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COUNTERING TERRORIST FINANCING: PROGRESS AND PRIORITIES

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME AND TERRORISM

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

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COUNTERING TERRORIST FINANCING: PROGRESS AND PRIORITIES

WEDNESDAY, SEPTEMBER 21, 2011

U.S. SENATE,
SUBCOMMITTEE ON CRIME AND TERRORISM,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The Subcommittee met, pursuant to notice, at 10:58 a.m., in room SD–226, Dirksen Senate Office Building, Hon. Sheldon Whitehouse, Chairman of the Subcommittee, presiding.

Present: Senators Whitehouse, Klobuchar, Blumenthal, Kyl, and Grassley.

OPENING STATEMENT OF HON. SHELDON WHITEHOUSE, A U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Chairman WHITEHOUSE. The hearing will come to order.

Today's hearing considers a central element of the fight against terrorism: the disruption and dismantling of terrorist finance networks. I am very grateful that the Ranking Member, Senator Kyl, is here. I know he has significant duties elsewhere as one of a certain group of 12 who are getting considerable attention in Washington these days, and I appreciate that he has taken the trouble to be here for this hearing. I will make a brief opening statement, yield to the Ranking Member, and then if nobody else is here, we will proceed to the witnesses.

It is obvious that terrorists need funds to maintain their organizations, to recruit and train new members, and to conduct operations. To meet this need, terrorists have sought funds from various sources: states hostile to our country; wealthy individuals who share their extreme ideology; charitable donors who may not know that their donations will end up in the hands of violent terrorists; corruption or even criminal activity such as drug production, kidnapping, or other cooperation with international organized crime groups.

Terrorists also have used various methods for moving their money, including through use of the American financial system, as well as through informal channels, such as hawalas and cash smuggling. Terrorists may deliver it into the United States to fund an attack against our homeland, launder it through our financial institutions, or move it from so-called charities in the United States to fund terrorist attacks abroad.

This diversity of sources of terrorist financing and means and purposes for moving terrorist cash makes the vital challenge of

choking off terrorist funds highly complex. It demands an integrated and well-coordinated response by the U.S. Government.

To that end, the United States has brought a sharpened focus to this fight in the decade since the 9/11 attacks. New legal authorities provided by statute and by Executive order have given the executive branch powerful tools to designate terrorist organizations and stop their use of the American financial system.

Reorganizations of departments and agencies have prioritized the fight against terrorist financing to ensure sustained effort in this crucial task. The Federal Bureau of Investigation and the Department of Justice have investigated and successfully prosecuted cases of material support for terrorist groups. The Treasury Department, State Department, and other agencies have worked to identify terrorist groups and freeze their assets in the United States and overseas.

Disrupting terrorist financing requires sophisticated analysis of bank records, meticulous study of available intelligence, careful assessment of foreign groups that may support terrorist organizations, and international partnerships that allow insight into the movement of terrorist finances abroad.

As I saw in a recent visit, this international work has reached as far as Afghanistan. Corruption, the diversion of funds from military contracts, and the poppy trade provide ready cash for terrorists in Afghanistan and the region. So I was glad to meet in Kabul with representatives of the Afghan Threat Finance Cell. The testimony provided today by the Treasury Department describes the ATFC's efforts to improve the targeting of insurgents' financial support and to disrupt other illicit financial activities. Their work throws into stark relief the tight relationship between terrorist finance and terrorist violence.

This close connection with terrorist violence is the reason we must sustain focus against terrorist finance. In that spirit today's hearing will assess our past performance in the effort to disrupt and interdict terrorist funds, and it will evaluate our Nation's readiness for future challenges.

This is no partisan issue. Every member of this Committee and of the Senate as a whole shares a commitment to disrupting and dismantling terrorist financing networks, and Congressional oversight, I believe, plays an important role in ensuring that we are on the right track.

With that in mind, I am happy that we are joined today by representatives of the Department of Justice, the FBI, and the Department of the Treasury. The responsibilities and expertise of the witnesses here today promise a full discussion of where we stand in the fight against terrorist financing and how ready we are to take on the challenges ahead.

I thank the witnesses in advance for their participation, and I yield to the Ranking Member for any statement he might like to make.

STATEMENT OF HON. JON KYL, A U.S. SENATOR FROM THE STATE OF ARIZONA

Senator KYL. Thank you, Mr. Chairman, and because of the commitment the Chairman mentioned, I will have to depart after this

statement. But I want to make a point to the witnesses in particular. I really appreciate your presence here and hope that you will convey to your colleagues our appreciation for the work that has been done by all three of the entities with whom you work.

I share all of the views that the Chairman just conveyed and would just comment on a couple of things, and I will put my full statement in the record.

Chairman referred to the material support statutes. I am delighted that they have been upheld in the *Holder* v. *Humanitarian Law Project* decision because they are a very important work horse in our efforts against al Qaeda, Hamas, and other terrorist organizations.

Since we make it a crime to knowingly provide material assistance to these and other terrorist groups, these statutes have helped starve those groups of resources, as the Chairman noted, and it makes it more difficult for them to carry out their attack plan and to do business with others. And they critically recognize that money is fungible, an important principle here, because it is impossible to give money to al Qaeda or Hamas, for example, without furthering these organizations' terrorist goals, regardless of how it is done. Not only is any dollar given to Hamas' so-called charitable wing a dollar that can be diverted to terrorism, but donations to this and other groups also enhance their power and prestige, which in turn makes it easier for them to recruit terrorists.

So the rigorous enforcement of the material support statutes can make these groups radioactive, deterring others from working with them, and ultimately cripple them entirely. As the Chairman pointed out, finances are such a key part of this that this is the way to go right to their bread basket, in effect.

The second thing I want to mention is the Comprehensive Iran Sanctions Accountability and Disinvestment Act, a long name for the CISADA acronym. Here we have aimed particularly at Iran, but there are others as well, but the Treasury Department is required to prescribe regulations that require our banks here in the United States to maintain—the banks that maintain foreign correspondent relations to have an audit or a certification requirement that neither they nor their correspondents abroad are servicing designated Iranian banks. Now, I really appreciate the effort that Treasury has made in this regard, but it did take nearly a year to draft the rule, and we still await the issuance of the final rule to implement Section 104(e) of the Act to address the vexing problem of foreign correspondents' accounts. And so I want to urge the Office of Management and Budget to complete an expeditious review of the final review and get this done so that we can take advantage of the tools that we passed here in the Congress and confront these illicit financing activities head-on.

In addition, we continue a bipartisan effort to strengthen the economic and political tools available to the administration to confront other illicit financial activities. For example, Senators Menendez, Lieberman, and I introduced S. 1048, the Iran, North Korea, and Syria Sanctions Consolidation Act of 2011, which would enhance existing measures, and it targets the nexus of proliferation between States like Iran and Syria and North Korea, and I would hope that my colleagues would consider and potentially act on this legislation

so that we can continue to try to close all of the loopholes that we have identified that enable illicit financial activities.

Again, I want to thank the Chairman for calling the hearing, for getting a good group of witnesses here, for all of those who are interested in the subject that are here. I will have questions for the record, Mr. Chairman, but I am going to have to depart in about 10 minutes.

Chairman WHITEHOUSE. Understood and appreciated.

[The prepared statement of Senator Kyl appears as a submission for the record.]

Chairman WHITEHOUSE. If we are ready to go to the witnesses, then I will first introduce Lisa Monaco, who is the Assistant Attorney General for National Security. She previously served as Principal Associate Deputy Attorney General, and prior to joining the Deputy Attorney General's office, she was chief of staff to FBI Director Bob Mueller. Ms. Monaco has also served as special counsel to Director Mueller and initially joined the FBI on detail from the U.S. Attorney's Office for the District of Columbia. Ms. Monaco served with me in the Department of Justice under Attorney General Janet Reno, where she served as counsel to the Attorney General, providing advice and guidance on national security, law enforcement, budget, and oversight issues. We are delighted to have her here today. You are invited to proceed.

STATEMENT OF LISA O. MONACO, ASSISTANT ATTORNEY GENERAL, NATIONAL SECURITY DIVISION, U.S. DEPARTMENT OF JUSTICE

Ms. MONACO. Thank you very much, Chairman Whitehouse, Ranking Member Kyl, and Senator Grassley. I have a brief opening statement, with your permission, and if I could ask for my full statement to be entered into the record.

Chairman WHITEHOUSE. Without objection, it will be.

Ms. MONACO. Thank you, Chairman Whitehouse and Ranking Member Kyl, for holding this hearing and for inviting me to testify today regarding the Department of Justice's role in combating terrorist financing.

The Department's efforts to combat terrorist financing are closely coordinated with those of our interagency partners, including, of course, the gentlemen who are here with me today. Our common objective is to deploy our counterterrorist financing tools in a coordinated, integrated way to disrupt the flow of funds and other material support to terrorist organizations.

Our efforts in this regard fall into three general categories: investigating and prosecuting terrorist financing and material support to terrorism, as the Chairman mentioned; foreign capacity building and technical assistance; and defending the laws and regulations designed to disrupt and punish terrorist financing. And I will just briefly mention each of these.

Perhaps the Department's principal role in countering terrorist financing is to work with the FBI and our other law enforcement partners to investigate and prosecute the individuals and networks who are engaged in it. Prosecution not only disrupts terrorist financing networks; it often permits us to gain valuable intelligence about terrorist networks.

My full statement for the record cites several cases in which we have disrupted fundraising activity, and in some cases those funds were actually earmarked to support specific violent acts of terrorism like the attempted assassination of the Crown Prince of Saudi Arabia.

Our ability to investigate and prosecute these cases relies on working with the Congress to ensure that our investigative authorities, our evidentiary rules, and the substantive criminal provisions remain effective and up to date, and I want to thank the members here today for your assistance, and I want to thank Chairman Whitehouse for your leadership in holding this hearing.

Although domestic prosecutions are important, the Department also recognizes that because the networks that finance and support terrorist organizations are international, so must be our efforts. To disrupt terrorist financing networks and bring their members to justice, we rely on cooperation with capable foreign partners. Toward that end, the Department currently has a network of 55 resident legal advisers in countries around the world, and those who are stationed in Bangladesh, Kenya, Turkey, and in the United Arab Emirates are expressly focused on the problem of terrorist financing.

We also frequently provide technical assistance to foreign countries who are drafting or amending their own terrorist financing laws, and we support and participate in training foreign governments and their investigative and prosecutorial services so that they, too, can mount effective terrorist financing cases.

Finally, the Department, as Ranking Member Kyl mentioned, defends the laws and Executive orders used to disrupt terrorist financing. You will hear from Assistant Secretary Glaser about how the Department of the Treasury uses Executive Orders 12947 and 13224 to designate individuals and entities that support terrorism and to freeze their assets.

In addition, under the provision of the Antiterrorism and Effective Death Penalty Act, which was enacted by this body, the Secretary of State, in consultation with the Departments of Justice and Treasury, designates foreign terrorist organizations, or FTOs. FTOs' assets are then frozen, and their members and supporters are barred from admission to the United States. And as the Committee well knows, it is also a Federal crime under one of the material support statutes to provide anything of value to an FTO, and the Department has successfully defended these and other terrorist financing laws and Executive orders against legal challenge.

As you will hear from my colleagues here today, our efforts to counter terrorist financing have had some significant success in the past decade, but we have work yet to do. Terrorist organizations and their supporters continue to adapt and evolve their operations, and in order to be effective, we must work with the Congress to ensure that we maintain our authorities and capabilities necessary to counter terrorist financing.

Thank you very much, Chairman, and I welcome the Committee's questions.

[The prepared statement of Ms. Monaco appears as a submission for the record.]

Chairman WHITEHOUSE. Thank you very much, Ms. Monaco. We are delighted to have you here, and we will hold questions until all the panel has had the chance to provide their testimony.

Our next witness is Ralph Boelter, who currently serves as Acting Assistant Director of the FBI's Counterterrorism Division. Mr. Boelter began his career at the FBI up in New England as a special agent in the Boston division, investigating white-collar crime, violent crime, and criminal enterprise matters. He has since served at FBI headquarters in the Criminal Investigative Division, as supervisor of the Los Angeles Division's Violent Crime and Criminal Enterprise Squad, and as special agent in charge of the Minneapolis Division, where he managed a number of high-profile investigations, including significant corporate fraud and counterterrorism matters. We are delighted he is here and ask for his testimony.

STATEMENT OF RALPH S. BOELTER, ACTING ASSISTANT DIRECTOR, COUNTERTERRORISM DIVISION, FEDERAL BUREAU OF INVESTIGATION

Mr. BOELTER. Thank you, Senator, Chairman. Good morning, Chairman Whitehouse, Ranking Member Kyl, Senator Grassley. I appreciate the opportunity to testify before you today regarding the efforts of the FBI to combat terrorist financing.

As we commemorated recently the tenth anniversary of the tragic events of September 11, 2001, we are reminded that the FBI's No. 1 priority is the prevention of terrorist attacks against the United States. The mission of the Terrorism Financing Operations Section within the FBI—the TFOS, as we call it—is to ensure that financial investigative efforts and techniques are applied in all counterterrorism investigations and to manage investigative efforts into individuals and entities who provide funding to terrorists.

TFOS carries out this mission through the application of financial investigative techniques and the exploitation of financial intelligence. To improve its ability to detect and disrupt those with the intent and capability to conduct attacks against the United States, TFOS has undergone a significant shift in the way it addresses the threat of terrorism financing.

Rather than solely collecting evidence to solve a particular case, this new approach prioritizes the collection and utilization of intelligence to develop a comprehensive threat picture, enabling strategic disruptions of terrorist financing operations. Thus, TFOS exploitation of intelligence not only seeks to identify the scope and breadth of terrorist financing, but also it seeks to identify the members of the terrorist network. This enables the FBI to enhance indicators and tripwires and develop actionable intelligence to identify and prevent terrorist attacks.

To more fully utilize the intelligence we receive from our domestic intelligence and law enforcement partners, TFOS recently added a Targeting Unit. The Targeting Unit works to identify currently unknown fundraisers and their associates.

In addition, TFOS added a Strategic Intelligence Unit to monitor threats, financial trends, and methodologies which are key to identifying possible terrorist financing transactions at their earliest point.

In May of this year, Hor and Amera Akl pled guilty to conspiring to provide material support to Hizballah. The Akls claimed to an FBI informant that they had moved money to Lebanon and had high-ranking contacts with Hizballah. Amera Akl told the informant that she "dreamed of dressing like Hizballah, carrying a gun, and dying as a martyr."

Posing as an individual with access to investors, the FBI informant delivered $200,000 to Hor and Amera for delivery to Hizballah. Both were arrested after the two were observed attempting to hide the money in a vehicle destined for shipment overseas.

In addition, in the last year, the FBI conducted terrorist financing investigations that led to the indictment of individuals for providing funding to the Pakistani Taliban, al Qaeda in the Arabian Peninsula, and Al-Shabaab. These cases, among many others, highlight the importance of applying financial investigative techniques to counterterrorism investigations.

Of course, we cannot accomplish this mission alone. Our close partners in these efforts are members of the Treasury Department, and in particular the Financial Crimes Enforcement Network within that Department. Working closely with the Treasury, the FBI conducts significant outreach to our financial industry counterparts. Through these continuing partnerships, the financial industry is better able to identify and report trends or patterns of suspicious activity around the country.

In addition, TFOS coordinates efforts with our foreign intelligence and law enforcement partners around the world. Through all the FBI's 62 legal attache offices, TFOS jointly investigates terrorist financing matters with our foreign counterparts. These relationships are key to the FBI's efforts to stem the flow of financial support to terrorists and protect the United States from terrorist attacks.

In conclusion, the efforts of TFOS, in close coordination with our Federal, State, and local partners, the financial industry, and our international partners, have established an increasingly difficult environment within which terrorist financiers can operate undetected. We believe these efforts have reduced the funding available for terrorist operations and have made the concealment and transfer of terrorism-related funds more difficult.

As the terrorists adapt their methods to raise and transfer funds, the FBI—and its partners—has also adapted its efforts and its capacity to detect and disrupt these financial networks. To identify new and emerging networks and currently unknown subjects, TFOS systematically tracks and analyzes intelligence to guide terrorist financing investigations. TFOS's cooperative efforts with our Government and private sector partners ensures an ongoing and coordinated approach to terrorist financing to prevent future terrorist attacks against the United States.

Chairman Whitehouse, Ranking Member Kyl, I appreciate the opportunity to come before you today to share the work that the FBI is engaged in to address terrorist financing and counterterrorism in this country and around the globe, and I am happy to answer any questions.

Thank you.

[The prepared statement of Mr. Boelter appears as a submission for the record.]

Chairman WHITEHOUSE. Thank you, Mr. Boelter. I appreciate your testimony.

Our final witness on the panel is Daniel Glaser, who is the Assistant Secretary for Terrorist Financing at the Department of Treasury's Office of Terrorism and Financial Intelligence. He has also served as Treasury's Deputy Assistant Secretary for Terrorist Financing and Financial Crimes. In addition to his prior roles at the Treasury Department, he has served as an attorney for the United States Secret Service and as the head of the U.S. delegation to the Financial Action Task Force, an intergovernmental agency charged with formulating policies to combat international money laundering and terrorism financing.

Mr. Glaser, welcome.

STATEMENT OF DANIEL L. GLASER, ASSISTANT SECRETARY FOR TERRORIST FINANCING, U.S. DEPARTMENT OF THE TREASURY

Mr. GLASER. Thank you, Chairman Whitehouse, for the opportunity to discuss our efforts to combat terrorist financing.

In the decade since the tragic attacks of September 11th, the U.S. Government has worked toward developing a comprehensive, whole-of-government approach to combat terrorist financing. Critical to this evolution has been the recognition that the Treasury Department—and the financial tools it wields—is central to our counterterrorism efforts and, indeed, to our National security as a whole.

