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U.S. Department of Justice



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

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

(U) EXECUTIVE SUMMARY

(U) The federal Witness Security Program (WITSEC Program) was established to provide for the security, health, and safety of government witnesses whose lives are at risk as a result of their testimony against organized crime members, drug traffickers, terrorists, and other major criminals.¹ Since the WITSEC Program's inception in 1971, more than 8,700 witnesses and over 9,900 family members and other associates of witnesses have been admitted into the WITSEC Program. Within this population, there are known or suspected terrorists (KSTs) who have agreed to cooperate in major terrorism investigations and prosecutions, including the 1993 World Trade Center bombing, the 1995 Alfred P. Murrah Federal Building attack in Oklahoma City, the 1998 East Africa Embassy bombings, a 2007 plot to bomb John F. Kennedy Airport, and a 2009 plot to bomb the New York City subway system.

(U) In May 2013, the Department of Justice (Department) Office of the Inspector General (OIG) issued an interim report on the Department's handling of KSTs admitted into the USMS WITSEC Program. The report included 16 recommendations to the Office of the Deputy Attorney General to improve information sharing among entities responsible for the WITSEC Program and reduce the risk to the public when admitting KSTs into the WITSEC Program. As we described in that report, we found that the Department had not identified all KSTs

admitted into the WITSEC Program; lacked adequate and appropriate oversight of these individuals; did not ensure that the identities of KSTs admitted into the WITSEC Program were placed on the government's consolidated terrorist watchlist, as appropriate; and did not appropriately share information with the Federal Bureau of Investigation (FBI) and other national security stakeholders, thus preventing these stakeholders from taking necessary precautions with respect to, and properly monitoring, these individuals.

(U) In this report, we follow up on findings in our May 2013 report to determine whether the corrective actions taken by the FBI, USMS, and OEO sufficiently addressed the risks we identified. Specifically, our objectives for this audit were to evaluate the Department's: (1) handling of KSTs admitted to the WITSEC Program; (2) practices for watchlisting and the processing of encounters with this group of WITSEC Program participants; and (3) procedures for mitigating risks to the public through restrictions placed on this high-risk group of WITSEC Program participants. We determined that since November 2015, OEO and the FBI admitted two new KSTs into the WITSEC Program, and in doing so followed their protocols and appropriately coordinated with each other and the USMS. However, we also concluded that while the FBI, USMS, and OEO have developed new policies and procedures to address the issues we identified in our May 2013 review, they have not sufficiently and appropriately implemented all of them. Additionally, we remain concerned that the Department has not ensured that KST information has been appropriately shared with relevant national security stakeholders, and that those responsible for monitoring these individuals have the information they need to do so effectively.

(U//~~LES~~) Identifying and Sharing Information on KSTs in the WITSEC Program

(U//~~LES~~) Our May 2013 report included several recommendations to improve the identification of KSTs in the WITSEC Program and the sharing of related information with national security stakeholders. In response to our 2013 report, the USMS and OEO manually reviewed more than [REDACTED] WITSEC Program case files to identify all potential KSTs that had been admitted into the WITSEC Program in order to ensure that their information had been appropriately shared with national security stakeholders. Specifically, the USMS and OEO performed separate reviews of [REDACTED] WITSEC Program case files to determine which cases involved facts indicating a potential nexus to terrorism. The USMS identified [REDACTED] individuals meeting this description and shared their true name and identifying information with OEO.² Based on its secondary review of the USMS's results and its primary review of [REDACTED] case files, OEO determined that a total of [REDACTED] individuals should be passed to the FBI for possible inclusion on the consolidated

² (U) A witness true identity refers to the name the witness had when he or she was admitted to the WITSEC Program.

(U) The full version of this report contains information that the Department considered to be law enforcement sensitive and sensitive security information, and therefore could not be publicly released. To create this public version of the report, the Office of the Inspector General redacted (blacked out) portions of the full report.

terrorist watchlist. The FBI subsequently added [REDACTED] of these individuals to the consolidated terrorist watchlist.

(U//~~LES~~) We found several deficiencies in the process OEO followed in analyzing these case files and in sharing information with the FBI. Specifically, we believe, and the FBI agrees, that OEO should have shared the information with national security stakeholders for all [REDACTED] individuals identified by the USMS, rather than conducting its own secondary review. If OEO had passed along all of the case file information that the USMS identified from its case file review, the FBI's counterterrorism experts - not just OEO - would have had the opportunity to evaluate whether any of the [REDACTED] individuals were KSTs. Under the process used, that did not happen for a majority of the individuals. We also found that neither OEO nor the FBI was able to provide evidence of a consistent application of the criteria each used for its reviews, and both lacked adequate support for their respective determinations.

(U//~~LES~~) In addition, OEO's sharing of information with the FBI was often marked by delay and the FBI's assessments of that information were inadequately documented. Of particular concern, we found that although the USMS began identifying to OEO individuals it believed had a potential nexus to terrorism in November 2013, OEO did not begin sending that information to the FBI for possible watchlisting until March 2014, and we found delays of weeks or months in OEO's handling of many of the individuals the USMS identified in late 2013 and early 2014. We believe that OEO should have reviewed and shared the case files identified by the USMS with the FBI in a timelier manner. We also attempted to determine what actions the FBI took to assess the information it received about potential KSTs who were admitted into the WITSEC Program. However, due to the FBI's inadequate documentation, we were unable to confirm that the FBI appropriately conducted all necessary [REDACTED] checks of these individuals, and that it appropriately identified and watchlisted all KSTs.

(U//~~LES~~) Due to our concerns, and after obtaining additional guidance from the FBI and the Department's National Security Division, OEO performed another review of the [REDACTED] cases, as well as [REDACTED] additional [REDACTED] cases with which OEO had concerns, and ultimately shared with the FBI another [REDACTED] individuals who had a potential nexus to terrorism. The FBI completed [REDACTED] checks on these [REDACTED] individuals and [REDACTED] also completed [REDACTED] checks on the individuals originally provided by OEO who were not already watchlisted [REDACTED]. After completing these assessments, the FBI determined that [REDACTED] individuals are KSTs, and added them to the consolidated terrorist watchlist. As of November 2016, counting those KSTs identified during our May 2013 report, the FBI, OEO, and USMS have identified [REDACTED] KSTs who were previously admitted into the WITSEC Program. As of November 2016, the FBI had located [REDACTED] of these [REDACTED] KSTs, and were in the process of verifying the location of the remaining [REDACTED] individuals.

(U//~~LES~~) In addition, we conducted reviews of [REDACTED] FBI [REDACTED] and found that the procedures to inform [REDACTED] of KSTs who had been admitted into the WITSEC Program [REDACTED] were not followed. As a result, some FBI [REDACTED] were unaware of KSTs [REDACTED]. We consider this a significant deficiency. FBI officials stated during our audit that they were meeting [REDACTED] with OEO and the USMS to discuss changes in FBI [REDACTED] and notifying [REDACTED] of KSTs [REDACTED]. In addition, in response to our finding, OEO told us it has taken steps to ensure that [REDACTED] changes [REDACTED] will not disrupt authorized notifications in the future, but an FBI official told us those changes have not been fully incorporated into the FBI's protocols.

(U) Counterterrorism Controls

(U//~~LES~~) We reviewed [REDACTED] WITSEC Program KST case files to determine if the files contained identifying information that had not been shared with national security stakeholders. We found [REDACTED] identifying pieces of information, or "identifiers," that the FBI should or could have identified, shared, and included in the consolidated terrorist watchlist, as well as the National Counterterrorism Center's (NCTC) classified repository of international terrorist information. Without these identifiers, the watchlist records are incomplete, thus limiting the information available to screeners at both the NCTC and Terrorist Screening Center (TSC) when their staff manage, in real time, an encounter with a KST at an airport, U.S. border, or traffic stop by local law enforcement. Based on the results of our review of these [REDACTED] files, we believe that the FBI should conduct a similar review of the remaining [REDACTED] WITSEC Program KST case files to ensure that all identifiers are identified, shared, and included in the watchlist. In February 2017, the FBI officials told us – but we have not yet confirmed – that the FBI has completed this review and added additional identifiers to the watchlist.

