naomi Klein, *Big Brother Democracy: How Free Speech and Surveillance Are Now Intertwined*, THE NATION, Aug. 28, 2006; Shelley Murphy, *False tips cost antiterror officials time and credibility*, Feb.1, 2005; Erich Lichtblau, *F.B.I. Goes Knocking for Political Troublemakers*, N.Y. TIMES, Aug. 16, 2004; John Friedman, *Spying on the Protesters*, THE NATION, Sept. 19, 2005; Matthew Rothschild, *Tales of Big Brother*, THE PROGRESSIVE, Aug. 25, 2004; Dafna Linzer, *In New York, a Turf War in the Battle Against Terrorism*, WASHINGTON POST, Mar. 22, 2008.

collaboration across jurisdictions implicates core privacy concerns, yet almost nothing is known about its staffing, the standards that guide it or limit this potentially-invasive information-sharing system, or whether the system is being abused. The level of federal, state and local participation in the local JTTF is an important piece of information that the public has an interest in knowing.

For example, the recent Fort Hood shooting has opened up a public discussion about the role the Department of Defense plays in the JTTFs. (Miklaszewski, Jim, *Gates orders security fixes after Fort Hood case*, NBC News, Apr. 15, 2010.) Another example is the case of Ahmad Afzali in New York City. Numerous news reports have gone into detail about the staffing of NYPD at the New York City JTTF. (Levitt, Len, *A Failure to Communicate*, Huffington Post, Apr. 19, 2010.)

Because it is a matter of public interest, the agency may only withhold the document by proving that “disclosure may risk circumvention of agency regulation.” Schiller, 964 F.2d at 1207. Additionally, the agency must demonstrate with adequate specificity how disclosure of records at issue would “significantly risk circumvention of federal statutes or regulations.” See e.g., Crooker v. Bureau of Alcohol, Tobacco, and Firearms, 670 F.2d 1051, 1074-1075 (D.C. Cir. 1981) (en banc) (concluding that it is the government’s burden to show that release of a surveillance manual might “help individuals evade detention by law enforcement authorities”). The agency has not made such an argument.

In fact, the staffing of many FBI, JTTF and other law enforcement agencies already are part of the public record. For example, a Department of Defense memo

available publicly on the internet states that the DoD has assigned personnel to the Boston JTTF office, as well as many others throughout the nation. See Exhibit C. Another publicly available document, published by the DHS Office of the Inspector General, goes into some detail about the relationship between Immigration and Customs Enforcement and numerous JTTFs around the country, including information about staffing. See Exhibit C.

Essentially, this request asks the government to disclose a complete list of the federal, state and local employees working with the JTTF. Withholding that information would allow for secret participation in our own cities and towns where the JTTF could operate without accountability to the public whom it is seeking to protect.

Finally, if the agency can prove that disclosure of certain documents would significantly risk circumvention of the law, the agency nonetheless has to demonstrate that it has segregated nonexempt material for disclosure. Schreibman v. Dep't of Commerce, 785 F.Supp. 164, 166 (D.D.C. 1991) (requiring agency to segregate and release portions of documents that merely identify computer systems rather than contain security plans, which remain protected as vulnerability assessments.).

III. EXEMPTION 7(E) DOES NOT BAR DISCLOSURE OF THIS DOCUMENT

“Exemption 7(E)” provides for the withholding of “records of information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information ... would disclose techniques and procedures for

law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.” 5 U.S.C. § 552(b)(7)(E).

The documents sought here – records indicating the number of federal, state and local law enforcement officials assigned to JTTF and the roles those personnel play at JTTF – do not fit the statutory definition. The mere number of agents and titles of their jobs at the JTTFs does not disclose techniques, procedures or guidelines.

Furthermore, in order to demonstrate a “risk of circumvention of the law,” the agency must demonstrate that the rules or procedures it seeks to withhold are not well known to the public. See Rosenfeld v. DOJ, 57 F.3d 803, 815 (9th Cir. 1995) (“Exemption 7(E) only exempts investigative techniques not generally known to the public.”); National Sec. Archive v. FBI, 759 F.Supp. 872, 885 (D.D.C. 1991); Albuquerque Publishing Co. v. Dep’t of Justice, 726 F.Supp. 851, 857 (D.D.C. 1989).

Thus, there must be a particularized showing by the withholding agency that disclosure would undermine or lead to the circumvention of the law. See Davin v. DOJ, 60 F.3d 1043, 1064 (3^d Cir. 1995) (requiring agency “to establish that the release of this information would risk circumvention of the law,” while rejecting as inadequate “speculation” in government’s brief on this subject.) There has been no particularized showing in this case.

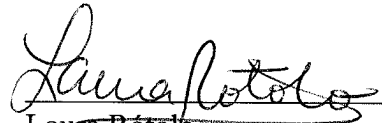
Finally, even if disclosure of certain documents would significantly risk circumvention of the law, the agency must demonstrate that it has segregated nonexempt material. See PHE, Inc. v. DOJ, 983 F.2d 248, 252 (D.C. Cir 1993) (holding that agency

must “clearly indicate[] why disclosable material could not be segregated from exempted material”); Voinche v. FBI, 412 F.Supp. 2d 60, 73 (D.D.C. 2006) (ordering agency to produce, inter alia, a proper segregability analysis.)

IV. CONCLUSION

The requested document is subject to disclosure because the FOIA statute and more recently, Presidential guidance, strongly favor a presumption of disclosure and because neither of the cited exemptions allows the agency to withhold the responsive documents. We urge you to release the document.

Thank you for your consideration.

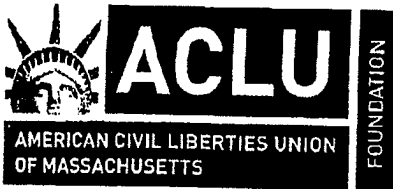

Laura Rótolo
ACLUM Staff Attorney

Thomas R. Cincotta
PRA Civil Liberties Project Director

FREEDOM OF INFORMATION ACT

--Appeal of FOIA Request No. 1141753-000--

EXHIBIT A



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Federal Bureau of Investigation
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Warren T. Bamford
Special Agent in Charge
Federal Bureau of Investigation
One Center Plaza
Boston, MA 02108

December 30, 2009

To whom it may concern:

This letter constitutes a request pursuant to the Freedom of Information Act, 5 U.S.C. § 552 made jointly to the U.S. Attorney for the District of Massachusetts and the Federal Bureau of Investigations. The Request is submitted on behalf of the American Civil Liberties Union of Massachusetts and its educational arm, the American Civil Liberties Union Foundation of Massachusetts (jointly referred to as ACLUM) and Political Research Associates (PRA).

Background

Over the past nine years, the federal government has implemented or expanded various programs that have resulted in an unprecedented degree of information sharing between federal and state law enforcement agencies and in the increased federalization of law enforcement activities in general and anti-terrorism activity in particular. This request seeks documents regarding the nature and extent of the cooperative efforts of

ATAC

16. Records indicating the present structure, purpose and membership of the Massachusetts Anti-Terrorism Advisory Council;
17. Records created after January 1, 2005 of the agenda, attendees and minutes of the Massachusetts ATAC.
18. Records describing investigative and prosecutorial priorities or strategies recommended or approved by Massachusetts ATAC.
19. Records of communication between the Office of the United States Attorney and members of Massachusetts ATAC;
20. Records of communications between the Massachusetts JTTF and members of Massachusetts ATAC;
21. Records of communications between the Boston Office of the FBI and members of Massachusetts ATAC
22. Documents describing the relationship between ATAC and the Massachusetts JTTF including records describing specific measures recommended or approved by ATAC to (1) coordinate specific antiterrorism initiatives; (2) initiate training programs; and (3) facilitate information sharing.;
23. Documents describing the relationship between ATAC and the Commonwealth of Massachusetts, any of its cities, towns, state or local agencies, police departments or other law enforcement units or officials in Massachusetts, colleges or universities.
24. Documents showing the budget for the Boston ATAC, including funding sources for the years 2005 to present.

Requesters are entitled to a fee waiver

ACLUM and PRA are entitled to a fee waiver under the FOIA statute and Department of Justice Regulations for two reasons. First, the requesters qualify as representatives of the news media. Second, release of the records requested is in the public interest and not in any commercial interest of the requesters.

- 1. ACLUM and PRA are representatives of the news media as defined in the statute and regulations.**

material into a distinct work, and distributes that work to an audience” to be “primarily engaged in disseminating information” (internal citation and quotation marks omitted)).¹⁰

As stated above, gathering and disseminating current information to the public is a critical and substantial component of PRA and ACLUM’s mission and work.

ACLUM publishes newsletters, news briefings, reports and other printed materials that are disseminated to the public. *See* Exhibits A – C. ACLUM also disseminates information through its heavily subscribed website, www.aclum.org, a blog, <http://www.massrightsblog.org> and regular posts on social media sites such as Facebook and Twitter. *See* Exhibits D – F.

ACLUM regularly publishes reports about government activity and civil liberties issues based on its analysis of information derived from various sources, including information obtained from the government through FOIA. This material is broadly circulated to the public and widely available to everyone for no cost or, sometimes, for a small fee. Many ACLUM reports include a description and analysis of government documents obtained through FOIA.¹¹

As the state affiliate of the national ACLU organization, ACLUM also disseminates information through the ACLU. Since 2007 alone, ACLU national projects have published and disseminated over 30 reports. The ACLU also regularly publishes books, “know your rights” publications, fact sheets, and educational brochures and pamphlets designed to educate the public about civil liberties issues and government policies that implicate civil rights and liberties.¹²

The ACLU operates a widely-read blog where original editorial content reporting on and analyzing civil rights and civil liberties news is posted daily.¹³ The ACLU also creates and disseminates original editorial and educational content on civil rights and civil liberties news through multi-media projects, including videos, podcasts, and interactive features.¹⁴ The ACLU has also produced an in-depth television series on civil liberties called “The Freedom Files.”¹⁵

The ACLU also publishes, analyzes, and disseminates information through its heavily visited website, www.aclu.org. The website addresses civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the

¹⁰ Notably, courts have found organizations with missions similar to the ACLU and that engage in information dissemination activities similar to the ACLU to be “primarily engaged in disseminating information.” *See, e.g., Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005) (*Leadership Conference on Civil Rights*); *ACLU v. Dep’t of Justice*, 321 F. Supp. 2d at 30 n.5 (Electronic Privacy Information Center).

¹¹ *See Detention and Deportation in the Age of ICE*, available at www.aclum.org/ice and the accompanying document gallery of FOIA documents at <http://aclum.org/ice/gallery.php>.

¹² A recent search of Amazon.com produced over 60 books published by the ACLU.

¹³ *See* <http://www.aclu.org/blog>.

¹⁴ *See* <http://www.aclu.org/multimedia/index.html>.

¹⁵ *See* <http://aclu.tv/>.

2009) (testimony of Janet Napolitano, Sec. Dep't of Homeland Security); *Strategies for Terrorism Information Sharing, Hearing Before Senate Judiciary Comm., 111th Cong.* (April 21, 2009) (testimony of Caroline Frederickson, Director, ACLU Washington Legislative Office).

As the sustained public interest concerning the FBI's work with local law enforcement clearly attests, the workings of the JTTFs constitute a "matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence," 28 C.F.R. § 16.5(d)(1)(iv).

Accordingly, expedited processing is appropriate in this case.

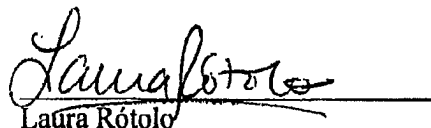
Conclusion

If our request is denied in whole or part, we ask that you justify all deletions by reference to specific exemptions of the FOIA. We expect you to release all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information or to deny a waiver of fees or expedited processing.

We look forward to your reply to the Request within twenty (20) business days, as required under 5 U.S.C. § 552(a)(6)(A)(i). Please reply to this request to by contacting Laura Rótolo at (617) 482-3170 x311 or through email at lrotolo@aclum.org.

Thank you for your prompt attention to this matter.

Sincerely,



Laura Rótolo
ACLUM Staff Attorney

Thomas R. Cincotta
PRA Civil Liberties Project Director

FREEDOM OF INFORMATION ACT

--Appeal of FOIA Request No. 1141753-000--

EXHIBIT B



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

February 16, 2010

MS. LAURA ROTOLO
ACLU OF MASSACHUSETTS
211 CONGRESS STREET
BOSTON, MA 02110

FOIPA Request No.: 1141753- 000
Subject: JTTF/FEDERAL, STATE, AND
LOCAL AGENCY PARTICIPANTS

Dear Ms. Rotolo:

This responds to your Freedom of Information/Privacy Acts (FOIPA) request.

The material you requested is exempt from disclosure pursuant to 5 U.S.C. § 552(b)(2), and 5 U.S.C. § 552(b)(7)(E). 5 U.S.C. § 552(b)(2) and 5 U.S.C. § 552(b)(7)(E) exempts from disclosure:

records or information related solely to the internal personnel rules and practices of an agency,

records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law...

In applying these exemptions, I have determined that the records responsive to your request are law enforcement records; and that release of this information contained in these responsive records could reasonably be expected to interfere with the enforcement proceedings and risk circumvention of the law. For a further explanation of this exemption, see enclosed Explanation of Exemptions Form.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), U.S. Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, D.C. 20530-0001. Your appeal must be received by OIP within sixty (60) days from the date of this letter in order to be considered timely. The envelope and the letter should be clearly marked "Freedom of Information Appeal." Please cite the FOIPA Request Number assigned to your request so that it may be identified easily.

Enclosed for your information is a copy of the Explanation of Exemptions Form and FBI File Fact Sheet.

Very truly yours,

A handwritten signature in black ink, appearing to read "D. Hardy", is positioned below the closing.

David M. Hardy
Section Chief
Record/Information
Dissemination Section
Records Management Division

Enclosures

FREEDOM OF INFORMATION ACT

--Appeal of FOIA Request No. 1141753-000--

EXHIBIT C

DEPARTMENT OF HOMELAND SECURITY
Office of Inspector General

**Coordination Between FBI and ICE on
Investigations of Terrorist Financing**



OIG-07-55

July 2007

Office of Inspector General

U.S. Department of Homeland
Security
Washington, DC 20528



**Homeland
Security**

JUL - 2 2007

Preface

The Department of Homeland Security Office of Inspector General was established by the Homeland Security Act of 2002 (*Public Law 107-296*) by amendment to the Inspector General Act of 1978. This is one of a series of audit, inspection, and special reports prepared as part of our oversight responsibilities to promote economy, effectiveness, and efficiency within the department.

This report addresses the effectiveness of a memorandum of agreement that coordinates investigations of terrorist financing between the Federal Bureau of Investigation (FBI) and Immigration and Customs Enforcement (ICE). It is based on interviews with employees and officials of relevant agencies and institutions, direct observations, and a review of applicable documents.