Money is vital to terrorist organizations. The monetary cost of executing an individual attack may be low, but terrorists require substantial sums to recruit, train, and sustain operatives, procure weapons, compensate families of so-called martyrs, and garner support from local populations. This need to raise and move funds is a significant vulnerability that can be exploited. The financial networks of terrorist organizations are susceptible to identification and disruption. It is our efforts to do just this that I would like to discuss today.

Prior to 9/11, the U.S. national security community had yet to grasp the full significance of the terrorist threat. Not surprisingly, terrorist financing was not high on the national security agenda, but that changed quickly 10 years ago. A galvanized U.S. Government recognized the importance of attacking terrorists' financial infrastructure as a critical component of an effective counterterrorism strategy.

Treasury, armed with new authorities to freeze terrorists' assets, played a significant role in this response. We designated various terrorist-affiliated entities, crippling the financial nodes of al Qaeda, Hamas, and other foreign terrorist organizations. Today I can confidently say that the U.S. no longer remains fertile ground for terrorist fundraising.

Despite our initial success, though, we recognized that Treasury's full potential remained bridled without a more comprehensive strategic approach and the institutional framework to implement it. Accordingly, in 2004 the Treasury Department, working with Con-

gress, created the Office of Terrorism and Financial Intelligence, or TFI. The creation of TFI, the first office of its kind in the world, was a revolutionary development in the national security arena, and in less than 8 years, TFI has had a dramatic impact on our National security and become a fixture within our foreign policy establishment. Our mission is clear: Marshal the Treasury Department's policy, enforcement, regulatory, and intelligence functions to sever the lines of financial support to international terrorists, WMD proliferators, narcotics traffickers, organized criminals, and other threats to our National security.

We advance this goal in many ways. For example, we work through multilateral bodies such as the Financial Action Task Force to establish a global framework that promotes transparency and which enables us to identify and address the various forms of terrorist financing vulnerabilities and threats.

We have also sought to mitigate the risks posed by hawalas, charities, cash couriers, and new payment methods. And we have systematically undermined terrorist financial networks by imposing targeted financial measures.

We have coupled these instruments with sustained outreach to the international and private sectors seeking to freeze terrorist groups out of the international financial system. Of course, in achieving these successes, cooperation from foreign counterparts is essential. Our engagement with Saudi Arabia exemplifies this approach. Though our partnership in combating terrorist financing in earlier years with Saudi Arabia had not always been good, sustained engagement over the years has produced strong progress. Moving forward, we must continue to build on this relationship and to encourage other regional players, in particular Qatar and Kuwait, to follow Saudi Arabia's lead in prioritizing the fight against terrorist financing.

Of course, considerable challenges remain ahead. We are, as Secretary of Defense Panetta has said, within reach of defeating al Qaeda. Their financial situation is indeed dire, and our goal is to make it worse.

But some pillars of financial and logistical support remain intact. Even as we make progress against core al Qaeda, we are finding that with the rise of al Qaeda affiliates, the terrorist financing threat has changed and, in some ways, become more intractable. Issues such as kidnapping for ransom and other terrorist groups that rely on non-traditional sources of funding, such as Al-Shabaab and Hamas, will require innovative approaches. We must continue to work with our interagency partners, the private sector, and our international counterparts to advance our mission. With the comprehensive strategic approach I have outlined here today, we will move forward to meet these challenges.

Thank you, Mr. Chairman, and I look forward to answering any questions you might have.

[The prepared statement of Mr. Glaser appears as a submission for the record.]

Chairman WHITEHOUSE. Thank you very much, Mr. Glaser. Let me turn right away to your observation that some pillars of financial and logistical support for terrorist organizations remain intact.

What are those pillars? And in what way are they resistant to our previous efforts? What do we need to do to bring them down?

Mr. GLASER. Well, thank you for the question, Mr. Chairman. I think we have made—we have to be vigilant across the board on every way terrorists raise funds and move funds, and all the ways that they have traditionally raised funds and all the ways they have traditionally moved funds, all the ways they continue to do so. But I think we have had a lot of success and made a lot of progress on the more traditional ways of fundraising through charities, moving funds through the formal financial sector, we have made a lot of progress, and I think we really have made it, as I like to say, costlier, riskier, less efficient for terrorist organizations to move their funds—raise funds and move their funds around the world.

One of the results of that success has been to transform the problem, and one of the things we have seen, particularly, as I said in my opening statement, with the reliance—with the emergence of not just al Qaeda core but al Qaeda affiliates, groups like al Qaeda in the Islamic Maghreb, al Qaeda in the Arabian Peninsula, Al-Shabaab, is an increased reliance on localized criminal activities to support themselves—in particular, with respect to al Qaeda in the Islamic Maghreb, kidnapping for ransom from which they derive substantial sums, so much so that it really-you know, they could survive on it.

So while we need to continue to sort of look at the deep-pocket donors and look at the ways that money moves into those regions, it is also important that we come up with new ways of thinking about how a group like AQIM is raising their funds.

I think it is important that we engage with our partners in Europe, for example, on the very substantial ransom sums that are paid and come up with a common view and a common approach on ransom sums that are paid. That would be something that I think we need to focus on.

There are other ways these groups raise funds. You have groups that are controlling territory, so you have Al-Shabaab, not an al Qaeda group, but Hamas who could raise funds the way the U.S. Government does through taxation. And, again, that presents challenges, and how do we target those financial systems? How do we find a way in to doing that? You know, these are some of the challenges that we face.

Chairman WHITEHOUSE. The more geographically local ones provide new types of challenges.

Mr. GLASER. One of the successes has been, you know, you smash the center, you make it harder for them to exert command and control and deliver potentially devastating attacks. One of the consequences of that that you have to face is a more dispersed threat with its own sources of financing, which are in some ways smaller—and that is a good thing—and harder to sort of coordinate as an overall global strategy. That is a good thing. And in a lot of ways poor, and that is a good thing. But, you know, then you have your new challenges of going after the localized ways that they raise funds.

Chairman WHITEHOUSE. Ms. Monaco, tell me a little bit about how we are doing against the hawala networks. These are financ-

ing networks that have lasted for hundreds, perhaps even thousands of years, supporting the trading communities in that area of the world, and they have developed an informal means of operating that does not require reporting and is hard to penetrate. Given that, what are the techniques you find that we are using that have generated some success, and can we be optimistic about encouraging further success against them?

Ms. MONACO. Well, Chairman Whitehouse, I think we have had some success, as you alluded to, and as Assistant Secretary Glaser's testimony discusses, we have also made some headway in ensuring that informal networks like hawalas are subject to registration requirements and trying to build in some of the same requirements that surround the formal system into the more informal system. So I think that is a success and that is a point of progress that we can recognize.

I think we have been successful in some cases, and some of the statements submitted for the record recognize this as well. I would point to the Younis case, an individual who pled guilty just earlier this summer in New York. I think that is an example of the great efforts of the FBI and the Assistant U.S. Attorneys in New York in focusing on all aspects of a particular threat and following each thread, including the financial thread, and the defendant in that case pled guilty to operating an unlicensed money-transmitting operation in which eventually some of that money found its way to Faisal Shahzad, the plotter of the attempted car bomb, of course, in Times Square. So that is an instance where FBI investigators very diligently followed every aspect of that operation, including where the funding was coming from, and in that case identified the use of the informal money-transmitting system and disrupted that operation going on both here and in Pakistan.

So I think we have had some successes. I think the Treasury Department's efforts to impose some of the requirements that exist in the formal system onto the informal system I think is a tremendous step in the right direction.

Chairman WHITEHOUSE. Very good. Thank you.

Let me turn to Senator Grassley and then, in order of arrival, Senator Blumenthal and Senator Klobuchar. Senator Grassley.

Senator GRASSLEY. I probably will not have an opportunity to ask all of you questions because I can only stay for one round, but I appreciate it and I will submit some questions for answer in writing. I will start with Ms. Monaco.

I sent a letter to the Department of Justice requesting information about the non-prosecution agreement entered into with the Islamic Investment of the Gulf Limited. I think it was an unusual move when the Department issued no press release about this agreement. The agreement was the conclusion of an investigation that moved around the Department from the National Security Division to the Criminal Division's Terrorism Financing Section to the Tax Division. As of today I have not had a response to the letter because—well, you know, I just kind of expect answers to my letters, but maybe it is a little soon to get them, so I am going to ask you. But I hope that we can get answers because I want to make sure that the Department is not trying to hide something.

The silence on this issue of not issuing a press release I think kind of runs afoul with the claim that this administration is going to be very transparent.

So what role did the National Security Division play in this investigation and in the non-prosecution agreement with the Islamic Investment?

Ms. MONACO. Senator Grassley, I do understand that the Department has received your letter, and I was informed about that in preparation for this hearing, and I will certainly take back the urgency with which the Senator has expressed a desire to get a response to that and ensure that we get a prompt response, that the Department gets a prompt response to you.

With respect to the National Security Division's involvement, I am not aware of a particular involvement in that matter, but, again, I am happy to go back and review that.

Senator GRASSLEY. Then you cannot answer the question who were the individuals at the Department that approved of the non-prosecution agreement? Or that is probably separate so you probably cannot answer that.

Ms. MONACO. I cannot, Senator.

Senator GRASSLEY. You can answer this: At any time did you offer an opinion on it?

Ms. MONACO. I did not, Senator, no.

Senator GRASSLEY. OK. There are reported connections between the Islamic Investment and known terrorist groups. Surely the National Security Division would investigate those connections, wouldn't they? I mean just as a matter of procedure.

Ms. MONACO. Senator, I would not want to speculate in this particular case. Again, I am not aware of what involvement, if any, the Division had in that matter, but I would be happy to go back and take a look at that, and we will ensure that we try and get a response to your letter promptly.

Senator GRASSLEY. Well, it would seem to me like they would have something to do with it. You may not know specifically what they had to do with it, but they surely had something to do with it.

Ms. MONACO. Again, Senator, I am not aware, and I would not want to speculate to the Committee.

Senator GRASSLEY. You can answer this question: How much money did the non-prosecution agreement involve?

Ms. MONACO. I do not know.

Senator GRASSLEY. Well, can you tell us why they did not publicize the agreement when they normally would?

Ms. MONACO. I am not aware of what the practice—if it would be normal practice to disclose that information, Senator.

Senator GRASSLEY. Well, would it be possibly because the Department got a bad deal and they are trying to hide it?

Ms. MONACO. Again, Senator, I am not sure if it is, in fact, normal practice to disclose the terms of any particular settlement agreement in that regard.

Senator GRASSLEY. In keeping with the spirit of openness and transparency that the President and the Attorney General promote, will you provide my office with a copy of the non-prosecution agree-

ment with the Islamic Investment as well as answers to my questions contained in the letter of September 7th?

Ms. MONACO. Senator, I will absolutely go back and ensure that we get a response to your letter and provide whatever information is appropriate to provide to you and to the Committee.

Senator GRASSLEY. Could you tell me when I could expect an answer to that letter?

Ms. MONACO. I would not want to overpromise, Senator, but, again, I would certainly go back and make sure that we do get a prompt response.

Senator GRASSLEY. As far as you know, there would not be any national security implications about releasing the information I have asked for?

Ms. MONACO. I am not——

Senator GRASSLEY. I mean, after all, it was a grand jury situation that was investigated.

Ms. MONACO. I am not aware of what the national security implications would be. It certainly would not be outside the realm of possibility that there would be national security implications in a grand jury investigation. But, again, I would not want to speculate.

Senator GRASSLEY. I had my staff ask the Justice Department yesterday whether the matter involved national security and if that was the reason for silence on the non-prosecution agreement. The Office of Legislative Affairs did not answer my staff's question despite notice that I would bring it up today. We have the capacity to review classified information, and if there is something about this that involves national security, since I have the capacity for classified information, I would urge you to use those channels to provide me with the information.

Ms. MONACO. I understand, Senator.

Senator GRASSLEY. OK. And then I will stop with this: On a related matter, I understand that, despite the hiring freeze at the Justice Department, more staff have been hired for the National Security Division. How many people do you have in the National Security Division Policy Office? How many were hired since the hiring freeze? And who approved the hires?

Ms. MONACO. Senator, the Department is under a hiring freeze, as you know, given the current budget situation. There are, however, exemptions that have been granted based on—to that hiring freeze where Department components can demonstrate that they have the funding and the allowable positions that have been provided by the Congress. I would have to double-check on the precise number, but I would say in the neighborhood of 30 individuals in the Law and Policy Office.

Senator GRASSLEY. OK. Thank you very much, Mr. Chairman.

Chairman WHITEHOUSE. Thank you very much, Senator Grassley.

The next questioner will be Senator Blumenthal of Connecticut, who has a distinguished career in law enforcement, as you all well know.

Senator BLUMENTHAL. Thank you, Mr. Chairman, and thank you, Chairman Whitehouse, for your distinguished career in law enforcement and for holding this hearing.

I think that we are all gratified by the progress that has been made in this area, particularly in combating the financial institutions' potential complicity in these transactions that involve financing terrorism. And I recognize that progress has been made in that area, and I want to thank each of you and the people who work with you for your continuing work and your accomplishments.

All three of you, I believe, have made reference to the guilty plea by Mohammad Younis and the information that was developed about the sources of funding for the Shahzad plot. And apparently a major source was in Pakistan, possibly with the complicity of the financial institutions there, possibly with the knowledge of officials in Pakistan. I wonder if you could comment on what information has been developed about the Pakistanis' involvement in financing terrorist organizations and what steps can be taken to combat it.

Ms. MONACO. I will just comment briefly on that, Senator Blumenthal. First I want to make clear that in the Younis case that individual was prosecuted and has pled guilty to operating an unlicensed money-transmitting operation, which I mentioned previously. He was not witting in the guilty plea—in that case did not demonstrate that he was witting of the purpose of those funds but, rather, the unlicensed transmission operation. So I just wanted to make that clear for the record.

As to development of information with regard to the Pakistani end of that operation, I do not have anything that I would be able to offer to the Committee. I am not sure about my FBI colleague.

Mr. BOELTER. Yes, Senator, I would just say generally that one of our great challenges is a lack of visibility in the financial institutions and entities overseas. That is a challenge, I would not limit that to Pakistan, but globally.

With respect to this case in particular, I think I would defer to speak to that issue in a more——

Senator BLUMENTHAL. In a different setting.

Mr. BOELTER. Yes.

Senator BLUMENTHAL. Well, I appreciate the reasons for your preference, although your testimony does say, and I am quoting, "Shahzad advised that the funding was arranged in Pakistan by associates of the . . . (TTP)." And I take it from that fairly general statement that perhaps a follow-up in a different setting would be worthwhile because I would be very interested in this instance and others where Pakistan perhaps played a part with degrees of knowledge and intention that may be open to question about the terrorist financing.

And let me follow up with you in another related area. What other countries would you say would bear scrutiny and perhaps could cooperate more fully in making their systems more transparent and, therefore, aid us in tracking down and stopping this kind of financing?

Mr. BOELTER. Well, Senator, I think I would defer to my Treasury colleague to speak on that point, if I may, Senator.

Senator BLUMENTHAL. Sure.

Mr. GLASER. Thank you, Senator. We spend a lot of time at the Treasury Department on precisely this issue, trying to work with other countries on what should be the international standards for anti-money-laundering and counterterrorist financing and then

putting systems in place to ensure the countries are actually taking steps to comply with those standards. And we do that through an organization called the Financial Action Task Force.

The Financial Action Task Force has what is called the FATF 40+9, which is the 40 recommendations on money laundering, 9 special recommendations on terrorist financing, and taken together they represent a comprehensive framework for combating money laundering and terrorist financing. It includes criminal laws, regulatory laws, and international cooperation.

And then we have worked with the IMF and the World Bank and FATF to make sure that every country or virtually every country—North Korea, for example, has not been reviewed, but virtually every country in the world is subject to a very rigorous review process.

FATF has on its website identified the countries which in particular have performed very poorly on those. Pakistan is one of those countries that has been so identified by the FATF, and there are about 25 countries. I could tell you a few. I cannot rattle them all off, off the top of my head, but it is publicly available on the FATF website which countries still have a lot of work to do. I am just getting this basic structural framework in place.

Senator BLUMENTHAL. I know that that information is available publicly, and just one last question because my time is about to expire. Does that list coincide with the list of countries that are actually responsible or without perhaps the knowledge of the governments themselves, does that list of the least transparent coincide with the list of countries that also are the most complicit, perhaps unwittingly?

Mr. GLASER. Exactly, and that is——

Senator BLUMENTHAL. I am not framing the question very artfully, but you get the——

Mr. GLASER. I know exactly what you are asking. I was about to make that distinction as well. That group of countries that I was mentioning are countries that need work on their basic framework, on their basic regulatory structure, their basic legal structure, and a lot of them are working to put those in place.

Then you get to the more difficult question of which countries are actually implementing it, which countries are actually doing what they need to do.

For example, Kuwait is a country that does not even have a terrorist financing law, the only country in the gulf that does not have a terrorist financing law. Kuwait is a country that has some work to do.

Qatar is making progress, but Qatar has a lot of work to do in implementing its terrorist financing laws, and I am going to be visiting Qatar and Kuwait later this month or the beginning of October—the end of September or beginning of October, to talk to them about the steps that they still need to take in order to make progress.

And then, of course, you have your state sponsors, countries like Iran, which we have recently designated an al Qaeda financial support network supported by Iran. Iran is the chief donor to Hizballah, to Hamas. So, I mean, you know, once you get to the state sponsorship arena, it is a whole different level.

So as you point out, I would say there are sort of three levels: the countries that still need work on a framework, the countries that simply do not have the political will or need more political will to implement, and then the countries that are actually actively part of the problem.

Senator BLUMENTHAL. Thank you very much.

Thank you, Mr. Chairman.

Chairman WHITEHOUSE. Senator Klobuchar.

Senator KLOBUCHAR. Thank you very much.