(U//~~LES~~) In our May 2013 report, we found that [REDACTED] KST WITSEC Program participants who should have been on the Transportation Security Administration's (TSA's) No Fly List had flown [REDACTED] times [REDACTED] on commercial aviation, [REDACTED]. We also found that [REDACTED] WITSEC Program participants who should have been on the TSA's Selectee List had flown [REDACTED] times on commercial aviation [REDACTED]. As a result of the FBI, USMS, and OEO's corrective actions in response to our findings, these KSTs were added to those lists. In this audit, we reviewed the TSC's encounter records for May 2013 to November 2015 and found that KST WITSEC Program participants on the No Fly and Selectee Lists had been properly handled by being prohibited from boarding commercial flights,

[REDACTED] to the public.

(U) WITSEC Program Administration

(U//LES) We identified several concerns about the administration of the WITSEC Program. For example, the USMS does not have a sufficient system to track the identity documents provided to or collected from WITSEC Program participants, [REDACTED]

[REDACTED] We also identified issues with how participants are terminated from the WITSEC Program. For example, despite four termination requests in 9 months from the USMS, OEO delayed the termination of a WITSEC Program participant who had allegedly sexually assaulted five individuals in an 8-year period, including three minors. We found this delay very troubling.

(U) In this report, we make 8 new recommendations to the USMS, FBI, and OEO to further improve sharing of information on KST WITSEC Program participants with national security stakeholders and ensure that there are appropriate controls over KSTs in the WITSEC Program. In addressing these recommendations, the Department will better mitigate the risks posed by KSTs in the WITSEC Program.

**(U) AUDIT OF THE DEPARTMENT OF JUSTICE'S
HANDLING OF KNOWN OR SUSPECTED TERRORISTS
ADMITTED INTO THE FEDERAL WITNESS SECURITY
PROGRAM**

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**(U) AUDIT OF THE DEPARTMENT OF JUSTICE'S
HANDLING OF KNOWN OR SUSPECTED TERRORISTS ADMITTED
INTO THE FEDERAL WITNESS SECURITY PROGRAM**

(U) INTRODUCTION

(U) The primary goal of the federal Witness Security Program (WITSEC Program) is to provide for the security, health, and safety of government witnesses whose lives are at risk as a result of their testimony against organized crime members, drug traffickers, terrorists, and other major criminals.¹ The WITSEC Program is administered through three Department entities: (1) the Criminal Division's Office of Enforcement Operations (OEO) oversees the WITSEC Program and authorizes witness participation in the WITSEC Program, (2) the United States Marshals Service (USMS) is responsible for the protection of active WITSEC participants who are not incarcerated, and (3) the Federal Bureau of Prisons (BOP) protects WITSEC participants while they are incarcerated in federal facilities.² Since the WITSEC Program's inception in 1971, more than 8,700 witnesses, and over 9,900 family members and other associates of witnesses, have been admitted into the WITSEC Program.³

¹ (U) The WITSEC Program was authorized by the Organized Crime Control Act of 1970 and amended by the Comprehensive Crime Control Act of 1984. Pub. L. No. 91-452 (1970) and Pub. L. No. 98-473 (1984), respectively.

² (U) The BOP's management of its portion of the WITSEC Program is not addressed in this report.

³ (U) OEO and USMS officials have stated that the total number of participants in the WITSEC Program is unknown. The numbers provided here are both agencies' best estimates.

(U) In May 2013, the Department of Justice (Department) Office of the Inspector General (OIG) issued a report on the Department's handling of known or suspected terrorists (KSTs) who were admitted into the WITSEC Program.⁴ In that report, we found that the Department: (1) had not ensured that the identities of KSTs admitted into the WITSEC Program were placed on the government's consolidated terrorist watchlist as appropriate, (2) did not definitively know the total number of KSTs admitted into the WITSEC Program, (3) did not know the current location of all identified KSTs, and (4) had not ensured that information potentially relevant to national security was shared appropriately with the Federal Bureau of Investigation (FBI) and other national security stakeholders. Based on the Department's decision to admit and not share information for KSTs in the WITSEC Program with national security stakeholders, we found that proper national security precautions had not been put in place and that appropriate monitoring of these individuals did not occur. Therefore, we made 16 recommendations to the Office of the Deputy Attorney General to improve information sharing within the Department and to reduce the risk to the public when admitting KSTs into the WITSEC Program and handling them, both during and after their WITSEC Program participation.

(U) OIG Audit Approach

(U) The Department established policies and procedures to address each of the recommendations in our 2013 report. The purpose of this audit was to determine whether the Department's policies and procedures sufficiently addressed the risks we identified at that time. Specifically, our audit objectives were to evaluate the Department's: (1) handling of KSTs admitted to the WITSEC Program; (2) practices for watchlisting and the processing of encounters with this group of WITSEC Program participants; and (3) procedures for mitigating risks to the public through restrictions placed on this high-risk group of WITSEC Program participants. The results of our review are detailed in the Findings and Recommendations section of this report. See Appendix 1 for further discussion of the audit objectives, scope,

⁴ (U) U.S. Department of Justice Office of the Inspector General, *Interim Report on the Department of Justice's Handling of Known or Suspected Terrorists Admitted into the Federal Witness Security Program*, Report 13-23 (May 2013). See Appendix 2 for the list of 16 recommendations issued as part of the May 2013 report.

(U//~~LES~~) The 2015 U.S. government's Watchlisting Guidance defines that a "known terrorist" is "an individual who has been (a) arrested, charged by information, or indicted for, or convicted of, a crime related to terrorism or terrorist activities . . . [or] (b) identified as a terrorist or member of a terrorist organization . . .," and it states that [REDACTED]

[REDACTED] The Guidance defines a "suspected terrorist" as "an individual who is reasonably suspected of engaging in, having engaged in, or intending to engage in conduct constituting, in preparation for, in aid or in furtherance of, or related to, terrorism and/or terrorist activities." [REDACTED]

U//LES//SSI

and methodology. See Appendix 3 for background on both the consolidated terrorist watchlist and the WITSEC Program.

(U) FINDINGS AND RECOMMENDATIONS

(U//~~LES~~) While the FBI, USMS, and OEO have developed new policies and procedures to address the issues we identified in our May 2013 review, they have not all been sufficiently and appropriately implemented. For example, we found several deficiencies with the USMS' and OEO's review of case files and documentation in WITSEC Program files, including that not all individuals having a potential nexus to terrorism were referred by OEO to the FBI's National Joint Terrorism Task Force (NJTTF) for watchlist consideration; and those that were referred were not always referred in a timely manner. We also found that the FBI insufficiently documented its assessments of individuals identified by the USMS and OEO as possible KSTs in the WITSEC Program. Based on the evidence available, we believe that the FBI likely did not perform the assessment [REDACTED], as required, which raises questions about the adequacy of the FBI's assessments themselves. In addition, we determined that hundreds of KST-related identifiers were not provided by the NJTTF to the Terrorist Screening Center (TSC) and National Counterterrorism Center (NCTC), causing the consolidated terrorist watchlist records to be incomplete. [REDACTED]

(U) As a result of these and other findings described below, we remain concerned that the USMS and OEO have not appropriately shared information about KSTs in the WITSEC Program with relevant national security stakeholders and ensured that those responsible for monitoring these individuals have the information they need to do so effectively.