The recommendations herein have been developed to the best knowledge available to our office, and have been discussed in draft with those responsible for implementation. It is our hope that this report will result in more effective, efficient, and economical operations. We express our appreciation to all of those who contributed to the preparation of this report.



Richard L. Skinner
Inspector General

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Abbreviations

CBP	Customs and Border Protection
DHS	Department of Homeland Security
DOJ	Department of Justice
EC	Electronic Communication
FBI	Federal Bureau of Investigation
ICE	Immigration and Customs Enforcement
JTTF	Joint Terrorism Task Force
JVU	Joint Vetting Unit
MOA	Memorandum of Agreement
NJTTF	National Joint Terrorism Task Force
OIG	Office of Inspector General
SAC	Special Agent in Charge
TFOS	Terrorist Financing Operations Section
USAO	United States Attorney's Office
U.S.C.	United States Code
USCS	United States Customs Service

Executive Summary

We initiated this review jointly with the Department of Justice (DOJ) Office of Inspector General (OIG) at the request of Senator Charles E. Grassley, former Chairman of the Senate Finance Committee, to examine the effectiveness of a memorandum of agreement (MOA) between the Department of Homeland Security (DHS) and DOJ addressing the coordination of terrorist financing investigations. The OIGs reviewed the progress of the cases that were transferred under the MOA; evaluated the MOA's effect on Immigration and Customs Enforcement's (ICE) ability to use its expertise and experience in pursuit of terrorist financing; and determined whether the MOA was implemented effectively. We also considered whether the MOA should be revised and identified any other ICE agreements on law enforcement issues.

In May 2003, DHS and DOJ signed an MOA to coordinate and deconflict terrorist financing cases between ICE and the Federal Bureau of Investigation (FBI). The MOA affirms the FBI as the lead on terrorist financing cases and produced a system for identifying and transferring ICE cases that have a nexus to terrorism to the FBI-led Joint Terrorism Task Forces (JTTFs). The MOA allows ICE agents to be detailed to the JTTFs to continue pursuing transferred cases. Some in ICE have expressed concerns about ICE's ability to lend its financial crime expertise and experience to terrorist financing investigations. Further, Senator Grassley and some ICE agents stated a concern that a "turf war" mentality may be impacting such investigations.

Our review determined that these concerns were unjustified. Of the more than 7,274 ICE cases and leads, only 11 were transferred from ICE to a JTTF under the MOA. We examined all 11 cases, interviewing the ICE and FBI agents assigned to them. Most of the cases have progressed well, suffering few, if any, problems in coordination or cooperation. The JTTFs fully employed the expertise and experience of the ICE agents who were detailed there to continue investigating the transferred cases. Because the transferred cases have been suitably investigated and ICE agents' expertise and experience have been fully employed to the advantage of the investigations, we do not recommend modifications to the MOA. Nonetheless, we identified shortcomings with the implementation and management of the MOA by ICE and the FBI that has led to some problems in cooperation and coordination. We are making four recommendations, two each to ICE and the FBI, to overcome those issues. All four recommendations are resolved, however each remains open pending our receipt of additional information regarding ICE and the FBI's proposed actions.

Background

Introduction

Senator Charles E. Grassley, former Chairman of the Senate Finance Committee, requested that the DHS and DOJ OIGs conduct a joint review of allegations made by Joseph Webber, the former ICE Special Agent in Charge (SAC) in Houston, Texas, that the FBI intentionally delayed approval of an ICE application for a Title III electronic surveillance warrant in a terrorist financing investigation.¹ The Senator's request letter is in Appendix A, and a copy of Mr. Webber's letter to Senator Grassley stating Mr. Webber's concerns is included in Appendix B.

In addition, Senator Grassley asked that we jointly review whether the May 2003 MOA between DHS and DOJ concerning terrorist financing investigations has been implemented effectively and assess whether it has affected ICE's ability to use its expertise and experience in pursuing terrorist financing investigations. Senator Grassley also asked us to determine how the cases that were transferred under the MOA have progressed and determine whether the MOA should be revised and to determine whether ICE has any other agreements on law enforcement issues.

The review addressing Senator Grassley's concerns was conducted jointly by DHS and DOJ OIGs. To expedite delivery of the findings, the DHS and DOJ OIGs divided the review into two stages. The first stage was an examination of the facts underlying Mr. Webber's allegation that the FBI intentionally delayed a specific ICE investigation. Because the principal allegation challenged FBI conduct, DOJ OIG led the production of the first stage report with DHS OIG concurrence. The results of that portion of our joint review were addressed in a report titled, *A Review of FBI's Actions in a Terrorist Financing Investigation Initiated by the U.S. Bureau of Immigration and Customs Enforcement*, April 26, 2006, which was published by the DOJ OIG with DHS OIG concurrence. That report was completed and provided to Senator Grassley in April 2006. A redacted version of this report, deleting classified or law enforcement sensitive information, was also provided to Senator Grassley on August 31, 2006.

The second stage of the review was a study of the effectiveness and impact of the MOA and the progress of other cases transferred under it. As with the first stage of the review, DHS OIG and DOJ OIG participated in the fact finding and analysis phases of the review. Because the principal focus

¹ The *Omnibus Crime Control and Safe Streets Act* of 1968, Pub. L. 90-351, Title III, provided rules for obtaining wire tap orders in the United States. The law was codified in 18 U.S.C. §§ 2510-2520.

involved ICE effectiveness and program issues, DHS OIG led the production of this second stage report, with the concurrence of DOJ OIG.

History of FBI and ICE Coordination in Terrorism-Related Investigations

The FBI and JTTFs

The FBI created the first JTTF in New York City in 1980 to coordinate federal, state, and local law enforcement efforts for the purpose of preventing, deterring, defeating, and responding to any terrorist attack within the United States. Since then, the number of JTTFs has expanded to more than 100 nationwide, including one at each of the FBI's 56 field office locations. The majority of those JTTFs were established after the September 11 attacks. Although the JTTFs are maintained and managed by the FBI, other agencies and departments have detailed their agents to the JTTFs to assist in combating terrorism. Some of the other agencies involved in the JTTFs include the Internal Revenue Service, the Drug Enforcement Administration, and state and local law enforcement personnel. Currently there are almost 4,000 JTTF agents nationwide, including agents from the FBI and almost 700 agents from other federal government agencies, including ICE.²

The efforts of the JTTFs are coordinated through the National Joint Terrorism Task Force (NJTTF) at FBI headquarters. The purpose of the NJTTF is to provide support, coordination, and information to the various JTTFs, and between the JTTFs and FBI headquarters.

Initially, the Attorney General relied upon the statutory authority granted by 28 U.S.C. § 533 to assign the FBI "lead agency responsibilities in investigating all crimes for which it has primary or concurrent jurisdiction and which involve terrorist activities or acts in preparation of terrorist activities...." Several Presidential Decision Directives and the President's National Strategy for Homeland Security of 2002 have further defined this leadership role. The FBI relies on the JTTFs to conduct counter-terrorism investigations throughout the United States.

FBI's Post-September 11 Counter-Terrorist Financing Efforts

In the aftermath of the September 11 attacks on the World Trade Center complex and the Pentagon, the FBI created the Financial Review Group to

² See "Protecting America Against Terrorist Attack: A Closer Look at the FBI's Joint Terrorism Task Forces," FBI Archives, December 1, 2004, available at <http://www.fbi.gov/page2/dec04/jtff120114.htm>.

investigate the financing of the 19 hijackers and to ascertain fundraising schemes associated with the attacks. The mission of the Financial Review Group evolved to encompass investigation of all terrorist-related financial and fundraising activities. The Financial Review Group developed leads and distributed them to the JTTFs, as well as contributed to other organizations, such as the National Security Council's Coordinating Policy Committee, by providing information on counter-terrorist funding activities. While the Financial Review Group was created as a response to the September 11 attacks, the FBI has had the jurisdiction and authority to investigate terrorist financing since at least 1994.³

In April 2002, the Financial Review Group was reorganized into the Terrorist Financing Operations Section (TFOS), with a similar mission to identify, disrupt, and dismantle terrorist-related fundraising activities, including using the tools enhanced by the *USA PATRIOT Act*.⁴ TFOS is responsible for coordinating, supporting, and enhancing the capabilities of terrorist financing investigations in the field and for managing terrorist financing cases in the JTTFs. The FBI has historically conducted financial investigations through its white collar crimes division. TFOS focuses that financial investigations expertise on terrorist financing cases.

ICE's Post-September 11 Counter-Terrorist Financing Efforts

The U.S. Customs Service (USCS) conducted financial investigations throughout its 200 year history, investigating financial crimes such as money laundering, bulk cash smuggling, intellectual property rights violations, and counterfeit goods trade and traffic. When DHS was established, ICE continued the USCS mission to investigate financial crimes, including those with a nexus to terrorism.

In October 2001, in response to the September 11 attacks, the Department of the Treasury also began a new program to identify and disrupt terrorist financing programs operating within the United States or abroad. This task force effort, known as Operation Green Quest, was led by the USCS, but it also included a number of other agencies: the FBI; the Internal Revenue Service; the U.S. Secret Service; the Financial Crimes Enforcement Network; and the Bureau of Alcohol, Tobacco, Firearms and Explosives, among others. Operation Green Quest served a coordinating role, disseminating leads to the field and ensuring that different field investigations were not duplicated. By many accounts, Operation Green Quest was very successful. In its first year and a half, the program opened

³ Congressional Research Service Report, *Terrorist Financing: U.S. Agency Efforts and Inter-Agency Coordination*, August 3, 2005, p. 36.

⁴ *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001*, Pub. L. 107-56, October 26, 2001, 115 Stat. 272.

2,000 cases, resulting in 79 arrests, 70 indictments, and seizures of \$33 million.

After the *Homeland Security Act of 2002*⁵ created DHS, agents from USCS were consolidated with agents from the Immigration and Naturalization Service into a new organization, ICE. Operation Green Quest also moved from USCS to ICE. Operation Green Quest continued until it was dismantled pursuant to the MOA between DHS and DOJ in May 2003.

Conflicts Between ICE and FBI Counter-Terrorist Financing Efforts

Following September 11, 2001, coordination issues quickly arose between the FBI's terrorist financing investigations and Operation Green Quest investigations. Both organizations and the DOJ Criminal Division's Counter Terrorism Section, which guides prosecutions of terrorist financing cases, complained about a lack of information sharing and a general inability to coordinate investigative activities. The lack of coordination and communication led to overlaps in investigations and a potential for compromised investigations and risk to agents' safety. For example, a DOJ employee told the OIGs that during one particular investigation, an ICE manager spoke about the details of an ongoing investigation on television, disclosing details the FBI considered to be classified.

Development and Implementation of the MOA and the Collaborative Procedures

Development of the MOA

Because of the problems in coordinating and deconflicting terrorist financing cases, DHS and DOJ negotiated the MOA in May 2003, ending Operation Green Quest and consolidating investigation of terrorist financing cases in the JTTFs.⁶ The stated purpose of the MOA was to enable the U.S. government to wage a seamless, coordinated campaign against sources of terrorist financing. The MOA recognized the FBI as the lead law enforcement agency in combating terrorism and terrorist financing. According to the MOA, ICE would continue to pursue terrorist financing investigations and operations through its participation in JTTFs. However, the MOA included a provision by which ICE could investigate terrorist financing outside the JTTFs provided that the FBI's TFOS gave express approval. The MOA noted that both ICE and the FBI would continue

⁵ P.L. 107-296 (November 25, 2002). The ICE organization was announced on January 30, 2003, and USCS and Immigration and Naturalization Service agents were transferred to ICE in March 2003.

⁶ Former DHS Secretary Tom Ridge and former Attorney General John Ashcroft signed the MOA on May 13, 2003. A copy of the MOA is included at Appendix C.

independent investigations of money laundering and other financial crimes that were unrelated to terrorism.

The MOA requires ICE to submit all “appropriate” money laundering or financial crime leads to the FBI to determine whether they are “related to terrorism or terrorist financing and to ensure effective deconfliction.” The MOA also directs that the TFOS Deputy Section Chief be a DHS employee, and it encourages ICE and JTTF members to share information related to terrorist financing cases to the fullest extent allowed by law and applicable agreements. The TFOS Section Chief, in consultation with the TFOS Deputy Section Chief, makes the final determination as to whether a case or lead is linked to terrorism or terrorist financing and whether it should be moved to the JTTF. According to the MOA, TFOS shall take the following factors into account when making a determination of whether a case is linked to terrorist financing: (1) strength of the terrorism or terrorist financing nexus; (2) impact of the investigation on non-terrorism matters; and, (3) stage and development of the respective investigations. Another provision of the MOA requires that DHS and DOJ develop specific, collaborative procedures for determining whether an ICE case or lead should be provided to TFOS and to enable TFOS to determine whether the case or lead is related to terrorism or terrorist financing.

Implementation of the MOA

ICE and the FBI acted promptly to implement the MOA. ICE appointed an employee to serve as the Deputy Section Chief to TFOS, and former ICE Assistant Secretary Garcia signed the collaborative procedures on July 2, 2003. FBI Director Mueller signed the collaborative procedures on July 7, 2003. A copy of the collaborative procedures is included in Appendix D.

The collaborative procedures required ICE to establish a Joint Vetting Unit (JVU) staffed by ICE and FBI personnel to serve as a central intake center for information from ICE agents about financial cases and leads that have a potential nexus to terrorism. ICE established the JVU, and in January or February 2004, the FBI appointed a TFOS Unit Chief to share JVU leadership with an ICE Unit Chief. The FBI JVU Unit Chief was given an office at ICE headquarters and access to all ICE databases.

Under the collaborative procedures promulgated pursuant to the MOA, the JVU has responsibility for determining which leads and cases should be sent to the TFOS Deputy Section Chief for consideration. The JVU reviews case and lead information submitted by ICE field offices, such as names, addresses, nationality, and banking data. It also reviews reports from the FBI’s National Threat Center Section and the ICE Office of Intelligence.

The JVU checks the information against appropriate FBI databases to learn whether the ICE information appears in any pending or closed FBI investigations. If the ICE lead or case is related to ongoing or closed FBI investigations, the JVU Unit Chief contacts the FBI or ICE field offices to get more information. Cases associated with FBI investigations are submitted to TFOS for review. In addition, regardless of whether FBI has a parallel case, if an ICE case involves potential criminal charges of material support of terrorism, the case information is presented to TFOS for review. The TFOS Section Chief and the Deputy Section Chief review the information on these cases and make a collaborative determination whether the case or lead must be transferred to the JTTF. A case involving charges of supporting terrorism must be transferred to the JTTFs regardless of whether FBI has a prior or parallel investigation.