I first wanted to welcome the Assistant Director, Ralph Boelter. He was a special agent in charge of the Minneapolis office and did an amazing job with our FBI there, and we have a very close law enforcement community in Minnesota. My favorite story of that was the Secret Service once had a holiday party, and I will never forget the invitation: "You're invited to the Secret Service Open House," which I thought was sort of funny. And when we got there, they would not tell you how many agents worked there because it was a secret. But I have really enjoyed working with you, and I welcome you here today.

Mr. BOELTER. Likewise, Senator. Thank you.

Senator KLOBUCHAR. Thank you.

I wanted to first start and follow up a little with you, Assistant Secretary Glaser. You were talking with Senator Blumenthal about some of the work that you are doing. I was just curious, from sort of a bigger picture question, what are the most common—like the two or three most common forms of fundraising you are seeing to finance these terrorist entities? And I know that in your testimony you talk about how it has become more intractable, more difficult to find. So what are you seeing now?

Mr. GLASER. Thank you for the question. As I said before, all the methodologies that we have traditionally seen for raising and moving terrorist funds we are still seeing. So terrorist organizations continue to receive money from deep-pocket donors in the gulf. They continue to receive money through charities. They continue to move money through both the informal and formal financial sectors. So all of that continues to go on, even though we continue to make tremendous progress in those areas. And I would just again point to Saudi Arabia as a good example of that progress.

I have been at this for a long time, and several years ago we were quite frustrated with what we thought was Saudi Arabia not taking as much action as it should be taking. In recent years we have seen Saudi Arabia have investigations, real law enforcement investigations into terrorist financing and real prosecutions in terrorist financing, and it put in place some of the strictest laws in the world with respect to how it regulates and oversees its charities with respect to their international disbursements of funds. So that is progress, and that is one of the ways that we have made it harder for terrorist groups to access the international financial system.

As a result, we have seen the problem disperse and become more localized, which has its advantages and disadvantages. One of the disadvantages is some of the more traditional tools we use in terms of sanctions, in terms of engaging with governments, and in terms of confronting governments are less effective, and we have to come up——

Senator KLOBUCHAR. Because it is more dispersed and it is——

Mr. GLASER. Because it is more dispersed, it is more localized, and it becomes almost a local law enforcement issue. One of the things I pointed to is kidnapping for ransom. I know I keep mentioning it like a broken record, kidnapping for ransom, because it is really, really important and it is——

Senator KLOBUCHAR. And so that money is going from these looser groups into terrorism.

Mr. GLASER. Well, these looser groups are terrorist organizations, and this is how they are funding themselves, but oftentimes——

Senator KLOBUCHAR. Right, so they just do it themselves. They kidnap people, they use that money, and then they commit acts of terrorism.

Mr. GLASER. These are terrorist organizations that raise—yes, that in part, and to a large part, support themselves through that criminal activity.

Senator KLOBUCHAR. Right. Could I turn to Assistant Director Boelter? Sort of combining your old job and your new job, organized crime, what do you see as the relationship between financing terrorism and organized crime?

Mr. BOELTER. I do not see a strong connection there. I think organized crime is not—it is not naturally paired with terrorism because the objectives of organized crime are to make money, frankly, and the objectives of terrorists are really to inflict harm on this country and our interests, and other countries as well. So I think there is not a natural relationship between those two entities, and likewise, I am not saying there is no connection, but I do not think it is a significant connection.

Senator KLOBUCHAR. And do you see some of the same things that Mr. Glaser was talking about with the funding?

Mr. BOELTER. In the different modes of raising——

Senator KLOBUCHAR. Yes, that it is more dispersed with individual terrorist groups funding themselves.

Mr. BOELTER. Absolutely, and I think to some extent that we have moved them in that direction over the last few years by shutting down the formal financial network or access to it, to them. So I think that is a product somewhat of what we have done, but, yes, it is a changing landscape in terms of how they raise money. I would not suggest that engaging in kidnappings would be their first choice, but it is something that—because that is a high-risk activity, but that is clearly overseas in particular something that we are seeing.

Senator KLOBUCHAR. Assistant Attorney General Monaco, you talked about training and working with our partners internationally. What response have you received? Have there been changes over the last decade? Have you seen changes to the foreign laws that make it easier for us to work with them?

Ms. MONACO. I think we have seen a growing level of cooperation and particularly in those areas where we have targeted our efforts. I mentioned Bangladesh, Kenya, and some other areas where we really are focusing almost exclusively with personnel in those areas on terrorist financing.

I think in areas like Indonesia there have been good strides made, and I think while we are working in those targeted areas to

bring up the level specifically on terrorist financing in the areas I mentioned, our resident legal attache program across the world with the 55 folks I mentioned is something we are trying to buildup our counterterrorism cooperation generally, buildup the level of attention and cooperation across the board.

Senator KLOBUCHAR. You know, I spent the evening of September 11th this year with the family of Tom Burnett, who was one of the passengers on that flight and one of the four guys that decided in that split second to wrestle the terrorists in the plane and then landed in a field in Pennsylvania instead of in one of our buildings here, which could have killed thousands of people, and his parents actually are—Mr. Chairman, I am glad you held this hearing. They are very focused on this financing issue and trying to go after who financed this terrorism act and working on it. So I just want to thank you for your work on their behalf and everyone else in this country. Thank you very much.

Ms. MONACO. Thank you, Senator.

Chairman WHITEHOUSE. Thank you, Senator Klobuchar.

I have a statement from Chairman Leahy on this hearing. With unanimous consent, I will put the statement into the record, and it has two letters attached, which I will also put into the record.

[The prepared statement of Chairman Leahy appears as a submission for the record.]

[The letters appear as a submission for the record.]

Chairman WHITEHOUSE. Ms. Monaco, I will summarize its conclusion, which is that the Attorney General should issue prosecutorial guidelines that remove the uncertainty over the scope of the material support law. I will hope very much that the Department takes that advice to heart. We have just had a vote in the last markup where the Department was invited to issue prosecutorial guidelines and did not, and the result was that a measure passed through the Judiciary Committee that the Department disapproves of. When the Chairman of the Judiciary Committee invites the Attorney General to issue prosecutorial guidelines on a matter, I think that is something that the Attorney General should attend to with considerable dispatch and attention because it is a device that leaves the control over this in the hands of the Department as to how to design the very best response. If you fail at that, then you end up with us. So please take that as a very positive step, and I would urge the Attorney General to respond quickly and affirmatively to the Chairman's request.

Back to the hawalas for 1 second. It strikes me from the description of the areas in which we have had success that it has been in this country where the operation of the hawala violates in essence our banking laws—they are operating an unauthorized financial facility. Once you get outside of that geographic boundary and into the area, say, between Afghanistan and Saudi Arabia, where funds are floating back and forth, or other gulf states, have we had any success dealing with the hawala system?

Ms. MONACO. I think that some of our efforts have been in the intelligence-gathering vein and have allowed us some insight—and I think my colleagues may have more to offer on that—has allowed us some insight into those activities overseas, but I do think it

poses one of the challenges we face in terms of the transparency, or lack thereof, of the operation of formal and informal networks.

Chairman WHITEHOUSE. Mr. Glaser, would that be one of your pillars of financial and logistical support that remain standing?

Mr. GLASER. Well, sure. As you noted, the reason hawala and other forms of informal remittances and informal money services exist is because there are large communities throughout the world that do not have access to formal financial services or affordable financial services. So the long-term "solution" to hawala is a generational one, and it is about building an international financial system that everybody around the world has access to.

Now, since that is a long-term solution, we need shorter-term—we need to address the problem in a shorter-term way as well. As you point out, the first prong is having an appropriate regulatory regime. I do think we have an appropriate regulatory regime in the United States, and money service businesses—and hawala would be a money service business—are required to register; they are required to have an anti-money-laundering program, and they are required to report suspicious transactions.

There are international standards that I mentioned before through the Financial Action Task Force that apply to all countries to have similar sorts of systems, and we are working with other countries to ensure that those around the world.

The next prong would be enforcement, and I think that we have taken—you mentioned Afghanistan. We have tried to be very aggressive with respect to international hawaladars that we think are problematic. In February of this year, under the Kingpin Act, under our kingpin sanctions, we designated the New Ansari Network, which is a major hawala operation in Afghanistan, which is moving billions of dollars in narcotics proceeds into and out of Afghanistan. So there is a particular hawala network that we went after, and we continue to follow up on that.

You mentioned the ATFC, the Afghan Threat Finance Cell. They have worked directly with special units of the Afghan police to conduct raids on hawaladars within Afghanistan. So there is an important—in addition to the regulatory component, there is an important enforcement component.

The way we try to approach it beyond the sort of long-term effort to make financial services available to everybody, you know, is a regulatory prong, enforcement, international standards, and general economic development. So that is at least how we think about the issue, but I do not want to give the impression that we have the issue cracked. It is there. It is a tough issue, and it is a largely non-transparent system as it exists today, and that is something that we focus on very intently.

Chairman WHITEHOUSE. Thank you.

A final question probably to Ms. Monaco. I believe that one of the great attributes of American democracy in this wonderful balanced system that has been handed down to us from the Founding Fathers is the jury and the right that every American has, when harmed, to go before a jury of their peers and plead their case and stand equal before the law with whoever may have harmed them. Americans have clearly been harmed by terrorist organizations. They have been harmed in America by terrorist organizations. And

some have sought to vindicate their rights by bringing private actions to establish the scope of those terrorist organizations, to establish the scope of the networks that support them, financially and otherwise, and to seek the redress that is every American citizen's right.

Do you find that a helpful element of the various ways in which—it is a nongovernmental element to a significant degree, but is it a helpful element in trying to identify and bring to justice people who are financing terrorist activities that harm Americans here in our home country?

Ms. MONACO. If I understand the Chairman's question, the right of individuals or organizations to challenge their designation?

Chairman WHITEHOUSE. The right of victims of terror to go after those who finance the terrorist plotters who harmed them and seek to bring them to justice in our civil courts.

Ms. MONACO. Certainly, Senator, there are a number of those cases in which individuals have, as you say, sought redress in the courts. I certainly agree with you as a lawyer and as a former prosecutor about the jury system and its importance in our system. And I think the ability of individuals to seek redress in the courts is absolutely a founding element of our democracy.

Chairman WHITEHOUSE. And so the Department of Justice is perfectly comfortable with the notion that people can proceed in that way to vindicate their rights against those who have harmed them in the American civil court system?

Ms. MONACO. Well, I think equally so the Department plays a role in defending statutes, in defending—in acting in litigation. Great career members of our Civil Division, as you know as a former denizen of the Justice Department, tremendous lawyers there who seek to uphold statutes passed by this body and to vindicate the interests of the Government in the courts, and I think they equally play an important role.

Chairman WHITEHOUSE. Very good. I appreciate everybody's testimony. I know that you have important responsibilities, and for you to take the time to come up here and share with all of us the work that you are doing and the concerns and challenges that you face is very helpful to us as we try to provide you the necessary material support to do the jobs that you have to do to protect us. So let me close by thanking you for your diligent service on behalf of our Nation, recognizing what every member who has been here has noted, which is the vital importance of the task that you have made it your purpose and mission to accomplish and to wish you well as you go forward. Please feel free to come to us with any specific requests you have to strengthen the hand that you have against those who are providing this kind of material support to the terrorist networks that still are targeting our country and our people.

Thank you very much. The record of the hearing will remain open for an additional week in the event that anybody wishes to add anything, but subject to that, the hearing is now adjourned.

Ms. MONACO. Thank you, Senator.

[Whereupon, at 12:03 p.m., the Subcommittee was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

Questions for the Record for
Ralph Boelter
Acting Assistant Director
Counterterrorism Division
Federal Bureau of Investigation
U.S. Department of Justice

Committee on the Judiciary
United States Senate

"Countering Terrorist Financing: Progress and Priorities"
September 21, 2011

Questions Posed by Senator Grassley

Agents Cheating on the Domestic Investigations and Operations Guide (DIOG) Exam

In 2007, the FBI implemented the Attorney General's Consolidated Guidelines for FBI Domestic Operations, which addressed the requirements FBI agents must follow in criminal investigations, national security investigations, and foreign intelligence collection. These policies and procedures are contained in the Domestic Investigations and Operations Guide (DIOG), and all FBI employees were required to take an exam based on the DIOG. Subsequently, the Department of Justice, Office of Inspector General (DOJ OIG) performed a limited investigation regarding allegations of FBI agents, including supervisors, cheating on the exam. The OIG found a significant number of employees had engaged in some form of cheating or improper conduct on the DIOG exam. The OIG recommended that the FBI take action regarding those who cheated on the exam, consider other appropriate conduct, and also conduct a new exam on the revised DIOG. As of February 9, 2011, the OIG reported that the FBI was still considering steps it would take in response to the OIG recommendations.

1. How many special agents that work national security or intelligence collection cheated on the exam?

Response:

As of September 30, 2011, 18 Special Agents were found to have received or provided unauthorized assistance on the Domestic Investigations and Operations Guide (DIOG) exam: 11 Agents worked on national security/intelligence collection (9 of whom also conducted criminal investigations), 11 Agents conducted criminal investigations (9 of whom also worked on national security/intelligence collection), and 5 Agents worked on other matters. Of the 18 Agents, 11 were supervisors. Some of these cases have appeals pending; therefore, these decisions (and the numerical tallies) are not final.

The FBI is disappointed with the conduct in these cases. The FBI acknowledges some responsibility for these results. The FBI did not strictly limit how field offices administered the training and testing, and the Department of Justice (DOJ) Office of the Inspector General found that training was not uniformly delivered across the country and testing procedures varied.

2. How many special agents that conduct criminal investigations cheated on the exam?

Response:

Please see the response to Question 1, above.

3. How many supervisors were found to have cheated on the DIOG exam?

Response:

Please see the response to Question 1, above.

4. Pursuant to the requirements of Giglio v. United States, if the FBI finds an agent cheated, that information is legally required to be disclosed to a defendant by the prosecution.

a. Will the FBI allow agents to testify in open court without disclosing to the U.S. Attorneys the fact that they cheated on this exam?

b. Will the FBI instruct or require all agents who are found to have cheated on this exam, to disclose that information to their respective U.S. Attorney's Office prior to testifying before a grand jury or in court?

Response to subparts a and b:

Employees who are under FBI investigation regarding the DIOG exam or have been adjudicated as having engaged in misconduct related to the DIOG exam are required to disclose to Assistant United States Attorneys with whom they are working the existence of the investigation and the conduct at issue before providing sworn statements or testimony, whether in writing, in open court, or before a grand jury.

The Use of Suspicious Activity Reports (SARs) to Detect Terrorist Financiers

In the written testimony of FBI Acting Assistant Director Boelter, he states that "Suspicious Activity Reports have been important components in our efforts to identify Terrorist financing." He also states that Suspicious Activity Reports are "critical tripwires to detect possible terrorist financiers as well as identifying associates of known terrorists."

5. How does the FBI receive Suspicious Activity Reports?

Response:

The Suspicious Activity Report (SAR) program was implemented by the Treasury Department's Financial Crimes Enforcement Network (FinCEN) and the five banking regulatory agencies to serve as a single repository of banking institutions' reports of suspicious activity. The FBI has direct access to SARs through FinCEN's WebCBRS, which is FinCEN's database of information filed electronically by the banking institutions. SARs are also regularly downloaded from FinCEN directly into the FBI's Investigative Data Warehouse (IDW).

IDW is a one-stop shop that allows a search of multiple databases at one time using a search engine similar to Google and state-of-the-art analytical tools. The search capability is robust, allowing various types of searches ranging from searches for individual records to comparisons of large batches of data with other data sets or individual pieces of information. Through IDW, the FBI is able to query SARs in conjunction with other FBI database holdings to quickly identify all information related to the query.

6. Does the FBI have a database that collects Suspicious Activity Reports information?

Response:

As noted above, all SARs are regularly downloaded into IDW, which is used to query SAR information. The FBI also has direct access to SARs through FinCEN's WebCBRS.

7. How does the FBI generate new investigative leads from the vast volume of Suspicious Activity Reports?

Response:

Of the large volume of SARs, a small percentage is identified by the filing entity as potentially related to terrorist financing, or "T-coded." T-coded SARs are reviewed by the FBI's Terrorist Financing Operations Section (TFOS) and the relevant FBI field office for potential terrorist-related activity. In addition, TFOS has developed an automated process that independently reviews all SARs filed each month, identifies those that may relate to terrorism financing according to the programmed parameters, and provides a summary of related FBI information and associations to the relevant FBI field office.

Additional information responsive to this inquiry is classified and is, therefore, provided separately.

8. How does the FBI mine the Suspicious Activity Reports data so that it is useful?

Response:

Through searches developed using intelligence and keywords culled from existing investigations, select SARs are identified for further review. Each field office receives a monthly summary of each such SAR relevant to that area of responsibility. These summaries include FBI database content regarding the individual, any associated FBI investigations, and a link chart reflecting the associations. TFOS also reviews the reports of SARs impacting multiple field offices to identify any potential subjects not obvious to the receiving field offices and prepares targeting packages to provide this information when appropriate.

Additional information responsive to this inquiry is classified and is, therefore, provided separately.

9. Does the FBI participate on any task forces, committees, or working groups that use Suspicious Activity Reports to target terrorism or terrorism financing? If so, please describe those activities and relationships.

Response:

At the national level, the FBI participates on DOJ's National SAR Review Team, which includes federal law enforcement agencies. This team's review includes SARs with a potential terrorist financing nexus, including those with an international nexus. FBI field offices participate on similar local-level SAR review teams to identify SARs with a terrorism nexus that impact their areas of responsibility.

Questions Posed by Senator Kyl

10. There are several USG departments, agencies, and offices with equities in terrorist and proliferation financing. How do you balance the need to designate and sanction entities or pursue criminal investigations against the intelligence value of additional information that the USG could potentially gather by allowing an entity to continue operating?

