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DEPARTMENT OF JUSTICE'S HANDLING OF KNOWN OR SUSPECTED TERRORISTS ADMITTED INTO THE FEDERAL WITNESS SECURITY PROGRAM

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM, HOMELAND SECURITY, AND INVESTIGATIONS

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

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DEPARTMENT OF JUSTICE'S HANDLING OF KNOWN OR SUSPECTED TERRORISTS ADMITTED INTO THE FEDERAL WITNESS SECURITY PROGRAM

TUESDAY, JUNE 4, 2013

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON CRIME, TERRORISM, HOMELAND SECURITY, AND INVESTIGATIONS

COMMITTEE ON THE JUDICIARY

Washington, DC.

The Subcommittee met, pursuant to call, at 10 a.m., in room 2141, Rayburn House Office Building, the Honorable F. James Sensenbrenner, Jr., (Chairman of the Subcommittee) presiding.

Present: Representatives Sensenbrenner, Goodlatte, Scott, Conyers, and Bass.

Staff present: (Majority) Allison Halataei, Parliamentarian & General Counsel, Sarah Allen, Counsel; Alicia Church, Clerk; and (Minority) Aaron Hiller, Counsel.

Mr. SENSENBRENNER. The Subcommittee will come to order.

Without objection, the Chair will be authorized to declare recesses during votes on the Floor of the House.

The Chair will make an opening statement and then yield to Mr. Scott.

Last month the Justice Department's Inspector General released a report that should have sent chills through everyone who read it. The report was titled "The Department of Justice's Handling of Known and Suspected Terrorists Admitted Into the Federal Witness Security Program," but it just as easily could have been the Department of Justice's mishandling of this program.

The Witness Security Program, often called WITSEC, is a critical prosecutorial tool that has been in existence since 1971. The program protects witnesses who agree to testify in a variety of different types of criminal cases, including drug trafficking, organized crime, and in recent years terrorism cases. For example, the witnesses involved in the 1993 World Trade Center bombing and the blind sheik prosecutions have been included in the WITSEC program. In order to protect them from harm stemming from their testimony, participants are relocated to a new community by the Justice Department, afforded financial assistance, and provided a new name and identification documents.

While conducting its periodic oversight of the WITSEC program, the IG discovered the Department, specifically the U.S. Marshals Service and the Criminal Division's Office of Enforcement Operations, or OEO, had little or no safeguards in place to make sure that the American people were protected from these potentially dangerous individuals. While most of the details of what the IG discovered are contained in a much longer non-public and classified report, the six-page public summary alone paints an extremely troubling picture.

For example, the IG discovered the Department did not actually know how many terrorists had been admitted into WITSEC. It had lost track of at least two terrorists in the program. It was not sharing critical information about potential terrorist activities by WITSEC participants with our national security stakeholders, including the FBI, and the Department was not providing the witnesses' new identities to the Terrorist Screening Center, which meant that these new names were not included in the Transportation Security Administration's No-Fly List. Accordingly, known terrorists who were trained in aviation and explosives and who were banned from flying were free to fly commercially at their whim. I would say this sounds like the plot of a Naked Gun movie if it were not so terrifying and true.

One of the most important lessons after September 11th was the critical need for better information sharing among our national security and law enforcement entities. The IG's report makes it clear that there is still much work to be done in this regard. Today I expect to hear from the Justice Department how this mismanagement was allowed to happen, how the Department intends to mitigate the potential harm to our national security that has already been done, and what it is doing to make sure this thing does not happen again.

It is now my pleasure to recognize for his opening statement the Ranking Member of the Subcommittee, the gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman.

Over the course of its 40-year history, the Witness Security Program has proven an invaluable law enforcement and counterterrorism tool for the Department of Justice. The program has enabled us to secure the cooperation of witnesses who have provided key testimony against some of the most egregious criminals in modern history, including the perpetrators of the 1993 World Trade Center bombing, the attack on our embassies in East Africa in 1998, and the 2009 attempted bombing of New York City's subway system.

But on May 16 of this year, the Office of the Inspector General issued its Interim Report on the Department of Justice's Handling of Known or Suspected Terrorists Admitted to the Federal Witness Security Program. The report raises a number of deeply troubling questions about the government's handling of individuals who are linked to terrorist activities and admitted to the Witness Security Program.

For example, it appears that until recently the Department had no mechanism in place to notify the FBI or the Terrorist Screening Center of new identities the government had provided to suspected

terrorists admitted to the program. Without that notice, TSC was unable to update the terrorist watch list to reflect these new identities. As a consequence, at least some of those new identities were left off the no-fly and selectee list, enabling these individuals to fly freely on commercial aircraft and evade our principal method for tracking the movement of known and suspected terrorists. In fact, it appears that in some cases, the United States Marshals Service expressly permitted these individuals to fly unescorted on commercial aircraft.

In another troubling instance the OIG report suggested that the government altogether lost track of two known or suspected terrorists who at some point left the program on their own accord. In short, the report has identified several critical flaws in the Witness Security Program that should never have been allowed to develop and must be addressed immediately, to the extent that they have not already been addressed.

One thing that is missing from the report and I think we should gain from the discussion today is a better sense of the timing of these incidents. Given the kinds of security flaws found in the audit, I can certainly appreciate the sense of urgency expressed by the Inspector General in his interim report and that the Chairman reflected in his opening statement. But it appears that the Department became aware of these problems years ago and has already taken substantial steps to address them, even before the OIG began its audit.

Of the 16 recommendations listed in the report, apparently 15 were completed by March 2013, 2 months before the report was circulated to our offices. If it turns out that any gaps remain in this program, I expect our witnesses to tell us how we can repair them immediately, and if those concerns have already been addressed, I expect to learn how they have been addressed and to be assured that the defects of this kind will not happen again.

Before I conclude, Mr. Chairman, it seems worth noting in advance that our discussion today will be somewhat limited by the public forum. When you talk about these things, there is a lot of sensitive information that cannot be discussed in an open forum, and I appreciate you holding an open session, but if necessary I hope we can have a more private setting where we might get more classified information.

But I look forward to our discussion today and thank our panelists for being with us.

Mr. SENSENBRENNER. To respond to the gentleman from Virginia, I think we will make that decision after we find out what the testimony is in the open session.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. SENSENBRENNER. The Chair now recognizes the gentleman from Virginia, Mr. Goodlatte, the Chair of the full Committee.

Mr. GOODLATTE. Thank you, Mr. Chairman. I appreciate your holding this hearing.

The Inspector General's recent report on the appalling handling of known and suspected terrorists in the Federal Witness Security Program raises serious concerns about whether this traditional law enforcement program should be used to hide and relocate suspected terrorists.

The IG report found that the number of known or suspected terrorists admitted to the Witness Security Program is unknown to the Department, that the Department has lost track of two suspected terrorists in the program, and that critical national security information is not being shared with other agencies.

For example, the Inspector General found that after the known or suspected terrorists received a new name and necessary identity-related documents, their new names were not placed on the Transportation Security Administration's No-Fly List, even though their previous names had been listed because they pose a threat to our national security.

As a result, there was nothing to stop these terrorists from joining the general public on commercial airplanes here in the United States. In some cases, witnesses on the No-Fly List were even permitted to fly commercially with the Department's approval.

All of this is especially problematic since the IG report found that terrorists admitted to the program include persons who have been trained in aviation and explosives, and individuals who have been involved in bombing attacks.

The Department's mismanagement of the WITSEC program has put American lives needlessly at risk, which simply cannot be tolerated. As we saw in regard to the recent Boston bombings, the IG's report highlights that a lack of robust information sharing persists more than a decade after the 9/11 terror attacks.

The terror threat has not diminished since 9/11. It is ever-present and evolving, and requires effective counter-terrorism programs. I look forward to hearing from our witnesses today on the steps the Department has taken and will take to make sure that appropriate interagency coordination is occurring within the WITSEC program, across the Department and the Administration.

Thank you, Mr. Chairman. I yield back the balance of my time.

Mr. SENSENBRENNER. Without objection, other Members' opening statements will be included into the record at this point.

It is the policy of the Committee to swear in all of the witnesses.

Would each of the witnesses please rise and raise your right hand?

[Witnesses sworn.]

Mr. SENSENBRENNER. Let the record show that each of the witnesses has answered in the affirmative.

The Chair will now introduce each of the witnesses.