(U) The Department's Efforts to Identify KSTs in the WITSEC Program

(U//~~LES~~) As we noted in our May 2013 report, the Department performed a review of WITSEC Program participant's criminal histories and, as of July 2, 2012, had identified [REDACTED] KSTs who had been admitted to the WITSEC Program. In response to our recommendations in that report, the Department manually reviewed all WITSEC Program case files for any previously unidentified KSTs in the WITSEC Program. After discussing this audit's findings with the FBI, USMS and OEO officials, OEO performed another round of review of certain high risk individuals [REDACTED] identified an additional [REDACTED] individuals with a potential nexus to terrorism who had been admitted to the WITSEC Program. As of [REDACTED], the FBI had reviewed the [REDACTED] individuals' backgrounds and added [REDACTED] of the [REDACTED]

individuals to the consolidated terrorist watchlist. In total, after accounting for the admittance of additional KSTs to the WITSEC Program and the identification of additional KSTs who needed to be added to the consolidated terrorist watchlist, there were [REDACTED] KSTs WITSEC Program participants as of [REDACTED].⁵

[REDACTED], the FBI was still in the process of verifying the current location of [REDACTED].

(U) USMS's and OEO's Manual Review of WITSEC Case Files

(U//LES) As a result of our May 2013 report, the USMS and OEO performed a review of their WITSEC Program case files to identify individuals with a potential nexus to terrorism who had been admitted to the WITSEC Program.⁶ Based on OEO's review of its case files, OEO determined that [REDACTED] of those WITSEC Program participants had a potential nexus to terrorism and shared this information with the FBI. These files were not reviewed by the USMS or any other entity prior to being shared with the FBI. We found that OEO consistently applied the terrorism criteria to the information in our sample of case files.

(U//LES) For the case files that the USMS

(U//LES) The Department's Efforts to Identify KSTs Admitted to the WITSEC Program Through a Manual Review of its Case Files

(U//LES) The USMS and OEO reviewed more than [REDACTED] case files and identified [REDACTED] individuals as having a potential nexus to terrorism.

- (U//LES) OEO reviewed approximately [REDACTED] case files and identified [REDACTED] individuals.
- (U//LES) The USMS reviewed approximately [REDACTED] case files and identified [REDACTED] individuals. OEO reviewed the [REDACTED] individuals agreeing with the USMS on [REDACTED].
- (U//LES) OEO also reviewed an additional [REDACTED] case files for individuals for whom the USMS was unable to review and identified [REDACTED].

(U//LES) OEO also identified [REDACTED] more individuals with a potential nexus to terrorism as part of a second review undertaken as a result of this audit. [REDACTED] of these individuals were determined by OEO to have a potential nexus to terrorism, and [REDACTED] were shared with the FBI out of an abundance of caution.

(U//LES) In total, OEO shared with the FBI information on [REDACTED] individuals whom OEO and the USMS had not identified during our May 2013 review. The FBI added [REDACTED] individuals to the consolidated terrorist watchlist.

⁵ (U//LES) [REDACTED]

⁶ (U//LES) [REDACTED]

[REDACTED] To address the report's recommendations, OEO and USMS collectively reviewed [REDACTED] files. OEO reviewed [REDACTED] case files [REDACTED]. For the remaining [REDACTED] files, the USMS reviewed [REDACTED] case file, [REDACTED].

reviewed, which were not included in OEO's case file review, its methodology was to identify and provide to OEO any case or individual that was connected to terrorism, however remotely. To accomplish this, the USMS assessed the underlying case facts to determine if the individual had a potential nexus to terrorism as defined in 18 U.S.C. §2331.⁷ The USMS conducted this analysis after receiving training from OEO intended to ensure that the two organizations were consistently applying the definitions of international and domestic terrorism. Between November 2013 and March 2014, the USMS identified and provided to OEO information on [REDACTED] individuals who were admitted into the WITSEC Program because the USMS determined that either their criminal history or the case facts had a potential nexus to terrorism.

(U//LES) OEO officials told us that they felt the USMS was overly cautious and too inclusive in its identification of cases or individuals that had a link to terrorism or a crime that might be considered terrorism. Therefore, OEO performed a secondary review of the [REDACTED] cases identified by the USMS. OEO stated that its secondary review was conducted to determine whether: (1) each individual's potential nexus to terrorism was consistent with the legal definitions of international and domestic terrorism and (2) to disclose the information as appropriate to the NJTTF for watchlist consideration. [REDACTED]

(U//LES) To illustrate the type of cases lacking a potential nexus to terrorism and therefore not shared with the FBI, OEO provided to us an example of a case where the individual committed a crime that [REDACTED] but OEO noted that any other state would have identified it as assault and battery, which would not be considered as having a potential nexus to

⁷ (U) 18 U.S.C. §2331 defines international terrorism as activities with the following characteristics: (1) involve violent acts dangerous to human life that violate federal law or state law; (2) appear to be intended (i) to intimidate or coerce a civilian population, (ii) to influence the policy of a government by intimidation or coercion, (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and (3) occur primarily outside the territorial jurisdiction of the U.S., or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum. The definition of domestic terrorism provided in 18 U.S.C. §2331 is the same as above with the exception of part 3, which states (3) occur primarily within the territorial jurisdiction of the U.S.

terrorism. To document its review process and decisions as to why each individual's history did or did not satisfy the definition of terrorism, OEO personnel made notes on a standardized cover page, corresponding to an individual in each case file. We selected and reviewed a judgmental sample of [REDACTED] cover pages where OEO determined the individual's information should not be passed to national security stakeholders because the case or the individual's criminal history lacked a potential nexus to terrorism. We found that OEO's notes and record keeping were inconsistent and in many instances too brief for us to understand the basis for OEO's determination. For example, some reviewers attempted to describe on the cover sheet the decision process, while others merely noted that the file was not a "T" (for "Terrorism") case, without further explanation.

(U//LES) During our audit, we identified another [REDACTED] WITSEC Program participant case files that had not been reviewed because [REDACTED] case files had been archived and either [REDACTED] could not locate [REDACTED] case file or [REDACTED] case file did not contain enough information to make a potential nexus to terrorism determination. OEO subsequently reviewed these files, which resulted in the identification and sharing of one more individual whom OEO determined had a potential nexus to terrorism.

(U//LES) Ultimately, the FBI added [REDACTED] WITSEC Program participants to the consolidated terrorist watchlist. In addition, after reviewing our findings the FBI decided to reassess its findings for [REDACTED] WITSEC Program participants that the FBI did not initially place on the consolidated terrorist watchlist, as well as [REDACTED] other individuals that OEO, upon reconsideration, determined to have a potential nexus to terrorism. As discussed in the FBI Vetting of Terrorism Information Section of this report, those reassessments identified [REDACTED] more KSTs who had been admitted to the WITSEC Program.

(U) Not All KSTs Were Identified During the Manual Review

(U//LES) To further assess OEO's review process on the case files that were not passed to the FBI, we selected a judgmental sample of [REDACTED] cases for closer examination. Specifically, we compared information within the [REDACTED] cases to the statutory definition of terrorism in 18 U.S.C. §2331. We found that [REDACTED] of the [REDACTED] individuals' case files contained information indicating a potential nexus to terrorism.

(U//LES) We discussed these [REDACTED] individuals with OEO officials who told us that even though OEO erred on the side of caution when making decisions to refer WITSEC Program participant's records to the FBI for possible watchlisting, it did not believe that forwarding these [REDACTED] individuals was warranted. However, [REDACTED] OEO require that OEO share information with the FBI on all individuals in the WITSEC Program with a potential nexus to terrorism. After we discussed these [REDACTED] individuals with the FBI, the FBI requested that the

individuals be shared with them. The FBI also expressed concern that OEO might not have shared with the FBI information on all WITSEC Program participants that have had a potential nexus to terrorism. We believe that OEO, [REDACTED], should have authorized the USMS to provide the FBI with this information. After we discussed with OEO officials the particulars of the [REDACTED] individuals that were not shared with the FBI and we conveyed the FBI's concern to OEO officials, OEO immediately authorized the USMS to share the information on the [REDACTED] individuals with the FBI. Ultimately, the FBI determined that neither individual required inclusion on the consolidated terrorist watchlist because [REDACTED]

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(U) Based on the results of our sample review and OEO's lack of supporting documentation for its review of the case files provided by the USMS, we are concerned that OEO did not forward information to the FBI on all cases where an individual had a potential nexus to terrorism. This failure deprived the FBI from considering whether individuals with a potential nexus to terrorism should be added to the consolidated terrorist watchlist.