Initially, the JVU and TFOS allowed ICE and FBI field offices to coordinate cases, instructing them to submit to the JVU only matters that they could not reconcile locally. That practice changed after problems arose in the Houston, Texas case, the subject of the first report in this review. Now, all terrorism-related cases must be referred to the JVU, regardless of local ICE and JTTF field office cooperation and coordination.⁷

Other ICE Agreements Involving Law Enforcement Issues

In addition to the MOA, which is the subject of this review, ICE reported six agreements between it and other agencies on law enforcement issues. Four of the agreements existed before the creation of DHS and involved agencies that were transferred to ICE and Customs and Border Protection (CBP). Two agreements were established after the ICE was created. The six agreements, other than the MOA addressed in detail in this report, are included in the table below.

⁷ *A Review of FBI's Actions in a Terrorist Financing Investigation Initiated by the U.S. Bureau of Immigration and Customs Enforcement.*

Table 1: Summary of Other ICE Law Enforcement Agreements

Agencies Involved	Subject of Agreement	Year
Originally USCS (now ICE and CBP) and the Department of Commerce	Export Enforcement Procedures	1993
Originally USCS (now ICE) and the Drug Enforcement Administration	Title-21 Cross Designation Procedures	1994 (amended 2000)
Originally the Department of the Treasury (now ICE) and the U.S. Attorney General and the U.S. Postal Service Postmaster General	Money Laundering Investigations	1990
Originally the Department of the Treasury (now ICE) and the U.S. Attorney General and the U.S. Postal Service Postmaster General	International Drug and Money Laundering Investigations	1994
ICE, the U.S. Attorney's Office, the FBI, the Department of Health and Human Services, the Department of Labor, and various state and local authorities in Missouri	Human Trafficking	April 2006
ICE, the U.S. Attorney's Office, and various state and local authorities in Texas, including the City of Austin (also includes representatives from the FBI, Department of Health and Human Services, the Department of Labor, and others)	Established the Austin Human Trafficking Task Force	April 2006

Results of Review

FBI Review of ICE Financial Leads and Cases Yields Few Transfers

From July 2003 through December 2005, FBI and ICE personnel reviewed more than 7,274 leads, targets, and associates for possible transfer to JTTFs under the MOA. The review has occurred in three phases. FBI personnel conducted the first review of a select set of Operation Green Quest cases before the JVU was established. Later, ICE submitted to FBI headquarters the Operation Green Quest database of targets, leads, and associates for evaluation. The third review phase is the ongoing JVU evaluation of current cases or leads that ICE submits when cases develop a potential nexus to terrorism.

The initial review began in July 2003 when TFOS sent an Electronic Communication (EC) to the field offices announcing the collaborative procedures and requesting FBI field agents to notify TFOS of any ICE cases that might have or might develop a nexus to terrorism. As a result, FBI field agents identified 30 such ICE cases. On October 30, 2003, a meeting was

held with FBI and ICE headquarters personnel, including TFOS, to examine the 30 ICE cases. At that meeting, ICE and the FBI agreed that 9 of the 30 cases had a nexus to terrorism and should be transferred in accordance with the MOA. In November 2003, ICE notified the affected field offices that those nine cases were to be transferred to the local JTTFs. In addition, the ICE SAC for one other ICE case in Boston, Massachusetts, was notified that that case would not be transferred despite a nexus to terrorism. The decision not to transfer the case relied upon a provision within the MOA that allows terrorism-related cases to remain at ICE. The memorandum said that the case would not be transferred due to the cooperation and coordination shown by FBI and ICE agents in their investigations.

The second review occurred when ICE provided the FBI with names and information from its Operation Green Quest database, including more than 7,000 leads, targets, and associates of leads or targets. As of December 2005, no cases were transferred to JTTFs as a result of the Operation Green Quest data review.

The third review phase is ICE's ongoing responsibility to transmit all leads and cases to the JVU that appear to have a nexus to terrorism. During the period between the establishment of the JVU and December 2005, ICE submitted 274 names and other identifying information to the JVU. However, none of the cases or leads submitted to the JVU transferred to the JTTFs as a result of this review process.

TFOS transferred two additional cases to JTTFs upon the suggestion of other FBI personnel outside of the review process. In the first, a New Haven, Connecticut case, the JVU and TFOS were aware that ICE was investigating a case that was related to terrorism, but chose not to transfer it because the JTTF and ICE were cooperating in the investigation. However, others within FBI headquarters learned that ICE sought a search warrant in the case and suggested that TFOS transfer the case to the local JTTF. An ICE agent said that although the case was transferred to the JTTF in June 2004, ICE was allowed to continue as the lead investigative agency, while conducting the investigation under the auspices of the JTTF.

The second case transferred by means other than the review process was a Houston, Texas case. Again, the JVU and TFOS were aware of the case, but initially decided not to transfer it to a JTTF because they had not determined a nexus to terrorism. When other FBI headquarters officials learned that ICE sought an electronic surveillance warrant in that investigation, the TFOS Section Chief agreed to transfer the case to a JTTF.

The details of that investigation and its transfer were the subject of the first stage of this review.⁸

The 11 ICE cases that transferred to JTTFs under the MOA are:

1. Newark, New Jersey
2. Miami, Florida
3. Los Angeles, California
4. Washington, DC Alpha
5. Washington, DC Beta
6. Washington, DC Gamma
7. Panama City, Florida
8. Chicago, Illinois
9. Orange County, California
10. New Haven, Connecticut
11. Houston, Texas

Because the Houston, Texas case was reviewed in the DOJ report that was the first stage of this joint review, we did not include that case in this report. Instead, we examined the other ten cases transferred under the MOA.

Of the ten cases, nine were active investigations at the time of the transfer. The target in the tenth case, Washington, DC Alpha, was indicted and fled the United States prior to the transfer of the case. Once transferred, the case could not be pursued further until the target returned to the country. We assessed the levels of coordination and cooperation between ICE and FBI agents prior to the transfer of the ten cases. Because further investigative activity was not indicated in the Washington, DC Alpha case, we assessed post-transfer interagency coordination and cooperation only for the nine active cases.

⁸ *A Review of FBI's Actions in a Terrorist Financing Investigation Initiated by the U.S. Bureau of Immigration and Customs Enforcement. See fn 7, supra.*

Transferred Cases Benefit When ICE Agents Are Detailed to JTTF

In reviewing the cooperation and coordination of cases before and after they were transferred, the investigations benefited when ICE detailed its case agents to the JTTFs to assist with the investigations. In our interviews with ICE agents, we noted a positive shift in their impressions of FBI cooperation from when the ICE agents worked on the cases solely under ICE to when ICE agents worked on the cases through participation on the JTTFs. The ICE agents who had reported pre-transfer problems with the FBI said that cooperation and information sharing was good or improved after the case was transferred and they were detailed to the JTTFs. Those ICE agents who did not report pre-transfer problems and who were detailed to work on transferred cases said that the level of cooperation and coordination remained good after the ICE case was transferred. Moreover, all ICE agents who were detailed to JTTFs to work on cases transferred there reported that their experience and expertise had been fully used to pursue the targets. Those transferred investigations have been largely successful, according to ICE agents, with two cases resulting in convictions, an arrest in one case, and another close to indictment. We summarized pre-transfer and post-transfer progress in Table 2 on page 17.

Pre-transfer Coordination and Cooperation

According to ICE agents, seven of the ten cases experienced problems with FBI cooperation prior to the transfer of the case to the JTTFs. Major areas of difficulty, according to the ICE agents, were FBI delays or refusals regarding investigative actions that required court approvals, such as search warrants, and FBI impediments to information sharing. ICE agents said that the FBI impeded or prevented ICE's requests for search warrants, pen registers,⁹ or Title III electronic surveillance warrants in four cases. The FBI would not share or was slow to share information from its investigations of the same or related targets, according to ICE agents from five cases. For example, the ICE agents said that among the information that the FBI would not share was information that ICE headquarters had obtained, and then shared with the FBI. The FBI classified the information and then refused to share it with ICE, claiming that ICE did not have a "need to know" the information. Agents from two of the five cases said that the FBI claimed that ICE agents had inadequate clearance levels or no "need to know." In the third case, FBI headquarters was slow to review and at times required ICE agents to resubmit their security clearance documentation, which delayed the local JTTF from sharing the case

⁹ A pen register is a device that records the telephone numbers or internet protocol addresses accessed by a particular communication device (such as a telephone or a computer). Pen registers do not record the content of communications.

information for more than a year. In another case, the ICE agent familiar with it said that problems in information sharing occurred inadvertently as a result of the difficulty of exchanging information among several agencies.

Other, more general issues were reported also, such as FBI reluctance to allow ICE agents to assist on search warrants that arose from information obtained by ICE during its investigation, and the FBI and the United States Attorney's Office (USAO) not including ICE agents in meetings to discuss investigations associated with ICE cases. We also learned of one case in which FBI JTTF agents said that ICE impeded a JTTF investigation. We will discuss this case further in the following sections.

We did not attempt to investigate fully the accusations that the FBI did not cooperate with ICE investigations before the investigations were transferred to the JTTFs. However, in an effort to learn the progress of three investigations that were transferred to JTTFs, we spoke with three FBI agents familiar with those cases. During those interviews, we inquired about ICE's accusations of poor cooperation prior to case transfer. The FBI JTTF supervisor for the Miami, Florida case reported that the JTTF had an open investigation on some of the associates of the Miami, Florida ICE subject before ICE opened its case, and the ICE Miami, Florida case was a small part of a larger JTTF investigation. The FBI JTTF supervisor could not recall whether the FBI and the USAO replaced ICE's pen registers with its own in April 2003. The FBI JTTF supervisor said that he had invited ICE agents to submit their security clearances and come to the JTTF to review the case information, but the ICE agents never accepted the offer.

The FBI JTTF supervisor for the Los Angeles, California case said that ICE did not cooperate with the JTTF in its investigation of the Los Angeles, California target, despite a clear need, as the JTTF had an investigation on the target at the time ICE initiated its case on the same target. According to the FBI JTTF supervisor, cooperation between ICE and the FBI was good initially. For example, the day after ICE opened its Los Angeles, California investigation, the JTTF gave all the ECs related to the case to ICE, according to the JTTF supervisor. An ICE JTTF agent in Los Angeles confirmed that the FBI cooperated with ICE by sharing information and seeking assistance and expertise from all sources. The FBI JTTF supervisor said it was the USAO, not the JTTF, that decided to stop an ICE search warrant because the JTTF was considering a Title III warrant for its case. Cooperation with ICE broke down, according to the FBI JTTF supervisor, when ICE did not inform the JTTF of important activities, such as arresting the target, and attempting to block the FBI JTTF supervisor from interviewing the target. In addition, the FBI JTTF supervisor said that after the MOA was executed, the Los Angeles ICE SAC removed all ICE agents from the Los Angeles JTTF. Six months later the agents were returned to

the JTTF, but ICE field office management instructed the agents not to assist with any JTTF financial investigations. ICE prevented the ICE agent who had worked on the JTTF investigation that involved the Los Angeles, California target from continuing work on that investigation, and the investigation has suffered as a result, according to the FBI JTTF supervisor and an ICE agent.

The Newark, New Jersey, Supervisory Special Agent we interviewed was not assigned to the ICE case until August 2004. He told the OIGs that he was not aware of any pre-transfer coordination problems between ICE and the FBI.

Post-transfer Coordination and Cooperation

After the nine active cases were transferred to the JTTFs, ICE agents associated with six cases were detailed to the JTTFs to continue working on the investigations. In each of the six cases, the ICE agents and their supervisors reported that cooperation with the FBI on the JTTF was good or improved after the transfers. None said that the FBI tried to impede the investigation in any way, and all said that they had been given full access to FBI information and systems. The ICE agents reported that their experience and expertise were used in the investigations. They served as affiants on search warrants or arrest warrants in three of the six cases, and all reported either serving as the case agent or being provided equal standing with FBI JTTF agents.

The six cases in which ICE agents have continued to work on the transferred investigations have progressed well, according to the ICE agents. The New Haven, Connecticut case has resulted in the target's arrest, and the Washington, DC Beta and Washington, DC Gamma investigations have brought convictions. ICE agents working on the Panama City, Florida investigation said that they anticipated obtaining an indictment in the summer of 2006. Investigation is ongoing and active in the Chicago, Illinois case. The Orange County, California case concluded when the USAO declined prosecution.

In the remaining three cases – Newark, New Jersey, Miami, Florida, and Los Angeles, California – ICE did not detail its case agent to the JTTFs when the investigation was transferred. Almost a year after the Newark, New Jersey case transferred, ICE detailed to the JTTF an agent who had not worked previously on the investigation.¹⁰ The ICE agent became the investigation's case agent. According to the ICE agent, the FBI JTTF

¹⁰ We interviewed the original ICE case agent and the agent's supervisor, as well as the ICE agent who was detailed to the JTTF to investigate the case.

agents handling the Newark, New Jersey case before him had done very little investigative work because the FBI had a large number of higher priority cases. However, an FBI agent familiar with the investigation said that one FBI JTTF agent had actively pursued the investigation.

Once the ICE agent was detailed to the JTTF to work on the Newark, New Jersey case, the ICE agent actively pursued the investigation. The only problems the ICE agent reported were what he perceived as cumbersome and bureaucratic JTTF procedures that slowed the investigation. To overcome one of the procedural problems, the JTTF allowed the ICE agent to use ICE financial analysts to review some records. Using FBI analysts would have taken longer because a large volume of other priority work had to be completed. The investigation progressed until November 2005, when the ICE agent transferred to a new unit in ICE. The JTTF supervisor for the case said that he anticipated closing the criminal investigation because the target had slowed suspicious activities and recently obtained information may undercut the suspected link between the target and terrorism.

As with the Newark, New Jersey investigation, when the Miami, Florida and Los Angeles, California cases were transferred, the ICE agents who had worked on the investigations were not detailed to the JTTFs. Unlike the Newark, New Jersey case, however, ICE did not detail another ICE agent to the JTTF to assist in the investigation, or assign the ICE agent already serving on the JTTF to the newly transferred case. Although ICE agents in the Miami, Florida and Los Angeles, California cases were invited to continue their investigations on the JTTFs, ICE field agents decided not to detail the ICE case agents due to the problems that they had experienced previously with the FBI and JTTFs.¹¹ ICE involvement in the Miami, Florida and Los Angeles, California cases ended after the cases were transferred. Accordingly, the ICE agents did not know the current status of the Miami, Florida and Los Angeles, California cases.

The Los Angeles, California and Miami, Florida FBI JTTF case supervisors also said that the transferred ICE criminal investigations have continued to be active, although neither the Los Angeles, California nor the Miami, Florida target has been indicted. The Miami, Florida investigation has resulted in four indictments against the target's associates on mail fraud and money laundering charges.

¹¹ In addition, the ICE agents familiar with the Miami, Florida investigation said that after the case transferred, ICE was asked to provide financial investigation training to JTTF members and to allow the former ICE case agent to interview the target. An ICE agent said she refused the requests due to the poor cooperation that ICE had experienced with the FBI prior to the transfer of the case.