The first witness today is the Honorable Michael E. Horowitz, who was sworn in as the fourth confirmed Inspector General of the Department of Justice on April 16, 2012. In this capacity, he oversees a nationwide workforce of approximately 450 special agents, auditors, inspectors, attorneys, and support staff whose mission is to detect and deter waste, fraud, abuse and misconduct in DOJ programs and personnel, and to promote economy and efficiency in Department operations.

Mr. Horowitz most recently worked as a partner at Cadwalader, Wickersham & Taft, LLP, where he focused his practice on white-collar defense, internal investigations and regulatory compliance. He also served as a commissioner on the U.S. Sentencing Commission, where he was instrumental in re-writing the guidelines for corporate compliance program and for fraud, anti-trust, intellectual

property, and money laundering offenses. He previously worked for DOJ in the Criminal Division at main Justice from 1999 to 2002, and as an Assistant U.S. Attorney for the Southern District of New York from 1991 to 1999. He received a Bachelor of Arts degree from Brandeis University and his law degree from Harvard Law School.

David Harlow is the Associate Director for Operations for the U.S. Marshals Service. In this capacity, he is responsible for the development of the Behavioral Analysis Unit within the National Sex Offender Targeting Center, which assists with the prioritization and targeting of non-compliant and fugitive sex offenders and the safeguarding of Marshal Service employees. He joined the Marshals Service in December 1983 in the Northern District of Ohio, where he was promoted to Chief Deputy U.S. Marshal.

During his tenure in Ohio, Mr. Harlow created the first Cooperative Fugitive Apprehension Team comprised of multiple law enforcement agencies in the Toledo metropolitan area. He was then transferred to the Eastern District of Virginia, where he served as Chief Deputy U.S. Marshal. Most recently, he served as Assistant Director for the Investigative Operations Division. He received his Bachelor's degree in Law Enforcement Administration from Western Illinois University.

Paul O'Brien is the Deputy Assistant Attorney General of the Criminal Division of the U.S. Department of Justice. He joined the Department in 1995 as an Assistant U.S. Attorney for the Western District of Tennessee. In 2003, he joined the U.S. Attorney's Office in Nashville, where he served as Narcotics Chief, Criminal Chief, First Assistant U.S. Attorney, and Interim U.S. Attorney. In 2008, he was appointed Chief of the Narcotics and Dangerous Drugs Section and served in that capacity through his appointment as the Director of Enforcement Operations in February 2010. He is a graduate of Texas A&M University and earned his law degree from the University of Memphis.

We will now proceed under the 5-minute rule. All of you know that we like to have your written testimony summarized. Without objection, the full written testimony will appear in the record.

During your testimony, the green light says go, the yellow light says a minute, and the red light says yield the floor.

And, Mr. Horowitz, you are first.

TESTIMONY OF THE HONORABLE MICHAEL E. HOROWITZ, INSPECTOR GENERAL, U.S. DEPARTMENT OF JUSTICE

Mr. HOROWITZ. Thank you, Mr. Chairman, and thank you for inviting me to testify today about the Office of the Inspector General's Interim Report on the Department's Handling of Known or Suspected Terrorists in the Federal Witness Security Program. My comments today will be limited to the information contained in our public summary report.

Our audit found significant deficiencies in the operation of the WITSEC program due to the failure of the WITSEC program to consult with national security stakeholders such as the FBI's Terrorist Screening Center, or TSC, when admitting and monitoring known or suspected terrorists into the WITSEC program. For ex-

ample, we found that the Department did not definitively know how many known or suspected terrorists had been admitted into the WITSEC program.

In response to our review, the Department began an analysis of its WITSEC program case files to determine how many known or suspected terrorists were admitted into the WITSEC program. Additionally, at our recommendation, the Department compared the true names, aliases and government-provided identities for the over 18,000 WITSEC program participants and their dependents to the TSC's consolidated terrorist watch list. This comparison identified additional known or suspected terrorists who were not identified in the Department's initial WITSEC program case file reviews.

The failure to adequately monitor WITSEC program participants was evidenced by the fact that the Department informed us during our review that it was unable to locate two former WITSEC participants identified as known or suspected terrorists, and that through its investigative efforts it has concluded that one individual was and that the other individual was believed to be residing outside of the United States.

We also found that the Department was not disclosing to the TSC the new identities provided to known or suspected terrorists and their dependents in the WITSEC program. As a result, until we brought this matter to the government's attention, the new government-provided identities of known or suspected terrorists were not included on the TSC's consolidated terrorist watch list. This failure meant that known or suspected terrorists could evade one of the government's primary means of identifying and tracking terrorists' movements and actions.

It also meant that known or suspected terrorists in the WITSEC program who the TSC had prohibited from flying on commercial airlines were allowed to fly on commercial flights using their new identities with WITSEC program officials' knowledge and approval. Moreover, these individuals, on their own accord, could have flown without WITSEC program officials' knowledge and approval.

Lastly, as a result of our review, we developed concerns about inconsistent, informal, and inadequate information sharing and coordination by the WITSEC program with national security stakeholders. Of particular concern, we found that prior to May 2012, the WITSEC program did not have a formal process to share WITSEC terrorism-related information with the FBI, and that the WITSEC program did not always share such information that could have been of potential value to the FBI.

We believe that such information must be shared with the FBI immediately so that the FBI, which has the primary responsibility for assessing national security threats, can determine the appropriate action to take.

In conclusion, the operations of the WITSEC program in general and the corrective actions, the 16 that we identified and recommended in our non-public interim report, require ongoing attention. A program that was designed to protect cooperating witnesses must be operated in a manner that also ensures the public safety. We look forward to working closely with the Department and the Congress to ensure that the national security vulnerabilities and

other issues identified during our review are addressed quickly and appropriately.

I would be pleased to answer any questions the Subcommittee may have.

[The prepared statement of Mr. Horowitz follows:]

Office of the Inspector General
United States Department of Justice

Statement of Michael E. Horowitz
Inspector General, U.S. Department of Justice

before the

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

concerning

The Department of Justice's Handling of Known or Suspected Terrorists
Admitted into the Federal Witness Security Program

June 4, 2013

Mr. Chairman, Congressman Scott, and Members of the Subcommittee:

Thank you for inviting me to testify about the Department of Justice's (Department) handling of known or suspected terrorists admitted into the federal Witness Security (WITSEC) Program.

As you are aware, the Department of Justice Office of the Inspector General (OIG) issued an interim report on May 16, 2013, that focused on the WITSEC Program activities administered by the Criminal Division's Office of Enforcement Operations (OEO) and the United States Marshals Service (USMS). While conducting its audit of the WITSEC Program, the OIG found significant issues concerning national security that it believed required an immediate remedy and notified Department leadership of them. We developed the interim report, which was issued and delivered to the Department and the Congress, to help ensure that those deficiencies were promptly and sufficiently addressed. The OIG will be continuing its review of the WITSEC Program, including evaluating the Department's progress in implementing corrective measures in response to the 16 recommendations contained in our interim report.

Due to statutory restrictions and concerns about national security and the safety of WITSEC Program participants cited by the Department, most of the results of our full interim report were not releasable publicly. However, when we issued the interim report we also released a public summary of the report. My comments in today's public hearing will be limited to the content of that public summary, although I would be pleased to discuss the other findings contained in our full interim report with the Subcommittee in an appropriate setting.

Background

According to Department estimates, more than 8,400 witnesses and 9,900 family members and other associates of witnesses have been admitted into the WITSEC Program since its inception in 1971. As of May 15, 2012, the USMS's portion of the WITSEC Program (USMS WITSEC Program) had approximately 700 active participants. Participants in the USMS WITSEC Program are relocated to an area believed to be safe from those who may want to harm them; provided a new identity; and afforded financial subsistence, occupational training, and other means necessary for them to acclimate to their new location.

The WITSEC Program was originally designed to protect witnesses, and their dependents, who were in danger as a result of their agreement to testify for the government in organized crime cases. However, the program has evolved over the past 40 years to admit witnesses who agree to testify in a

variety of cases, including drug trafficking, violent gang, and terrorism cases. Indeed, the audit we conducted confirmed that WITSEC Program participants include individuals who, pursuant to the definitions established in the Terrorist Screening Center's (TSC) Watchlisting Guidance, are considered by the government to be known or suspected terrorists. This includes individuals trained in areas such as aviation and explosives, involved in plotting bombing attacks, and guilty of serious offenses such as conspiracy to murder U.S. nationals.