(U//LES) In March 2016, we discussed this finding with OEO officials. OEO officials stated that based on the OIG's concerns, it undertook a thorough secondary review of [REDACTED] cases that were flagged by the USMS as having a potential nexus to terrorism, as well as an additional [REDACTED] cases, which OEO analysts had designated as "cases in need of further review." Prior to performing this review, OEO officials stated that they obtained extensive instruction in the identification of terrorism information from the FBI and DOJ National Security Division officials. After performing this review, OEO shared information on [REDACTED] individuals between April 2016 and July 2016 who had a potential nexus to terrorism. In September 2016, the NJTTTF completed the [REDACTED] checks on these individuals and determined that [REDACTED] do not meet the criteria for watchlisting. The TSC added the other [REDACTED] to the consolidated terrorist watchlist.⁹

(U) OEO's Untimely Sharing of Terrorism Information with the NJTTF

(U) The WITSEC Program statute states that the Attorney General shall establish an accurate, efficient, and effective system of records concerning the criminal history of persons provided protection through the WITSEC Program in

⁸ (U//LES) [REDACTED]

⁹ (U//LES) [REDACTED]

order to facilitate the sharing of WITSEC Program information, as appropriate, with the Department's law enforcement partners. Delays in the review of potential KSTs by the NJTTF and other national security stakeholders – particularly those individuals who had already been identified by the USMS as having a potential nexus to terrorism – are contrary to the language and purpose of the law, policies, and procedures governing the WITSEC Program, and unnecessarily exposes the nation to an increased security risk.

(U//LES) One example of delay that we identified during our review concerned KST 70, [REDACTED] WITSEC Program participant who had been known to the FBI since the [REDACTED]. While we uncovered no evidence to suggest that [REDACTED] could have been averted by more timely sharing of WITSEC Program information, we did note that the USMS had identified KST 70 to OEO [REDACTED], and that OEO was still reviewing KST 70's case file at the time [REDACTED]. We therefore asked OEO about its timing in passing KST 70's information to the NJTTF. An OEO official stated that OEO was in the process of manually reviewing [REDACTED] Program case files [REDACTED], which the official emphasized took time. Another OEO official told us that, [REDACTED] he could not explain why it took so long to get to KST 70's file.

(U//LES) We found that the delay in forwarding KST 70's information to the FBI was not the only such delay by OEO. [REDACTED]

[REDACTED] The USMS sent the first batch of [REDACTED] individuals (which included KST 70) to OEO on [REDACTED], but it was not until [REDACTED], that the NJTTF received information from OEO on any of the individuals in this first batch, and KST 70's information was not provided until [REDACTED], after KST 70's [REDACTED] and after the FBI requested the information. For many of the batches, it took OEO more than 6 weeks to complete its review, and for some batches it took much longer.

(U) Table 1

~~(U//LES)~~ USMS Identified Individuals in the WITSEC Program
With a Potential Nexus to Terrorism
Being Shared with the FBI

Batch Number	Number of Individuals Identified by the USMS	██████████	Date(s) the USMS Sent the Names to OEO	Date(s) OEO Sent the Names to the NJTTF	Number of Days It Took OEO to Complete Its Review
1	██████	██████████	11/21/13	03/19/14 to 05/08/14	118 to 168
2	██████	██████████	11/29/13	03/19/14 to 05/08/14	110 to 160
3	██████	██████████	12/05/13	03/19/14	104
4	██████	██████████	12/12/13	05/08/14	147
5	██████	██████████	12/19/13	03/19/14 and 05/08/14	90 and 140
6	██████	██████████	01/09/14	03/19/14	69
7	██████	██████████	01/16/14	04/21/14	95
8	██████	██████████	01/23/14	03/27/14 and 05/08/14	63 and 105
9	██████	██████████	01/30/14	03/19/14 and 04/21/14	48 and 81
10	██████	██████████	02/06/14	03/19/14 and 04/21/14	41 and 74
11	██████	██████████	02/18/14	03/19/14	29
12	██████	██████████	02/20/14	03/19/14 and 05/08/14	27 and 77
13	██████	██████████	02/28/14	04/21/14 and 05/19/14	52 and 80
14	██████	██████████	03/06/14	03/19/14 to 05/19/14	13 to 74
15	██████	██████████	03/13/14	05/19/14	67
16	██████	██████████	03/21/14	05/19/14	59
TOTAL	██████	██████████ ^b			

^a (U//LES) Batch number 1 included KST 70.

^b (U//LES) ██████████ ██████████ ██████████ was also passed to the NJTTF on May 8, 2014.

(U) Source: The USMS and OEO

(U) We believe that OEO should have reviewed and shared the case files identified by the USMS with the FBI in a timelier manner, particularly in light of the fact that, for each of those individuals, the USMS had specifically reached the conclusion that its cases had a potential nexus to terrorism.

(U) Sharing of WITSEC Program Information with the FBI

(U//LES//SSI) In our May 2013 report we recommended that the Office of the Deputy Attorney General ensure that OEO authorize the USMS to disclose, and that the USMS disclose to the FBI, identification and other necessary information on KSTs

in the WITSEC Program. We also recommended that [REDACTED]

[REDACTED] At the time of that report, the Department had identified [REDACTED] KSTs who were in the WITSEC Program as of July 2012, which was the most current information available at the time. During this audit we found that, based on our prior report's recommendations, OEO authorized the USMS to share information with the FBI on all [REDACTED] of these KSTs. The FBI subsequently performed threat assessments on all of the individuals and [REDACTED] most of them.¹⁰ [REDACTED]

[REDACTED]¹¹ In addition, the USMS stated that it verified the physical location of all [REDACTED] KSTs. For the [REDACTED] KSTs identified since this current audit began who were previously admitted into the WITSEC Program, the FBI stated that [REDACTED] were admitted only to the BOP WITSEC Program, [REDACTED] individuals have passed away, and [REDACTED] individuals are incarcerated because of new crimes they have committed. As of November 2016, the FBI is in the process of verifying the location of the remaining [REDACTED].

(U//LES) In our 2013 review, we reported that the USMS, FBI, and OEO had been working since December 2010 on a formal protocol [REDACTED] KSTs in the WITSEC Program who [REDACTED], but that the protocol was not completed until the spring of 2012. During the current audit, we reviewed the implementation of this protocol [REDACTED]. We found that [REDACTED]

[REDACTED]

(U//LES) [REDACTED]

¹⁰ (U//LES) [REDACTED]

¹¹ (U) Some of the individuals had already been placed on the watchlist by other entities.

[REDACTED]

(U//LES) When we discussed this situation with OEO, an official told us that when the protocols were developed, the FBI stated they were going to include, [REDACTED]

[REDACTED], it does not appear that this process is working. After we brought this matter to the attention of FBI [REDACTED], an OEO official stated that the NJTTF called him to discuss fixing the process. [REDACTED]

[REDACTED] and an FBI official stated that its protocol needs to be updated to reflect this requirement. In the interim, FBI officials are meeting [REDACTED] with OEO and the USMS [REDACTED]

We recommend that [REDACTED]

(U) The FBI's Vetting of Terrorism Information and Handling of KSTs in the WITSEC Program

(U//LES//SSI) In our May 2013 report, we recommended that the Department develop a mechanism for the FBI to review KST WITSEC Program participant case files for information that demonstrates a potential nexus to terrorism. Between March 2013 and January 2016, OEO passed relevant information for a total of [REDACTED] individuals ([REDACTED]) to the NJTTF as part of [REDACTED] case file review.¹² OEO also provided the NJTTF access to the entire case file [REDACTED]. After the NJTTF's review, two of the individuals (KST 68 and KST 69) were added to the consolidated terrorist watchlist.¹³

¹² (U//LES) KST 70's identity and case file information was not included in the [REDACTED] individuals passed to the NJTTF. KST 70's [REDACTED] KST 70's [REDACTED]

¹³ (U//LES) During our May 2013 audit, OEO inventoried all the KSTs in the WITSEC Program and [REDACTED], for tracking purposes. We have used the same [REDACTED] system here and throughout the report to refer to all KSTs.