In the Los Angeles, California case, the JTTF is monitoring pen registers, preparing an application for a Title III warrant, and has seized illegal drugs and money. JTTF agents have indicted one of the target's associates on money laundering and illegal drug charges. The JTTF will attempt to use the indictment to obtain cooperation from the target and more information against the Los Angeles, California target, according to the FBI JTTF supervisor.

In summary, before the nine active cases were transferred, ICE agents from seven of the cases reported poor levels of cooperation between ICE and the FBI. Once the cases were transferred, ICE agents were assigned to six of the cases. In the seventh, an ICE agent was detailed to the JTTF to work on the case almost one year later. All seven cases have progressed, some with tangible investigative outcomes. The ICE JTTF agents report good cooperation between the FBI and ICE agents involved with the cases. In the two cases in which ICE did not detail an agent to work on the case, the JTTF agents continued to pursue the investigations despite a lack of ICE involvement. Also, in these two cases the FBI reported, and an ICE agent familiar with one case confirmed, poor levels of cooperation from ICE.

Table 2: Summary of Ten Cases Transferred

Case	Before Case Transferred		After Case Transferred		
	<i>ICE agents said that FBI Prevented or Delayed ICE Pen Registers, Search Warrants or Title IIIs</i>	<i>ICE agents said that FBI Prevented or Delayed Information Exchange</i>	<i>ICE Agent Working Case on JTTF</i>	<i>Cooperation</i>	<i>Case Status</i>
Newark, New Jersey	Yes	Yes	Not initially. ICE detailed an agent to JTTF and case almost one year later.	Good	Suspicious activity has slowed. Links to terrorism may be dispelled. Criminal case may be closed or moved to another squad as a result.
Miami, Florida	Yes	Yes, but FBI said it attempted to share information.	No	ICE field agents refused to train FBI agents and to conduct interview of target.	4 targets associated with the ICE target were indicted. ICE target investigation moved to another JTTF team.
Los Angeles, California	Yes, but FBI said the USAO blocked the search warrants.	No	No	Former ICE JTTF agent directed not to assist in investigation.	Investigation ongoing. Pen registers up, illegal narcotics and cash seized. Preparing Title III application, and target's associate indicted.
Washington, DC Alpha	Yes	No	Not Applicable	Not Applicable	Target indicted and fled U.S. before transfer to JTTF.
Washington, DC Beta	No	Yes, but unintentional.	Yes	Good	One conviction; investigation ongoing.
Washington, DC Gamma	No	Yes	Yes	Good	Conviction.
Panama City, Florida	No	Yes	Yes	Good	Indictment pending.
Chicago, Illinois	No	No	Yes	Good	Investigation ongoing.
Orange County, California	No	No	Yes	Good	USAO declined prosecution in 2005.
New Haven, Connecticut	No	No	Yes	Good	Arrest.

ICE Agents' Dissatisfaction with MOA May Lead to Failure to Pursue Leads and Cases with Potential Terrorism Nexus

ICE agents have misperceptions of the MOA and its procedures, and some resent the MOA and the FBI. As a result, ICE agents and headquarters officials reported some ICE agents fail to pursue leads and cases that might develop a nexus to terrorism. Further, agents may not be sending potential terrorism related leads and cases to the JVU or to the JTTFs. The failure to pursue or report terrorism related cases would violate the terms of the MOA and would be detrimental to national security. However, none of the ICE agents we interviewed provided specific instances of violations and agents spoke of the matter in more broad terms. We have no direct evidence that any ICE agent has actually been derelict.

Nine agents from three field offices and ICE headquarters told us that they or other agents drop leads that appear to have a terrorism nexus, or choose to ignore a terrorism nexus and select violations unrelated to terrorism, in order to continue the case without FBI involvement. One senior field office manager provided a hypothetical choice between a case that does not have a potential nexus to terrorism and another that might develop such a nexus. The field office manager said that if a case agent came across two leads in the course of an investigation, one that led to illegal narcotics charges, and one that might result in a nexus to terrorism, the agent would develop the case on the narcotics-related lead. He added that agents should normally send the lead with the potential link to terrorism to the JTTF, but that this does not always happen.

Within 18 months of its inception, Operation Green Quest had opened 2,000 cases and obtained 79 arrests, 70 indictments, and seizures of \$33 million. However, according to a June 25, 2003, memo from the ICE Deputy Assistant Director for Financial Programs, Operation Green Quest investigations rarely developed into terrorist financing cases. In confirmation of that assertion, only nine of the 2,000 cases were transferred initially. The other cases were primarily financial crimes without a terrorism nexus. While not conclusive, the fact that only two cases have been transferred to the JTTFs in the more than two years since the initial review of former Operation Green Quest cases supports the contention that ICE agents do not pursue leads and cases with potential terrorism links. However, there may be other reasons for the low number of transferred cases. Some ICE agents have suggested that before and immediately after September 11, 2001, terrorist financiers operated more openly, making them relatively easy to identify. Since then, however, terrorist financiers, realizing that their activities are likely being monitored by law enforcement, may have become more careful to avoid detection. In response to our draft

report, ICE officials named another reason why the number of cases transferred to JTTFs is low. The officials said that ICE now deconflicts certain leads with the FBI before ICE begins an investigation. Accordingly, leads that might have a terrorism nexus are transferred before ICE opens a case.

Some ICE agents reported to us highly negative views and significant misinformation about JTTF handling of terrorist financing cases under the MOA. In our interviews ICE agents told us that:

- The FBI-led JTTF does not actively pursue terrorist financing cases that transfer to the JTTF;¹²
- The FBI's long-term intelligence gathering strategy precludes criminal convictions in some cases;¹³
- FBI JTTF agents have such a large caseload that they are unable to address terrorist financing cases;¹⁴ and,
- The FBI is unable to lead terrorist financing cases under the JTTF because the FBI agents lack the expertise and experience to conduct such investigations.¹⁵

However, the evidence we encountered indicates that the FBI's strategies, priorities, and alleged inexperience with financial crimes cases have not hampered the investigation of transferred ICE cases or prevented ICE agents from actively pursuing transferred cases when ICE has detailed an agent to the JTTF to assist in the investigation. The issues reported by ICE agents have not held back the progress of the six investigations that were transferred with the ICE case agent to the JTTF. As for the cases in which the ICE case agent was not detailed to the JTTF, Miami, Florida and Los Angeles, California, the JTTF has continued active criminal investigations in those cases.

Regarding the FBI's focus on other priorities, only one of the nine active cases that transferred, Newark, New Jersey, appeared affected. The ICE agent assigned to the Newark, New Jersey case almost a year after it went to the JTTF said that FBI JTTF agents had not pursued the investigation since the case was transferred because of their large case load of higher priority investigations. However, when ICE detailed an agent to the JTTF to work on the case, the investigation progressed satisfactorily.

¹² Five of these agents had experience with a transferred case that ICE perceives to be going poorly. One agent was involved in a case that was not transferred to the JTTF, but that agent encountered problems with the FBI.

¹³ ICE agents from three field offices made this allegation.

¹⁴ ICE agents from two field offices discussed this issue.

¹⁵ ICE agents from five field offices cited this concern.

Another misperception held by ICE agents is that ICE will not receive a share of the recognition for successful cases. ICE has received credit for some of the investigative successes in cases that have transferred to JTTFs. In three of the six cases in which the ICE case agent was detailed to the JTTF, the ICE agent was the affiant on court ordered investigative activities, such as search and arrest warrants.

Other ICE agents said that they would not want a detail to the JTTFs to work transferred cases because they would not want to be governed by an FBI management structure, which they believed would treat them inequitably. A similar complaint was that in moving to the JTTF, an agent would lose operational control of the case. However, the ICE agents who were detailed to JTTFs to work on the investigations told the OIGs that they served as the case agents or had status equal to the FBI JTTF agents. No one complained of inequitable treatment, and some said that they wished ICE would encourage more agents to work on the JTTFs.

Even though they had no JTTF experience, three agents from two field offices said that the MOA was a means by which the FBI could “take” or “steal” cases from ICE, and one of those agents believed that if a case were transferred, ICE would no longer have an opportunity to work it. However, the only transferred cases that were not investigated by ICE agents were cases where ICE chose not to detail the agent to the JTTF. When ICE detailed an ICE case agent with a case to the JTTF, the ICE agents said that they continued as the case agent or had equal standing with the other JTTF agents. The perception that the FBI takes cases away from ICE agents was not supported.

Four ICE agents from two field offices said that the MOA undercuts the ICE mission to target support for terrorism by requiring terrorism-related cases to be transferred to the JTTFs. Although these agents recognize that the FBI has the lead on terrorism investigations, they said that ICE has the expertise to combat terrorist financing and a mission to protect the country from terrorist attacks as a member of DHS. However, ICE fulfilled its mission when it detailed its case agents to continue investigative work on ICE cases that transferred to the JTTFs. For example, when an ICE agent transferred with the case, three of the six resulted in arrests or convictions, two are being investigated actively, and one was closed after the USAO declined prosecution. By detailing ICE agents to the JTTFs to work terrorism-related cases, ICE can pursue its mission and leverage its experience and expertise in financial crimes with a nexus to terrorism.

Two ICE headquarters employees acknowledged that ICE field agents suffered from misperceptions of the purpose and effect of the MOA. One ICE headquarters agent confirmed that ICE agents believe that the FBI uses

the MOA to steal ICE cases, but stated that such allegations were incorrect. Another senior ICE official said that ICE was “self-limiting” with regard to terrorist financing cases – that is, ICE agents would not pursue leads and cases with a potential link to terrorism, to avoid transfer to the JTTF. The headquarters employee said that the agents’ misperceptions of the MOA were partly to blame for their dissatisfaction with it.

However, ICE management has not implemented measures to overcome its agents’ misperceptions. Aside from a few case-specific visits to the field, ICE management has not adequately communicated with its field agents to alleviate the misinterpretations of the MOA that have contributed to the alleged reluctance to pursue terrorism-related cases through the JTTFs.

In summary, we encountered suspicion and hostility from ICE agents towards the MOA, but their claims about the way the JTTFs operate were unfounded. We were also extremely troubled that ICE agents would say that their agents declined to undertake a case of potential national security significance for such petty reasons. We know of no investigation that was ignored for such reasons, and there are alternative explanations for the low numbers of cases transferred after the initial review of the 2,000 investigations. On closer examination, the discussions to which we were privy fell into more general characterizations of what “other agents” might do rather than the actions of agents we interviewed. Thus, while the hostility to the FBI’s dominance in the field of terrorist financing investigations is palpable, we have no direct evidence that any ICE agent has actually been derelict.

However, even a discussion along these lines is unacceptable and violates the agent’s duties and responsibility. ICE should act to defuse the misperceptions about the MOA and ensure that the terms of the agreement are enforced and obeyed.

Changes to the MOA Are Unnecessary

ICE field agents recommended several changes to the MOA in order to address the issues that they perceived as hampering terrorist financing investigations. Three agents suggested that ICE be allowed to work terrorist financing cases in a coordinated manner with the JTTFs by allowing ICE concurrent jurisdiction. Coordinating but not transferring a case with a terrorism nexus has been successful in some instances. In Atlanta, Georgia and Boston, Massachusetts, ICE agents and JTTF agents were coordinating independent cases that appear to have a nexus to terrorism, but were not transferred to the JTTF. The ICE agents working on those cases are not on the JTTF, yet they report that the coordination between ICE and the JTTF is

working well. For example, the agents said that they served as the affiants on court documents and that the FBI has given ICE full access to JTTF case information. Criminal complaints have been issued in the case in Boston, Massachusetts. The ICE agents in Atlanta, Georgia said that the FBI requested their assistance and that the case is progressing. The agents said that coordinating cases without transferring them to the JTTFs works well.

This sample of cases is too small to draw broad conclusions, but the fact that some investigations can operate successfully without an MOA does not mean all can. The MOA resulted from prior problems, and there is insufficient evidence supporting a need to relinquish FBI authority over terrorist financing investigations or to nullify the MOA. We therefore disagree with the suggested changes proposed by some ICE agents. In fact, the evidence indicates that the cases that were transferred from ICE to the JTTFs have been pursued aggressively, and when ICE agents have been detailed to the JTTFs to continue working on the investigations, their expertise has been used fully.

Moreover, before the MOA was in place, ICE and the FBI complained of poor coordination and communication. The FBI said that terrorist financing cases might have been compromised due to those conditions. Now, when cases are worked on JTTFs, a single chain of command ensures coordination and information exchange. In addition, with almost all transferred cases, the FBI has employed the expertise of ICE agents to bring the full weight of the law to investigations of terrorist financing.

Ineffective MOA Instruction to Field Agents

ICE management has not communicated the MOA's purpose and procedures adequately to its field agents. In addition, FBI agents have little understanding of the MOA and its procedures. As a result, not only are some ICE and FBI agents confused about the MOA's procedures and effect, but ICE agents may be dropping leads and cases as a result of their misperceptions. The fact that misperceptions persist suggests that ICE and FBI's outreach and education on the MOA remain ineffective.

ICE Instruction to Field Agents

In addition to the misperceptions discussed in previous sections, ICE agents do not have a clear understanding of basic screening procedures for determining whether a case should be transferred to a JTTF under the MOA. Ten ICE agents from eight field offices said that cases with a potential nexus to terrorism should be vetted through local FBI and JTTF offices, but they

did not realize that the JVU should also receive that information for the same purpose.

ICE made its field offices aware of the MOA and collaborative procedures through three memoranda issued in 2003. The first memorandum was sent to the field offices on June 2, 2003, from the ICE Interim Director of Customs Investigations. It notified all ICE SACs of the MOA and the termination of Operation Green Quest. The ICE Deputy Assistant Director for Financial Programs sent a second memorandum to all SACs on June 25, 2003, which served as a reminder of the MOA and noted that the MOA would likely affect only a small number of ICE investigations because Operation Green Quest leads rarely involved terrorist financing. Finally, ICE outlined the provisions of the MOA and introduced the collaborative procedures to all ICE SAC offices in a third memorandum dated August 7, 2003. Since that memorandum, there has been no other written communication from ICE headquarters to the field offices regarding the MOA or its related procedures.

In addition to issuing the memoranda, the ICE Deputy Section Chief of TFOS briefed the ICE SACs on the MOA and its procedures at two annual ICE SAC conferences. However, officials from ICE headquarters have not communicated directly with field office financial crimes supervisors or agents about the MOA and its procedures.

ICE only communicated the procedures and purpose of the MOA to ICE SACs through three memoranda and through the annual SAC conferences, and did not attempt to train its field agents or supervisory agents about the MOA. Relying on the ICE SACs to present the information and ensure that it is understood has not served as an effective mechanism to inform agents. As a result, serious misperceptions are hampering effective enforcement of the MOA and, according to agents and officials alike, may cause ICE agents to consider abandoning leads and cases, rather than risk having them transferred to JTTFs. Given the level of misunderstanding and even hostility towards the MOA, ICE officials should implement measures to educate field agents on the MOA and its procedures, the successes of the transferred cases, and the satisfactory experiences ICE agents encountered when detailed to the JTTFs.