National Security Vulnerabilities

When handling known or suspected terrorists in the WITSEC Program, we believe that national security risks must be mitigated by specific, formalized procedures that consider national security implications along with the protection of WITSEC participants. Yet our audit found significant deficiencies in the handling of known or suspected terrorists who were admitted into the USMS WITSEC Program. Specifically, we determined that OEO and the USMS – the two entities primarily responsible for managing the WITSEC Program for participants who are not incarcerated – did not involve national security stakeholders when admitting and monitoring known or suspected terrorists into the WITSEC Program.

Inadequate Monitoring of Known or Suspected Terrorists Admitted to the USMS WITSEC Program

Our review found that the Department did not definitively know how many known or suspected terrorists were admitted into the USMS WITSEC Program and that it had not adequately monitored those that had been admitted into the WITSEC Program.

In response to our review, the Department began an analysis of its WITSEC Program case files to determine how many known or suspected terrorists were admitted into the WITSEC Program. Last month, the Department told the OIG that it had completed its review of the files for all participants entering the WITSEC Program since 1996. Additionally, and at our recommendation, the Department compared the true names, aliases, and government-provided identities for the over 18,000 WITSEC Program participants and their dependents who had entered the Program since its inception to the consolidated terrorist watchlist. This essential comparison identified additional known or suspected terrorists who were not identified in the Department's initial WITSEC Program case file reviews.

It is our understanding that, to date, the Department has identified a small but significant number of USMS WITSEC Program participants as known or suspected terrorists. However, the Department's review of its more than

18,000 WITSEC case files is ongoing, and until this review is complete, we believe the Department will be unable to state definitively that it has identified, located, and minimized the threat of all known of suspected terrorists previously admitted into the WITSEC Program.

I also note that in July 2012, the USMS stated that it was unable to locate two former WITSEC participants identified as known or suspected terrorists, and that through its investigative efforts it has concluded that one individual was, and the other individual was believed to be, residing outside of the United States.

Failure to Share New Identities of Known or Suspected Terrorists with the TSC

We found that the Department was not authorizing the disclosure to the TSC of the new identities provided to known or suspected terrorists and their dependents in the USMS WITSEC Program. The TSC's consolidated terrorist watchlist is exported to various screening databases, including the Transportation Security Administration's (TSA) No Fly and Selectee lists, which are used to identify known or suspected terrorists attempting to fly on commercial airlines. Individuals placed on the TSA's No Fly list are prohibited from flying on commercial planes, and individuals on the TSA's Selectee list require additional screening procedures in order to board a commercial aircraft.

As a result of the Department not disclosing relevant information to the TSC about these known or suspected terrorists, the new, government-provided identities of known or suspected terrorists were not included on the government's consolidated terrorist watchlist until we brought this matter to the Department's attention. Therefore, it was possible for known or suspected terrorists, using their new government-issued identities, to fly on commercial airplanes in or over the United States and evade one of the government's primary means of identifying and tracking terrorists' movements and actions. We identified some USMS WITSEC Program participants who were on the TSA's No Fly list yet were allowed to fly on commercial flights using their new identities with WITSEC Program officials' knowledge and approval. Moreover, these individuals, on their own accord, could have flown without WITSEC Program officials' knowledge and approval.

As a result of our review, the Department established protocols to share with the TSC and the FBI the identities of known or suspected terrorists in the USMS WITSEC Program. Further, in May 2012, the Department implemented revised protocols and improved its security measures regarding participants' use of commercial flights. The Department also told us that as of March 2013: (1) the FBI had completed threat assessments on all but one of the USMS WITSEC Program participants disclosed to it by the USMS and OEO as having

a potential nexus to terrorism, and (2) none of these individuals had revealed a threat to national security at that time. The only threat assessment yet to be completed at that time related to a USMS WITSEC participant in BOP custody who had not been provided a new identity. We have not verified the Department's information about these threat assessments, but as we continue our review we intend to evaluate the Department's stated progress on this matter.

Failure to Share Potentially Derogatory Information about USMS WITSEC Program Participants with the FBI

Shortly after we began our review, we developed concerns about inconsistent, informal, and inadequate information sharing and coordination between OEO, the USMS, and Department's national security stakeholders regarding WITSEC Program participants. Of particular concern, we found that prior to May 2012, OEO, the USMS, and FBI did not have a formal process to share WITSEC terrorism information, and that OEO and the USMS did not always share case information of potential value to the FBI.

In one instance, we noted that in a June 2009 field report a USMS Inspector reported his belief that a WITSEC participant was trying to gather intelligence on sensitive policies and procedures of the USMS WITSEC Program for militant Muslim groups, yet we found no evidence that this information was shared with the FBI when it was reported to USMS WITSEC headquarters personnel near the time the Inspector recorded this concern. USMS WITSEC Program personnel surmised that this information was not passed to the FBI at that time because USMS WITSEC Program officials determined that the statements about the witness gathering intelligence for a terrorist group were based more in opinion than fact and that the witness was concerned about the amount of funding the witness' family was receiving. Nevertheless, certain WITSEC Program personnel with whom we discussed this matter stated that the information should have been shared with the FBI at the time it was originally reported. Following our discussion with WITSEC Program personnel about this matter, an FBI official told us that this information had been shared with the FBI in February 2012, years after the Inspector originally stated his concern. We believe information such as that found in this situation must be shared with the FBI immediately, so that the FBI, the Department component with primary responsibility for assessing national security threats, can determine the appropriate action.

OIG Recommendations

Our non-public interim report makes 16 recommendations to assist the Department in its efforts to include national security considerations when identifying, admitting, monitoring, and terminating WITSEC Program participants who are known or suspected terrorists. The Department agreed

with all 16 recommendations and told the OIG that, as of March 2013, it had implemented corrective actions for 15 of these recommendations and was in the process of implementing corrective action on the remaining recommendation. These actions include sharing WITSEC Program participant identity and case file information with the FBI and TSC on known or suspected terrorists, performing threat assessments on known or suspected terrorists admitted into the WITSEC Program, and developing protocols for enhanced monitoring of these individuals. To date, we have received sufficient information about these actions to close 3 of the recommendations, and we intend to evaluate the Department's progress and effectiveness in addressing the rest of our recommendations in a future report.

Conclusion

The operations of the USMS WITSEC Program in general, and the corrective actions we have recommended in our non-public interim report, require the ongoing attention of the Department's senior leadership. A program that was designed to protect cooperating witnesses must be operated in a manner that also ensures the public's safety. I look forward to working closely with the Department and the Congress to ensure that the national security vulnerabilities and other issues identified during our review are addressed quickly and appropriately.

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

Mr. SENSENBRENNER. Thank you, Mr. Horowitz.

Mr. Harlow?

TESTIMONY OF DAVID HARLOW, ASSISTANT DIRECTOR, U.S. MARSHALS SERVICE, U.S. DEPARTMENT OF JUSTICE; AND PAUL O'BRIEN, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE

Mr. HARLOW. Thank you for inviting me here today, Mr. Chairman. Mr. O'Brien will be speaking on behalf of both of our parties.

Mr. SENSENBRENNER. Mr. O'Brien.

Mr. O'BRIEN. Chairman Sensenbrenner, Ranking Member Scott, and distinguished Members of the Subcommittee, thank you for inviting me here today to share the views of the Justice Department on the admission of former known or suspected terrorists into the Witness Security Program. Together with my colleague David Harlow from the United States Marshals Service, we are honored to represent the Department at this hearing.

Over its more than 40-year history, the Witness Security Program has played a crucial role in the protection of witnesses in organized crime prosecutions, enabling prosecutors and law enforcement to bring to justice some of the world's most dangerous and violent criminals, convictions that would not have been possible without testimony from the witnesses being protected by the program. As then Acting Assistant Attorney General John C. Keeney testified to Congress, "Obtaining the cooperation of insiders is crucial to the successful prosecution of traditional organized crime groups, international narcotics traffickers, and violent street gangs." That was true when Mr. Keeney testified in 1996; it is equally true today.

The Witness Security Program has evolved to include witnesses in domestic and international terrorism prosecutions. These witnesses are individuals close enough to terrorists to have information about them, their organizations, and their plans. They necessarily include a small number of former or known suspected terrorists. Cooperation from these witnesses is vital to successfully prosecute those who pose the most significant threat to our national security.