Response:

The designation of an entity as a Foreign Terrorist Organization (FTO) is a powerful tool, making it unlawful to provide material support or resources to the organization and stigmatizing and isolating the organization internationally. Proposed designations are coordinated with relevant U.S. Government (USG) agencies to accumulate the evidence to support the designation and to determine the timing of the designation that will best avoid disrupting operational activities. The FBI is an active participant in this process.

The FBI does not see designations, sanctions, criminal investigations, and intelligence gathering as mutually exclusive objectives. The FBI has successfully obtained critical intelligence from suspects for many years, and the criminal justice system has proven to be one of the most effective weapons available to our government for both incapacitating terrorists and collecting intelligence from them.

As indicated in response to Question 11, below, if the objectives were to conflict in a given case, we would use the mechanism established for resolving such conflicts.

11. How do you handle a situation where Treasury believes an entity should be sanctioned for illicit activities, and the FBI believes those sanctions will impede a criminal investigation?

Response:

We are aware of no instance in which the Department of Treasury has believed an entity should be sanctioned but the FBI believed sanctions would impede a criminal investigation. In the event this should occur, though, and agencies cannot agree on a course of action at the working level, the issue can be raised for further discussion by senior agency officials.

12. What about the role of the State Department?

Response:

Statutorily, the Department of State (DoS) has a lead role in designating Foreign Terrorist Organizations (FTO) under the Immigration and Nationality Act in consultation with the Secretary of the Treasury and the Attorney General. The DoS also plays a lead role in designating entities and individuals under section 1(b) of E.O. 13224. When DoS is considering designating an entity or individual under E.O. 13224, or designating a group as an FTO, DoS seeks input from the FBI to determine both whether the FBI has any information relevant to the proposed designation and whether designation would adversely affect FBI equities.

The FBI participates with DoS on several initiatives designed to combat terrorist financing, including the following.

- The DoS chairs the Terrorist Financing Working Group (TFWG), coordinating the provision of capacity-building assistance to key foreign partners and providing foreign policy guidance and funding. The FBI serves on the TFWG and, along with other federal departments and agencies, assists by providing training and technical assistance.

- The FBI and DoS participate, along with DOJ, the Treasury Department, and others, as part of the USG delegation to the Financial Action Task Force (FATF), which is an inter-governmental body whose purpose is the development and promotion of national and international policies to combat money laundering and terrorist financing.

13. Do you face a situation where the State Department argues the imposition of sanctions or the initiation of a criminal investigation will undermine diplomacy?

Response:

While the FBI is not aware that such a situation has occurred, we defer to DoS on the impact the initiation of an FBI investigation might have on diplomatic efforts.

14. What mechanism is in place to adjudicate any disputes that arise?

Response:

The FBI engages with DoS on many levels, both formally and informally. On a formal level, the FBI belongs to several interagency groups in which DoS also participates, including the USG delegation to the FATF, the Counterterrorism Security Group (CSG) (to which the sub-CSG reports), and the TFWG. These groups provide formal avenues through which the participants can coordinate ongoing efforts and discuss any disputes that may arise. Informally, FBI employees work closely with their counterparts in DoS and the other agencies that address terrorism financing, and these employees have developed working relationships that enable them to discuss and mitigate disagreements before they need to be resolved at a more formal level. Ultimately, though, as noted in response to Question 11, above, if a disagreement cannot be resolved through any of these avenues, the conflict would be resolved by the NSC. To date, we are aware of no instance in which conflict resolution at this level has been necessary.

15. Would any of you care to comment on the material support statutes, and what role they have played in denying funds and resources to international terrorist organizations?

Response:

The material support statutes (18 U.S.C. §§ 2339A and 2339B) are effective tools in the toolbox used by the USG to deny funds and other resources to terrorist organizations. The successes in using these statutes include the following.

- On October 20, 2011, two Rochester, Minnesota, women were convicted by federal juries of providing material support to al-Shabaab, a designated FTO. The defendants, Amina Farah Ali and Hawo Mohamed Hassan, both of whom are naturalized United States citizens from Somalia, were each convicted of one count of conspiracy to provide material support to a terrorist organization.

Ali was additionally convicted of twelve counts of providing material support to al-Shabaab.

- In May 2010, Khalid Ouazzani pled guilty in the Western District of Missouri to conspiracy to provide material support to a terrorist organization. Ouazzani, who is a U.S. Person (USPER), admitted that beginning in August 2007 he participated in a conspiracy to provide material support and resources to al-Qa'ida and that he personally provided approximately $23,000 to al-Qa'ida. In late April 2010, Ouazzani's co-conspirators, USPERs Sabirhan Hasanoff and Wesam El-Hanafi, were indicted and subsequently arrested in the Southern District of New York for conspiring to provide material support to al-Qa'ida. These subjects are currently awaiting trial.

16. Do you agree that it is important to deny all funds to a terrorist organization, regardless of whether a donation purports to be only for the organization's "charitable activities"?

Response:

We agree that it is important to deny all funds to a terrorist organization regardless of whether a donation purports to be only for the organization's "charitable activities." First, even if donated funds purport to be for, or are intended by the donor to be used for, charitable purposes, this does not necessarily mean this is the purpose to which the funds will actually be put. In addition, if the donated funds are used for charitable purposes, this might enable the recipient organization to free up other resources for use in terrorist activities.

September 2011

Countering Terrorist Financing: Progress and Priorities

Questions for the Record

From Senator Charles Grassley

To Assistant Secretary Daniel L. Glaser, United States Department of Treasury:

(1) Prepaid Access Card Regulations

Prepaid access cards have proliferated since the 1990's and can often attract people such as college teens and individuals who prefer to avoid the banking system. These cards can be accessed without the traditional need of a bank account and can be used at point of sale terminals to purchase goods and services. Additionally, many prepaid access cards, specifically cards that are "open-loop" which means money is stored in a pooled account and not directly on the card, are used by criminals to commit money laundering. Criminals can use prepaid access cards to easily integrate illegal proceeds into the financial system so that they eventually appear legitimate. The Financial Crimes Enforcement Network recently established prepaid access card rules that were mandated by the Credit Card Accountability Responsibility and Disclosure Act of 2009. The new rules are tentatively effective on September 27, 2011.

1. The new regulations for prepaid access cards require providers to register as a Money Service Business. Why did the Financial Crimes Enforcement Network (FinCEN) exclude sellers of prepaid access cards from registering as a Money Service Business (MSB)?

   In the Prepaid Access Rule, FinCEN distinguishes between the prepaid access program provider and the seller of prepaid access in the same way other money services business (MSB) regulations distinguish between principals and agents, whereby the principal is the entity with the registration requirement. With respect to prepaid access, the program provider is analogous to the principal and the seller to the agent. As with other MSB principals, providers of prepaid access will be required to maintain lists of agents, and provide that information upon request to FinCEN, its delegate or an appropriate law enforcement agency.

2. The modified definition of prepaid access cards essentially designates the cards as a "device or vehicle to access prepaid funds". Does that now make them subject to the regulations governing financial instruments and thus subject to International Transportation of Currency and Monetary Instrument Reports (CMIR)?

For clarity FinCEN chose first to introduce the new terminology and regulatory obligations associated with prepaid access program providers and sellers of prepaid access, and will separately propose amending the definition of "monetary instrument" for purposes of the international transport of currency and monetary instrument reporting ("CMIR") requirement at 31 CFR 1010.340 to include tangible prepaid access devices. That Notice of Proposed Rulemaking was issued on October 12, 2011 and is open for a 60 day comment period.

3. Criminals frequently purchase "closed loop" prepaid access cards with stolen credit cards, and then use them to purchase items for sale, which integrates unlawfully obtained proceeds into legitimate businesses. Do you agree that "closed loop" prepaid access cards are a risk for money laundering schemes, thereby evading financial transparency?

   Many of the comments received to the Notice of Proposed Rulemaking indicated closed loop prepaid access offers very limited criminal or money laundering opportunities. Commenters noted that closed loop prepaid access typically involved relatively low dollar amounts, most commonly issued in denominations of $500 or less. Such low dollar limits and the inability except under de minimis situations required by state laws to convert closed loop prepaid access to cash make it an inefficient, cumbersome tool for use by money launderers. However, FinCEN understands that, so long as closed-loop prepaid access can be issued in denominations large enough to be of concern for schemes such as those outlined in this question, the entire category cannot be excluded from regulation. Accordingly, FinCEN has chosen to set a dollar threshold of $2,000, so that closed loop prepaid access that is issued in amounts of $2,000 or less will be excluded from the definition of prepaid program, while larger denomination programs are covered. This helps address the concerns of both retailers and law enforcement. In addition, the sale of closed loop and open loop products both figure into a separate $10,000 threshold per person per day that can trigger regulatory requirements for sellers.

(2) The Use of Suspicious Activity Reports (SARs) to Detect Terrorist Financiers

In the written testimony of FBI Acting Assistant Director Boelter, he states that "Suspicious Activity Reports have been important components in our efforts to identify terrorist financing." He also states that Suspicious Activity Reports are "critical tripwires to detect possible terrorist financiers as well as identifying associates of known terrorists."

1. Do you agree with Agent Boelter's statement about the value of Suspicious Activity Reports to assist in identifying terrorist financiers and associates?

Yes. Suspicious activity reports, as well as other reporting required under the Bank Secrecy Act, are consistently cited by law enforcement as integral to their efforts in investigating financial crime including the financing of terrorism.

2. Does the Department of Treasury use Suspicious Activity Reports for this purpose?

With the exception of the Criminal Investigative Division of the Internal Revenue Service (IRS-CI), the Department's Office of the Inspector General (OIG), the Treasury Inspector General for Tax Administration (TIGTA), and the Special Inspector General for the Troubled Assets Relief Program (SIG-TARP), the Department of the Treasury does not have law enforcement personnel who conduct criminal investigations. IRS-CI makes extensive use of suspicious activity reports and other BSA data in its criminal investigations. Additionally, several components of the Office of Terrorism and Financial Intelligence (TFI) utilize suspicious activity reports and other BSA data in furtherance of their missions: the Office of Intelligence and Analysis (OIA) makes use of the data in its analytical efforts relating to terrorism and organized crime; the Office of Foreign Assets Control (OFAC) uses the data in support of its efforts to enforce economic and trade sanctions based on US foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States; and the Financial Crimes Enforcement Network (FinCEN), conducts its own analysis and also provides analytical support to law enforcement.

3. Does the Treasury have a database that collects Suspicious Activity Reports information?

The BSA, enacted in 1970, authorizes the Secretary of the Treasury to require certain records or reports, including SARs, where they have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism. FinCEN maintains the database that houses those reports and administers access to that data.

4. How does the Treasury generate new investigative leads from the vast volume of Suspicious Activity Reports?

As noted above, with the exception of IRS-CI, OIG, TIGTA and SIG-TARP, the Department of the Treasury does not have law enforcement personnel who conduct

criminal investigations. Federal law enforcement agencies generally have direct access to SARs and other BSA data maintained by FinCEN. Law enforcement agencies inspect SARs and other BSA data for investigative leads either individually or together in SAR review teams – and many of the latter have significant IRS-CI participation. FinCEN proactively queries BSA data and provides analytical support to law enforcement investigations.

5. How does the Treasury mine the Suspicious Activity Reports data so that it is useful?

As noted above, FinCEN has analysts who both proactively query SAR and other BSA data, as well as provide direct analytical support to federal, state, and local law enforcement investigations. Other offices within TFI (OIA, OFAC, and TFFC) also utilize SAR and other BSA data in support of their respective missions.

6. Does the Treasury participate on any task forces, committees, or working groups that use Suspicious Activity Reports to target terrorism or terrorism financing? If so, please describe those activities and relationships.

Treasury participates in a number of law enforcement task forces that could be relevant to counter-terrorism investigations. These include the Criminal Investigations Division of the Internal Revenue Service (IRS-CI), which is involved with:

(i) ***<u>Joint Terrorism Task Forces (JTTFs)</u>, which are FBI-led cells of locally based investigators and support personnel from dozens of U.S. law enforcement and intelligence agencies. IRS-CI has 18 liaisons and 44 full-time or part-time agents assigned to the JTTFs The IRS-CI Lead Development Center in Garden City, NJ supports the IRS-CI JTTF liaisons with financial research and analysis drawing heavily on SARs and other BSA data, as well as tax information.***

(ii) ***<u>Organized Crime Drug Enforcement Task Forces (OCDETF)</u>, which target high priority money laundering or narcotics trafficking organizations. The OCDETF Fusion Center gathers, stores, and analyzes all-source financial investigative information and intelligence, including SARs and other BSA data to support coordinated, multi-jurisdictional investigations.***

(iii) ***<u>The Special Operations Division (SOD)</u>, a Drug Enforcement Administration-led coordination center that manages and develops programs directed against***

major national or international drug trafficking organizations. SOD uses SARs and other BSA data to support financial investigations.

FinCEN also has six analysts assigned to designated High Intensity Financial Crimes Areas (HIFCAs) in New York, Chicago, Puerto Rico, San Francisco, Los Angeles, and the Southwest Border. These analysts participate in SAR Activity Review Teams, which review new SAR filings for their respective geographical area. FinCEN personnel also participate in the Northern VA SAR Review Team, the Northern District of West Virginia SAR Review Team, and Northern District of West Virginia Working Group. All of these entities review SARs to identify potential criminal activity and while they are not solely focused on terrorism or terrorism financing, they would investigate or refer those matters, if identified.

SENATOR JON KYL

Questions for Treasury

1. The Treasury Department has repeatedly highlighted the role of the Central Bank of Iran, or Bank Markazi in facilitating Iran's illicit activities, including warning international banks to exercise extreme caution in dealing with it. Last month I joined a letter with nearly all of my Senate colleagues urging President Obama to increase economic pressure on Iran and impose sanctions on the CBI. There is overwhelming bipartisan support in Congress for the imposition of sanctions on the CBI. Is the administration moving closer to imposing sanction on the CBI?

   U.S. financial institutions are already generally prohibited from doing business with any bank in Iran – including the CBI – under existing sanctions programs. That said, further U.S. action against the CBI, if it attained multilateral support, could further isolate the CBI, with a potentially powerful impact on Iran. As Secretary Geithner said in his August 29th response to the letter referenced above, "all options to increase the financial pressure on Iran are on the table, including the possibility of imposing additional sanctions against the CBI."

2. Is the Treasury Department working with our allies to ensure that any action by the administration is undertaken jointly to increase the effectiveness of such measures?

   Yes. Any action against Iran would be more effective if undertaken jointly. As such, we have engaged with our closest allies on this matter and will continue to do so.

3. Please provide an update on the status of the final rule to implement Section 104(e) of the Comprehensive Iran Sanctions and Divestment Act (CISADA).

   On October 11, 2011, the final rule implementing section 104(e) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA) and complementing Treasury's ongoing efforts to protect the international financial system from abuse by Iran, was published in the Federal Register. The U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) will be issuing a number of information requests to U.S. banks regarding several foreign banks that Treasury has

reason to believe may be engaged in activity that is sanctionable under CISADA.

4. You mentioned in your written testimonies that some foreign countries have failed to implement UNSCR 1373, which requires UN member states to implement sanctions against groups and individuals involved in terrorist activity, regardless of whether such groups or individuals are designated by the UN. Can you elaborate on your comments?

UNSCR 1373 was the global response to the 9/11 terrorist attacks, requiring each member state to adopt and implement laws to identify, designate and economically sanction all terrorist organizations and their support networks, not just those affiliated with al Qaeda and the Taliban. This resolution is one of the most important international coordination mechanisms we have in countering terrorist financing and has the potential for even greater effectiveness in combating terrorist financing if it is better implemented by member states. As noted in the UN's Global Implementation Survey, the vast majority of States have yet to implement an effective procedure for the freezing of terrorist assets without delay, relying for the most part on criminal procedure codes, which take longer to freeze assets since they are tied to a criminal investigation. This is particularly the case with respect to non-al Qaeda related individuals and groups. The UN results are in line with the findings of the Financial Action Task Force (FATF), which sets the international standards for combating money laundering and terrorist financing. FATF has assessed over 39 global financial centers and only nine were determined to have largely met their targeted financial sanctions obligations under UNSCRs 1267 and 1373, and even among the countries that have received positive ratings, questions of effectiveness remain in many instances. We continue to work bilaterally and through various fora, including the UN and the FATF, to help promote greater national implementation and more effective use of the obligations in UNSCR 1373.

5. Are there any particular countries where it would be particular important to see this Security Council Resolution complied with, and which have failed to comply?

Terrorism is a global threat that requires all countries to implement the requirements of UNSCR 1373. It is important for the EU as a whole to improve its implementation of UNSCR 1373 with respect to Hamas. It is also important to see improved implementation in regions where terrorist organizations have cultivated donor support, such as in the Gulf, as well as those in which terrorist organizations are consistently active, such as Pakistan.

6. You mentioned in your written testimony that some European governments have failed to take adequate steps to remove various supposedly charitable fundraising organizations from Hamas's international network — and, as a result, have failed to "dry up" Europe-based financial support for Hamas. Can you elaborate on this statement?

While still significant, the importance of charitable support to Hamas has diminished in recent years relative to Iranian sponsorship, which now constitutes the majority of support. That said, we have been engaged with European partners for a number of years on cutting off financial flows to Hamas. While the European Union has designated Hamas under European Community Regulation 2580/2001, we remain concerned that certain Hamas-affiliated and U.S. designated charities continue to operate, including International Palestine Relief and Development Fund (Interpal) in UK, Al-Aqsa Foundation in Belgium, Comite de Bienfaisance et de Secours aux Palestiniens (CBSP) in France, the Association de Secours Palestiniens (ASP) of Switzerland, and the Palestinian Association in Austria (PVOE). All of these non-governmental organizations are affiliates of the Union of Good. Founded by Hamas in late-2000, the Union of Good acts as a broker for Hamas by facilitating financial transfers between a web of charitable organizations. The U.S. Treasury Department designated Union of Good in 2008.