FBI Instruction to Field Agents

The FBI's implementation of the MOA was more thorough than ICE's, but also had shortcomings. The FBI issued five ECs to the field, the most recent in February 2005, and provided training on the MOA and its procedures to the field agents.

The first EC was sent to FBI field offices in May 2003, shortly after the MOA was finalized. The EC summarized the MOA and required each field office to send a designated terrorist financing coordinator to a headquarters meeting to learn more about the MOA and TFOS. The FBI notified all field offices of the establishment of the collaborative procedures on July 8, 2003, via an EC. The EC also required each office to notify TFOS of any ICE financial investigations that had an existing or developing nexus to terrorism.

The FBI sent two ECs in 2004, reminding the field offices of the MOA and the procedures established to fulfill it. On April 12, 2004, FBI headquarters sent an EC to all FBI field offices, legal attaches overseas, and International Terrorism Operations Section personnel.¹⁶ The EC again summarized the MOA and added that TFOS would provide overall operational command to terrorist financing investigations on the JTTFs. It also stressed the importance of information sharing with members of the JTTFs and ensuring that ICE agents detailed to the JTTFs are given a “fully integrated role.” Three months later, on July 13, 2004, TFOS distributed an EC to FBI field offices updating them on the implementation of the MOA, explaining the role of the JVU, and noting that ICE agents detailed to the JTTFs to continue working on the transferred cases should be given “significant roles” in the investigations.

After difficulties arose in the Houston, Texas case, the FBI sent another EC to the field. The February 2005 EC from the TFOS Section Chief reminded the FBI field offices to comply with the MOA and cautioned that there had been instances where FBI field offices had not accepted ICE field office recommendations to transfer terrorist financing cases to the JTTFs. Those failures, the EC noted, proved problematic for FBI headquarters. The EC included copies of the MOA and collaborative procedures.

In addition to the ECs, the FBI has provided various training sessions to its field office personnel on the MOA and its procedures. The first training was given in 2003 to field office terrorist financing case coordinators who had been appointed in accordance with the May 2003 EC. Since that initial training, training has been repeated each year at the annual terrorist financing case coordinators meeting in Washington, DC. After issues arose with the Houston, Texas case in 2005, the FBI began including MOA procedures and compliance in the regular training TFOS administers to JTTF field offices. Part of the training emphasizes that the transfer of cases under the MOA is not to be made informally at the discretion of the field

¹⁶ The International Terrorism Operations Section is a part of the Investigative Operations Branch of the FBI. It “supports, coordinates, and provides oversight of FBI international counterterrorism operations.

offices. The MOA and its procedures are also addressed in an annual conference of FBI supervisory special agents.

Despite its ongoing communications and training, several FBI agents with whom we spoke did not know that ICE should vet cases through the JVU if they suspect a nexus to terrorism. Five of the seven FBI field office personnel with whom we spoke were not familiar with the JVU. As FBI field offices do not have a large role in the vetting process supporting the MOA, the field agents' confusion over vetting procedures is not very problematic. However, it would be advantageous for FBI agents to understand the purpose and importance of the vetting process under the MOA. Doing so would enhance coordination activities with TFOS and ensure that the JTTFs do not agree to coordinate ICE cases with a nexus to terrorism without express approval from TFOS.

For the cases that were transferred, FBI agents, either through the ECs and training or by their own initiative, have followed the MOA's instruction that ICE agents be fully integrated into the investigation, factors which have contributed to the success of the MOA. The FBI should ensure that its field offices continue the practice of making detailed ICE agents the case agents for transferred ICE cases and provide the ICE agents the opportunity, when appropriate, to serve as the affiant on search and arrest warrants. ICE agents who developed cases that were transferred to the JTTFs have a sense of ownership and pride in their investigations. Additionally, they have expertise and experience not just in the transferred case, but also in general immigration and customs matters. Their special expertise should be recognized to best pursue all investigative avenues that may arise in a case.

We are recommending that the Assistant Secretary for ICE:

Recommendation 1: Routinely communicate with ICE agents the purpose and impact of the MOA and its collaborative procedures, as well as the successes of cases in which ICE case agents transferred to JTTFs to continue investigating a case.

Recommendation 2: Convey to ICE agents their responsibility to report potential terrorism leads and cases to the JVU. Promote the detailing of ICE agents to the JTTFs by communicating that working on the JTTFs is a priority for ICE, for the department, and an opportunity for ICE to investigate terrorist financing.

We are recommending that the FBI Director:

Recommendation 3: Ensure that the FBI field agents understand the role of the JVU and understand that ICE cases with a nexus to terrorism will be

investigated solely through the NJTTF, JTTFs, and TFOS, except as expressly approved by TFOS.

Recommendation 4: Encourage FBI field offices to continue full utilization and integration of detailed ICE agents investigating transferred ICE cases.

Management Comments and OIG Analysis

We evaluated the technical and formal comments submitted by ICE and the FBI and have made changes to the report where we deemed appropriate. Below is a summary of each bureau's written response to the report's recommendations and our analysis of the response. A copy of ICE's response, in its entirety, is recorded in Appendix F and Appendix G contains the FBI response, in its entirety.

The draft report was provided to ICE and the FBI under the provisional classification of "SECRET" and with it was an unclassified summary. Both the ICE and the FBI responses address the report and the summary. However, as the report has subsequently been determined not to contain classified information, the summary is not necessary and will not be published. Accordingly, we performed an analysis on only the responses to the report.

Further, we made three recommendations to ICE in the draft report, but subsequently have combined two of those recommendations. In this report, recommendation 1 and 2 are directed to ICE, and recommendation 3 and 4 are directed to the FBI. Further, the FBI provided alternative language for recommendation 3 to address any potential confusion from "informal" coordination if a potential or probable terrorism nexus is developed. We agree with the FBI's proposed changes to the recommendation and have modified it.

ICE Response

ICE made two comments that merit modifying the report and two comments that do not. First, we agree with ICE that the report should note the FBI appointed a TFOS Unit Chief as the co-lead of the JVU. Second, we also agree the language about statements that ICE agents may fail to pursue terrorism-related cases should be changed. We modified the report accordingly.

However, we did not modify the report in response to two comments that dispute the accuracy of the report's findings related to ICE's actions to inform and educate their investigators of the MOA and collaborative procedures. We asked several ICE officials and ICE investigators in the field to describe any training or other information they received related to the MOA and collaborative procedures. The report reflects what they said. In addition, during our fieldwork we requested ICE to provide:

- "Any policies, instructions, directives, procedures, notices, etc. related to submission of names, email addresses, telephone numbers, or other identifying information to DOJ in accordance with the MOA."
- "All such documents since the implementation of the MOA through the present."
- "All communication to ICE field offices."

Other than the three memoranda referenced in the report, we did not receive any documents from ICE in response to our request.

ICE Response to Recommendations

Recommendation 1: Routinely communicate with ICE agents the purpose and impact of the MOA and its collaborative procedures, as well as the successes of cases in which ICE case agents transferred to JTTFs to continue investigating a case.

ICE Response: In its response, ICE listed a variety of activities by which it communicates with its agents about the MOA and successful ICE investigations. ICE said it regularly disseminates the MOA and the collaborative procedures that govern ICE's responsibilities under the MOA, and that those documents are available on ICE's internal website. ICE reported it has provided guidance and instruction to all Special Agents-in-Charge, Deputy and Assistant Special Agents-in-Charge, and financial group supervisors on their responsibilities under the MOA. ICE said that the MOA and its procedures were presented in basic and advanced agent training classes as well. Additionally, ICE reported that it uses various communication methods, such as the ICE website and news releases, to provide employees information about all successful ICE investigations on both JTTF and non-JTTF related cases.

OIG Analysis: ICE's response outlines efforts to communicate with its agents about the MOA, the collaborative procedures, and investigative successes. However, ICE's outlined activities do not fully address the intent of this recommendation, which is: to improve ICE agents' attitude toward

the MOA, the collaborative procedures, and working with the JTTFs. To dispel the negative attitude toward the MOA, ICE needs to instill a better understanding of the purpose and impact of the MOA and collaborative procedures. This understanding would help dispel the negative attitude some ICE agents have toward the MOA, the collaborative procedures, and working on the JTTFs.

We made this recommendation because many ICE agents expressed dislike for MOA and for investigating a terrorism-related case on a JTTF. We determined, however, that ICE agents who were detailed to JTTFs to continue working their transferred cases were satisfied with the JTTF environment, and most achieved successes with their cases. By contrast, none of the transferred cases for which an ICE agent refused a detail to the JTTF achieved the same level of investigative success.

This recommendation is resolved, but remains open pending our receipt of additional information. To close this recommendation, ICE should provide us with the content of its memoranda, training materials, and other communications that are directed at educating its agents about the MOA and collaborative procedures, as well as successful investigations on the JTTFs. The content of those documents should reflect the MOA's purpose to align ICE and FBI efforts to pursue terrorism-related cases; describe the limited impact of the MOA on ICE; and, explain the successes that ICE agents have achieved in terrorism-related cases while working on the JTTFs. In addition, the past and future distribution frequency for each of those communications should be indicated.

Recommendation 2: Convey to ICE agents their responsibility to report potential terrorism leads and cases to the JVU. Promote the detailing of ICE agents to the JTTFs by communicating that working on the JTTFs is a priority for ICE, for the department, and an opportunity for ICE to investigate terrorist financing.

ICE Response: ICE responded it continues to convey the importance of the proper handling and sharing of potential financial terrorism leads. ICE's increased education, understanding, and promotion of the MOA have resulted in a shift in methodology of how terrorist finance investigations are worked collaboratively between ICE and the FBI. Cases are now vetted and coordinated at the onset, both at the field and headquarters level and ICE agents share information and deconflict cases with the JTTFs. ICE reported those efforts have significantly minimized the number of ICE cases that have been moved to the JTTF, and have promoted a better coordination between ICE and the FBI. As a result of those improvements, ICE suggests the need for the MOA be re-examined. ICE also said that it contributes significantly to the JTTFs, and will continue to detail agents to the JTTFs on

a case-by-case basis. Finally, ICE reported that all of its criminal investigative work is a priority.

OIG Analysis: In its response, ICE provided some information about the effect of its educational efforts. This recommendation is resolved, but remains open pending our receipt of additional information. To close this recommendation, ICE should provide more detailed information regarding the actions it has taken, including documentation of its efforts to educate ICE investigators about their duties under the MOA and collaborative procedures, and to promote the detailing of its investigators to the JTTFs. ICE should also provide documentation to support the number of ICE agents working on JTTFs for fiscal years 2004 through 2006.

ICE reported that all criminal acts investigated by ICE, are a priority for ICE. However, some ICE agents said if a lead or a case developed a potential terrorism nexus, an ICE agent would not pursue the lead or the terrorism aspect of the case because the lead or case would have to be transferred to a JTTF.

Regarding ICE's response that its efforts have changed the deconfliction and information exchanges between ICE and the JTTFs, we want a step-by-step explanation of how an ICE agent currently shares information about potential terrorism leads and cases with the JVU and JTTFs.

ICE also suggested that the necessity of the MOA be re-examined in light of the improved coordination between ICE and FBI. One of our objectives was to examine whether the MOA should be abolished. Our fieldwork does not support terminating the MOA or that its necessity be re-examined.

FBI Response

The FBI made a comment that warrants modifying the report. It said the discussion of the second ICE case to transfer to a JTTF, by means other than the review process, should be characterized differently. The text should state that the JVU and TFOS did not transfer the case initially because it did not have a terrorism nexus. The case was transferred after TFOS discovered such a nexus.

We modified the report to state the TFOS managers did not transfer the case initially because they did not determine a terrorism nexus. However, the report's description of why the case eventually was transferred reflects the information that we received from many sources. Accordingly, we did not make a change to the description of the transfer.

FBI Response to Recommendations

Recommendation 3 (formerly 4): Ensure that the FBI field agents understand the role of the JVU and understand that ICE cases with a nexus to terrorism may not be “coordinated” without express approval from TFOS.

FBI Response: The FBI responded it and ICE both desire for their agents to coordinate matters with each other and the way the recommendation is currently worded might be too ambiguous. The FBI provided alternative language for the recommendation to address any potential confusion from informal coordination if a potential or probable terrorism nexus is developed. The FBI reported the TFOS training to JTTFs and Terrorists Financing Coordinators stresses that if there is a doubt or question by field agents or field supervisors in these matters, TFOS should be contacted for guidance. The FBI did not provide additional information on how or whether it would fulfill the intent of the recommendation further.

OIG Analysis: This recommendation is resolved, but remains open pending our receipt of additional information. However, we have no direct authority to compel the FBI to provide such information. We do encourage the FBI to regularly disseminate information explaining the role of the JVU and the prohibition on coordinating cases without TFOS approval to its field agents. Documentation from the FBI to this effect would close this recommendation.

In addition, we agree with the FBI’s proposed changes to the recommendation and have modified it accordingly.

Recommendation 3 (Revised): Ensure that the FBI field agents understand the role of the JVU and understand that ICE cases with a nexus to terrorism will be investigated solely through the NJTTF, JTTFs, and TFOS, except as expressly approved by TFOS.

Recommendation 4 (formerly 5): Encourage FBI field offices to continue full utilization and integration of detailed ICE agents investigating transferred ICE cases.

FBI Response: In its response, the FBI concurred with our recommendation, but did not indicate how it would fulfill it.

OIG Analysis: This recommendation is resolved, but remains open pending our receipt of additional information. However, we have no direct authority to compel the FBI to provide such information. We do urge the FBI to encourage its field offices to fully utilize and integrate ICE agents

working at JTTFs on transferred ICE cases. Documentation from the FBI to this effect would close this recommendation.

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June 3, 2005

VIA FACSIMILE: (202) 514-2141 & (202) 772-9734

Original via USPS Mail

The Honorable Alberto Gonzales
Attorney General
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20535

The Honorable Michael Chertoff
Secretary
Department of Homeland Security
3801 Nebraska Avenue, NW
Washington, DC 20528

Dear General Gonzales and Secretary Chertoff:

The tragic events of September 11, 2001, ought to have taught every American serving in government that it is infinitely more important to work together against the terrorists than to fight about who is in charge or who gets the credit. Some turf wars may be inevitable given human nature, but as leaders of your departments, you have a duty to ensure that interagency disputes do not harm national security. Unfortunately, the Committee is aware of at least one case where national security may have been the casualty of bureaucratic infighting. Such infighting should never be tolerated when national security is on the line, and America needs strong leadership from both of you to ensure that it is not.