In deciding whether to admit these witnesses into the Witness Security Program, our paramount priority is the safety of the American public and of the United States. Among other investigations and prosecutions, participants in the Witness Security Program have provided essential cooperation and testimony regarding the 1993 World Trade Center bombing, the 1995 Oklahoma City bombing, the 1998 East Africa embassy bombings, and the 2007 plot to bomb the John F. Kennedy International Airport.

As these cases illustrate, the Witness Security Program is a critical tool for securing the cooperation from witnesses who are necessary to the successful prosecution of cases that are important to the government's counterterrorism mission and to the security of the United States. To date, the FBI has not identified a national security threat tied to the participation of terrorism-linked witnesses in the Witness Security Program.

Nevertheless, in 2010, the Department recognized that the program's handling of terrorism-linked witnesses needed to be im-

proved and began instituting a series of corrective measures aimed at, among other things, ensuring more robust information sharing with our national security stakeholders. Thereafter, the Department's Office of the Inspector General also found areas in which the program's handling of terrorism-linked witnesses needed to be enhanced.

Since that time, the Department has worked closely with the Office of the Inspector General to develop and implement changes to the Witness Security Program to maintain its reliability and value while simultaneously protecting our citizens and our Nation from harm. Indeed, the Department has already complied with 15 of the 16 recommendations made by the Inspector General and has made significant progress toward completing the last recommendation.

Among the changes made by the Department is the institution of formal protocols that provide for special handling of former known or suspected terrorists admitted into the Witness Security Program. These protocols ensure full cooperation and information sharing between the Department, the United States Marshals Service, the FBI, the Terrorist Screening Center, and the National Joint Terrorism Task Force. They mandate notification to the FBI when a former known or suspected terrorist enters the Witness Security Program, and they require careful supervision of each terror-linked program participant who is currently in the program.

The Department is committed to closely monitoring the Witness Security Program, maintaining the security of the witnesses who provided critical assistance to the United States, and above all preserving the safety of the American public. Thank you for allowing me the opportunity to appear before you. Although I may be somewhat limited in those aspects of the program that I can discuss in this setting, I am pleased to answer any questions you may have either here or in a more appropriate forum. Thank you.

[The joint prepared statement of Mr. Harlow and Mr. O'Brien follows:]

Department of Justice

STATEMENT OF

PAUL O'BRIEN
DEPUTY ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

DAVID HARLOW
ASSOCIATE DIRECTOR FOR OPERATIONS
U.S. MARSHALS SERVICE
U.S. DEPARTMENT OF JUSTICE

BEFORE THE

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

ENTITLED

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

PRESENTED

JUNE 4, 2013

Statement of Paul O'Brien
Deputy Assistant Attorney General, Criminal Division
David Harlow
Associate Director for Operations, U.S. Marshals Service
U.S. Department Of Justice

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

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

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

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

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

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

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

I. Evolution of the WitSec Program to Include Terrorism Prosecutions

Created by Congress over 40 years ago as part of the Organized Crime Control Act of 1970 to combat organized crime syndicates, the WitSec Program has played a crucial role in the protection of witnesses to violent crimes, enabling law enforcement officials and federal prosecutors to bring to justice some of the world's most dangerous criminals. The Program has successfully protected an estimated 18,300 participants – including innocent victim-witnesses and cooperating defendants and their dependents – from intimidation and retribution. No Program participant who has followed Program guidelines has ever been seriously injured or killed as a result of their cooperation while in the Program. This vital and effective law enforcement tool allows the government to protect witnesses whose assistance is necessary as part of criminal investigations and whose testimony is critical to secure convictions in United States courts of law, military tribunals, and even foreign prosecutions.

As previously reported to Congress, over the last 20 years, as the government has devoted more resources to the prosecution of terrorism cases, the WitSec Program has evolved to include witnesses in domestic and international terrorism prosecutions.[1] The Government generally cannot choose its witnesses. This is particularly true in cases involving terrorism, where our witnesses are often former known or suspected terrorists – or individuals who are close enough to terrorists to have information about them, their organizations, and their plans – whose cooperation is necessary to successfully prosecute those who pose the most significant threat to our national security. The prosecution of these cases requires providing protection for a small number of former known or suspected terrorists and their family members – as well as innocent victims of and eyewitnesses to planned and executed acts of terror – whose cooperation is essential to securing convictions of those responsible for planning and committing acts of terror.

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

[1] *See The Effectiveness of the Department of Justice Witness Security Program Created Under the Organized Crime Act of 1970 to Protect Witnesses Who Testify Against Traditional Organized Crime Figures: Hearing Before the Senate Committee on the Judiciary*, 104th Cong. 873, at 43 (1996) (statement of John C. Keeney, Acting Assistant Attorney General, Criminal Division, U.S. Department of Justice) ("Although our efforts continue to focus on the type of traditional organized criminal activity, the detection and neutralization of other types of very dangerous criminal organizations, such as *terrorist groups*, international narcotics traffickers, and violent street gangs, became an unfortunate reality for federal law enforcement. Obtaining the cooperation of insiders is crucial to the successful prosecution of these organizations. Securing the testimony of insider witnesses is often impossible without the Witness Security Program.") (emphasis added), *available at* http://www30.us.archive.org/stream/oversightof depar00unit#page/n0/ mode/1up.

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

II. <u>There is No Threat to Public Safety</u>

To date, the FBI has not identified a national security threat tied to the participation of terrorism-linked witnesses in the WitSec Program. Moreover, in the more than 40-year history of the WitSec Program, no terrorism-linked witness has ever committed an act of terrorism after entering the Program. These two facts are a testament to the careful vetting all WitSec Program participants undergo before they are admitted into the Program. No witness – in a terrorism case or otherwise – is admitted into the Program without being subject to an intensive vetting by: the FBI or other sponsoring federal law enforcement agency investigating the underlying criminal conduct; the U.S. Attorney for the district prosecuting the underlying criminal conduct; the U.S. Marshals Service (USMS), which protects witnesses who require a change of identity and relocation services; and Department's Office of Enforcement Operations (OEO), which oversees the WitSec Program. Thus, national security stakeholders such as the FBI have been deeply involved in the Program admission process – often as the party *sponsoring* a terrorism-linked witness's admission into the Program – even before the Department began implementing changes to the Program's treatment of terrorism-linked witnesses. Indeed, of the identified universe of terrorism-linked witnesses, the FBI sponsored nearly 80% of these witnesses into the Program.

Moreover, a witness may be admitted into the Program only if, and after, the sponsoring law enforcement officials can demonstrate through a thorough risk assessment that the witness's value to the prosecution, the need to protect the witness, and the witness's suitability to the Program *outweigh any potential risks to public safety*. As required by law, the risk assessment includes a full psychological evaluation and detailed consideration of the witness's criminal history, his or her value to the underlying prosecution, the nature of the threat against the witness, and the risk that the witness might pose to the relocation community. Thus, the Department has *always* considered the potential risk to the public posed by the entry of a former known or suspected terrorist into the WitSec Program.

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

Despite the WitSec Program's demonstrated value and remarkable success over the last four decades, in May 2010 – prior to the commencement of the OIG audit – new leadership at OEO recognized that the Program's handling of terrorism-linked witnesses needed to be improved. At that time, the newly appointed OEO Director, in consultation with the USMS and FBI, identified several areas in which the management of terrorism-linked Program participants required significant changes and enhanced oversight. The OEO Director then initiated a series of reforms, including mandated information sharing between law enforcement national security stakeholders and improved tracking and recordkeeping of terrorism-linked witnesses admitted into the Program.

In May 2012, OEO, the USMS, the FBI, and the Terrorist Screening Center (TSC), in consultation with the Department's National Security Division (NSD) and the National Joint Terrorism Taskforce (NJTTF), finalized and simultaneously implemented formal protocols to provide for specialized handling for former known or suspected terrorists in the WitSec Program. Recognized in the *OIG Audit Report* as a "significant milestone," these protocols require the robust and real-time sharing of information between all law enforcement national security stakeholders. In effect for a year now, the enhanced protocols mandate:

- Complete information sharing between the USMS, OEO, FBI, TSC, and NJTTF, including full access to the USMS and OEO case files for all terrorism-linked witnesses.

- A risk assessment to be conducted by the FBI to determine Program suitability in all cases – even in cases when FBI is not the sponsoring law enforcement agency.

- Consultation with the NSD prior to admitting a terrorism-linked witness into the Program.

- Running every new applicant through the Terrorist Screening Database (TSDB) and the National Criminal Instant Background Check (NCIC) database before any decision is made to authorize Program services.