7. What particular activities are European governments allowing to occur that are problematic?

As stated above, certain Hamas-affiliated charities continue to operate, including International Palestine Relief and Development Fund (Interpal) in UK, Al- Aqsa Foundation in Belgium, Comite de Bienfaisance et de Secours aux Palestiniens (CBSP) in France, the Association de Secours Palestiniens (ASP) of Switzerland, and the Palestinian Association in Austria (PVOE).

8. And which governments in particular have failed to take steps to cut off the flow of money to Hamas?

As stated above, certain Hamas-affiliated charities continue to operate, including International Palestine Relief and Development Fund (Interpal) in UK, Al- Aqsa Foundation in Belgium, Comite de Bienfaisance et de Secours aux Palestiniens (CBSP) in France, the Association de Secours Palestiniens (ASP) of Switzerland, and the Palestinian Association in Austria (PVOE).

9. The Republic of Argentina has received sub-par evaluations on its anti-money laundering and terrorism financing controls by the Financial Action Task Force. Based on Argentina's failure to comply fully with the Task Force's security criteria, Task Force member governments have argued that Argentina should be placed on the Task Force's "black list," along with Iran and North Korea. In light of these circumstances, what is the United States doing either to press Argentina to resolve such problems or to take action if those issues remain unresolved?

The United States is committed to working closely with Argentina to rectify its anti-money laundering and counter-terrorist financing (AML/CFT) deficiencies. In October 2010, the Financial Action Task Force (FATF), of which the United States is a member, expressed disappointment and serious concern regarding Argentina's failure to implement an adequate and effective AML/CFT system. In June 2011, Argentina made a high-level political commitment to work with the FATF to address these strategic deficiencies, which include shortcomings in Argentina's criminalization of both money laundering and terrorist financing. As part of this commitment, Argentina enacted significant amendments to its money laundering law and issued a number of corresponding financial regulations. However, the FATF expects additional progress by the upcoming FATF plenary meeting in late October 2011. In particular, Argentina is expected to present a draft law criminalizing terrorist financing in accordance with international standards and address remaining deficiencies in its money laundering law. If Argentina fails to demonstrate adequate progress, the FATF may escalate pressure on Argentina. The United States has been actively involved in multiple FATF meetings with Argentina in the past several months, and will continue to work with Argentina to improve its AML/CFT regime.

Questions for all witnesses

10. There are several USG departments, agencies, and offices with equities in terrorist and proliferation financing. How do you balance the need to designate and sanction entities or pursue criminal investigations against the intelligence value of additional information that the USG could potentially gather by allowing an entity to continue operating?

One of the central challenges of national security decision-making is to decide on the appropriate response in a given situation. When faced with an illicit financial network, sometimes immediate criminal enforcement action or sanctions is the right course of action. In others diplomatic engagement is preferable, and in still others allowing the network to continue operations as a

means of gathering data on the broader network may be the chosen tactic. A robust interagency process is in place to weigh each stakeholder's equities and determine an interagency consensus as a basis for coordinated USG action. For example, the Counterterrorism Security Group (CSG), chaired by the National Security Staff (NSS) and attended by all interagency stakeholders, coordinates the USG's actions on counterterrorism issues. In the context of Iran, an Interagency Policy Committee process guides the deliberative USG policy. There are numerous sub-CSG and sub-IPC expert-level groups to resolve lower-order questions, as well as the Deputies Committee and Principals Committee process for more significant or unresolved decision points.

11. How do you handle a situation where Treasury believes an entity should be sanctioned for illicit activities, and the FBI believes those sanctions will impede a criminal investigation?

As previously explained, the U.S. Government has an interagency coordination process chaired by the NSS. Treasury works closely with other stakeholders in this process to determine the best means to address the illicit threat, recognizing that sanctions are not always the best solution.

12. What about the role of the State Department?

The State Department participates as an important stakeholder in the interagency process that reviews illicit financial threats and determines the appropriate course of action for a particular threat.

13. Do you face a situation where the State Department argues the imposition of sanctions or the initiation of a criminal investigation will undermine diplomacy?

As stated previously, balancing various equities is a key part of determining the appropriate tool to address illicit finance threats. Disagreements are resolved through an NSC-led interagency consultative process.

14. What mechanism is in place to adjudicate any disputes that arise?

As with any interagency process, there are occasions where the various interagency partners have differing views on the appropriate USG action on a particular issue. A robust interagency process is in place to weigh each stakeholder's equities and determine an interagency consensus as a basis for coordinated USG action. For example, the Counterterrorism Security Group (CSG), chaired by the National Security Staff (NSS) and attended by all

interagency stakeholders, coordinates the USG's actions on counterterrorism issues.

15. Would any of you care to comment on the material support statutes, and what role they have played in denying funds and resources to international terrorist organizations?

    I defer to the Federal Bureau of Investigation and the Department of Justice, the agencies primarily responsible for investigations and prosecutions under the material support statutes.

16. Do you agree that it is important to deny all funds to a terrorist organization, regardless of whether a donation purports to be only for the organization's "charitable activities"?

    Yes. The provision of charitable services does not excuse a charity's support for a terrorist group. In fact, such charitable services are often used to advance the goals of the terrorist organization.

Questions for the Record for
Lisa Monaco
Assistant Attorney General
National Security Division
U.S. Department of Justice

Subcommittee on Crime and Terrorism
Committee on the Judiciary

"Countering Terrorist Financing: Progress and Priorities"
September 21, 2011

SENATOR JON KYL

Questions for all witnesses

1. **There are several USG departments, agencies, and offices with equities in terrorist and proliferation financing. How do you balance the need to designate and sanction entities or pursue criminal investigations against the intelligence value of additional information that the USG could potentially gather by allowing an entity to continue operating?**

   Response:

   The decision whether to pursue designation, administrative sanctions and/or criminal prosecution, or alternatively to continue intelligence collection, is made on a case-by-case basis. We consider a variety of factors, such as the relative value of the intelligence to be gained, the relative strength of the criminal case, the threat to individuals and national security from acting or not acting against a particular target, and more. Further, investigations do not always require pursuing just one avenue; some investigations may be intended initially to gather intelligence and eventually evolve into a criminal prosecution or have criminal cases spun-off. The U.S. Government has a robust interagency process for ensuring that each agency's equities are addressed and that designation and sanction efforts do not impinge upon operational equities. Disputes of this nature between agencies are extremely infrequent given the multiple opportunities for any such potential problem to be thoroughly discussed before any action is taken.

2. **How do you handle a situation where Treasury believes an entity should be sanctioned for illicit activities, and the FBI believes those sanctions will impede a criminal investigation?**

Response:

The situation described in this question is quite rare. In the event that agencies cannot agree at the working level on a course of action, the issue may be raised for further discussion by senior agency officials. The National Security Council (NSC) process is also available to assist in resolving any interagency disputes.

3. What about the role of the State Department?

Response:

The State Department is an important stakeholder in the interagency process. For example, the Antiterrorism and Effective Death Penalty Act of 1996 and Executive Orders 12947 and 13224 each prescribe procedures whereby the Secretary of State may make terrorism-related designations, whether of foreign terrorist organizations, specially designated terrorists, or specially designated global terrorists.

For those designations on which the Department of State is the lead agency, the Department of State is required to consult with the Department of Justice and with the Department of the Treasury on the record in making a designation. Attorneys from the Departments of Justice and Treasury closely review the records compiled by the Department of State for purposes of such designations to ensure that they adequately support the factual findings required by the applicable authority. The process includes an opportunity for the Department of Justice to raise any operational concerns and to ensure that the designation would not impede or interfere with an ongoing or planned investigation.

4. Do you face a situation where the State Department argues the imposition of sanctions or the initiation of a criminal investigation will undermine diplomacy?

Response:

As noted in our response to question one, the decision as to what approach to take in dealing with a particular terrorist financing target or concern is made on a case-by-case basis, taking into account all relevant factors. The issue of whether diplomatic methods may be the best way to advance our national security interests is among the factors that are considered. The interagency works hard to determine the best means to address terrorist financing threats while balancing multiple equities.

5. What mechanism is in place to adjudicate any disputes that arise?

Response:

As previously stated, a robust interagency process exists to balance equities and to develop consensus as to the most appropriate U.S. Government approach. As part of this process, U.S. Government agencies and departments engaged in countering terrorist financing coordinate and de-conflict their activities to ensure that in addressing each case, the U.S. Government uses the tool, or combination of tools, that will best protect national security.

The NSC and the National Security Staff are responsible for facilitating interagency coordination and resolution of any interagency disputes on all national security matters, including our efforts to counter terrorist financing. Within the NSC structure are specific working groups which develop policy, share information and coordinate responses to terrorist and other threats against U.S. interests. Should a dispute arise that cannot be resolved at that level, it would be elevated to more senior NSC groups, up to and including the Deputies and Principals Committees.

6. Would any of you care to comment on the material support statutes, and what role they have played in denying funds and resources to international terrorist organizations?

Response:

18 U.S.C. §§ 2339A and 2339B, which criminalize providing material support or resources to terrorists and designated Foreign Terrorist Organizations (FTOs), are among the most important tools in the U.S. Government's toolbox in the fight against terrorism. Time and again, prosecutors have used these statutes to disrupt efforts to funnel money and other support to terrorist organizations or activities. In the last decade, the Department of Justice has prosecuted individuals on material support charges in more than 100 cases.

7. Do you agree that it is important to deny all funds to a terrorist organization, regardless of whether a donation purports to be only for the organization's "charitable activities"?

Response:

Yes. Terrorist financing frequently involves funds that, prior to being remitted, are unconnected to any illegal activity. We recognize that terrorist organizations and individual terrorists exploit the charitable efforts of others to divert to terrorist purposes funds meant for the poor, needy and disenfranchised. Accordingly, we have increased our efforts to identify and eliminate terrorist financing disguised as charitable giving.

Our current laws and policies recognize that money is fungible, and that the provision of funds to a terrorist organization, regardless of the donor's intention as to how such funds are to be used, frees up other resources at the disposal of such organizations and further enables their terrorist activities. See *Holder v. Humanitarian Law Project*, 130 S. Ct. 2705, 2725 (2010). Therefore such "charitable donations" are, and should continue to be, prohibited.

SUBMISSIONS FOR THE RECORD

Department of Justice

STATEMENT

OF

RALPH S. BOELTER
ACTING ASSISTANT DIRECTOR
COUNTERTERRORISM DIVISION
FEDERAL BUREAU OF INVESTIGATION

BEFORE THE

SUBCOMMITTEE ON CRIME AND TERRORISM
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

AT A HEARING ENTITLED

"COUNTERING TERRORIST FINANCING: PROGRESS AND PRIORITIES"

PRESENTED

SEPTEMBER 21, 2011

Statement of Ralph S. Boelter
Acting Assistant Director
Counterterrorism Division
Federal Bureau of Investigation

Subcommittee on Crime and Terrorism
Committee on the Judiciary
United States Senate

"Countering Terrorist Financing: Progress and Priorities"
September 21, 2011

Good morning Chairman Whitehouse, Ranking Member Kyl and Members of the Subcommittee. I appreciate the opportunity to testify before you today regarding the efforts of the Federal Bureau of Investigation (FBI) to combat terrorist financing.

Introduction

As we commemorate the tenth anniversary of the tragic events of September 11, 2001, we are reminded that the FBI's number one priority in its mission to protect and defend the United States continues to be the prevention of terrorist attacks against the United States. The mission of the Terrorism Financing Operations Section (TFOS) is twofold. First, to manage the FBI's investigative efforts in relation to individuals who provide funding to terrorists; and second, to ensure financial investigative techniques are used, where appropriate, in all counterterrorism investigations to enhance the investigations.

In coordination with our law enforcement and intelligence community partners, TFOS carries out this mission through the application of financial investigative techniques and the exploitation of financial intelligence. To improve its ability to detect and disrupt those with the intent and capability to conduct attacks against the United States, TFOS has undergone a significant shift in the way we address the threat of terrorism financing.

Inception of TFOS

Immediately after the terrorist attacks on September 11th, the FBI established the Terrorism Financing Operations Section (TFOS) within the Counterterrorism Division. In recognition of the importance of tracking the financial underpinnings of terrorist activity, TFOS was established to serve as a comprehensive, centralized unit to provide broad support for counterterrorism investigations by analyzing and exploiting all available financial intelligence (FININT).

TFOS Organization

Consistent with the FBI's continuing transformation into an intelligence-led national security organization, in early 2011, the Counterterrorism Division implemented changes to

TFOS. These changes enhance TFOS' ability to carry out its mission through a threat-based, intelligence-led approach. Rather than collecting information to solve a particular case, this new approach prioritizes the collection and utilization of intelligence to develop a comprehensive threat picture, enabling strategic disruptions of terrorist financing operations.

Targeting Unit

The TFOS Targeting Unit utilizes all source intelligence from the US intelligence and law enforcement communities to identify currently unknown fundraisers and their associates. This unit focuses on identifying unknown or previously unidentified financiers within terrorist networks. As our targeting efforts identify these individuals, TFOS works directly with each of the FBI's 56 field offices to open assessments or investigations and lead those investigations through TFOS's two operational units.

Strategic Intelligence Units

The TFOS Strategic Intelligence Unit monitors threats and financial trends to identify trends and methodologies which are key to identifying possible terrorist financing transactions at their earliest point. This intelligence is disseminated to the US Intelligence Community, as well as Federal, State, local, tribal, and foreign law enforcement partners, as appropriate. In addition, TFOS has been successful in augmenting relationships and establishing channels for sharing information with elements of the financial industry which routinely report on suspicious financial activity occurring in the private sector.

In addition to carrying out targeting and strategic intelligence functions TFOS personnel are embedded within the Counterterrorism Division's International Terrorism Operations Section (ITOS) and threat cells, which manage the priority threats and investigations. This cadre of Special Agents, Intelligence Analysts and Forensic Accountants ensure the FININT in priority threat investigations is fully exploited to support those investigations. FININT is critical in these investigations as the FBI does not just focus on the total dollar amount of a financial transaction, but also gleans valuable intelligence from the financial activity. Further, TFOS conducts analysis of other critical intelligence collected during transactions. Thus, the TFOS exploitation of FININT not only seeks to identify the scope and breadth of terrorist financing, but also the members of the terrorist network to enhance indicators and tripwires and create actionable intelligence to identify and prevent terrorist attacks.

Outreach, Training and Education

In partnership with the Treasury Department's Financial Crimes Enforcement Network (FINCEN) the FBI conducts ongoing outreach and education with our financial industry counterparts. The financial industry's efforts and resources dedicated to detecting and reporting suspicious financial activities, through Suspicious Activity Reports (SARs), have been important components in our efforts to identify terrorist financing. SAR reporting is a critical tripwire to detect possible terrorist financiers as well as identifying associates of known terrorists. The analysis of SAR information aids in the development of an overall terrorist financing threat

picture and can assist TFOS in identifying trends or patterns of suspicious activity around the country. This information can also identify previously unknown associates of terrorism subjects.

In conjunction with the Treasury Department, TFOS conducts an annual training session with the New York Federal Reserve to provide the financial industry with updated trend information regarding terrorist financing. This year's conference included over 300 attendees from the financial sector interested in learning how to maximize their resources to more effectively identify and report suspicious financial activity. These outreach efforts provide an opportunity for the financial sector to receive the latest terrorist financing threat and trend information, as well as share in best practices for the rapid identification and reporting of suspicious financial activity.

International Efforts

Coordinated efforts with our foreign intelligence and law enforcement partners are key elements to the FBI's success in counterterrorism investigations. Through the FBI's 62 Legal Attache offices TFOS jointly investigates terrorist financing matters with our foreign counterparts. In addition, TFOS personnel are embedded within key Legal Attache offices to provide expertise and resources dedicated to terrorist financing. These relationships and global efforts in the sharing of intelligence are key to the FBI's efforts to stem the flow of financial support to terrorists and protect the United States from terrorist attacks. TFOS also participates, jointly with the Treasury Department and other United States Government agencies, in international forums to support international efforts in relation to terrorist financing.

TFOS conducts international training to convey the latest financial exploitation techniques and share best practices and investigative strategies to support the joint investigation of terrorist financing matters. In coordination with the Department of State, over the past two years, TFOS has conducted over 20 international training courses in 17 different countries. This training enhances our foreign counterparts' awareness and capabilities and promotes financial exploitation in all counterterrorism investigations.

Recent Successes

The FBI's terrorist financing efforts have resulted in numerous successes which have resulted in the disruption and arrest of terrorist financiers.

In September 2010, Mohammad Younis pled guilty to operating an unlicensed money transmitting business in New York. Faisal Shahzad, who attempted to detonate a car bomb in Times Square, received money from Younis, which he used to fund his preparations for the attempted bombing. Younis received the money through his unlicensed money transmitting business from a co-conspirator in Pakistan. Shahzad advised that the funding was arranged in Pakistan by associates of the Tehrik-e-Taliban (TTP).

In May, 2011, Hor and Amera Akl pled guilty to conspiracy to provide material support to Hizballah in Ohio. Hor and Amera Akl told an FBI informant they would be willing to send money to Hizballah for him. The informant gave them $200,000 to send to Hizballah and they

were arrested as they attempted to conceal the money in a vehicle that would be shipped overseas.

In September, 2009, Abdul Tawala Ibn Ali Alishtari pled guilty to charges of terrorism financing in New York. Alishtari facilitated the transfer of $152,000, with the understanding that the money would be used to fund training for terrorists.

In the last year, the FBI has conducted terrorist financing investigations which led to the indictment of individuals for providing funding to the Pakistani Taliban, Al Qaeda in the Arabian Peninsula (AQAP), and Al-Shabaab. The Al-Shabaab indictments involved a network which used teleconferences to raise funds and then remitted the money to Al-Shabaab terrorists in Somalia.