Earlier this year, a senior Immigration and Customs Enforcement (ICE) agent, Joe Webber, informed me that our government failed to intercept communications between the subject of a criminal investigation and a designated terrorist for more than four months because the Federal Bureau of Investigation (FBI) took over, and then mishandled, the case. These are serious allegations that deserve high-level attention and a thorough review. Instead, they have largely been ignored. Neither the Department of Justice (DOJ) nor the Department of Homeland Security (DHS) has conducted an inquiry. Nor has the leadership of either department sought an independent review by an inspector general. To his credit, I understand that the head of ICE, Assistant Secretary Michael Garcia, suggested that a joint working group be established with the FBI to review this case and others like it. However, it appears that his suggestion has fallen on deaf ears.

The Honorable Alberto Gonzales
The Honorable Michael Chertoff
June 3, 2005
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An examination of Mr. Webber's allegations has raised a number of questions that need to be answered by an independent inquiry. I am concerned that the May 13, 2003, Memorandum of Agreement (MOA) between DOJ and DHS is being enforced in a way that creates a strong disincentive for anyone outside the FBI to investigate suspected terrorist financing activity. Why would we want to discourage agencies with experience and expertise investigating cross-border financial crimes from contributing to the fight against terrorism? Instead of trying to protect its turf, the FBI should be actively pursuing real partnerships with other agencies that have something to offer.

Unfortunately, it looks like the FBI is not interested in partnerships nearly as much as in taking promising cases from other agencies. Under the MOA, ICE agreed to shut down its highly successful Operation Green Quest program, which yielded 38 arrests, 26 indictments, and the seizure of \$6.8 million in terrorist assets in its first nine months of existence. Rather than partnering with ICE to build on this success, as contemplated by the MOA, the FBI's initial reaction was to propose what one DHS official called the "box theory" of interagency cooperation (i.e. just shut down Green Quest and hand over your files in boxes). While that view did not ultimately prevail, ICE has had to combat this mindset in seeking a meaningful partnership with the FBI. I understand that since the MOA has been in place, 11 terrorist financing cases (including the one Mr. Webber wrote to me about) have been transferred from ICE to FBI-controlled Joint Terrorism Task Forces (JTTFs). This has had a devastating effect on morale within ICE. Even though the FBI has allowed ICE agents to continue working some of these cases, many agents avoid any case that might potentially relate to terrorism for fear that it will be taken away by the FBI.

In the case Mr. Webber wrote to me about, the problem is much worse than one agency taking credit for the work of another. It appears that the FBI needlessly delayed a Title III wiretap application for four months, thus failing to capture communications with a known terrorist. When the Committee inquired about this matter, the FBI's response was to admit that it had mishandled the case and that the delay should not have occurred. FBI headquarters blamed the local FBI field office for allegedly failing to transfer the case to the JTTF when instructed to do so. However, according to Mr. Webber and his superiors at ICE, the FBI field office was not the source of the delay. Rather, FBI headquarters raised a number of issues that slowed the approval process, and none of them were related to whether the case had been transferred to the JTTF. This raises questions about whether the true motivation for delaying the case may have been to prevent a rival agency from infringing on FBI turf.

Among the issues raised by FBI headquarters that caused this delay were (1) potential conflicts with other FBI cases, (2) a fear that notification to the subject required under Title III could not be sufficiently delayed, (3) a desire to first explore whether the subject could be recruited as a confidential informant, and (4) indecision over whether to pursue the case as a criminal matter or as an intelligence matter under the Foreign

The Honorable Alberto Gonzales
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Intelligence Surveillance Act (FISA). None of these excuses are ultimately persuasive: (1) according to ICE, the potential conflicts were easily resolved, (2) the U.S. Attorney's Office was confident that notification could be delayed as long as necessary, (3) there was no credible reason to believe that the subject could be recruited as a source, and (4) a Title III intercept could be approved faster than a FISA intercept. Moreover, every office that reviewed the request agreed that there was enough probable cause for a Title III intercept, including the FBI field office, the U.S. Attorney's Office, the DOJ Counter Terrorism Section, and the DOJ Office of Enforcement Operation (DOJ-OEO). Yet, FBI headquarters still said "no."

The FBI headquarters' attempt to blame the field office for delay makes no sense in light of its own persistent opposition to the request. Headquarters claimed that the delay occurred because of a failure to transfer the case to the JTTF before the intercept request was submitted to DOJ-OEO for approval. The implication is that if the request had come to Washington as an FBI-JTTF case, rather than an ICE case, it would have been approved more quickly. This may be true, but it is hardly a defense. Whether the field office transferred the case to the JTTF before or after the request was submitted to Washington should have no impact on FBI's ability to resolve issues in a timely way. If intercept requests from other agencies are slow-walked through the process simply because they did not originate with the FBI, then the real problem here is an FBI culture where the knee-jerk reaction is to oppose any other agency in order to protect its own turf.

Leadership is essential in order to rise above petty turf wars. Only an independent inquiry into this case and an objective assessment of the effectiveness of the terrorist financing MOA between DOJ and DHS can provide a reliable basis for such leadership. Therefore, by this letter I am asking the Inspectors General for DOJ and DHS to conduct a joint review to determine, among other things, the following:

- (1) What was the cause of the delay in processing the Title III intercept request in the case referred to by Mr. Webber?
- (2) What steps have been taken, if any, to ensure that similar delays do not recur? How effective are any such safeguards?
- (3) How effective is the implementation of the Terrorist Financing MOA between DOJ and DHS?
- (4) How well do the arrangements under the MOA operate to ensure that the expertise and experience of ICE with cross-border financial crimes is maintained and employed in terrorist financing investigations?
- (5) In light of the known problems with coordination between the two agencies, should the MOA be revised? If so, in what way?
- (6) Of the 10 other cases transferred from ICE to the FBI under the MOA, were any of them negatively impacted by delays or other problems associated with insufficient interagency cooperation? If so, what was the nature and consequence of any such problems?

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- (7) What distinct priorities does ICE pursue and to what extent are those priorities mutually agreed upon by both agencies?
- (8) What is the status of other areas where ICE and the FBI share investigative jurisdiction? What agreements, if any, are in place to ensure coordination, and how effectively do the agencies cooperate on non-terrorist financing matters?

Please ensure that your Departments fully cooperate with this inquiry and that you take the time to carefully consider the results. If turf wars are not actively discouraged at the highest levels, this problem will continue to plague our efforts to combat terrorist financing.

Sincerely,



Charles E. Grassley
Chairman

cc: Richard L. Skinner, Acting Inspector General
U.S. Department of Homeland Security

Glenn A. Fine, Inspector General
U.S. Department of Justice

William Mercer, Acting Principal Deputy Attorney General
U.S. Department of Justice

Robert S. Mueller, III, Director
Federal Bureau of Investigations

Michael J. Garcia, Assistant Secretary
Immigration and Customs Enforcement

Office of Investigations

Department of Homeland Security
4141 N. Sam Houston Parkway E.
Suite 300
Houston, Texas 77032



**U.S. Immigration
and Customs
Enforcement**

January 24, 2005

Senator Chuck Grassley
135 Hart Senate Office Building
Washington, D.C. 20510-1501

Dear Senator Grassley:

On January 10, 2005, I forwarded a letter to the Government Accountability Office (GAO) that expressed my concerns relating to the national security interests of the United States. Copies of the letter were also forwarded to the Inspector General's Office for the Department of Homeland Security and the Department of Justice. Remarkably, and despite the national security concerns contained in the correspondence, no action has been taken in fourteen days. A copy of the letter to GAO dated January 10, 2005 is enclosed for your convenience.

By way of introduction, my name is Joseph R. Webber. I am currently serving in the Department of Homeland Security as the Special Agent in Charge, Immigration and Customs Enforcement in Houston, Texas. I am not a disgruntled federal employee nor am I a conspiracy theorist. I have more than thirty years of federal law enforcement experience and I am currently serving as a member of the Senior Executive Service (SES). I am a proud recipient of a Presidential Rank Award in 2003.

On September 11, 2001, I was serving as the Special Agent in Charge, United States Customs Service in New York. The Customshouse in New York was approximately thirty feet north of the north tower of the World Trade Center. After the terrorists attack and the collapse of the WTC towers upon the Customshouse, I was trapped in the building. I made several unsuccessful attempts to exit the building and was eventually rescued by members of the New York City Fire Department. The memories of 9-11 will haunt me for the rest of my life. Like many Americans the memories of 9-11 also serve to motivate me to ensure that we do everything possible to prevent another terrorist attack against our citizens.

Unfortunately, I am writing to you because high level officials of the Federal Bureau of Investigation (FBI) are placing personal agendas and parochial infighting, "turf battles," above our national security interests. The FBI has done everything possible to scuttle an ICE terrorist fund-raising investigation being conducted by my office. The ICE investigation has progressed to the point where an affidavit in support of a wiretap application was forwarded to Washington on October 12, 2004 for approval. The January 10, 2005, version of the affidavit refers to terrorism on no less than 49 occasions. By name, Osama bin-Laden is referenced in the document on three

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occasions and al-Qaeda twice. It is my opinion and that of many others familiar with the investigation that there is sufficient probable cause to pursue the wiretap. The local U. S. Attorney's Office and the Counter Terrorism Section of Main Justice have also supported the ICE wiretap application. In addition, several individuals within the FBI, both at headquarters and the field, have expressed displeasure with the actions of their headquarters. For more than one hundred days an affidavit relating to terrorist financing has sat in Washington as the FBI has repeatedly attempted to undermine our efforts. Unconscionably, during this one hundred-day period more than seven hundred communications with a suspected nexus to terrorism would have been subject to interception. I can assure you that despite the FBI's best efforts we will not cease our efforts to pursue this investigation. I am cautiously optimistic that we will overcome every artificial hurdle thrown our way.

In the aftermath of 9-11 considerable effort has been made to refocus the Government's response to terrorism. To win this war we need to involve every Federal, State, and Local Government agency and our citizens. The postal worker that delivers a suspect package, the bank teller that processes a questionable financial transaction, the local police officer that encounters a suspected fraudulent drivers license and the ICE agents with the knowledge, skills and abilities to pursue a terrorist fun-raising evidence trail, all have a critical role to play in this war. No one should be left behind. No one should be held at bay.

I am aware of yet a separate instance where the FBI scuttled an ICE terrorist fund-raising investigation. Again probable cause existed to support a wiretap application related to terrorist fund-raising. When the ICE investigation was forced to be closed, the FBI gave assurances that they would pursue the case through other means. The FBI failed to pursue the investigation. With the lessons learned in the two referenced cases it is clear to me that the FBI will spare no effort, even at the risk of our national security, to ensure that ICE does not have a role in terrorist fund-raising investigations.

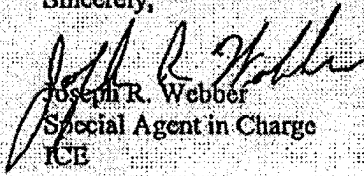
On May 13, 2003, Attorney General John Ashcroft and Homeland Security Secretary Tom Ridge signed a Memorandum of Agreement (MOA) concerning terrorist fund-raising investigations. The MOA addressed the importance of waging a "seamless, coordinated" law enforcement campaign against terrorist sources of financing. The MOA designates the FBI as the "lead" in this effort. Terrorist fund-raising is often referred to as the lifeblood of terrorist organizations. Fund-raising provides the necessary resources to pursue their heinous acts of violence throughout the world. By disrupting the cash flow you starve the beast and undermine their ability to conduct acts of violence. Under the "leadership" of the FBI, ICE fund-raising investigations have been obstructed. We should not entrust those that tolerate such practices with our national security.

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I have but one motive in bringing this matter to your attention. Quite simply, I have witnessed the horrors of a terrorist attack upon our Homeland and I am appalled that any Government entity in a post 9-11 environment would engage in such subterfuge. I do not fear retaliation for bringing this matter to your attention. I am concerned that the ICE investigators that follow and those brave individuals within the Department of Justice that had the courage to speak out may be in jeopardy as a result of my disclosure to you.

God bless the United States of America.

Sincerely,


Joseph R. Webber
Special Agent in Charge
ICE
Houston, TX

Enclosure

Copy of a letter to GAO dated January 10, 2005

MEMORANDUM OF AGREEMENT BETWEEN THE DEPARTMENT OF JUSTICE AND
THE DEPARTMENT OF HOMELAND SECURITY CONCERNING TERRORIST
FINANCING INVESTIGATIONS

1. Definitions. For purposes of this agreement:

- (a) "Secretary" means the Secretary of Homeland Security, and his successors, on behalf of all covered entities they head, supervise or represent.
- (b) "Attorney General" means the Attorney General of the United States, and his successors, on behalf of all covered entities they head, supervise or represent.
- (c) "Director" means the Director of the Federal Bureau of Investigation, and his successors.
- (d) "Parties" means the signatories to this Agreement and their successors, on behalf of all covered entities they head, supervise or represent.

2. Understanding the importance of waging a seamless, coordinated campaign against terrorist sources of financing, the undersigned agree that the Department of Justice will, as part of its responsibilities as the lead law enforcement agency in combating terrorism, and in accordance with the President's National Strategy for Homeland Security, lead the federal law enforcement effort against terrorist financing. The Federal Bureau of Investigation (FBI) will lead terrorist financing investigations and operations, utilizing the intergovernmental and intra-agency National Joint Terrorism Task Force (NJTTF) at FBI Headquarters and the Joint Terrorism Task Forces (JTTFs) in the field to conduct terrorist financing investigations and operations. Through the Terrorist Financing Operations Section (TFOS), the FBI will provide overall operational command to the NJTTF and the JTTFs.

3. The Secretary and the Attorney General will ensure that all appropriate information and intelligence relating to terrorist financing is shared with the members of the NJTTF and JTTFs, including Department of Homeland Security (DHS) detailees, to the greatest extent permissible by law and applicable guidelines, and consistent with the March 3, 2003, Memorandum of Understanding Between the Intelligence Community, Federal Law Enforcement Agencies, and the Department of Homeland Security Concerning Information Sharing. The parties agree to promptly take all reasonable and necessary steps to permit the maximum allowable information sharing relating to terrorist financing information and intelligence among the members of the NJTTF and the JTTFs. To further increase information sharing and coordination, the Attorney General and the Director agree to detail appropriate personnel to the financial crimes division of the Bureau of Immigration and Customs Enforcement (ICE). The Secretary shall ensure that such detailees are provided full and timely access to all data developed in ICE's money laundering and financial crimes cases on an ongoing basis.