- An absolute ban on the use of commercial flights for WitSec Program participants with a Watchlist status of "No Fly."

- Regular computer indices checks on each terrorism-linked Program participant who is currently in the Program or being provided with immigration or identity support services, unless otherwise directed by the OEO Director.

- Face-to-face meetings several times a year with terrorism-linked Program participants who are currently in the Program or being provided with immigration or identity support services, unless otherwise directed by the OEO Director.

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

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

IV. Conclusion

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

Mr. SENSENBRENNER. Thank you very much, Mr. O'Brien.

The Chair would remind Members of the Subcommittee that the 5-minute rule will be in effect. Also, the Chair will place on the record that non-Members of the Subcommittee will be allowed to sit on the dais but will only be allowed to ask questions should Members of the Subcommittee yield them some of their time.

Mr. Horowitz, your public report revealed a systematic lack of information sharing among DOJ entities that directly touches upon our national security. And we also found that out relative to information sharing about the Boston attacks, which are not the subject of this report.

Can you comment on what you found in this respect, and are you satisfied, as Mr. O'Brien has said, but the holes have been patched in the Justice Department's information sharing?

Mr. HOROWITZ. Well, we found in the course of this review that information was not being shared. The primary protectors and organization that the Congress and the executive branch have assigned to deal with these issues is the FBI and its Terrorist Screening Center. They were not receiving the information they needed to receive. That did not happen until 2012.

We believe as a result of the audit that protocols have now been put in place that, if followed, will in fact address the holes, but we have not audited against the steps that have been taken. So the recommendations are not yet closed, and we will go back and follow up and ensure that the steps that we have recommended, that the Department has said they have taken, were in fact taken.

Mr. SENSENBRENNER. Now, the public summary of your audit indicates that a U.S. Marshals inspector was concerned that a witness was collecting information from militant Muslim groups, but that information was not being shared with the FBI for at least 2 years. Has this hole been plugged?

Mr. HOROWITZ. Again, our understanding is the protocols should address that issue, if followed, and we will do a follow-up audit and issue a report that determines whether, in fact, the steps have been taken.

Mr. SENSENBRENNER. Okay. Either Mr. Harlow or Mr. O'Brien, the Marshals Service, which is tasked with fugitive apprehension, lost at least two known terrorists who were under your supervision. Why did that happen, and have you found them?

Mr. HARLOW. Mr. Chairman, thank you. It is important to note that the Witness Security Program is a voluntary program, and the two witnesses in question left the program years ago—in fact, one more than 25 years ago—left the country years ago. They have since been located, and our investigative efforts have shown that they have not tried to reenter the country, and the FBI has determined that they have not posed a threat to the United States.

Mr. SENSENBRENNER. Do you know if their names and whatever relevant data we know of has been entered in the State Department watch list so that they would not be granted a visa and given to Homeland Security so that if they did show up at the airport they would be denied entry?

Mr. HARLOW. Yes, sir. Those steps have been taken.

Mr. SENSENBRENNER. Okay. Now, another question that I have of both of you is are local law enforcement officials notified when

someone under the Witness Protection Program is placed in their community?

Mr. HARLOW. Mr. Chairman, local law enforcement is notified on a case-by-case basis depending on the specifics of that witness' history.

Mr. SENSENBRENNER. Okay. And can you say which types of history would require notification of local law enforcement and which would not?

Mr. HARLOW. Yes, Mr. Chairman. Many times, when a particular witness has an extensive criminal history, local law enforcement might be notified that they are going to be placed in their area.

Mr. SENSENBRENNER. And which would not?

Mr. HARLOW. General witnesses involved in the program without that extensive criminal history.

Mr. SENSENBRENNER. Well, what about a terrorist who was not indicted or charged with any type of terrorist-related offense? Would local law enforcement be knowledgeable about the fact that that person was in the community?

Mr. HARLOW. Mr. Chairman, under our new protocols, the Joint Terrorism Task Force would be notified. The FBI would have the lead for distributing that information as they see fit.

Mr. SENSENBRENNER. And are they doing it with people who are known terrorists who are in the program now?

Mr. HARLOW. I am sorry, sir. I do not know that answer.

Mr. SENSENBRENNER. Okay. Mr. O'Brien, do you know that answer?

Mr. O'BRIEN. Mr. Chairman, thank you for the question. First, the new protocols mandate that we share all information with the FBI when a former known or suspected terrorist is admitted to the program.

Mr. SENSENBRENNER. What about those that are already in the program prior to the new protocol?

Mr. O'BRIEN. We have shared that information with the FBI, and the FBI has access to the files both at the Department and the Marshals Service.

Mr. SENSENBRENNER. Thank you. My time is up.

The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman.

Following up on that last question about notifying local law enforcement, it seems to me that the more people you tell about the presence of somebody, the more likely there may be a breach. Who in the local law enforcement, if you tell them, will get this information?

Mr. O'BRIEN. Congressman, the protocols mandate that we notify the FBI both in the new location area where the witness is placed, and we also notify the FBI on the national level to make sure that there is redundancy built into the notification system.

One thing that we also have been doing——

Mr. SCOTT. What about local police?

Mr. O'BRIEN. So we take the lead. If the FBI determined that they needed to share this information with the local police, that is certainly something we would consider. I think it is important to note that these individuals are watch listed.

Mr. SCOTT. So when you say the local, you are talking about the local FBI. You were not talking about local law enforcement.

Mr. O'BRIEN. That is correct. That is correct, Mr. Chairman, Congressman.

Mr. SCOTT. Okay. Let me ask another question. How important is the Witness Protection Program to the Department?

Mr. O'BRIEN. The Witness Protection Program is one of the most important tools prosecutors have to tackle organized crime, whether it is traditional organized crime, international narcotics cases, or a violent street gang. It has been one of the most effective tools that we have utilized in the Department to bring these individuals to justice, individuals that pose some of the most significant harm to our communities.

Mr. SCOTT. How many of the people in the program are dangerous criminals, and how many just happened to be bystanders that would otherwise be reluctant to testify?

Mr. O'BRIEN. Thank you, Congressman. I think that is an important question. The program has effectively not only safely protected witnesses who have criminal histories and have cooperated with the government, those individuals that have cooperated against the organizations which they are members of, but the program also protects family members and innocent bystanders, those individuals that are also placed in peril as a result of, say, for example, a family member's cooperation with the United States. So the program is designed to not only protect those individuals that are testifying on behalf of the United States but family members that could face retribution as a result of the cooperation of a family member as well.

Mr. SCOTT. How many people do you have in the program? Is that a public number?

Mr. O'BRIEN. Congressman, I believe in the public summary there are approximately 700 individuals actively in the program. But as we stated, through the history of the program, the Marshals Service has effectively protected thousands of individuals.

Mr. SCOTT. Now, you used the term "known or suspected terrorists." Many of these have not been convicted of anything; is that right?

Mr. O'BRIEN. That is correct.

Mr. SCOTT. And they are free to just up and leave. There are no restraints on them; is that right?

Mr. O'BRIEN. The program is a voluntary program, and individuals can leave the program at their choosing.

Mr. SCOTT. And what is your response to somebody that just up and leaves and just disappears?

Mr. O'BRIEN. Well, Congressman, the protocols address that, and one thing that we have implemented is that when an individual leaves the program, that we will provide that information to the FBI and notify the FBI that the individual has left the program.

Mr. SCOTT. Do you have any estimate of how many staff people you have to assign to each protectee?

Mr. O'BRIEN. Congressman, I think that is a question better left for the Marshals Service. They may not be at liberty to discuss those operational issues.

Mr. HARLOW. Congressman, Mr. O'Brien is correct.

Mr. SCOTT. If you do not want to do it in general, are their budget implications to keeping track of these people?

Mr. HARLOW. Yes, sir.

Mr. SCOTT. Okay. Mr. O'Brien, we have been advised that 15 of the 16 recommendations from the Inspector General's report have been addressed. What is left undone?

Mr. O'BRIEN. Congressman, there is one recommendation that we are working on. In an abundance of caution, we have decided to audit every WITSEC file to review those files to ensure that there are no other known or suspected terrorists that entered in the program, and if we do notice those individuals, we will provide that information to the FBI. That audit is underway. We have reviewed approximately 20 years' worth of files, and that process is ongoing, and we are going to continue to work on that recommendation to see to its conclusion.

Mr. SCOTT. The other recommendations have been—you have completed those recommendations?

Mr. O'BRIEN. The other recommendations that were in the report, we believe we have completed 15 of the 16.