Conclusion

The efforts of TFOS, in close coordination with our federal, state and local partners, the financial industry, and our international partners have established an increasingly difficult environment within which terrorist financiers can operate undetected. We believe that these efforts have reduced the funding available for terrorist operations, and have made the concealment and transfer of terrorism related funds more difficult.

As the terrorists adapt their methods to raise and transfer funds, the FBI has also adapted its efforts to detect and disrupt these financial networks. The FBI TFOS is better able to systematically track intelligence, identify networks and currently unknown subjects, and oversee the FBI's terrorist financing investigations related to those networks. TFOS's cooperative efforts with our government and private sector partners ensures an ongoing and coordinated approach to terrorist financing to prevent future terrorist attacks against the United States.

Chairman Whitehouse, Ranking Member Kyl and Members of the Subcommittee, I appreciate the opportunity to come before you today and share the work that the FBI is doing to address terrorist financing and counterterrorism in this country and around the globe. I am happy to answer any questions.

Testimony of Daniel L. Glaser, Assistant Secretary for Terrorist Financing,
U.S. Department of the Treasury, before the
Senate Judiciary Subcommittee on Crime and Terrorism
"Countering Terrorist Financing: Progress and Priorities"
September 21, 2011

INTRODUCTION

Chairman Whitehouse, Ranking Member Kyl, thank you for inviting me today to testify on our efforts to combat terrorist financing. In the ten years since the tragic attacks of September 11th, 2001, the U.S. Government has made great strides in developing a comprehensive, whole-of-government approach to combating terrorist financing drawing on all tools of national power. Critical to this evolution has been a recognition that the Treasury Department—and the financial tools it wields—is central to our counter-terrorism efforts and, indeed, our national security as a whole.

Like other threats to U.S. and international security, terrorist groups need money to survive. While the cost of an individual terrorist attack is frequently quite low (the terrorist group al-Qa'ida in the Arabian Peninsula recently boasted in its official magazine *Inspire* that its "cargo plot" cost only $4,200), recruiting, training and sustaining operatives, procuring weapons, compensating the families of so-called "martyrs" and garnering support from local populations requires substantial sums. As former, and now deceased, al-Qa'ida-Financial Chief Sa'id Al-Masri aptly put it, "without money, jihad stops." And because money raised by terrorist groups from deep-pocket donors, state sponsors and, increasingly, criminal activity often flows through the international financial system, these financial networks are vulnerable to identification and disruption.

I'd like to talk to you today about the U.S. and international response to this threat. I will describe the development of the USG's comprehensive strategic approach, focusing in particular on the creation of Treasury's Office of Terrorism and Financial Intelligence (TFI) and the increasingly important role of finance ministries in national security. I will discuss our efforts to identify, disrupt and dismantle terrorist financial networks, as well as our work to safeguard the global financial architecture from this threat. Finally, I will address some of the key challenges facing the U.S. and international community.

THE CREATION OF TFI

Early Efforts

Prior to 9/11, the U.S. national security community, still in the shadow of the Cold War, had yet to fully grasp the significance of the terrorist threat. Not surprisingly, terrorist financing was not high on the national security agenda. Charities like the Holy Land Foundation (HLF)—which was designated in December 2001 for providing support to Hamas— raised over $13 million in 2000 and operated openly in the United States with offices in Texas, Illinois, New Jersey and California.

September 11th served as the catalyst for a dramatic paradigm shift in the national security community and an attendant recognition that terrorism was a primary threat to the homeland and our interests abroad. A galvanized interagency quickly identified the importance of attacking the financial infrastructure of terrorism as an effective counter-terrorism strategy. The efforts of U.S. law enforcement are particularly noteworthy. FBI financial investigators, coordinated out of the Terrorism Financing Operations Section (TFOS), marshaled the shared resources of law enforcement, through Joint Terrorism Task Forces (JTTFs) across the country, integrating intelligence through unprecedented cooperation with the CIA. These efforts resulted in a number of successful domestic terrorist financing cases against organizations like the Holy Land Foundation, Al-Barakaat, Global Relief Foundation and Benevolence International.

Treasury, armed with new authorities under Executive Order 13224 to freeze the assets of "Specially Designated Global Terrorists," was an important part of these early efforts. Working in close coordination with law enforcement counterparts, the Office of Foreign Assets Control (OFAC) designated HLF and other entities and associated networks, shutting down critical financial nodes of Al-Qa'ida, Hamas and other foreign terrorist organizations. In part because of these important achievements, in December 2005, the 9/11 Commission's Public Discourse Project awarded its highest grade, an A-, to the U.S. government's efforts to combat terrorist financing. Today, I can confidently say that the U.S. is no longer fertile ground for terrorist fundraising. However, given the notorious resilience of terrorist groups, we remain vigilant against a resurgence of this activity.

TFI and its Strategic Approach

Despite these initial successes, Treasury leadership recognized that the Department's full capabilities were yet to be realized in the absence of a more comprehensive strategic approach and the institutional framework to carry it out. Accordingly, in the wake of the dissolution of Treasury's Office of Enforcement and the establishment of the Department of Homeland Security, the Treasury Department, working with Congress, created the Office of Terrorism and Financial Intelligence (TFI) in 2004. The creation of TFI, the first office of its type in the world, was a revolutionary development in the national security arena. Counterterrorism and security policy have traditionally been the province of foreign affairs, defense, intelligence, and law enforcement officials – not finance officials.

TFI's mission is to marshal the Treasury Department's policy, enforcement, regulatory, and intelligence functions to sever the lines of financial support to international terrorists, WMD proliferators, narcotics traffickers, and other threats to our national security. We seek to meet this responsibility by striving to achieve two overarching goals:

- Identifying, disrupting and dismantling the financial networks that support terrorists, organized criminals, WMD proliferators, and other threats to international security.
- Identifying and closing vulnerabilities in the U.S. and international financial systems that make them susceptible to abuse by terrorists, organized criminals, WMD proliferators, and other threats to international security.

TFI possesses a variety of tools to accomplish these goals. To identify, disrupt, and dismantle illicit financial networks we have a number of targeted financial measures at our disposal, including economic sanctions. We also have newer regulatory authorities such as Section 311 of the USA PATRIOT Act, which allows us, among other things, to deny access to the U.S. financial system to jurisdictions, financial institutions, types of accounts or classes of transactions determined to be of "primary money laundering concern." Leveraging the "soft power" of the Treasury Department, we also share intelligence and engage directly with foreign governments and financial institutions at risk of abuse by illicit financial activity.

To close vulnerabilities in the international financial system, we seek to strengthen financial transparency across the formal financial sector and expand such transparency to the informal sectors such as hawala and other informal remittance systems. This has not been limited to the U.S. financial system, but has included efforts to strengthen global standards and facilitate implementation of effective anti-money laundering regimes in countries around the world. And we have leveraged our expertise, experience and global relationships in combating money laundering to develop and integrate global standards to combat terrorist financing.

Underpinning virtually all of our efforts is a focus on developing financial intelligence, an effort that is embodied in our Office of Intelligence and Analysis (OIA). With the creation of OIA, Treasury became the first finance ministry in the world to develop in-house intelligence and analytic expertise to use this information. As a full member of the Intelligence Community (IC), OIA's ability to work with its IC counterparts to map the financial networks of our terrorist adversaries is what allows us to take action- be it a designation, the identification of a new terrorist financing typology requiring the development of a new multilateral regulatory standard, or a conversation to alert the private sector and government officials in another country to a particular threat.

Financial intelligence also serves a broader purpose in our counter-terrorism efforts. Money trails don't lie, making financial information a uniquely reliable source of intelligence on terrorist networks as a whole. "Following the money" can often yield valuable insights into a terrorist organization and help discover previously unidentified leadership and support nodes.

THE IMPACT OF TFI

In less than eight years, TFI has had a dramatic impact on our national security. Through the use of targeted financial measures, the development of innovative mechanisms for collecting financial intelligence and sustained engagement with key jurisdictions, we have systematically undermined terrorist financial networks across the globe, with notable success against core Al-Qa'ida, our greatest threat. Working through the Financial Action Task Force (FATF), the G7 and the G20, the International Monetary Fund (IMF) and World Bank and other multilateral bodies, we have promoted transparency throughout the international financial system and have integrated robust systemic anti-money laundering/countering the financing of terrorism (AML/CFT) safeguards into the international financial architecture. This global AML/CFT architecture has enabled us to systematically identify and address terrorist financing and broader illicit financing vulnerabilities in the international financial system on an ongoing basis. I would like to take a moment to discuss some of these successes in more detail.

Developing a Global AML/CFT Framework

The global nature of the terrorist threat and the increasing interdependence of the international financial system require a global approach to combating terrorist financing. TFI has worked with its interagency and international partners to help create a global AML/CFT framework as a foundation for taking action against specific terrorist financing threats and for closing down vulnerabilities that terrorist networks exploit. This framework consists of several intergovernmental organizations that collectively develop, assess and facilitate jurisdictional implementation of measures that are essential to combating various forms of illicit finance, including terrorist financing. Such organizations include:

- ***Financial Action Task Force (FATF)*** – The FATF is the premier international policy-making and standard-setting body in the international effort against terrorist financing, money laundering, and other illicit finance. Established by the G-7 Economic Summit in 1989, the FATF is an intergovernmental body that has grown to include 36[1] members, representing most major financial centers in all parts of the globe. The FATF sets global AML/CFT standards, promotes and assesses compliance with those standards, and, when necessary, promotes compliance through diplomatic pressure and coordination of economic countermeasures through its member governments. Through a combination of technical expertise and political and economic strength, the FATF has been unique among international bodies in its ability to take strong, effective multilateral action to prompt positive change in strengthening jurisdictional AML/CFT regimes worldwide.

  TFI manages the FATF program for the U.S. government and heads the interagency U.S. delegation to the FATF. The U.S. delegation to the FATF includes the Departments of State, Justice, and Homeland Security; the Federal Reserve Board; the Securities and Exchange Commission; other federal financial regulatory agencies; and federal law enforcement agencies.

- ***FATF-Style Regional Bodies (FSRBs)*** – Through the FATF, TFI and its interagency and international partners have also supported the creation and development of eight independent FSRBs that serve as leaders in their respective regions for advancing AML/CFT policy, including by conducting periodic compliance assessments of member jurisdictions against the FATF's AML/CFT standards. In conjunction with the FATF, these bodies are intended to establish a global framework for ensuring the adoption and implementation of the FATF standards.

[1] FATF members include Argentina; Australia; Austria; Belgium; Brazil; Canada; Denmark; European Commission; Finland; France; Germany; Greece; Gulf Cooperation Council; Hong Kong, China; Iceland; India; Ireland; Italy; Japan; Luxembourg; Mexico; Kingdom of the Netherlands; New Zealand; Norway; People's Republic of China; Portugal; Russian Federation; Singapore; South Africa; South Korea; Spain; Sweden; Switzerland; Turkey; United Kingdom; and the United States.

- ***Group of 20*** – The Group of 20 (G-20) Ministers have endorsed the important work of the FATF in combating money laundering and terrorist financing, most recently by calling for the FATF to publicly identify countries of concern for money laundering and terrorist financing. TFI works with AML/CFT experts in the G-20 countries to adequately respond to the G-20 calls and facilitate multilateral action in protecting the international financial system from abuse by illicit actors.

- ***United Nations*** – The UN Security Council has emerged as the backbone of the global counter-terrorist financing effort over the past 10 years. UN Security Council Resolution (UNSCR) 1267 and its successor resolutions, overseen by the UN 1267 Committee, have created the only binding international legal obligation for member states to freeze the "economic resources" (i.e., funds and other property) of, and prohibit dealings with, designated individuals and entities affiliated with al-Qa'ida. We have worked closely with the State Department to submit new al-Qa'ida fundraisers, facilitators, and fronts to the UN for designation and to ensure full member state implementation of UNSCR 1267 obligations. Due to this outreach and broad international acceptance of the UN mandate, this effort has been remarkably successful with designated terrorists finding it very difficult to continue operations after they have been designated, although there are, of course, notable exceptions.

  We have been less successful, however, in promoting compliance with UNSCR 1373, another, equally important though less visible, sanctions regime. The direct response to September 11th, UNSCR 1373 obligates UN member states to develop appropriate national authorities and procedures to implement targeted economic sanctions against all individuals and entities that engage in or support terrorist activities. UNSCR 1373 therefore goes beyond the reactive obligation to block the property of, and prohibit dealings with, UNSCR 1267-listed terrorists. Instead, it requires member states to implement sanctions against any person or entity involved in terrorist activity proactively, regardless of whether specifically designated at the UN. In other words, it requires countries to develop national sanctions programs similar to what we have developed in the U.S. The failure of countries around the world to develop such programs stands as one of our biggest terrorism financing challenges going forward and highlights the need for finance ministries worldwide to play a more active role in national security.

- ***International Financial Institutions*** – The World Bank and International Monetary Fund (IMF) have become strong partners of the FATF and U.S. Treasury Department in assessing global compliance with international AML/CFT standards, and providing high-quality technical assistance. In 2001, the World Bank and IMF officially recognized the FATF Recommendations as one of the 12 Key International Standards and Codes. Since then, the FATF, the World Bank and IMF worked together to develop a joint standardized methodology for assessing countries against the FATF Recommendations. Today, all formal World Bank and IMF Financial Sector Assessment Programs (FSAPs) must contain a full AML/CFT component and the World Bank, IMF, and the FATF are coordinating to ensure that virtually every country in the world is subject to an AML/CFT assessment using the joint methodology.

Working to Close Vulnerabilities in the Informal Sectors

One of Treasury's core missions is to safeguard the domestic and international financial system from abuse by identifying and closing vulnerabilities that terrorist organizations, WMD proliferators, drug kingpins, and other criminals and their illicit networks exploit. This strategic approach safeguards the financial system from terrorism and other abuse by promoting transparency, particularly across higher risk elements of the financial system, which I will describe in greater detail below. Transparency in the financial system is necessary in allowing financial institutions, law enforcement, regulatory authorities, and others to identify sources of illicit finance and those individuals and entities that comprise illicit finance networks.

Since its inception, TFI has been a leader in identifying and working to mitigate these key systemic vulnerabilities. Cooperating with interagency and international partners, we have developed strategies to combat the risks posed by the abuse of hawalas and other informal value transfer systems, charities, cash couriers, new payment methods and other areas of concern. Below, I set forth a brief summary of how we have addressed these issues.

Hawala: The Treasury Department has long-recognized the vulnerability of informal value transfer systems to illicit finance. Treasury has worked to address the vulnerabilities presented by informal value transfers through a four-pronged approach: targeted financial sanctions and enforcement actions; systemic regulation; outreach; and international engagement. Both domestically and internationally, our goals are the same: to bring hawalas into the formal financial system and to hold illicit actors to account. The international component of our strategy includes standard setting through FATF. One of the FATF's Special Recommendations is dedicated exclusively to informal value transfer systems. It calls upon member states to license and register hawalas, while putting effective civil, criminal, and administrative sanctions in place for hawalas that fail to do so. Another core component is targeted sanctions on such illicit actors as the New Ansari Network, a major money laundering vehicle for Afghan narcotics trafficking organizations, which OFAC designated in February 2011 under its counter-narcotics authorities.

Domestically, hawalas, like other money services businesses, are required to register with the Financial Crimes Enforcement Network (FinCEN), a bureau within the Treasury Department. We have worked to establish a transparent financial system with appropriate AML/CFT requirements on informal financial service providers. Where these requirements are not observed, it is important that we act. To date, FinCEN has taken civil enforcement actions against four unregistered money transmitters. Treasury is also working to ensure that our domestic regulatory regime is as robust as possible. We are engaging in rulemaking to impose cross-border reporting requirements on all cross-border wire transfers above one thousand dollars for all money transmitters. This will enhance our understanding of cross-border money flows through the industry and inform our outreach, enforcement and regulatory compliance efforts.

- ***Charities*:** Protecting charities from terrorist abuse is a critical component of the domestic and global fight against terrorism. Charities provide essential services, comfort, and hope to those in need around the world. Unfortunately, terrorists have exploited the

charitable sector to raise and move funds, provide logistical support, encourage radicalization and terrorist recruitment, or otherwise support terrorist organizations and operations. This abuse threatens to undermine donor confidence and jeopardizes the integrity of the charitable sector, whose services are indispensable to the world community. TFI works to protect the charitable sector through a multi-prong approach that includes: targeted investigations and enforcement actions to disrupt charities associated with terrorist organizations; private sector outreach to inform the public of terrorist abuse of the charitable sector, provide guidance on ways to mitigate against such abuse, and explain government actions, such as OFAC designations; and international engagement to help develop and promote international standards related to protecting charities from terrorist abuse, working with countries to implement such standards, and specific engagement with countries of concern or vulnerable to abuse. Through active engagement, governments and the private sector can identify terrorist financing risks, clarify obligations and best practices, facilitate compliance with relevant laws, and help promote charitable giving while reducing the threats of terrorist abuse.

- ***Cash Movements***: The physical movement of cash within jurisdictions and cash smuggling across borders are consistently used to move the proceeds of crime and play a significant role in the financing of terrorism. Criminals and terrorists seek to move funds in a form that is both familiar and comfortable. The use of cash is attractive to criminals mainly because of its anonymity and lack of audit trail. Terrorists are looking for the same flexibility when moving funds. By using cash, terrorists are able to stay close to their money without having to place those funds into the financial sector, which automatically creates some form of audit trail.

  We have worked with the FATF to create standards that are designed to detect and prevent the illicit cross-border transportation of cash and bearer negotiable instruments. The FATF has also produced guidance which includes a list of red flag indicators that could be used to detect cash couriers and asks countries to consider not issuing large denomination bank notes. The FATF has also created standards on the reporting of large-value cash transactions and has recognized the benefits and usefulness these reports present to law enforcement.