(U//LES) KSTs 68 and 69 Arrested on [REDACTED] Nearly 5 Months After Their Information was Provided to the NJTTF for Possible Watchlisting

(U//LES) According to the USMS and OEO, KST 68 and KST 69, [REDACTED]

[REDACTED]
[REDACTED] KST 68 and KST 69 engaged in criminal activities that promoted [REDACTED]
[REDACTED]

(U//LES//SSI) [REDACTED]

[REDACTED]
[REDACTED] OEO determined that KST 68 and KST 69 had a potential nexus to terrorism [REDACTED] disclosure of their WITSEC Program participant information to the NJTTF, [REDACTED], nearly 5 months after OEO shared its information with the NJTTF, both were arrested [REDACTED]

[REDACTED] However, it was not until after their arrest and approximately 6 months after OEO initially referred the two individuals to the NJTTF, that KST 68 and KST 69 were added to the consolidated terrorist watchlist. On several occasions we asked the FBI to explain the reasons for the delay, but as of December 2016 we had only received a timeline of what transpired but no explanation for the delay.

(U) The FBI's Unsupported and Incomplete Vetting of WITSEC Information

(U//LES) [REDACTED]

[REDACTED]
[REDACTED] We reviewed the NJTTF's process to determine: (1) if the NJTTF

¹⁴ (U//LES) [REDACTED]
[REDACTED]
[REDACTED]

reviewed the KST documentation and made a determination on the necessity of a threat assessment for all individuals that OEO and the USMS shared with them and (2) whether the NJTTF assessed the risk to the public.

(U//LES) Given the arrest of KST 68 and KST 69, [REDACTED]. NJTTF officials told us that they believe the NJTTF performed a [REDACTED] check of each of the other individuals that OEO passed to the FBI and determined that a threat assessment was unnecessary. [REDACTED] the current NJTTF personnel could not provide a definitive answer as to whether a [REDACTED] check or some other assessment was performed for each of the individuals, and former NJTTF personnel could not remember what [REDACTED] steps were performed. Additionally, we found that the NJTTF did not maintain sufficient documentation to support the determination that each of the individuals was not: (1) a known terrorist that should be watchlisted based on prior criminal history or (2) potentially involved in terrorist activity and appropriately considered a suspected terrorist. Without adequate supporting documentation, controls over the NJTTF review process were significantly weakened because the analysis performed could not be properly checked by supervisors, and important records will not be available should the need for additional investigations of the individuals later arise.

(U//LES) We also reviewed a judgmental sample of [REDACTED] of the individuals passed to the NJTTF to assess whether the facts in the case file, which included the individual's past criminal history, indicated a potential nexus to terrorism. We concluded that the facts in [REDACTED] of the case files appeared to indicate a potential nexus to terrorism. However, due to insufficient supporting documentation, we were unable to determine why the NJTTF did not pass the information to the TSC. The relevant facts from these [REDACTED] case files included:

- (U//LES) [REDACTED]
- (U//LES) [REDACTED]

(U//LES) In December 2015, NJTTF, TSC, and OEO officials jointly reviewed these [REDACTED] individuals' criminal histories and the case files associated with each of them. These officials determined that the WITSEC-provided identities for the [REDACTED] individuals did not present an ongoing threat to national security because

[REDACTED], we found that these KSTs' information was not provided to the NJTTF while they were in the WITSEC Program [REDACTED], and as such they were not assessed at the proper time by the NJTTF for inclusion on the watchlist. Had the information been provided more promptly and the determination been made to place these individuals on the consolidated terrorist watchlist, additional information about these individuals may have been obtained through any subsequent encounters, thus aiding investigative and national security efforts.

(U//~~LES//SSI~~) The failure of the FBI to appropriately document the assessments and reviews upon which KST determinations are made hinders the effectiveness of the WITSEC Program. [REDACTED]

[REDACTED]. In addition, we believe that the NJTTF's actions may not be consistent with the requirements of Homeland Security Presidential Directive number 6 (HSPD-6) to identify all individuals that should be shared with the TSC for possible watchlisting.¹⁵ If any of the individuals are determined to be KSTs, then certain security procedures are set in motion by the USMS to mitigate the risk to the public. Based on our findings and not including the [REDACTED] individuals discussed above [REDACTED], the FBI performed a new documented [REDACTED] check on the individuals provided by OEO. The [REDACTED] check determined that an additional [REDACTED] individuals are KSTs and they were added to the consolidated terrorist

¹⁵ (U//~~LES//SSI~~) HSPD-6 states "the heads of executive departments and agencies shall, to the extent permitted by law, provide to the [National Counterterrorism Center (NCTC)] on an ongoing basis all appropriate terrorist information in their possession, custody, or control." Terrorism information is specifically defined as ". . . information about individuals known or appropriately suspected to be or have been engaged in conduct constituting, in preparation for, in aid of, or related to terrorism." [REDACTED]

[REDACTED] The U.S. government's Watchlisting Guidance that was in force prior to 2015 [REDACTED]

Additionally, the U.S. government's 2015 Watchlisting Guidance states that a "known terrorist" is "an individual who has been (a) arrested, charged by information, or indicted for, or convicted of, a crime related to terrorism or terrorist activities . . . [or] (b) identified as a terrorist or member of a terrorist organization . . .," and it states that [REDACTED]

watchlist. We therefore recommend that the FBI establish policy to require documentation and maintenance of support for its KST determinations on WITSEC Program participants.

(U) Incomplete Watchlist Records

(U//LES) Our May 2013 report recommended that the Department ascertain the identity, as well as other necessary information, on KSTs in the WITSEC Program and evaluate its practices and formalize procedures for the sharing of KST WITSEC Program participants' identity information with DOJ national security stakeholders. Further, we recommended that the TSC receive the new, government-provided identities of all KSTs [REDACTED]

(U//FOUO) The effectiveness of the consolidated terrorist watchlist as a law enforcement and intelligence gathering tool is dependent on the completeness and accuracy of the records it contains. [REDACTED]

(U//LES) During our previous review, the NJTTF was provided full access to the [REDACTED] WITSEC case files, and spent over a week reviewing the files. Although there is little documentation to demonstrate the purpose or results of the NJTTF's review, based on the information available to us, it appears that the review was conducted so that the FBI could perform threat assessments on the [REDACTED] KSTs identified in our prior report, and not for the purpose of identifying additional information from the files that should be provided to the TSC.

(U//LES//SSI) We base this conclusion, in part, on the results of our review of a judgmental sample of [REDACTED] of the [REDACTED] KSTs identified in the May 2013 report. We

¹⁶ (U//FOUO) [REDACTED]

See

Table 2.

reviewed these case files to determine if they contained identifying information that fell into [REDACTED] of the [REDACTED] categories of identifiers and found [REDACTED] identifiers that were not included in the consolidated terrorist watchlist records. Table 2 reflects the breakdown of the [REDACTED] identifiers we found, by category.

(U) Table 2
(U//LES//SSI) Identifiers Contained in USMS Records and Not Provided to the TSC at the Conclusion of the NJTTF's Review^a

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

(U//LES) [REDACTED]
 [REDACTED]
 [REDACTED]
^b (U//LES) [REDACTED]
 [REDACTED]

(U) Source: [REDACTED] Case Files

(U//LES//SSI) When we discussed with USMS and OEO officials the omission of these identifiers from the consolidated terrorist watchlist, they agreed that the relevant identifiers should have been shared, and they subsequently provided the information to the TSC for potential inclusion in the watchlist. The TSC determined that each identifier fell into one of [REDACTED] TSC defined [REDACTED]

[REDACTED]

A TSC official stated that all of the [REDACTED] identifiers that could be attributed to the individuals in the cases in our sample have now been added to the watchlist. However, because the value to the watchlist record for [REDACTED] is limited to questionable, the TSC determined that these identifiers would only be added if they received a nomination form from the NJTTF.