Mr. SCOTT. Okay. Mr. Horowitz, is that your understanding?

Mr. HOROWITZ. The Department has reported to us that it has addressed 15 of the 16. As I said, until we audit against it and determine that, in fact, the steps were taken and that they were effective, we can not close the recommendation.

Mr. SENSENBRENNER. The gentleman's time has expired.

The gentleman from Virginia, Mr. Goodlatte.

Mr. GOODLATTE. Thank you, Mr. Chairman.

Inspector General Horowitz, your office discovered the practice of admitting known and suspected terrorists into the Witness Security Program while doing a routine audit of the program and decided to issue an interim report on the issue. Is it common for you to find something so alarming that you need to issue an interim report to stop it?

Mr. HOROWITZ. Fortunately, it is not. We thought this was of such importance that we needed to issue the report and make sure steps were taken because the gaps were still there when we started this audit.

Mr. GOODLATTE. Assistant Director Harlow, specifically why did not the Department share the new names and identities that provided known terrorists with the FBI's Terrorist Screening Center?

Mr. HARLOW. Mr. Chairman, the success of this program for many, many years was built on the compartmentalization of information. As the program evolved, we failed to evolve our procedures and protocols. We have now changed those procedures and protocols and we actively embrace them. It is also important to note that the FBI is the sponsoring agency in more than 80 percent of these types of cases.

Mr. GOODLATTE. So it was an intentional decision based upon a flawed protocol.

Mr. HARLOW. We recognized the problem with new leadership in May of 2010 and started to make those changes. Yes, sir.

Mr. GOODLATTE. Deputy Assistant Attorney General O'Brien, the Department's response to the IG's report calls the participants in question "former known and suspected terrorists." Can you tell us

what a former terrorist is? Is there any guarantee that the participants have given up their bad ways when they join the program?

Mr. O'BRIEN. Mr. Chairman, I think it is important to note that these individuals, before they are admitted into the program, go through extensive vetting. That vetting includes a risk analysis by the sponsoring law enforcement agency, and approximately 80 percent of the former terrorists that were admitted into the program, they were admitted after a recommendation or a sponsor by the FBI. These are individuals that turn on their organizations, and many of these individuals testified publicly against the organizations which they were members of.

So we go through a very careful vetting before they are admitted to the program, which includes a risk assessment by the sponsoring law enforcement agency. And one thing we have done to ensure that there are no gaps in this risk analysis is that if it is a case in which an agency is sponsoring a witness into the program other than the FBI, we will ask the FBI to perform a risk assessment.

Lastly——

Mr. GOODLATTE. I understand that some of them are still on the FBI's terrorist watch list. Is that another failure to share information, or is that because they disagree with your assessment of the individuals? What would be the reason for that?

Mr. O'BRIEN. Some of the individuals, not all, are still watch listed. Some of them are watch listed in varying degrees of status on the watch list. I will say that the FBI, when we looked at this issue and began looking at this issue, the FBI performed risk assessments of these individuals, and as I said in my opening statement, currently the FBI has determined that there is no threat to public safety based on their program participation.

That being said, Mr. Chairman, I think it is fair to say that we admit that the suitability and monitoring requirements historically employed by the program needed to be enhanced. One thing that we are doing now, which I think is very effective, is that we have quarterly meetings with the FBI and the Terrorist Screening Center, the Marshals Service and the Department, and we go over the list of individuals that we have identified as being former known or suspected terrorists and we share that information to make sure that we all have the requisite information that we need.

From the beginning, we have been talking to the FBI about having greater involvement with the FBI with this program, and the FBI has unfettered access to the files both of the Marshals Service and the Department. So that type of robust information sharing is now in place.

Mr. GOODLATTE. Let me ask you a couple more questions before my time expires. First of all, does the fact that two of the people in the program disappeared, and I now understand they have been located but located outside the United States, does that call into question the soundness of the screening process that they were no longer a risk as a terrorist and could be called a former terrorist, or does it indicate that they cooperated in order to get away from everything and maybe back engaged in terrorist activities again? Do we know the answer to that?

Mr. O'BRIEN. Well, certainly, Mr. Chairman, we have no information to believe that these two individuals which you have referenced have engaged in acts of terrorism.

Mr. GOODLATTE. Why did they leave unaccounted for?

Mr. O'BRIEN. One individual voluntarily chose to leave the program after being in the program for a short period of time. That individual left the program over 25 years ago. The second individual, it is my understanding, was terminated from the program when he no longer decided to cooperate.

Mr. GOODLATTE. All right.

Thank you, Mr. Chairman. My time has expired.

Mr. SENSENBRENNER. The gentleman's time has expired.

The gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Thank you, Chairman Sensenbrenner.

Welcome to the witnesses.

Is it accurate to say, Deputy Assistant Attorney General O'Brien, that the Witness Security Program is critical to two missions of the Department, law enforcement and counterterrorism?

Mr. O'BRIEN. I think that is a fair and accurate statement. Many of these witnesses who have cooperated not only have provided public testimony and cooperation in cases that were prosecuted in our Federal courts, but they have also provided information and intelligence about the organizations in which they were previously members of. So I think that is a fair statement.

Mr. CONYERS. Inspector General Horowitz, by all accounts, none of the operational flaws identified in the Inspector General's report represent a current threat to public safety or national security. Can we conditionally agree with that, or can we not make that statement at this time?

Mr. HOROWITZ. Well, as we indicated in our report, the Department has advised us that it has taken the steps that we have recommended in 15 of the 16 instances. Until we audit against that, though, we are not prepared to make a statement that the recommendations are, in fact, closed.

Mr. CONYERS. So then we will be waiting to find how your audit of the 15 items that have been completed before the interim report before we will know exactly how things have turned out.

Mr. HOROWITZ. That is correct.

Mr. CONYERS. Now, one of the more disturbing aspects of the report is the suggestion that individuals on the no-fly list, Mr. Harlow, Assistant Director of Marshals, that there were individuals on the no-fly list that were allowed to fly on commercial airlines. When did the Department of Justice become aware of this problem?

Mr. HARLOW. Congressman, for several years now people on the no-fly list have not flown on commercial planes. We embrace the recommendations of the Inspector General's report and we have applied those protocols.

Mr. CONYERS. Is it possible that these individuals could escape detection by TSA today?

Mr. HARLOW. Sir, all members have been put on the terrorist screening watch list and are on the flying watch list.

Mr. CONYERS. Mr. Chairman, those are the questions that I have. I yield back the balance of my time.

Mr. SENSENBRENNER. I thank the gentleman from Michigan.

This concludes today's hearing, and I want to thank all of the witnesses for attending.

Without objection, all Members will have 5 legislative days to submit additional written questions for the witnesses or additional materials for the record.

The Chair says he will talk to Members on both sides of the aisle to see if we want to have you come back for a classified hearing.

And without objection, this hearing is adjourned.

[Whereupon, at 10:43 a.m., the Subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

INTERIM REPORT ON THE DEPARTMENT OF JUSTICE'S HANDLING OF KNOWN OR SUSPECTED TERRORISTS ADMITTED INTO THE FEDERAL WITNESS SECURITY PROGRAM

U.S. Department of Justice
Office of the Inspector General
Audit Division

Report 13-23
May 2013

PUBLIC SUMMARY

PUBLIC SUMMARY

INTERIM REPORT ON THE DEPARTMENT OF JUSTICE'S HANDLING OF KNOWN OR SUSPECTED TERRORISTS ADMITTED INTO THE FEDERAL WITNESS SECURITY PROGRAM

The Department of Justice Office of the Inspector General (OIG) is conducting an audit of the federal Witness Security Program (WITSEC Program). While conducting this audit, we found significant issues concerning national security that we believe required immediate remedy. We notified Department of Justice (Department) leadership of the vulnerabilities we identified, and we developed this interim report to help ensure that the Department promptly and sufficiently addressed the deficiencies we found. As of March 2013, the Department stated that it had or was in the process of implementing corrective actions to address all 16 of the recommendations we make in this report. We will continue our review and evaluate the Department's progress in implementing these corrective actions.

Due to statutory restrictions and concerns about national security and the safety of WITSEC Program participants cited by the Department, most of the results in our full interim report are not releasable publicly. This unclassified summary includes publicly releasable information from our full interim report.