- ***New Payment Methods***: The emergence of new payment methods in recent years has helped many people at home and abroad participate in the formal financial system for the first time, which helps us in the fight against money laundering and the financing of terrorism. Prepaid cards, mobile payments, and funds transfers via the Internet can bring added transparency to the financial system when they replace cash and transactions made through unlicensed service providers. However, new payment technologies can also create new vulnerabilities if these payment tools are not adequately covered by anti-money laundering and counter-terrorist financing regulations. To address that, we are working domestically and through the FATF to ensure that our safeguards keep pace with payment system innovations. Providers of prepaid access are currently required to register with FinCEN as money services businesses. Moreover, earlier this summer, FinCEN issued a final rule applying customer identification, recordkeeping, and reporting obligations to providers and sellers of prepaid access.

Targeted Action and Diplomatic Engagement

For decades, economic sanctions have been one of our most powerful tools to disrupt illicit financial networks and apply economic pressure on our adversaries. Combining this time-tested approach with sustained diplomatic outreach, TFI has enjoyed significant success in freezing terrorist groups out of the international financial system and encouraging foreign counterparts to take parallel action.

Our engagement with Saudi Arabia, one of the countries most central to our global counter-terrorism efforts, is a prominent example of this successful approach. A country of great wealth struggling with religious extremism, Saudi Arabia has historically served as and remains a primary source of funds for al-Qa'ida and its adherents. To address this threat, we have employed targeted sanctions and continuous diplomatic engagement and information sharing with impressive results. While our partnership with Saudi Arabia on combating terrorist financing has not always been excellent, over the years it has grown increasingly strong and vibrant.

One of our most significant actions was a series of U.S. and UN designations of the Al-Haramain Islamic Foundation, a Saudi-based charity that provided significant financial support to al-Qa'ida. Saudi Arabia's support for these actions, including joint sponsorship of the UN designation of Al-Haramain's branch network, was an important early step by Saudi Arabia. Even more significant were the additional steps Saudi Arabia took to combat the abuse of its charitable sector by enhancing financial controls on charitable financial flows to ensure that funds intended for humanitarian purposes do not benefit extremist groups or support terrorist activity.

Over the years, we sought to build on these steps and have consistently encouraged Saudi Arabia to bolster its efforts to identify and take proactive steps against domestic terrorist financing networks rather than approach the problem in a reactive manner. We have done this by, among other things, institutionalizing our counter-terrorist financing relationship through establishing a Treasury attaché office at the U.S. Embassy in Riyadh.

In recent years, we have seen the beginnings of a shift in Saudi Arabia's own internal calculus regarding the terrorist threat stemming from a number of internal terrorist attacks—including one against Saudi Arabia's senior counter-terrorism official. Today, Saudi Arabia is moving in the right direction. In May 2010, the Council of Senior Ulema, the highest religious authority in Saudi Arabia, issued a key religious ruling (fatwa) against terrorist financing. The fatwa has the force of law in Saudi Arabia, and is emblematic of the Saudi political will to address terrorist financing concerns. Moving forward, it will be important to continue to build on this relationship, and to encourage other countries in the region—in particular Qatar and Kuwait—to follow Saudi Arabia's lead in its efforts against terrorist financing.

Our efforts to attack Hamas financial support networks have also evolved over the years and have included a combination of targeted financial action and increasingly close partnerships with foreign counterparts. While Hamas today derives most of its financial support from Iranian state sponsorship and from its control over Gaza, for most of its history it was dependent on a vast

network of charities for sustenance. A critical part of our early efforts to target this infrastructure was the shuttering of Hamas-affiliated U.S. charities, such as the Holy Land Foundation, and our designation of its European network in 2003. This sprawling network, comprised of a number of charities including the Comité de Bienfaisance et de Secours aux Palestiniens (CBSP-France), the Association de Secours Palestinien (ASP-Switzerland), the Palestinian Relief and Development Fund (Interpal-UK), the Palestinian Association in Austria (PVOE-Austria) and the Sanabil Association for Relief and Development (Lebanon), falls under an umbrella organization known as the "Union of Good," which was also designated by the U.S. in 2008. Unfortunately, despite these designations and years of information sharing and diplomatic outreach, European governments have failed to take adequate steps to remove these organizations from Hamas' international network. We continue to work closely with our colleagues at the State Department, in particular Coordinator for Counterterrorism Ambassador Daniel Benjamin, to press our European partners to dry up Europe-based financial support to Hamas.

We have, however, enjoyed strong partnerships with the Palestinian Authority and Palestinian Monetary Authority. I have met with Palestinian leaders regularly over the past several years both in Ramallah and in Washington and have found them consistently responsive to U.S. concerns over terrorist organizations' penetration into Palestinian financial institutions and non-governmental organizations (NGOs). They have been proactive in promoting AML/CFT reform through the passage of an anti-money laundering law and the creation of a financial intelligence unit. Moving forward, it will be important for the Palestinian Authority to continue to remain vigilant to the threat posed by Hamas and other terrorist financial networks, and in particular by Hamas-affiliated charities operating in the West Bank. In 2008, we established an attaché office at the Consulate General in Jerusalem to enhance our ability to cooperate with the Palestinian Authority on these and other matters.

Unfortunately, we do not always have strong local partners to support our counter-terrorism efforts. In the case of Iran and its support for a diverse array of designated terrorist groups including Hamas, Hezbollah, the Taliban and, alarmingly, al-Qa'ida, unilateral action has often been our only recourse. Hezbollah, Iran's primary terrorist proxy and foothold in the Arab world, has long been a focus of our attention.

As a global organization with unparalleled financial and commercial resources—former Deputy Secretary of State Richard Armitage famously called the group the "A Team" of terrorists—Hezbollah has necessitated a global response. Accordingly, we have pursued a dual track approach of financial pressure against both the center and periphery of this far-flung network. In Lebanon, we have designated Hezbollah leadership as well as core business enterprises it uses to either move funds or secure community support, such as the construction firms Jihad al-Bina (2007) and the Waad Project (2009), or for fundraising, recruitment and propaganda purposes, such as the television station Al-Manar (2006). In parallel, we have sought to expose and isolate Hezbollah's networks in Latin America, where we have designated fourteen Hezbollah individuals and entities, and in Africa, where over the past two years we have targeted Hezbollah commercial networks with tentacles in Cote D'Ivoire, Sierra Leone, The Gambia, the Democratic Republic of the Congo and Angola.

We have not forgotten, however, that the real power behind Hezbollah lies in Tehran. As members of Congress already know, exposing and isolating Iran's worldwide illicit financial network has been a top priority for the Treasury Department over the last several years. While much of our focus has been on targeting key nodes in the Iranian proliferation program, we have also brought sustained pressure to bear against Iranian state sponsorship of terrorism. In 2007, for example, we designated the state-owned Iranian Bank Saderat, which transferred over $50 million to Hezbollah from 2001 to 2006, and the primary architect of Iranian terrorism, the Iranian Revolutionary Guards Corps-Quds Force (IRGC-QF). Since that time, we have targeted a number of IRGC-QF leaders and fronts and will continue to keep up the pressure.

Among our most important acts against Iranian state sponsorship occurred just two months ago when we, for the first time ever, exposed Iran's secret agreement with al-Qa'ida members, which allows al-Qa'ida to funnel funds and operatives through Iranian territory. This revelation was made available as part of the designation of Yasin al-Suri, a key Iran-based al-Qa'ida facilitator, and a number of his associates.

Promoting Novel Counter-Illicit Financing Partnerships

Recognizing that a comprehensive counter-terrorist financing strategy requires a whole-of-government effort, TFI has pioneered a number of novel interagency mechanisms for collecting, analyzing, and ultimately acting on, financial intelligence. Most notable has been our work with the Department of Defense and other partners such as the Drug Enforcement Administration (DEA) to develop "Threat Finance Cells." Our first such effort began in 2005 when the Treasury and Defense Departments established a Baghdad-based interagency intelligence unit, known as the Iraq Threat Finance Cell (ITFC). The mission of this unit was to enhance the collection, analysis, and dissemination of timely and relevant financial intelligence to combat the terrorist and insurgent groups operating in the Iraq theaters. The ITFC made significant contributions to our war fighters. Senior U.S and Coalition military commanders came to rely heavily on the cell's strategic and tactical analysis to help combat the Iraqi insurgency and disrupt terrorist, insurgent, and militia financial networks.

The success of this initiative led to the creation of the Afghanistan Threat Finance Cell (ATFC) in Afghanistan in 2008. The ATFC was initially modeled after the Iraq Threat Finance Cell, and is led by a director from the Drug Enforcement Administration with two co-deputy directors, one each from the Department of the Treasury and the Department of Defense. The ATFC now comprises approximately fifty-eight intelligence analysts, special agents, and other personnel drawn from the Intelligence Community, federal law enforcement, other partner agencies, and every branch of the military.

The ATFC team provides threat finance expertise and actionable intelligence to U.S. civilian and military leaders. ATFC personnel are embedded with military commands across Afghanistan to improve the targeting of the insurgents' financial structure. Specially-vetted Afghan authorities have also partnered with the ATFC on raids of hawalas suspected of illicit financial activities, including insurgent finance, narcotics trafficking, and corruption. This cooperation has resulted in the collection of tens of thousands of financial documents. The ATFC also works closely with these Afghan authorities to improve their capacity to operate independently in the future.

CONCLUSION

TFI's story has been a success, but the terrorist financing tale is far from over and challenges remain. We are, as Secretary of Defense Panetta has said, within reach of achieving our core goal of defeating al-Qa'ida, the only international terrorist group to successfully conduct an attack on U.S. soil. With Usama Bin Ladin's death, al-Qa'ida has lost a charismatic leader capable of raising funds and inspiring recruits. Already in difficult financial straits due to diminished access to its traditional donor base in the Gulf, in particular Saudi Arabia and the UAE, al-Qa'ida will come under increasing financial pressure.

But other pillars of financial and logistical support remain. As our recent designation of six members of an Iran-based al-Qa'ida financial facilitation networks demonstrates, Iran has emerged as a vital facilitation conduit for al-Qa'ida. Its provision of safe havens to al-Qa'ida is offering much needed breathing space for the group. Two members of this network are located in Kuwait and Qatar, underscoring the need for these jurisdictions to do more to crack down on domestic terrorist financiers and facilitators. The designation of now-deceased Atiyah Abd al-Rahman, al-Qaida's former overall commander in Pakistan's tribal areas, is another reminder of the permissive operating environment al-Qa'ida enjoys in Pakistan.

Even as we make progress against core al-Qa'ida we are finding that, with the rise of al-Qa'ida affiliates, the terrorist financing threat has metastasized and, in some ways, become more intractable. Today, al-Qa'ida in the Arabian Peninsula (AQAP) and al-Qa'ida in the Islamic Maghreb (AQIM) are among the most dangerous and operationally active terrorist groups. These affiliates rely on non-traditional sources of funding, including criminal activity and, most notably, kidnapping-for-ransom. Still other groups such as Al-Shabaab and Hamas, which physically control territory, can tax ports, businesses and local populations for revenue. Attacking financial flows that largely avoid the financial system (e.g., kidnapping-for-ransom) or are internally derived (e.g., internal taxation) will require novel approaches and new partnerships.

Above all, we must maintain our commitment to defeating terrorists and illicit finance networks in the post-Bin Ladin era. Our work is not done—in fact, in many ways, it has just begun. Terrorist groups and other transnational threats will continue to adapt to our measures. As we squeeze them out of the formal financial system, they turn to informal mechanisms such as hawalas and cash couriers. As we dry up funding in the Gulf, they turn to criminal activities for sustenance.

Going forward, we must continue to work with our interagency partners and the private sector to ensure that we are collecting, sharing and applying useful financial information to combat terrorism and other threats. We must also work with our interagency partners and the private sector to advance the effectiveness and efficiency of our financial actions, including our systemic regulatory efforts and our targeted and economic financial measures, in preventing terrorist activity and in disrupting these threats. We must also continue to work with our international counterparts to develop and share meaningful financial information and to achieve broader multilateral capability and support for our financial actions.

Today the United States is one of the few countries that implement a counter-terrorism sanctions regime fully compliant with UNSCR 1373. Accordingly, we must press international partners to bolster- and in some cases establish-their own sanctions regimes. And we must adjust the development and application of our financial tools as terrorists and other threats adapt their financing methods. With the comprehensive strategic approach that I have outlined here today, we will move forward to attack these challenges.

Chairman Whitehouse, Ranking Member Kyl, thank you for the opportunity to testify, and I would be happy to answer any questions you may have.

SUBCOMMITTEE ON CRIME AND TERRORISM
SENATE JUDICIARY COMMITTEE

Opening Statement of Senator Jon Kyl

"Countering Terrorist Financing: Progress and Priorities"

21 September 2011

Introduction

Chairman Whitehouse, thank you for holding this hearing.

Since the 9/11 attacks, the U.S. government has expanded its efforts to deprive terrorists of the resources they need to support their organizations. I would like to focus my remarks on material support and Iran's illicit activities, including its support for Hamas and continued pursuit of nuclear weapons

Material Support

The material-support statutes have played a critical role in the struggle against Al Qaeda and other terrorist organizations. Working with the Department of Justice, I introduced several improvements and enhancements to those statutes in 2004. These changes were designed to strengthen current law and address various constitutional concerns, as well as to expressly prohibit receiving military training at a terrorist training camp. These proposals were enacted later in 2004 as part of the Intelligence Reform and Terrorism Prevention Act[1], and in 2005 as part of the REAL ID Act.[2] I was pleased to see the Supreme Court sustain the material

[1] Intelligence Reform and Terrorism Prevention Act of 2004, 50 U.S.C.A. § 401 (West 2011), Pub. L. No. 108-458, 118 Stat. 3636 (2004).
[2] REAL ID Act of 2005, 8 U.S.C.A. § 1101 (West 2011), Pub. L. No. 109-13, 119 Stat. 231 (2005).

support statute against legal attack last year in its *Holder v. Humanitarian Law Project* decision.[3]

The material-support statutes have been the true workhorse in our efforts against Al Qaeda, Hamas, and other terrorist organizations. By making it a crime to knowingly provide material assistance to these and other known terror groups, the material-support statutes have helped starve them of resources while making it more difficult to do business with others. Critically, these statutes recognize that money and other resources are fungible, and that it is impossible to give money to Al Qaeda or Hamas without furthering those organizations' terrorist goals. Not only is any dollar given to Hamas's so-called "charitable" wing a dollar that can diverted to terrorism, but donations to this and other groups also enhance their power and prestige — which, in turn, makes it much easier for them to recruit terrorists.

Through rigorous enforcement of the material-support statutes, we can make these groups radioactive, deterring others from working with them, and — ultimately — cripple them entirely.

CISDA

Over the past decade, the United States has made tremendous strides in targeting illicit terrorist and proliferation financing activities. However, there is always more that can be done to disrupt them further. In particular, as noted at the outset, I remain deeply concerned about Iran's illicit activities, including its support for Hamas and continued pursuit of nuclear weapons.

[3] 561 U.S. __, 130 S. Ct. 2705 (2010).

It has been more than a year since President Obama signed the Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA) into law.[4] Under CISADA, the Treasury Department is required to prescribe regulations that require U.S. banks that maintain foreign correspondent accounts to have an audit or certification requirement that neither they, nor their correspondents abroad, are servicing designated Iranian banks. Treasury dragged its feet for nearly a year before issuing a draft rule. Today we still await the issuance of the final rule to implement section 104(e) of CISADA to address the vexing problem of foreign correspondent accounts. I strongly urge the Office of Management and Budget to complete an expeditious review of the final rule. The administration must take advantage of the sanctions tools provided by Congress so that our nation can confront illicit financing activities head on.

In addition, Congress continues its bipartisan efforts to strengthen the economic and political tools available to the administration to confront illicit financial activities. Earlier this year, Senators Menendez, Lieberman, and I introduced S. 1048, the "Iran, North Korea, and Syria Sanctions Consolidation Act of 2011." This legislation enhances existing measures and targets the nexus of proliferation between states like Iran, Syria, and North Korea. I urge my Senate colleagues to act on this legislation so that Congress can continue to do its part to close loopholes that enable illicit financial activities.

Conclusion

Today's hearing will consider efforts to deprive terrorist organizations of the financial resources they need to operate effectively. It will assess challenges and priorities for the future, as terrorist organizations turn to increasingly informal

[4] Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, 22 U.S.C.A. § 8501 (West 2011), Pub. L. No. 111-195, 124 Stat. 1312 (2010).

mechanisms for moving money — for instance, either self-funding or engaging in criminal activities as they strive to maintain their solvency and ability to carry out attacks on the innocent. In particular, I look forward to hearing the use that the Justice Department has made of the material support statutes to deny financial support to terrorist organizations. Finally I am interested to receive an update on overall CISADA implementation, including whether adequate resources have been made available to Treasury Department's Office of Foreign Assets Control (OFAC) to ensure the provisions are fully implemented.

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Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, U.S. Senate Committee On The Judiciary
Subcommittee On Crime And Terrorism
Hearing On "Countering Terrorist Financing: Progress And Priorities"
September 21, 2011

I commend Senator Whitehouse for convening this hearing today, and thank the witnesses for their testimony. The investigation of terrorist financing activities is a critical element of preventing and prosecuting terrorism, and yet tracking funds can be difficult and time intensive. The 9/11 Commission reported that al Qaeda moved, stored, and spent money in traditional ways as it plotted the 9/11 attacks. Its tradecraft was not particularly sophisticated and yet it eluded detection. Al Qaeda also allegedly engaged in illegal activities to finance its organization, such as trafficking in drugs, or trading in hard-to-trace commodities like "blood diamonds." As difficult as it may be in this arena, a tried and true investigative tool is to follow the money, and that is what our terrorist financing laws must enable us to do.