(U//LES) Given the watchlist policy, the NJTTF should have provided all of the identifiers on all KSTs in the WITSEC Program to the TSC. These identifiers include information that is useful to counterterrorism personnel to quickly and

accurately identify KSTs during an encounter, and avoid the temporary misidentification of innocent individuals as KSTs during encounters.

(U//LES [REDACTED])

[REDACTED]¹⁷ Our review of the [REDACTED] KST records referenced above also assessed whether any identifiers were missing from [REDACTED]. We found that the same identifiers for international terrorists contained in the [REDACTED] case files that had not been added to the consolidated terrorist watchlist also had not been added to [REDACTED] for each individual. Because this information was not added to the consolidated terrorist watchlist record, the consolidated terrorist watchlist and the NCTC's [REDACTED] complete, thus limiting the usefulness to national security stakeholders.

(U//LES) Our review clearly demonstrated that additional identifiers of value to the watchlist are likely to be found in the [REDACTED] WITSEC case files, and in February 2017, the FBI stated that they have extracted [REDACTED] from the WITSEC case files for KSTs in the WITSEC Program and have added them to the consolidated terrorist watchlist. We therefore recommend that [REDACTED]

(U) Encounters of Known or Suspected Terrorists

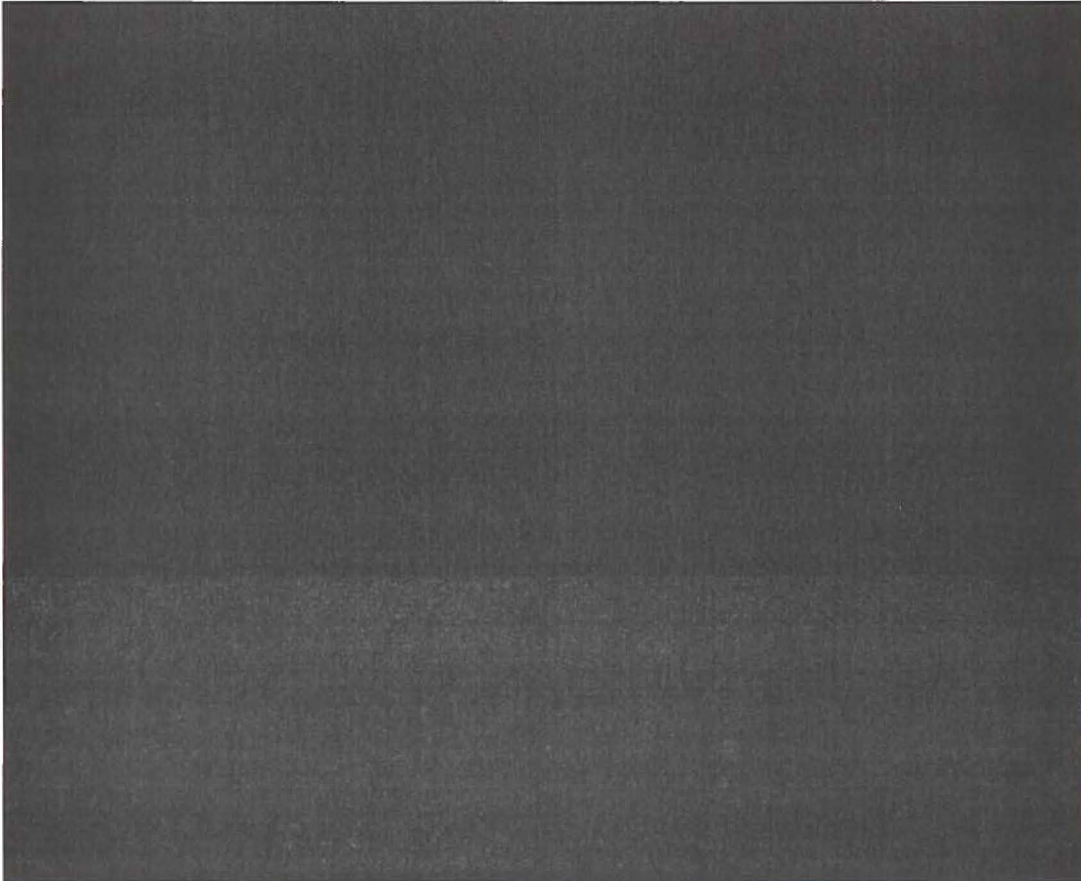
(U//LES//FOUO) An encounter is defined [REDACTED]

[REDACTED] In July 2016, a TSC Official provided statistical information that the TSC processes [REDACTED] encounters per day on average, and processed approximately [REDACTED] per year between 2013 and 2015.

¹⁷ (U) TIDE is the U.S. government's central and shared repository of information on international terrorist identities. It is used by the intelligence community as one list for the consolidation of classified information on known or suspected international terrorists. A sub-set of sensitive but unclassified information in TIDE feeds into the one consolidated unclassified known or suspected terrorist watchlist, the Terrorist Screening Database (TSDB). The TSDB contains information on all terrorists, both international and domestic.

(U) Figure 1

**(U//~~LES~~//~~SSI~~) KST Interim Encounter Process
For WITSEC Program Participants**



(U) Source: Terrorist Screening Center

(U//~~FOUO~~) As shown in Figure 1, encounters occur when a watchlisted individual is encountered by local, state, federal, or tribal law enforcement, homeland security, or other screening personnel, and the individual's identity matches an identity on the consolidated terrorist watchlist. For example, if a watchlisted individual is encountered crossing the border or obtaining a U.S. Passport or Visa, law enforcement personnel are notified that this individual's identity information matches the identity record on the consolidated terrorist watchlist. When information on a potential encounter is provided to the TSC, TSC personnel determine whether certain actions should be taken, including whether law enforcement should be notified, and whether information obtained during the encounter should be added in the consolidated terrorist watchlist record for this individual. During these encounters, key information is often obtained that may be useful to law enforcement and screening personnel, and it is often reported to other databases, such as the FBI's Known or Suspected Terrorist File in the

National Criminal Information Center (NCIC), which is used by local, state, tribal, and other screening agencies to identify KSTs during encounters.

(U//LES) Part of the national security infrastructure to reduce the risk of terrorist attacks is to place KSTs that are a threat to commercial aviation on the Transportation Security Administration's No Fly and Selectee Lists. KSTs on the No Fly List are denied flying within United States airspace and KSTs on the Selectee List have to go through additional screening at the airport before boarding their flight. In our May 2013 interim report, we found that [REDACTED] of the [REDACTED] KSTs who should have been on the No Fly List had flown [REDACTED] times [REDACTED]

[REDACTED] Additionally, we found [REDACTED] of the [REDACTED] KSTs who should have been on the Selectee List had flown [REDACTED] times. In response to our 2013 report, the TSC updated its protocols to mitigate the risk [REDACTED]

(U//LES) In the current audit, we reviewed encounters for all of the KSTs that have been admitted into the WITSEC Program between the issuance of our interim report in May 2013 and November 2015. We found that, according to TSC encounter records, KSTs in the WITSEC Program have been encountered a total of [REDACTED] times. As shown in Table 3, [REDACTED]

(U) Table 3

(U//LES) Types of Encounters of KSTs
Admitted into the WITSEC Program
May 15, 2013 to November 5, 2015

Type of Encounter	Number of Encounters
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

^a (U//LES) [REDACTED]

^b (U//LES) [REDACTED]

(U) Source: TSC Encounter Records

(U//LES) The [REDACTED] encounters [REDACTED] involved [REDACTED] KSTs admitted into the WITSEC Program. [REDACTED] KSTs who were on the No Fly List were denied boarding or [REDACTED] were taken [REDACTED] times, and the [REDACTED] KSTs who were on the Selectees list were flagged for additional screening [REDACTED] times.¹⁸

(U//LES) [REDACTED]. Whatever the nature of the encounter, the ability to identify the KST and timely share such critical information among national security stakeholders decreases the risk of harm to the public, and to the law enforcement official or screener involved in the encounter.