Background

Since the WITSEC Program's inception in 1971, more than 8,400 witnesses and 9,900 family members and other associates of witnesses have been admitted into the WITSEC Program.[1] This report focuses on the WITSEC Program activities that are administered by: (1) the Criminal Division's Office of Enforcement Operations (OEO) and (2) the United States Marshals Service (USMS).[2] As of May 15, 2012, the USMS WITSEC Program had approximately 700 active participants. Participants in the USMS WITSEC Program are relocated to an area believed to be safe from

[1] The figures presented here include both incarcerated and not incarcerated witnesses and are estimates, as the Criminal Division's Office of Enforcement Operations (OEO) officials have stated that the total number of participants in the WITSEC Program is not known.

[2] The Federal Bureau of Prisons portion of the WITSEC Program is not the focus of this report.

those who may want to harm them; provided a new identity; and afforded financial subsistence, occupational training, and other means necessary for them to acclimate in their new location.

The WITSEC Program was designed to protect witnesses, and their dependents, who were in danger as a result of their agreement to testify for the government in organized crime cases. The program has evolved over the past 40 years to admit witnesses who agree to testify in a variety of cases, including drug trafficking, violent gang, and terrorism cases. We found that WITSEC Program participants include individuals known or suspected by the government to be involved in terrorism.[3] This includes individuals trained in areas such as aviation and explosives, involved in plotting bombing attacks, and guilty of serious offenses such as conspiracy to murder U.S. nationals.

The Department told us that the WITSEC Program was and remains a critical prosecutorial tool to combat terrorism. The Department stated that known or suspected terrorists admitted into the WITSEC Program provided invaluable and critical information and testimony that assisted the government in identifying, dismantling, and prosecuting terrorist organizations. These witnesses cooperated in major terrorism investigations and prosecutions that the Department described as integral to its primary counterterrorism mission, including the 1993 World Trade Center bombing, the East Africa Embassy bombings, the "Blind Sheik" prosecutions, the Alfred P. Murrah Federal Building attack in Oklahoma City, the New York City subway suicide-bomb plot, and the plot to bomb John F. Kennedy International Airport. The Department believes that as a result of their cooperation, the known or suspected terrorists admitted into the WITSEC Program faced danger of retaliation.[4]

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[3] The Terrorist Screening Center's Watchlisting Guidance established definitions for known or suspected terrorists. Persons meeting these definitions are considered to be known or suspected terrorists by the U.S. government. TSC personnel stated that there is no "former" known or suspected terrorist designation.

[4] This report addresses vulnerabilities and weaknesses in the handling of known or suspected terrorists when admitted into the WITSEC Program. We recognize the extraordinary importance of these prosecutions and therefore, our report is not intended to, and does not, assess the overall value or the processes that precede the admittance of known or suspected terrorists into the WITSEC Program, including the value of their testimony or cooperation.

National Security Vulnerabilities

When handling known or suspected terrorists in the WITSEC Program, national security risks must be mitigated by specific, formalized procedures that consider national security implications along with the protection of WITSEC participants. We found significant deficiencies in the handling of known or suspected terrorists who were admitted into the WITSEC Program. Specifically, we determined that OEO and the USMS – the two entities primarily responsible for managing the WITSEC Program for participants who are not incarcerated – did not involve national security stakeholders when admitting and monitoring known or suspected terrorists into the WITSEC Program.[5]

To help protect witnesses from the persons and organizations against whom they testify, the USMS provides a WITSEC participant and his or her dependents with a new name and necessary identity-related documentation. We found that the Department was not authorizing the disclosure to the Terrorist Screening Center (TSC) of the new identities provided to known or suspected terrorists in the WITSEC Program.[6] The TSC's consolidated terrorist watchlist is exported to various screening databases to include the Transportation Security Administration's (TSA) No Fly and Selectee lists, which are used to identify known or suspected terrorists attempting to fly on commercial airlines. Individuals placed on the TSA's No Fly list are prohibited from flying on commercial planes and individuals on the TSA's Selectee list require additional screening procedures in order to board a commercial aircraft.

As a result of the Department not disclosing information on these known or suspected terrorists, the new, government-provided identities of known or suspected terrorists were not included on the government's consolidated terrorist watchlist until we brought this matter to the Department's attention. Therefore, it was possible for known or suspected terrorists to fly on commercial airplanes in or over the United States and evade one of the government's primary means of identifying and tracking

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[5] National security stakeholders such as the FBI and DEA may be involved in the WITSEC Program admission process as sponsoring agencies. A sponsoring agency provides WITSEC Program personnel with information on the witness, including a threat assessment and a risk assessment. The threat assessment evaluates the threat to the witness for cooperating with the federal government while the risk assessment reports on potential risks to the public caused by the witness' enrollment in the WITSEC Program.

[6] The TSC is managed by the Federal Bureau of Investigation (FBI) and was established to serve as the U.S. government's consolidation point for information about known or suspected terrorists.

terrorists' movements and actions. For example, we identified some WITSEC Program participants who were on the TSA's No Fly list yet were allowed to fly on commercial flights with WITSEC Program officials' knowledge and approval. Moreover, these individuals, on their own accord, could have flown without WITSEC Program officials' knowledge and approval. As a result of our review, the Department established protocols to share the identities of known or suspected terrorists authorized into the USMS WITSEC Program with the TSC as well as the FBI. Further, in May 2012 the Department implemented revised protocols and improved its security measures regarding participants' use of commercial flights.

We verified that as of July 2012 the USMS had disclosed to the FBI and TSC the government-provided identities for a majority of the known or suspected terrorists who the Department has identified being admitted into the WITSEC Program. The FBI is reviewing this matter and, as of July 2012, FBI officials stated that the FBI had not identified an immediate threat tied to the provided identities. In July 2012 the Deputy Director of OEO stated that OEO authorized and the USMS disclosed to the TSC the identity information on additional WITSEC participants who the Department had identified as known or suspected terrorists. In September 2012, OEO and FBI officials informed us that information on these individuals had been shared with the FBI. The Department stated that as of March 2013: (1) the FBI had completed all but one of the threat assessments on WITSEC Program participants disclosed to them as having a potential nexus to terrorism, and (2) none of these individuals have revealed a threat to national security at this time.[7] We have not verified this information, and as we continue our review we intend to evaluate the Department's stated progress on this matter.

In July 2012, the USMS stated that it was unable to locate two former WITSEC participants identified as known or suspected terrorists, and that through its investigative efforts it has concluded that one individual was and the other individual was believed to be residing outside of the United States.

In addition, we found that the Department did not definitively know how many known or suspected terrorists were admitted into the WITSEC Program. The Department has identified a small but significant number

[7] The Department stated that the remaining threat assessment yet to be completed involves a WITSEC participant in BOP custody who has not been provided a new identity.

of USMS WITSEC Program participants as known or suspected terrorists.[8] As of March 2013, the Department is continuing to review its more than 18,000 WITSEC case files to determine whether additional known or suspected terrorists have been admitted into the program. Therefore, we believe the number may not be complete and may continue to evolve.

We also found that OEO and the USMS did not share case information of potential value to the FBI. Before May 2012, OEO, the USMS, and FBI did not have a formal process to share WITSEC terrorism information. In one instance, we noted that in a June 2009 field report a USMS Inspector reported his belief that a WITSEC participant was trying to gather intelligence on sensitive policies and procedures of the USMS WITSEC Program for militant Muslim groups. We found no evidence that this information was shared with the FBI when it was reported to USMS WITSEC headquarters personnel near the time the Inspector recorded this concern. USMS WITSEC Program personnel surmised that this information was not passed to the FBI at that time because USMS WITSEC Program officials determined that the statements about the witness gathering intelligence for a terrorist group were more based in opinion than fact and that the witness was concerned about the appropriate amount of funding the witness' family was receiving. Nevertheless, certain WITSEC personnel with whom we discussed this matter stated that the information should have been shared with the FBI at the time it was originally reported. Following our discussion with WITSEC Program personnel about this matter, we were informed by an FBI official that this information was shared with the FBI in February 2012, years after the Inspector originally stated his concern. We believe information such as that found in this situation must be shared with the FBI immediately, so that the FBI, as national security experts, can determine the appropriate action.

As we identified these and other national security vulnerabilities, WITSEC Program managers expressed concern for the confidentiality of the WITSEC Program and the safety of its participants. OEO, USMS, and FBI National Joint Terrorism Task Force officials stated that in December 2010 they began working to establish a formal process to address some of the issues we identified. FBI officials stated that OEO was willing to provide the information to the FBI, but an agreement could not be reached on the number of individuals who would have access to WITSEC information. The

[8] The Department requested that we not release publicly the actual number of known or suspected terrorists admitted into the WITSEC Program due to concerns over the sensitivity of the information. We consider the total number of known or suspected terrorists to be small as it relates to the number of all participants admitted into the WITSEC Program.