4. After June 30, 2003, DHS will pursue terrorist financing investigations and operations solely through its participation in the NJTTF, the JTTFs, and TFOS, except as expressly approved by TFOS as provided in this paragraph. Both DHS and the Department of Justice (DOJ) will, however, continue independently to investigate money laundering and other financial crime matters that are unrelated to terrorism. DHS will focus its activities on protecting the integrity of U.S. financial infrastructures. To determine whether a money laundering or financial crime matter is related to terrorism or terrorist financing and to ensure effective deconfliction, all appropriate DHS leads relating to money laundering and financial crimes will be checked with the FBI. The parties agree to develop, as soon as possible but no later than June 30, 2003, specific collaborative procedures to enable the Section Chief of TFOS and Deputy Section Chief of TFOS detailed from DHS (or, if prior to the appointment of the Deputy Section Chief from DHS, the Associate Chief referenced in paragraph 3) to determine which leads should be provided to TFOS to enable TFOS to determine whether such leads may be related to terrorism or terrorist financing. Such procedures will provide for joint and continuous analysis of leads. Beginning on July 1, 2003, in any given matter, if TFOS determines that the matter is unrelated to terrorism or terrorist financing, the leadership of the investigation regarding the matter shall not be governed by this MOA. Determinations by TFOS shall take into account the following factors: strength of the terrorism or terrorist financing nexus; impact on the investigation of non-terrorism matters; and stage and development of the respective investigations. If TFOS, after consultation with DHS, determines that the matter is related to terrorism or terrorist financing, the investigation and operation of the matter shall be led by the FBI in accordance with paragraph 2. In pursuing investigations, TFOS will consider, among other things, the following factors: preservation of the government's flexibility and options to pursue investigations of both terrorism and non-terrorism matters; maintenance of the continuity of investigative personnel and management where appropriate (including the option, at the discretion of TFOS, to allow ICE to conduct terrorist financing investigations); and utilization of relevant expertise and authorities.

5. The parties agree that when the position of Deputy Section Chief of the TFOS next becomes vacant or by December 1, 2003, whichever comes first, the position shall be filled by a DHS employee detailed to the FBI, and shall continue to be filled by a DHS employee in the future. The employee will be chosen by mutual agreement of the Secretary and the Attorney General. Until such time as the position of Deputy Chief is filled by a DHS employee, the parties agree that a DHS employee shall be detailed to the FBI in a newly created position of "Associate Chief" of TFOS. The employee will be chosen by mutual agreement of the Secretary and the Attorney General.

6. The parties agree that the federal campaign against terrorist financing must utilize the significant expertise and capabilities of ICE. To this end, the parties will ensure that the appropriate ICE personnel have a significant and active presence on the NJTTF at headquarters and the JTTFs in the field. The Secretary will detail a significant number of appropriate personnel to the task forces, and the Director will ensure that the detailees are fully integrated into the FBI's efforts to combat terrorist financing, both at Headquarters and in the field, and are able to assist in the process described in paragraph 4, supra. The

Secretary will ensure that the performance of DHS agents detailed to the FBI under this Agreement is recognized as a critical component of the DHS mission and that Customs Service's pre-existing financial investigative expertise is preserved and developed through recruitment, training and retention initiatives.

7. The Secretary agrees that no later than June 30, 2003, Operation Green Quest (OGQ) will no longer exist as a program name. The Secretary agrees to ensure that any future DHS initiative or program to investigate crimes affecting the integrity and lawful operation of U.S. financial infrastructures will be performed through the financial crimes division at ICE. DHS will investigate matters related to terrorism and terrorist financing only with the consent of the FBI in accordance with this Memorandum of Agreement.

8. The Attorney General and the Secretary shall direct the Director and the Assistant Secretary for ICE to provide a joint written report to the Attorney General, the Secretary, and the Assistant to the President for Homeland Security on the status of the implementation of this Agreement four months from the effective date of this Agreement.

9. The parties shall immediately pursue implementation of the terms of this Agreement. Within ten days of the effective date of this Agreement the parties shall jointly issue guidance to all FBI and ICE supervisory agents regarding this Agreement.

10. Except where otherwise indicated, the terms of this Agreement shall be effective upon the signature of all parties.

11. These provisions are not intended to and do not create any rights, privileges, or benefits, substantive or procedural, enforceable by any individual or organization against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.


Attorney General of the United States

5-13-03
Date


Secretary of Homeland Security

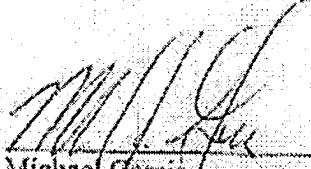
May 13, 2003
Date

Collaborative Procedures Pertaining to the Memorandum of Agreement (MOA) Between the Department of Justice (DOJ) and the Department of Homeland Security (DHS)

Consistent with the MOA dated May 13, 2003, the FBI and DHS/Bureau of Immigration and Customs Enforcement (BICE) jointly agree on the following collaborative procedures to determine whether appropriate BICE financial crime leads or money-laundering investigations may be related to terrorism or terrorism financing. Nothing in this document shall supersede the written provisions enumerated in the aforementioned MOA. The following procedures pertain only to information and operations of DHS/BICE:

1. DHS/BICE will establish a Joint Vetting Unit (JVU) within the Financial Information Analysis Section (FIAS), which will continue to utilize the existing ICE vetting methodology to identify financial leads or investigations with a nexus to terrorism or terrorism financing consistent with the MOA.
2. The JVU will be staffed by DHS/BICE and FBI personnel who will have full access to relevant DHS/BICE and FBI databases to conduct reviews to determine whether a nexus to terrorism or terrorism financing exists in the appropriate DHS/BICE lead information or investigations. The JVU will establish a joint tracking system on investigative leads referred to the JVU and provide the assigned FBI personnel access to this system.
3. Throughout the collaborative vetting process, the determination of whether a DHS/BICE investigative referral or investigation is related to terrorism or terrorist financing shall be governed by the factors as delineated in the MOA.
4. DHS will designate a BICE official to serve as the Deputy Chief of the FBI's Terrorism Financing Operations Section (TFOS). The Deputy Chief will have a fully integrated role in the evaluation and determination of whether a DHS/BICE referral or investigation has a nexus to terrorism or terrorism financing. The Deputy Chief and other DHS/BICE personnel assigned to TFOS will be provided complete and continuous access to FBI databases.
5. If, after collaborative consultation is made between the TFOS Section Chief and the DHS/BICE Deputy Chief, TFOS determines that a lead or investigation has a nexus to terrorism or terrorism financing, the matter will be investigated solely through the National Joint Terrorism Task Force (NJTTF), Joint Terrorism Task Force (JTTF) and TFOS, except as expressly approved by TFOS as delineated in the MOA.


6. Beginning on or about July 1, 2003, DHS/BICE and the FBI will begin the joint collaborative review within the JVU of pending DHS/BICE terrorist financing investigations. The review process to determine nexus to terrorism and terrorism financing will be governed by the procedures as outlined in this document and as delineated in the MOA.



Michael Garcia
Assistant Secretary
Bureau of Immigration and Customs Enforcement

7-2-03

Date



Robert Mueller
Director
Federal Bureau of Investigation

7/2/03

Date

Purpose, Scope, and Methodology

This review was initiated at the request of Senator Charles E. Grassley, former Chairman of the Senate Committee on Finance, after receiving a complaint from the former ICE SAC in Houston that the FBI improperly delayed the approval of an application for a criminal wiretap warrant in an ICE terrorist financing investigation named the Houston, Texas case. Senator Grassley asked DHS and DOJ OIGs to conduct a joint review of the Houston, Texas investigation, as well as a review of the implementation and effectiveness of an MOA between DHS and DOJ that governed the conduct of terrorist financing investigations by ICE and the FBI. Senator Grassley asked that in assessing the MOA we review the ten investigations that were transferred under the MOA to the JTTFs, (those other than the Houston, Texas investigation that was the subject of the ICE SAC's complaint) to determine whether they had suffered delays similar to those in the Houston, Texas case and whether ICE expertise and experience in financial crimes cases was being leveraged to enhance investigations of terrorist financing. We were also asked to determine what modifications, if any, should be made to the MOA. At a meeting on June 9, 2005, due to the broad nature of the request, Senator Grassley's staff agreed that our review would not need to address Senator Grassley's seventh question regarding ICE's investigative priorities and that the eighth question would be limited to a survey of agreements on law enforcement issues. Appendix A contains a copy of the Senator's request letter.

The review was divided into two stages; the first stage examined the former ICE SAC's complaint, and the second reviewed the implementation and effectiveness of the MOA and progress of the ten transferred cases. DHS and DOJ OIGs participated equally in both stages of the review. Each was active in the planning, fact-finding, and analysis tasks for the review. To expedite delivery of the reviews, DOJ OIG was responsible for drafting the report of the findings and conclusions of the first stage of the review.¹⁷ DOJ OIG issued the first stage report upon receiving concurrence and approval from DHS OIG. Similarly, DHS OIG drafted this second stage report, and obtained the DOJ OIG's concurrence and approval prior to its issuance.

The overall objectives of this review were to:

- Assess the progress of the ten transferred cases;

¹⁷ *A Review of FBI's Actions in a Terrorist Financing Investigation Initiated by the U.S. Bureau of Immigration and Customs Enforcement. See fn 7, supra.*

- Examine the implementation of the MOA;
- Evaluate whether ICE expertise can be applied in terrorist financing cases under the terms of the MOA.
- Determine whether the MOA should be revised.

To accomplish the fact-finding portion of our second stage review, we spoke with senior ICE, FBI, and DOJ officials familiar with the MOA and ICE's terrorist financing investigations to learn about the MOA's history, implementation, and impact.

To determine the progress of the ten cases, we conducted telephone interviews of 29 ICE case agents, supervisors, Resident Agents in Charge, and Assistant Special Agents in Charge, who were responsible for the ICE cases before they were transferred.¹⁸ In three cases, the ICE agents did not know the progress of the investigation subsequent to the transfer of the case to the JTTF.¹⁹ To discover subsequent progress, we interviewed three FBI JTTF agents who were involved with the cases after their transfer.

To ascertain the success of the implementation of the MOA and determine its effectiveness and impact, we asked the 29 ICE agents and the three FBI JTTF agents to describe the MOA and its procedures, as well as its effect. We asked the same questions of five ICE financial investigation group supervisors in five geographically diverse cities from which ICE investigations had not been transferred.²⁰ We also conducted a telephone interview of FBI field personnel in Seattle, Washington to confirm information that we had received from an ICE agent there.

Additionally, we conducted an interview of an ICE Assistant Special Agent in Charge from the Washington, DC field office because he requested to speak to us, and we interviewed an ICE JTTF agent in Miami, Florida who, we learned, had very limited involvement with one of the cases that had been transferred.

¹⁸ The cases originated in ICE field offices located in Chicago, Illinois; Los Angeles, California; Miami, Florida; New Haven, Connecticut; Newark, New Jersey; Orange County, California; Panama City, Florida; and Washington, DC. Three of the investigations that were transferred to the JTTF originated in the Washington, DC field office. The six other cities each had one case that was transferred. For some of the investigations, we interviewed more than one ICE case agent because during the life of the investigation more than one agent had been assigned.

¹⁹ Miami, Florida; Los Angeles, California; Newark, New Jersey. The Miami, Florida and Los Angeles, California agents did not have any knowledge of case progress after the investigation transferred to the JTTF. The Newark, New Jersey ICE agent had been detailed to the JTTF to work on the transferred investigation and was knowledgeable of case progress until very recently when he was re-assigned and had ceased to be active in the JTTF investigation.

²⁰ Atlanta, Georgia; Boston, Massachusetts; Denver, Colorado; Minneapolis/St. Paul, Minnesota; and Seattle, Washington.

We obtained and reviewed multiple documents from ICE, the FBI, and DOJ that assisted in our review. We also toured the JVU facility to better understand its operations.

We conducted our fieldwork between November 2005 and January 2006. Our work was conducted under the authority of the *Inspector General Act of 1978*, as amended, and according to the *Quality Standards for Inspections* issued by the President's Council on Integrity and Efficiency.

Office of the Assistant Secretary

U.S. Department of Homeland Security
425 I Street, NW
Washington, DC 20536



U.S. Immigration
and Customs
Enforcement

FEB 16 2007

MEMORANDUM FOR: Richard L. Skinner
Inspector General
Department of Homeland Security

FROM: Julie L. Myers *JLM*
Assistant Secretary *(Signature)*

SUBJECT: OIG Draft Report: "Coordination Between FBI and ICE on
Investigations of Terrorist Financing"

This response addresses the two recommendations made in the report as follows:

Recommendation 1:

To the ICE Assistant Secretary - Routinely communicate with ICE agents the purpose and impact of the MOA and its collaborative procedures, as well as the successes of cases in which ICE case agents transferred to JTTFs to continue investigating a case.

ICE Response:

ICE regularly disseminates, via memorandum or electronic format, the MOA and collaborative procedures that govern ICE's responsibilities and role regarding the MOA and terrorist financing investigations. In addition, both the MOA and collaborative procedures are available to all ICE agents via the ICE proprietary Web site. This Web site is the primary online repository for agency directives, policies and procedures utilized by ICE agents in their everyday course of business. Additionally, the MOA and its collaborative procedures have been presented in various forums such as Special Agent-in-Charge (SAC) conferences, basic agent training classes, advanced agents training classes, and Joint Terrorist Task Force (JTTF) conferences. All ICE Special Agents-in-Charge, Deputy Special Agents-in-Charge and Assistant Special Agents-in-Charge, as well as financial group supervisors, have been provided guidance and instructions on their responsibilities governed by the MOA. All successful ICE investigations, both JTTF and non-JTTF, are disseminated to employees via internal communications, the ICE Web site, and/or ICE and DHS news clips and releases.

Recommendation 2:

To the ICE Assistant Secretary - Convey to ICE agents their responsibility to report potential terrorism leads and cases to the JVU. Promote the detailing of ICE agents to the JTTFs by communicating that working on the JTTFs is a priority for ICE, for the department, and an opportunity for ICE to investigate terrorist financing.

ICE Response:

ICE continues to convey the importance of the proper handling and sharing of potential financial terrorism leads. Due to ICE's increased education, understanding, and promotion of the MOA/JVU, ICE has seen a shift in the methodology of how potential terrorist finance

www.ice.gov

SUBJECT: OIG Draft Report: "Coordination Between FBI and ICE on Investigations of Terrorist Financing"

Page 2

investigations are worked collaboratively between ICE and the FBI. Because of this better understanding and education, cases are now vetted and coordinated at the onset, both at the field and headquarters level. As a result of this multi-level coordination, ICE has observed an increase in "real-time" information sharing and de-confliction. This has significantly minimized the number of ICE cases that have been moved to the JTTF, and has promoted a better coordination between ICE and the FBI. The fact that no ICE investigation in the past two years with a potential nexus to terrorist financing has been "formally" transferred from ICE to the JTTF illustrates this point. Based on the shift in the fundamental understanding and application of the MOA, ICE strongly suggests that efforts be pursued to re-examine the necessity of the continued existence of the MOA.

ICE continues to contribute significantly to the JTTFs and remains the second-largest investigative component of the JTTF. In addition to the current level of support, ICE will continue to detail agents to the JTTF on a case-by-case basis in support of national priorities and security. It should be noted that all criminal acts investigated by ICE, to include terrorist and other national security related investigations, are a priority for ICE.