I strongly support the efforts of Federal law enforcement to investigate and prosecute terrorist financing, and I want to ensure that our investigators have the tools they need to prevent and prosecute illegal acts. I fully agree with the Department of Justice that the prohibition on material support for terrorism, including financing, is an important counterterrorism tool, and one that has brought many terrorists and supporters of terrorists to justice. However, the material support law has been modified repeatedly over the past decade, and is now so broad that it imposes unintended constraints on legitimate humanitarian assistance efforts.

This past summer, as U.S.-based humanitarian relief agencies tried to respond to the famine in Somalia, many expressed genuine fear that those agencies would run afoul of the law if some of their aid was diverted, without their knowledge, to al-Shabab, an al Qaeda affiliate in Somalia. A great deal of energy was expended seeking a solution as the famine put lives in grave danger. I commend the State Department and the U.S. Agency for International Development for requesting a license from the Treasury Department so that relief agencies receiving funds from the U.S. Government could operate in Somalia without violating the law. But this will not be the only humanitarian emergency we face. We need greater clarity in the law so that, in the future, Government officials and reputable humanitarian relief agencies need not delay the delivery of desperately needed aid while they scramble for a license.

The material support for terrorism law also limits the actions of individuals and non-governmental organizations engaged in unofficial diplomacy and peace building. These actors often engage in informal negotiations that serve United States interests, and pave the way for formal settlements of conflicts. The Supreme Court's 2010 ruling in *Holder v. Humanitarian Law Project* left many individuals and organizations uncertain as to the scope of permitted activity under the law because their activities might be construed as providing expert advice and assistance to terrorist groups. These groups have sought clarification from the Departments of State and Justice. The Department of Justice recently stated in a letter to me that it has not prosecuted individuals or entities engaged exclusively in legitimate good-faith efforts to promote the peaceful resolution of conflicts. That is welcome news, but I believe the Attorney General should issue prosecutorial guidelines that remove the uncertainty over the scope of the material

support law and establish a process by which actors may seek exemptions. I ask unanimous consent to include my exchange of letters with the Department of Justice in the Record.

Today's hearing provides an excellent opportunity to explore how our terrorism financing laws are working and how they might be modified, both to prosecute nefarious criminal acts and to protect innocent humanitarian activities. We can do both, and I look forward to working with the witnesses to address these issues.

# # # # #

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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*
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August 3, 2011

The Honorable Hillary Clinton
Secretary of State
Department of State
2201 C Street NW
Washington, DC 20520

The Honorable Eric Holder Jr.
Attorney General
Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Dear Madam Secretary and Mr. Attorney General:

I write to express my deep concern that the current interpretation of the law governing material support for terrorism is prohibiting organizations from delivering essential humanitarian relief in the Horn of Africa. I have long advocated for reform of this overly broad law, but the famine and resulting humanitarian crisis in Somalia demands immediate action.

Relief organizations, desperately trying to meet the need for food and medical care, fear that their staff members could be prosecuted under the material support law if some aid ultimately – and unintentionally – ends up in the hands of al-Shabab, an al Qaeda affiliate that is designated by the Department of State as a foreign terrorist organization. I understand that the Department of State took steps yesterday to ameliorate the concerns of relief organizations, but the Department declined to explain publicly what those steps include. I urge you to exercise the authority provided in law to grant exemptions to relief organizations focused on responding to this urgent humanitarian crisis, with no intent to engage in terrorist activity, such that this aid can immediately reach as many Somalis as possible.

The material support law not only imposes unintended constraints on legitimate humanitarian assistance efforts, it also limits the actions of individuals and non-governmental organizations engaged in unofficial diplomacy and peace building. These actors often engage in informal negotiations that serve United States interests, and have no intent to support terrorist movements. I am concerned that they are unduly constricted as a consequence of the Supreme Court's 2010 ruling in *Holder v. Humanitarian Law Project*. A number of individuals and organizations have expressed uncertainty over the scope of permitted activity under the law, and have sought clarification from the Departments of State and Justice.

In addition to taking immediate action with respect to aid to Somalia, and in order to address the broader impact of current law, I urge you to facilitate a dialogue between relevant executive branch agencies and affected organizations and individuals. The result of this dialogue should be the release of a set of guidelines that remove the uncertainty with the scope of the material support law, and the establishment a process by which actors may seek exemptions.

The humanitarian needs of the world and the security of the United States are both served by enabling non-governmental actors to fulfill their missions. We must not impede the efforts of individuals and organizations that have no intent to provide material support for terrorism, and whose activities serve the goals of the United States.

I appreciate your attention to this matter.

Sincerely,

PATRICK LEAHY
Chairman

Department of Justice

STATEMENT

OF

LISA O. MONACO
ASSISTANT ATTORNEY GENERAL
NATIONAL SECURITY DIVISION

BEFORE THE

SUBCOMMITTEE ON CRIME AND TERRORISM
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

AT A HEARING ENTITLED

"COUNTERING TERRORIST FINANCING: PROGRESS AND PRIORITIES"

PRESENTED

SEPTEMBER 21, 2011

Statement of Lisa O. Monaco
Assistant Attorney General
National Security Division
U.S. Department of Justice

Subcommittee on Crime and Terrorism
Committee on the Judiciary
United States Senate

"Countering Terrorist Financing: Progress and Priorities"
September 21, 2011

Chairman Whitehouse, Ranking Member Kyl, and members of the Subcommittee, thank you for inviting me to testify today regarding the Department of Justice's role in combating terrorist financing. The Department of Justice's efforts to combat terrorism are closely coordinated with those of our interagency partners, some of whom are testifying with me here today. Our common objective is to deploy the counter terrorist financing tools available to the United States in a coordinated, integrated fashion to effectively disrupt the flow of funds and other material support to terrorist organizations.

The Department of Justice's efforts in this regard fall generally into three categories, each of which I'll address briefly today: our capacity building and technical assistance efforts with foreign governments; our participation in and defense of terrorist financing laws, regulations, and processes; and our investigation and prosecution of the individuals and networks involved in financing and supporting terrorism.

Capacity Building and Technical Assistance

Like our interagency colleagues, we at DOJ recognize that to be truly effective our counter terrorist finance efforts must be reinforced by other countries around the world. We have worked hard to help foreign governments develop their laws and capability to implement these laws for investigating and prosecuting terrorist financing to ensure that no jurisdiction provides a safehaven for the financial networks that support terrorist organizations. DOJ currently has State Department funded Resident Legal Advisers in Bangladesh, Kenya, Turkey, and the United Arab Emirates who are focused primarily on terrorist financing. In addition, DOJ's network of 55 RLAs in countries around the world regularly provide technical assistance to the host government on terrorist financing laws and prosecutions.

In addition, DOJ has provided bilateral technical assistance to a number of foreign countries drafting or updating their counter terrorist finance laws, including Indonesia, Turkey, and Nigeria. We have also supported or assisted in scores of terrorist financing trainings around the world, including in Indonesia, Saudi Arabia, Yemen, Jordan, Azerbaijan, Turkey, and many other countries. The networks that finance and support terrorist organizations are international,

and our efforts effectively to disrupt those networks and bring their members to justice therefore rely critically on cooperation with capable foreign partners.

Review and Defense of Terrorist Finance Designations

The Department of Justice also participates in the designation of Foreign Terrorist Organizations (FTO); Specially Designated Terrorists (SDT); and Specially Designated Global Terrorists (SDGT) and defends in litigation the laws and regulations that permit designation and outlaw the provision of financing and other forms of material support to terrorist organizations.

The terrorism-related designations process in the United States plays a critical role in our fight against terrorist financing and is an effective means of curtailing support for terrorist activities based on listing entities and individuals the government has identified as terrorists, terrorist organizations, or supporters of terrorism or terrorist organizations. There are three principal mechanisms through which the executive branch designates individuals, entities, or organizations as involved in terrorism: under the Antiterrorism and Effective Death Penalty Act (AEDPA) of 1996; under Executive Order 12947, Prohibiting Transactions With Terrorists Who Threaten To Disrupt the Middle East Peace Process (Executive Order 12947), and under Executive Order 13224, Blocking Property And Prohibiting Transactions With Persons Who Commit, Threaten To Commit, Or Support Terrorism (Executive Order 13224). Executive Orders 12947 and 13224 were issued pursuant to the International Economic Emergency Powers Act (IEEPA).

AEDPA and Executive Orders 12947 and 13224 each prescribe procedures whereby executive officials may make terrorism-related designations. AEDPA gives the Secretary of State the authority to designate FTOs. Executive Orders 12947 and 13224 give the Secretaries of State and of the Treasury the authority to designate SDTs and SDGTs, respectively. Under both, the lead agency (either the State Department or the Department of the Treasury) compiles a record of classified and unclassified information supporting the designation. Moreover, both AEDPA and the Executive Orders require the lead agencies to consult with DOJ on the basis of this record in making the designation.

Specifically, Department of Justice attorneys closely review the administrative record compiled for purposes of designating an entity as an FTO, or an individual or entity as an SDT or SDGT, to ensure that the record adequately supports the factual findings required by the applicable authority and to assess litigation risk in the event that a designation is subsequently challenged by the designated individual or entity.

Designation under the AEDPA or the Executive Orders introduces the possibility of a range of criminal and civil penalties as well as actions blocking and, potentially, confiscating the assets of the designee. Once an organization has been designated as an FTO under the AEDPA, knowingly providing material support or resources to that organization triggers criminal liability. It is also a criminal offense knowingly to receive military-type training from or on behalf of any organization designated as an FTO at the time the training takes place. FTO designation also has immigration consequences and financial repercussions, including blocking orders, forfeiture actions, and civil fines.

Designation pursuant to Executive Order 12947 or 13224 also blocks the property and interests in property of the SDTs or SDGTs, respectively, and prohibits U.S. persons from engaging in transactions with the designated individual or entity. Similarly, once an individual or entity has been designated an SDT or SDGT it is criminal to engage willfully in any transaction with such an individual or entity.

The Justice Department has defended a number of the components of this counter terrorist finance legal framework against constitutional and other challenges in litigation. Last year, in the Supreme Court case of Holder v. Humanitarian Law Project, the Department of Justice successfully defended provisions of the material support statute against claims that it was unconstitutional. Although the statutory provisions constituting "material support" challenged in that litigation included the provision of "personnel," "training," "service," and "expert advice and assistance," as I know the Subcommittee is aware, this material support law also prohibits the provision of any property, currency, monetary instruments, or financial securities. The Court, in an opinion authored by Chief Justice Roberts and joined by five other Justices, held that the material support statute was not unconstitutionally vague for purposes of the Due Process Clause and did not violate plaintiff's constitutional rights of free expression and association.

The Department has also prevailed against challenges in litigation to the provision of AEDPA that grants the Secretary of State authority to designate organizations as FTOs.

We have also defended against constitutional challenges designations as SDGTs and other actions taken by the Department of the Treasury under IEEPA and Executive Orders 12947 and 13224. Persons and entities designated under those Executive orders can challenge their designations under the Administrative Procedure Act in district courts. We have successfully defended cases involving the Global Relief Foundation, the Holy Land Foundation, and the Islamic American Relief Association. (We are currently litigating cases involving the Al Haramain Foundation and Kindhearts.)

In sum, the Justice Department, in close coordination with our interagency partners, both participates in the designation processes and defends against challenges in litigation to the counterterrorist finance legal framework that supports the government's authority to make such designations.

Investigation and Prosecution of Terrorist Financiers

At its heart, the government's counter terrorist finance efforts take aim at the monetary and material support terrorist groups need to sustain themselves and to plot and carry out attacks against innocent civilians. We must disrupt the networks that provide such support, often referred to as the lifeblood of international terrorist organizations, whether the support they provide comes in the form of currency, training, valuable equipment, or any of the other categories of material support proscribed by our criminal laws. As the Supreme Court noted in Holder v. Humanitarian Law Project, there is "persuasive evidence" that providing "material support to a designated foreign terrorist organization – even seemingly benign support – bolsters the terrorist activities of that organization."

Acting Assistant Director Ralph Boelter mentioned in his testimony the 2010 guilty plea of Mohammad Younis, whose unlicensed money transmitting business was used to transfer money to Faisal Shahzad to fund his attempt to detonate a car bomb in Times Square, and of Abdul Tawala Ibn Ali Alishtari, who pled guilty to terrorist financing charges and was sentenced to 10 years for facilitating the transfer of more than $150,000 to support terrorist training camps in Afghanistan and Pakistan. Let me mention a couple of other significant terrorist financing prosecutions.

- In October 2004, Abdurahman Alamoudi pled guilty and was sentenced to 23 years in prison for conduct that included facilitating the transfer of hundreds of thousands of dollars to a group plotting the assassination of Saudi Crown Prince Abdullah.
- In May 2009, five leaders of the Holy Land Foundation for Relief and Development were sentenced to terms ranging from 15 to 65 years for providing financial and other material support to HAMAS. These cases are currently on appeal.
- There are currently a number of cases charged and pending in the United States regarding the alleged transfer of funds to Al Shabaab terrorists in Somalia.

We have also brought a number of cases under Section 960A of Title 21, the narco-terrorism statute, to disrupt individuals and networks attempting to use narcotics proceeds to finance terrorist organizations such as the Revolutionary Armed Forces of Colombia (or FARC), the Taliban, and al Qaeda in the Islamic Maghreb. And we have prosecuted individuals for trying to conceal the financial interest that SDGTs maintained in their companies, Infocom and PTech, thus cutting off a potential source of funding and money laundering for such SDGTs.

As the result of a close working relationship between our prosecutors and our partners in the law enforcement and intelligence communities, we have been able to disrupt these and other attempts to finance terrorism, gain valuable information as a result of the cooperation of the defendants, and bring the defendants to justice, ensuring that they are safely behind bars in American prisons, not continuing to finance terrorist attacks against America and our foreign partners.

Conclusion

As you have heard from all of my colleagues, United States Government efforts to counter terrorist financing have had some significant success over the past decade, but we have work yet to do. Terrorist organizations and their supporters continue to adapt and evolve their operations. To continue to be effective, we must continue to work with you to ensure that we have the authorities and capabilities necessary to effectively to counter terrorist financing. Thank you.

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

August 12, 2011

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This responds to your letter to the Attorney General dated August 3, 2011, regarding the famine in the Horn of Africa and the importance of effective interagency coordination to ensure that humanitarian assistance reaches those in need as soon as possible in a way that minimizes any risk of material support or resources reaching the al-Shabaab terrorist group.

We share your concern about the humanitarian emergency in the Horn. We want to assure you that there is an ongoing dialogue among relevant executive branch agencies and relief providers as you suggested in your letter. In the face of extreme humanitarian needs and an unpredictable situation on the ground, several U.S. agencies have collaborated to provide for greater flexibility in our fiscal sanctions to ensure that aid workers implementing U.S. foreign assistance are not in conflict with U.S. laws and regulations. The State Department and USAID are authorized to provide grants and contracts to fund nongovernmental organizations (NGOs) providing humanitarian assistance in Somalia, including in areas under the *de facto* control of al-Shabaab. The State Department and USAID requested and on July 29 received an expanded license from the U.S. Treasury Department's Office of Foreign Assets Control (OFAC) to ensure that NGOs receiving funds from the U.S. Government are not in conflict with OFAC sanctions.

We believe that this expanded flexibility will significantly increase the range of urgent programming that we can fund within southern Somalia. At the same time, we continue to work closely with U.S. government partners to ensure that every possible precaution is taken to avoid the diversion of humanitarian funds to al-Shabaab.

We also have participated in an interagency meeting with NGOs affiliated with Interaction, which State, OFAC, and USAID representatives also attended. In addition, OFAC, in coordination with State and USAID, has made answers to frequently asked questions about humanitarian assistance to Somalia publicly available on its website. We will continue our dialogue with key NGOs about how they provide humanitarian assistance inside Somalia and how we can assist them.

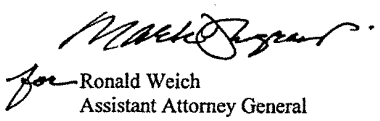
We will also continue to examine additional actions the U.S. Government might take to facilitate assistance to the people of Somalia in this time of urgent need. Your letter specifically urges use of the authority under current law to grant exemptions to humanitarian organizations. We note that 18 U.S.C. § 2339B(j) provides limited authority to the Secretary of State, with the concurrence of the Attorney General, to grant such exemptions. Under the law, only material support or resources consisting of "personnel," "training," or "expert advice or assistance" may be approved for exception under this subsection. The types of material support that may be provided to al-Shabaab in the course of providing assistance in Somalia in most instances would not be expected to include any of these three categories of support.

With regard to the broader impact of the material support law on legitimate humanitarian assistance and peace building efforts, we are mindful of the concerns that have been raised about possible prosecution under 18 U.S.C. § 2339B, particularly after the Supreme Court's decision in *Holder v. Humanitarian Law Project*. As you know, the material support prohibition is an important counterterrorism tool that has proved critical in our efforts to protect the American people and bring terrorists and their supporters to justice. The Department of Justice has not prosecuted individuals or entities engaged exclusively in legitimate good-faith efforts to provide humanitarian assistance to needy populations or promote the peaceful resolution of conflicts. In this regard, it should be noted that the *Humanitarian Law Project* case involved not a criminal prosecution of the conduct at issue in that case, but rather an NGO's unsuccessful challenge to the constitutionality of that statute.

The Department will continue to work with State, USAID, Treasury, and other relevant executive branch agencies to ensure the continued effective enforcement of counterterrorism laws in a manner that does not inadvertently impede the legitimate and important disaster relief activities described in your letter. Responding effectively to the drought and humanitarian crisis in Somalia and in the greater Horn of Africa is a critical objective. We will continue to seek solutions to ameliorate the suffering of drought-affected populations both inside Somalia and in neighboring countries.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,



for Ronald Weich
Assistant Attorney General

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