FBI stated that despite delays, it believed there was an understanding amongst all the agencies about the need to develop a protocol.

Once the Department's senior leadership was made aware of the issues concerning known or suspected terrorists in the WITSEC Program, the Department's senior leadership immediately directed the initiation of corrective actions to address the national security vulnerabilities we identified. For example, the Deputy Attorney General and the Director of the USMS ensured that all witness identities were compared against the consolidated terrorist watchlist to identify all witnesses who had a watchlist record.

In our report we make 16 recommendations to the Deputy Attorney General to assist the Department in its efforts to include national security considerations when identifying, admitting, monitoring, and terminating WITSEC Program participants who are known or suspected terrorists. The Department stated that as of March 2013 it had implemented corrective actions for 15 of these recommendations and was in the process of implementing corrective action on the remaining recommendation. These actions include sharing WITSEC Program participant identity and case file information with the FBI and TSC on known or suspected terrorists, performing threat assessments on known or suspected terrorists admitted into the WITSEC Program, and developing protocols for enhanced monitoring of these individuals. As we continue our review of the WITSEC Program, we will evaluate and report on the Department's progress in implementing its corrective actions to address our recommendations.

DEPARTMENT OF JUSTICE RESPONSE

U.S. Department of Justice

Office of the Deputy Attorney General

Washington, D.C. 20530

May 6, 2013

MEMORANDUM

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

Through: Raymond J. Beaudet
Assistant Inspector General for Audit

From: Armando O. Bonilla
Senior Counsel to the Deputy Attorney General

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

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

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

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

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

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

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

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

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

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

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

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

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

I. Evolution of the WitSec Program to Include Terrorism Prosecutions

Created by Congress over 40 years ago as part of the Organized Crime Control Act of 1970[5] to combat organized crime syndicates, the WitSec Program has played a crucial role in the protection of witnesses to violent crimes, enabling law enforcement officials and federal prosecutors to bring to justice some of the world's most dangerous criminals. The Program successfully has protected an estimated 18,300 participants -- including innocent victim-witnesses and cooperating defendants and their dependents -- from intimidation and retribution. No witness or family member of a witness who has followed Program guidelines ever has been seriously injured or killed as a result of his or her cooperation. This vital and effective prosecution tool allows the government to protect witnesses whose assistance is necessary as part of criminal investigations and whose testimony is critical to secure convictions in United States courts of law, military tribunals, and even foreign prosecutions.

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

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

[6] *See The Effectiveness of the Department of Justice Witness Security Program Created Under the Organized Crime Act of 1970 to Protect Witnesses Who Testify Against Traditional Organized Crime Figures: Hearing Before the Senate Committee on the Judiciary,* 104th Cong. 873, at 43 (1996) (statement of John C. Keeney, Acting Assistant Attorney General, Criminal Division, U.S. Department of Justice) ("Although our efforts continue to focus on the type of traditional organized criminal activity, the detection and neutralization of other types of very dangerous criminal organizations, such as *terrorist groups*, international narcotics traffickers, and violent street gangs, became an unfortunate reality for federal law enforcement. Obtaining the cooperation of insiders is crucial to the successful prosecution of these organizations. Securing the testimony of insider witnesses is often impossible without the Witness Security Program.") (emphasis added), *available at* http://www30.us.archive.org/stream/oversightof depar00unit#page/n0/ mode/1up.

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

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

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

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

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

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

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

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

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

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

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

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

following reforms prior to the commencement of this audit:

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

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

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

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

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

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

OFFICE OF THE INSPECTOR GENERAL ANALYSIS OF THE DEPARTMENT OF JUSTICE'S RESPONSE TO THE PUBLIC SUMMARY

The OIG provided to the Department a draft of this summary of our interim report on the Department of Justice's Handling of Known or Suspected Terrorists Admitted into the Federal Witness Security (WITSEC) Program. The Department's written response to this summary is incorporated in Appendix I. The following provides the OIG analysis of this response.

Department Actions to Address OIG Recommendations

As stated in this summary report, the full version of our interim report is Limited Official Use and contains 16 recommendations to assist the Department in its efforts to include national security considerations when identifying, admitting, monitoring, and terminating WITSEC Program participants who are known or suspected terrorists. The Department agreed with all 16 recommendations.

In closing its response to the public summary report, the Department listed several reforms that it states it has implemented to improve its terrorism-related protocols for WITSEC Program applicants and participants. Many of these stated reforms are in response to our findings and directly address the recommendations that we made in the full report and that we shared with the Department throughout our review so it could take immediate action to remedy the serious national security vulnerabilities we identified. Further, the Department stated in its response that it "agrees that the recent protocol changes were necessary, will ensure the WITSEC Program's continued vitality, and will provide additional security to the public."

We reviewed the Department's response to the full interim report and determined that the Department has provided adequate evidence of corrective action to close 3 of the 16 recommendations. The remaining 13 recommendations are resolved and will be closed upon the submission of the information indicated below. We will follow up with the Department to obtain support for actions it states it has taken and plans to take on the remaining recommendations. Further, as we continue our review we intend to evaluate the Department's implementation of its newly developed protocols designed to address the vulnerabilities we identified.

The Department's Use of the Term "Former" Known or Suspected Terrorist

The Department stated in its response that the OIG interim report "fails to take into account the extensive vetting [the] WITSEC participants undergo before being formally sponsored, and then admitted, into the [WITSEC] Program, and the fact that these individuals are cooperating with the government, and often testify in terrorism-related prosecutions." The Department also stated that a broader definition than that contained in Terrorist Screening Center Watchlisting Guidance was used to identify the universe of WITSEC Program participants with links to terrorism-related activity. For these reasons, the Department stated that it is more accurate to refer to known or suspected terrorists in the WITSEC Program as "*former*" known or suspected terrorists.

We believe the Department rightly applied a broader definition to identify WITSEC Program participants with known and potential ties to terrorism. However, as we indicate in our report, we were told by TSC personnel that there is no "former" known or suspected terrorist designation. The TSC's Watchlisting Guidance provides definitions for "known terrorist" and "suspected terrorist" and the TSC determined, during the course of our review, that some current and former WITSEC Program participants fell within these established definitions. Moreover, as a result of our review, several known or suspected terrorists in the WITSEC Program were added to the U.S. government's No Fly list or the Selectee list and the Department determined that certain WITSEC participants on the consolidated terrorist watchlist should be removed from the watchlist because they did not satisfy the definition of a known or suspected terrorist. We concur with the Department's statement in its response that the suitability requirements used in determining an individual's admission into the WITSEC Program should be enhanced for terrorism-linked witnesses.

The Department's Implementation of Terrorist-Related Protocols

In its response, the Department stated that when our review "commenced in October 2011, OEO, the USMS, and the FBI were already working to remedy... the information sharing deficiencies between national security stakeholders concerning terrorism-linked witnesses admitted into the WITSEC Program." However, shortly after we began our review we found that information sharing and coordination between OEO, the USMS, and DOJ's national security stakeholders regarding the WITSEC Program was inconsistent, inadequate, and informal.

The Department stated in its response to this summary report that in May 2012 it implemented formal protocols for admitting and monitoring known or suspected terrorists in the WITSEC Program. Given the importance of these protocols and the substantial time it took the Department to develop and finalize them, we noted in our full interim report that this was a "significant milestone."

The Department's Identification of Known or Suspected Terrorists

In its response to this public summary report, the Department stated that it "has identified, located, and minimized the threat of all former known or suspected terrorists admitted into the WITSEC Program during its 40-year history." We agree that the Department followed our recommendation and ran all WITSEC participants' true and new names and known aliases against the consolidated terrorist watchlist. This process helped the Department identify individuals with ties to terrorism whom it had not identified in its preliminary review of WITSEC case files. The Department also stated in its response that it has completed its manual review of all WITSEC files since 1996, but that it still needs to manually review files from prior to 1996. While this manual review has not identified any additional known or suspected terrorists admitted into the WITSEC Program, we believe that only upon completion of this review will it be possible for the Department to state definitively that it has identified, located, and minimized the threat of all known or suspected terrorists admitted into the WITSEC Program during its existence.

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