(U//LES) Ensuring that any additional identifiers obtained during encounters are added to the [REDACTED] WITSEC case files is also crucial to the appropriate management of the WITSEC program. We determined that encounter records were shared timely and accurately with the USMS, and that the [REDACTED] stored this information in its system.

¹⁸ (U//LES) [REDACTED]

(U) Processing, Tracking, and Locating KSTs in the WITSEC Program

(U//~~LES~~) After addressing the recommendations in our May 2013 interim report, the Department's new process for handling KSTs is generally to:

[REDACTED]
[REDACTED] To evaluate the Department's process, we selected for review a judgmental sample of [REDACTED] KSTs admitted to the WITSEC Program who have received a new government identity, KST 70's case, [REDACTED] recently admitted KSTs, and [REDACTED] individuals with a potential nexus to terrorism with which the USMS had concerns.

(U) The USMS's Tracking of WITSEC Program Participant's Identity Documents

(U//~~LES~~) We found that the USMS does not have a sufficient system to keep track of the identity documentation provided to or collected from WITSEC Program participants. [REDACTED]

[REDACTED]. Nor is there a separate accounting for identification documents when the recipient leaves the WITSEC Program or passes away. In addition, until December 2013, the USMS did not require that USMS Inspectors complete a form to acknowledge the receipt of [REDACTED] identification documentation collected from Program participants.

(U//~~LES~~) KST 70 is an example of the need [REDACTED] to have a system that tracks identity documents. During our review, it came to our attention that KST 70 used both KST 70's true identity and new identity for [REDACTED] years after KST 70 was removed from the WITSEC Program. We found that KST 70 was never formally issued a new identity, which, according to the USMS, would include a [REDACTED] name change [REDACTED]. However, KST 70 was provided a [REDACTED] driver's license, and [REDACTED] in KST 70's new name. When KST 70 was removed from the WITSEC Program [REDACTED], the USMS should have requested that KST 70 return all new-name documents. But based on [REDACTED] records, it is unknown if KST 70 was asked to return or in fact returned any documents. It was not until [REDACTED], when the USMS again requested that KST 70 return all new name documents, that they received KST 70's [REDACTED]. This is the only new identity information that [REDACTED] records reflect being returned by KST 70.

(U//~~LES~~) By retaining these documents, KST 70 was able to use both identities for years. For example, KST 70 was receiving [REDACTED] benefits in KST 70's new name while receiving [REDACTED] retirement benefits in KST 70's true name.¹⁹ KST 70 should have been receiving both the [REDACTED] and [REDACTED] retirement benefits in KST 70's true name, because the new name

¹⁹ (U) We did not attempt to determine the amount of benefits KST 70 received as part of this audit.

was never a legal name. We also found that KST 70 was able to use KST 70's [REDACTED] drivers' license to help obtain additional identifications in KST 70's new name, including a [REDACTED] driver's license. In fact, KST 70 checked into a hotel the night before the [REDACTED] [REDACTED] with that [REDACTED] driver's license. We find it very concerning that KST 70 was allowed to use both identities for such a long period of time.

(U//LES) [REDACTED]

(U//LES) [REDACTED]

(U//LES) This lack of document oversight and the lack of an effective mechanism to ensure that WITSEC Program-issued identity documents are returned upon request increase the risk that WITSEC Program participants will have access to and use of multiple identities. We recommend that [REDACTED]

(U//LES) OEO officials acknowledged the concern about WITSEC Program participants retaining identification documents they should not have, and they updated the [REDACTED]

[REDACTED]. However, we believe additional steps are warranted to mitigate the risk to the Department and the

public of WITSEC Program participants having access to these identification documents. [REDACTED]

[REDACTED] recommend that

[REDACTED] Therefore, we

[REDACTED] Finally, we recommend that

(U) Physical Location of KSTs

(U//LES) In our May 2013 interim report, we recommended that the Office of the Deputy Attorney General ensure that the USMS and FBI verify the physical locations of all KSTs previously admitted into the WITSEC Program. The Department verified the location of all the KSTs identified in the May 2013 report. As previously stated, additional KSTs were subsequently admitted and identified, and the FBI is still in the process of locating [REDACTED] of these additional KSTs. It is important that the FBI locate these individuals and take appropriate steps to mitigate any potential security threat. Therefore, we recommend that [REDACTED].

(U) Pre-Admittance Requirements

(U//LES) In our May 2013 interim report, we recommended that the Office of the Deputy Attorney General determine the appropriate inclusion of DOJ national security stakeholders in decisions and processes for admitting and monitoring KST WITSEC Program participants. We also recommended that the USMS develop, with input from OEO and the FBI, a process to accurately identify all KSTs when they enter the WITSEC Program. Our recommendation [REDACTED].

(U//LES) On July 26, 2013, OEO and the USMS finalized its protocols to enhance oversight necessary to evaluate, screen, and monitor KSTs admitted to the WITSEC Program. These protocols require that, [REDACTED], all individuals sponsored to the WITSEC Program are compared against the consolidated terrorist watchlist to ascertain whether the individual is already

considered a KST.²⁰ We found that prior to admittance OEO has been running names for newly sponsored individuals against the consolidated terrorist watchlist. OEO officials stated that in order to help process potential terrorism information timely, it was in the process of hiring a management consultant to establish stronger management controls. However, based on budget restraints, OEO informed the OIG in February 2017 that it will be using internal staff to update its system.

(U//LES) The protocols also require that OEO provide to the NJTTF information on KST WITSEC Program participants. In practice, OEO has also been providing the NJTTF with information on individuals with a potential nexus to terrorism so that the NJTTF can use this information in assessing whether the individuals in question should be considered a KST. Additionally, the protocols require that OEO request and review a detailed risk assessment from the FBI [REDACTED], and solicit input from the Department's National Security Division regarding WITSEC Program suitability of any watchlisted individual prior to making a decision to admit the individual into the WITSEC Program. In November 2015 OEO informed us that since the issuance of our interim report, only [REDACTED] individuals with a potential terrorism nexus have been admitted to the WITSEC Program. For these [REDACTED] individuals, we found that OEO and the USMS shared information with national security stakeholders as required; however, as described below, the NJTTF did not properly vet the WITSEC Program participants in accordance with the Department's protocol.

(U) Foreign Government Hacker – Potential Nexus to Terrorism

(U//LES) [REDACTED]

(U//LES) We reviewed the [REDACTED] case file for this WITSEC Program participant to determine whether OEO was in compliance with its pre-admittance protocols for all new Program participants and its informal process for individuals with a potential nexus to terrorism. We found that, in October 2013, OEO and the

²⁰ (U//LES) Specifically, as part of the suitability for the WITSEC Program evaluation process, OEO runs the identity information for each individual against the consolidated terrorist watchlist and [REDACTED]. Once approved for admittance, [REDACTED] runs the identity of the individual against the consolidated terrorist watchlist and [REDACTED] to obtain updated information on the participant's status [REDACTED].

USMS obtained the WITSEC Program threat and risk assessments completed by the sponsoring agency.²¹ In March 2014, the USMS ran the individual's identities against the [REDACTED] and against the consolidated terrorist watchlist and found that he was not in either database. At the same time, based on the belief that this individual had a potential nexus to terrorism, the USMS provided the WITSEC Program participant's information to both the TSC and NJTTF, [REDACTED]. Based on this, OEO determined that the participant is not a KST. However, we found that the NJTTF could not provide evidence of a [REDACTED] check or documentation reflecting that the assessment was performed, as required by FBI protocol.

(U) A Gang Member – Potential Nexus to Terrorism

(U//LES) In [REDACTED] 2015, an individual with a potential nexus to terrorism was admitted to the WITSEC Program and disclosed to NJTTF for review. [REDACTED]

(U//LES) In early 2015, while processing this participant's admittance information, the USMS identified the potential nexus to terrorism. On April 21, 2015, the USMS provided information on this individual to the NJTTF for review and determination as to whether the individual should be nominated to the consolidated terrorist watchlist. An NJTTF official told us that the NJTTF did not nominate this individual to the consolidated terrorist watchlist because, [REDACTED], the NJTTF considered the individual's terrorist nexus to have been effectively severed. However, there was no evidence in the records we reviewed that the NJTTF performed a [REDACTED] check and documented it, as required by FBI policy.