SUBSTANTIVE COMMENTS AND CHANGES:

After a thorough review of the report and summary, ICE Office of Investigations identified several objectionable conclusions made by the OIG. ICE offers the following substantive changes and corrections:

A. Draft Summary:

Page 3, Paragraph 3 - ICE strongly objects to the assertion "the lack of coordination led to case overlap, and the potential to compromise investigations and jeopardize agent safety." The complete OIG draft report included an example where a DOJ employee told the OIG that an ICE manager disclosed details of a classified FBI investigation during a television interview (draft OIG report, page 5, footnote 16). ICE believes that one unverified example from a DOJ employee does not substantiate this claim or the OIG assertion.

Page 4, Paragraph 2 - The JVU is not headed by an FBI Unit Chief. The JVU is jointly led by both an ICE and FBI Unit Chief.

Page 4, Paragraph 2 - The paragraph states the JVU was established to facilitate FBI review of ICE case information. This statement is not accurate, as the review of the case information is a joint effort between ICE and the FBI. According to the collaborative procedures dated July 2, 2003, ICE will have a fully integrated role in the evaluation and determination of whether an ICE referral or investigation has a nexus or potential nexus to terrorism or terrorist financing. Both ICE and FBI will have full access to relevant ICE and FBI databases.

Page 6, Paragraph 4 - A reference is made to ICE's need to more effectively communicate the purpose and procedures of the MOA to field agents. In addition to the three memoranda to field offices cited in said paragraph, please see ICE's response to recommendation #1 for additional details regarding ICE's effective communication with the field as it relates to the MOA and collaborative procedures.

B. Draft Report:

Page 7, Paragraph 1 - This paragraph should reflect that the FBI appointed a TFOS Unit Chief to co-lead the JVU.

SUBJECT: OIG Draft Report: "Coordination Between FBI and ICE on Investigations of Terrorist Financing"
Page 3

Page 18, Paragraph 1 - ICE strongly objects to the assertion that ICE agents "may" be derelict in their duties and; therefore, jeopardizing national security. ICE would refer to that statement made by the OIG on page 21, paragraph 2, which states, "We (the OIG) have no direct evidence that any ICE agent has actually been derelict."

Page 22, Paragraph 3 - ICE refutes the content of this paragraph. See ICE's response to recommendation #1 for additional details regarding ICE's communication with the field as it relates to the MOA and collaborative procedures.

Page 23, Paragraphs 2 and 3 - ICE refutes the content of this paragraph. See ICE's response to recommendation #1 for additional details regarding ICE's communication with the field as it relates to the MOA and collaborative procedures.

Thank you for your consideration in this matter. Should you have any questions, please do not hesitate to have your staff contact Ms. Clinett Short at (202) 616-7629.



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535-0001

January 19, 2007

The Honorable Richard Skinner
Inspector General
Office of the Inspector General
Department of Homeland Security
245 Murray Drive, Southwest
Building 410
Washington, D.C. 20528

Dear Mr. Skinner:

I would like to thank you for providing the Federal Bureau of Investigation (FBI) the opportunity to respond to your classified report entitled, "Coordination Between FBI and ICE on Investigations of Terrorist Financing" and the unclassified summary similarly titled.

Executive Management from the Counterterrorism Division (CTD) and personnel from the appropriate programs within the FBI have reviewed the OIG's draft report concerning the coordination between the FBI and ICE on investigations of terrorist financing. The FBI agrees with the findings and recommendations of this report. Ideally, we would like for the report to be updated to reflect some suggested changes.

Regarding the unclassified summary report:

1. Page 7, first paragraph: This paragraph should include that the MOA and Collaborative Procedures are also posted on the TFOS Intranet website for prompt and easier access by FBI Agents and supervisors. Since the time the OIG investigators were conducting their investigation last year, the MOA and Collaborative Procedures have been placed into electronic format and can be found on the TFOS website which is accessible to JTTF personnel.

Regarding the classified "SECRET" report:

2. Page 10, second paragraph: This paragraph should reflect that the JVu and TFOS were aware of the case, however, it initially did not have a nexus to terrorism

Mr. Skinner

and was not transferred to the JTTF. When TFOS became aware of a terrorism nexus, it was moved to the JTTF. (U)

OIG recommendations #1 through #3 were directed to the Assistant Secretary for ICE. Consequently, the FBI did not address those recommendations. However, the following are the FBI's response to the remaining OIG recommendations:

Recommendation #4

OIG Recommendation: Ensure that the FBI field agents understand the role of the JUV and understand that ICE cases with a nexus to terrorism may not be "coordinated" without express approval from TFOS.

FBI Response: The FBI and ICE both desire for their field agents to coordinate matters with each other and the way the current recommendation is worded may be a bit ambiguous. Alternate language recommended is, "Ensure that the FBI field agents understand the role of the JUV and understand that ICE cases with a nexus to terrorism will be investigated solely through the National Joint Terrorism Task Force (NJTTF), Joint Terrorism Task Force (JTTF) and TFOS, except as expressly approved by TFOS" as detailed in the Collaborative Procedures Pertaining to the MOA between DOJ and DHS. This language addresses any potential confusion from "informal" coordination if a potential or probable terrorism nexus is developed. The TFOS training to JTTFs and Terrorist Financing Coordinators stresses that if there is a doubt or question by field agents and/or field supervisors in these matters, TFOS should be contacted for guidance.

Recommendation #5

OIG Recommendation: Encourage FBI field offices to continue full utilization and integration of detailed ICE agents investigating transferred ICE cases.

FBI Response: FBI agrees with this recommendation and recognizes the value ICE agents bring to the JTTFs.

The responses were coordinated through the FBI's Inspection Division. Please contact Sonja Menefee of the Inspection Division should you have any questions. Ms. Menefee can be reached at (202) 324-9097.


Coordination in the conduct of joint investigations is vital to combating terrorism and terrorist financing.

Mr. Skinner

I want to thank you again for your efforts in producing this report, and I welcome the opportunity to discuss in detail the progress the FBI continues to make in this area.

Please contact me should you have any questions regarding this matter.

Sincerely yours,


Joseph Billy, Jr.
Assistant Director
Counterterrorism Division

Department of Homeland Security OIG

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Marcia Moxey Hodges, Chief Inspector, Office of Inspections

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Assistant Secretary, Legislative and Intergovernmental Affairs
Assistant Secretary, Immigration and Customs Enforcement
Director, ICE Office of Investigations
Chief Security Officer
Chief Privacy Officer
DHS OIG Liaison
ICE Audit Liaison

Federal Bureau of Investigation

Assistant Director for the Inspection Division

Office of Management and Budget

Chief, Homeland Security Branch
DHS' Program Examiner

Congress

Congressional Oversight and Appropriations Committees, as appropriate

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DHS Office of Inspector General/MAIL STOP 2600, Attention:
Office of Investigations - Hotline, 245 Murray Drive, SW, Building 410,
Washington, DC 20528.

The OIG seeks to protect the identity of each writer and caller.



DEPUTY SECRETARY OF DEFENSE

1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

SEP 13 2007



MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT
OF DEFENSE
INSPECTOR GENERAL OF THE DEPARTMENT
OF DEFENSE
ASSISTANT TO THE SECRETARY OF DEFENSE
FOR INTELLIGENCE OVERSIGHT
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Implementation of Interim Threat Reporting Procedures

Effective September 17, 2007, the TALON Reporting System will be closed. Department of Defense (DoD) components will submit Suspicious Incident/Activity Reports and other non-intelligence reporting concerning force protection threats to DoD resources to the FBI's Guardian Reporting System on an interim basis.

DoD components will follow the guidelines in Enclosure 1 for reporting information to their supporting Joint Terrorism Task Force (JTTF), the FBI Threat Monitoring Unit, or the FBI Counterterrorism Watch Center at the National Counterterrorism Center (NCTC). These organizations will review the information and enter it into the Guardian Reporting System. These procedures will remain in effect until DoD approves and implements a permanent force protection threat reporting system.

In accordance with the Attorney General's guidelines for threat reporting, information based solely on the ethnicity, race, or religion of an individual or solely on the exercise of rights guaranteed by the First Amendment (e.g., protected free speech and lawful assembly) will not be entered into the system.

Enclosures:

1. DoD Threat Reporting-Guardian Implementation Plan
2. Joint Terrorism Task Force (JTTF) and Other Recipient Contact Information
3. Suspicious Incident Report(SIR)/Suspicious Activity Report(SAR) Guide for Guardian Reporting

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DoD Threat Reporting - Guardian Implementation Plan

Background:

- Guardian is a web-based application on FBINET (Secret level Intranet) designed to allow for the immediate communication of terrorist threat and suspicious activity information throughout the FBI. Guardian provides the ability to store, search, and analyze suspicious incident reporting. Including DoD suspicious incident reports in Guardian will provide DoD a more complete threat picture and coordinated response to such threats.
- DoD agencies have assigned personnel to the FBI's National Threat Center, Threat Monitoring Unit (TMU), and the FBI Counterterrorism Watch Center (CT Watch) at the National Counterterrorism Center (NCTC). DoD agencies also assigned personnel to the National Joint Terrorism Task Force (NJTTF) and numerous Joint Terrorism Task Forces (JTTF) around the nation. A listing of these organizations is attached to this implementation plan.
- DoD personnel assigned to the above mentioned organizations have full access to the Guardian system for data entry, and routinely review, search, and analyze incidents in the database to accomplish trends analysis and indications and warnings reports in support of DoD activities.

Covered Information: The implementation plan applies to the following information except as provided in the provision that focuses on excluded information.

- Urgent reporting regarding a terrorism-related event, terrorist threat, or suspicious activity
 - Example: A stolen vehicle is recovered on a DoD installation and contains firearms and a laptop computer with information pertaining to planned attacks on a government facility.
- Specific and actionable reports warranting the initiation of investigative activity
 - Example: Security guards observe a person taking prolonged video of the entrance to a DoD facility with a hand-held video recorder. The same individual has been observed recording video of the building on two separate occasions in the past week.
- Non-actionable reports that may be relevant to the establishment of patterns of suspicious activity

- Example: Military uniforms were stolen out of an employee's vehicle parked at Baltimore Washington International (BWI) Airport.
- When Covered Information contains the names of U.S. Persons, it must be marked as such to meet FBI reporting guidelines.

Excluded Information: The following information shall not be submitted for entry, or entered, by DoD into Guardian.

- Information based solely on the ethnicity, race, or religion of an individual or solely on the exercise of rights guaranteed by the First Amendment.
- Intelligence information covered under E.O. 12333 as amended, and DoD 5240.1R, will be reported instead via Intelligence Information Reports or other intelligence reporting.
- Information gathered under Foreign Intelligence Surveillance Act (FISA), 50 USC, 1801, et seq.
- Information classified above the Secret level.

Implementation

- All information will be reviewed to determine whether it is covered or excluded from the entry procedures.
- Covered Information will be submitted for entry into Guardian by way of one of the approved methods described below.
- No Excluded Information will be submitted for entry into Guardian.
- Prior to the submission of Covered Information, the information will be provided to the servicing Military Criminal Investigative Organization (MCIO) or other military security organizations, local command officials, and local, state, and federal authorities, as needed, in accordance with Military Department specific guidelines for the dissemination, coordination, and investigation of threat incidents. The Suspicious Incident Report/Suspicious Activity Report (SIR/SAR) should indicate whether the report is for informational purposes or action and if the servicing MCIO or another investigative agency has taken the incident for action.

- DoD suspicious incident reporting will be entered into Guardian through the following methods:
 - **In the Continental United States (CONUS) (including Alaska, Hawaii, and Puerto Rico):**
 - The reporting organization will provide the details of the Covered Information to its local/regional JTTF representative via SIR/SAR.
 - The JTTF representatives will be responsible for entering data into the Guardian system.
 - In the event that a JTTF representative is not available, the information may be provided directly to the DoD representatives at the FBI TMU or CT Watch.
 - **Outside the Continental United States (OCONUS):**
 - The reporting organization will provide the details of the Covered Information to the DoD representatives at the FBI's TMU or CT Watch.
 - The DoD representatives at the FBI's TMU will enter the data into Guardian.
- Information can be reported directly to the JTTF, TMU, or CT Watch representatives via SIPRNET, NIPRNET, or telephone consistent with the classification of the data being reported.
- A suggested SIR/SAR format (attached to this implementation plan) that is consistent with Guardian data entry fields may be used to report suspicious incidents. Use of this format will assist in data entry into the Guardian system by individuals assigned to JTTFs, the TMU, and the CT Watch.
- Commanders may request analytical products highlighting regional and national trends through their servicing MCIO. The servicing MCIO will request these products from its regional JTTF, NJTTF, or the TMU.
- All analyses, law enforcement advisories, and other products derived from the Guardian database will be coordinated with the FBI Supervisory personnel prior to publication and dissemination.
- Prior to obtaining access to the Guardian system, DoD personnel will attend, at minimum, FBI training for the database. DoD Guardian users will review SIR/SAR data to ensure it meets reporting requirements prior to entry and will follow FBI policies and procedures related to the Guardian system, as applicable.

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**JOINT TERRORISM TASK FORCE (JTTF) AND OTHER RECIPIENT
CONTACT INFORMATION**

Region	Address	Phone	URL
NOTC Threat Monitoring Unit	Farm Credit Drive Liberty Crossing McLean, VA 22102	571-280- 6246	being established
CT Watch Center		571-280- 5000	ctwatch@ic.fbi.gov
Atlanta	2635 Century Parkway Northeast Suite: 400 Atlanta, GA 30345	404-679- 9000	atlanta.fbi.gov
Austin (San Antonio)	9420 Research Boulevard Suite 400, Echelon III Austin, TX 78759	512-345- 1111	sanantonio.fbi.gov
Baltimore	2600 Lord Baltimore Baltimore, MD 21244	410-265- 8080	baltimore.fbi.gov
Birmingham	1000 18th Street North Birmingham, AL 35203	205-326- 6166	birmingham.fbi.gov
Boston	One Center Plaza Suite 600 Boston, MA 02108	617-742- 5533	boston.fbi.gov
Charleston (Columbia)	170 Meeting Street Suite 200, Regions Building Charleston, SC 29401	843-722- 0135	columbia.fbi.gov
Charlotte	400 South Tyron Street Suite 900, Wachovia Building Charlotte, NC 28285	704-377- 9200	charlotte.fbi.gov
Chicago	2111 West Roosevelt Road Chicago, IL 60608	312-431- 1335	chicago.fbi.gov
Colorado Springs (Denver)	111 South Tejon Street Suite 600 Colorado Springs, CO 80903	719-633- 3852	denver.fbi.gov
Corpus Christi (Houston)	800 North Shoreline Suite 1100, North Tower Corpus Christi, TX 78401	361-883- 8671	houston.fbi.gov
Dallas	One Justice Way Dallas, TX 75220	972-559- 5000	dallas.fbi.gov
Dayton (Cincinnati)	200 West 2nd Street	937-222-	cincinnati.fbi.gov