(U//LES) We believe the processing of these [REDACTED] individuals represent examples of situations where the USMS and OEO properly shared information on individuals with a potential nexus to terrorism with national security stakeholders. However, we found no documentation to suggest that the NJTTF followed the FBI's protocol for vetting WITSEC Program participants with a potential nexus to

²¹ (U) During admission to the WITSEC Program, the threat assessment evaluates the threat to the witness for cooperating with the federal government. This threat assessment is different from the threat assessment performed by the FBI to determine if a person is a threat to national security. The risk assessment reports on potential risks to the public caused by the witness' enrollment in the WITSEC Program.

terrorism, although we note that in August 2016, FBI officials told us that it performed another [REDACTED] check in [REDACTED] and determined neither individual should be added to the consolidated terrorist watchlist. After we discussed this issue with OEO and the FBI, OEO created a detailed checklist to be used during the vetting process in order to identify a potential WITSEC Program participant's nexus to terrorism. The FBI also required that the NJTTF document its decisions on whether a WITSEC Program participant should or should not be nominated to the consolidated terrorist watchlist.

(U) KSTs Admitted to the WITSEC Program

(U//LES) For [REDACTED] of the KSTs OEO has admitted to the WITSEC Program since November 2015, we found that OEO and the FBI followed its [REDACTED]: (1) OEO shared these individuals' information with the NJTTF, (2) OEO requested and reviewed detailed risk assessments from the FBI [REDACTED], and (3) OEO solicited input from the Department's National Security Division regarding WITSEC Program suitability of any watchlisted individual prior to making a decision to admit the individual into the WITSEC Program. We also reviewed the admission process for these individuals to determine whether the USMS had developed a process to involve DOJ national security stakeholders in determining [REDACTED]

(U) Post Admittance Requirements

(U//LES) In our May 2013 interim report, we recommended that the Office of the Deputy Attorney General ensure that the USMS completes the development of protocols to require USMS Inspectors to meet regularly with and maintain up-to-date information on active WITSEC Program participants who are also KSTs. Additionally, we recommended that [REDACTED]

(U//LES) We reviewed the protocols developed in response to our recommendations and found that the protocols require that national security stakeholders, including the USMS, FBI, TSC, and OEO, meet [REDACTED] to review the KST's admittance into the WITSEC program. Additionally, the protocols require that the USMS conduct computer indices checks [REDACTED], conduct an in-person meeting [REDACTED]

[REDACTED]

(U//LES) We discussed the implementation of these protocols with OEO, USMS, TSC, and NJTTF personnel. We were told that the [REDACTED] meetings are occurring as required. Participants advised that the meetings facilitated a greater amount of sharing than might have occurred had they not met in person. We also reviewed the [REDACTED] case files containing documentation related to the [REDACTED] indices checks, [REDACTED], and [REDACTED] reports. We found that the USMS was performing indices checks [REDACTED] for all [REDACTED] judgmentally selected participants, where required. We also found that for the [REDACTED] individuals for whom [REDACTED] were required, the USMS performed the checks as required. For the remaining [REDACTED] individuals, we found that the USMS did not perform [REDACTED] checks because, consistent with the policies, the USMS waived the monitoring requirement for these individuals because the WITSEC Program participant posed a danger to the USMS personnel. However, the USMS still ran the individual's names against [REDACTED].

(U//LES) [REDACTED]

²² (U//LES) [REDACTED]

(U//LES) [REDACTED]

(U//LES) In our May 2013 interim report, we recommended that the Department ensure that OEO authorizes the USMS to inform, and ensure the USMS does inform, the FBI whenever a KST [REDACTED], voluntarily leaves the WITSEC Program, is relocated, or is removed from the WITSEC Program. [REDACTED]

[REDACTED]

(U//LES) [REDACTED]

(U) Issues with Terminating a KST for Criminal Misconduct

(U//LES) KST 12 was admitted to the USMS WITSEC Program [REDACTED]. During our work on the May 2013 report, we were told that KST 12 had been charged with inappropriate communications with a minor. During this audit, we followed up on that information and discovered that KST 12 has been charged with or accused of sexual assault-related crimes six times since entering the WITSEC Program. [REDACTED]

(U//LES) The alleged sexual assaults all occurred during [REDACTED]

- (U//LES) [REDACTED], a 22-year-old accused KST 12 of inappropriate touching and making inappropriate comments [REDACTED]. The accusation was made to a local police department, but we found no evidence that the USMS was made aware of this allegation at the time. [REDACTED]. As described in the last bullet, this [REDACTED] allegation was brought to the USMS's attention [REDACTED] a different police department investigated a similar allegation against KST 12. USMS documentation shared with us during this audit noted [REDACTED]

that local police determined that they did not have sufficient evidence to investigate this allegation.

- (U//LES) [REDACTED], KST 12 allegedly inappropriately touched and made inappropriate comments to a 16-year-old [REDACTED]. Since she felt uncomfortable with KST 12, she brought a friend with her [REDACTED], and KST 12 allegedly made inappropriate comments to the friend. Neither the 16-year-old victim nor the friend reported the incidents to the local police at the time. As described in the last bullet, these allegations came to the USMS's attention [REDACTED], when during a local police department's investigation of a similar allegation against KST 12 by a woman, who was 16 at the time of the assault, came forward as a witness. USMS documentation shared with us during this audit noted that the local police determined they did not have sufficient evidence to investigate these allegations.
- (U//LES) [REDACTED], a 17-year-old accused KST 12 of inappropriate touching and making inappropriate comments [REDACTED]. No criminal charges were pursued in this case. [REDACTED] KST 12 [REDACTED] KST 12's [REDACTED] KST 12's [REDACTED]. The USMS was made aware of this allegation in [REDACTED] when, according to the documentation we reviewed, the USMS sent a USMS Inspector to talk to KST 12, who confirmed the allegation [REDACTED]. The USMS documentation stated that KST 12 claimed to be innocent.²³ We did not find evidence that the USMS shared this information with OEO at the time or took any further actions.
- (U//LES) [REDACTED], a 21-year-old accused KST 12 of inappropriate touching and making inappropriate comments [REDACTED]. No criminal charges were pursued by the local police. [REDACTED]
[REDACTED] As described below, the USMS first learned of this allegation in [REDACTED], when a different police department investigated a similar allegation against KST 12.
- (U//LES) [REDACTED], KST 12 made inappropriate sexual contact and comments to a 15-year old. During its investigation, the local police department [REDACTED]
[REDACTED] then notified the local police department about the [REDACTED] allegation, the only allegation of which the USMS appeared to be aware at the time, [REDACTED]. In turn, the detective investigating KST 12 made the USMS aware of the other allegations mentioned above. According to USMS documentation, [REDACTED]

²³ (U//LES) OIG did not interview the USMS employee because [REDACTED].

[REDACTED]. During the prosecution resulting from this allegation, four of the six women described above agreed to testify against KST 12, and KST 12 ultimately pled guilty [REDACTED]

(U//LES) [REDACTED]

(U//LES) From a public safety standpoint, the failure of the USMS to notify OEO and have subsequent communication with local law enforcement about this individual after being made aware of the [REDACTED] incident is concerning. An OEO official told us that the [REDACTED] allegation was the first allegation for KST 12 for which it had been made aware. OEO was notified [REDACTED]

[REDACTED]. The official stated that the prior instances of misconduct did not result in charges or convictions, [REDACTED]

(U//LES) After the [REDACTED] allegation, the USMS proposed termination from the WITSEC Program for KST 12 on four separate occasions within a 9 month timeframe before receiving approval from OEO to terminate [REDACTED].

(U//LES) [REDACTED]

Additionally, we recommend that [REDACTED]

(U) Conclusion

(U//LES) Since our May 2013 review, the FBI, USMS, and OEO have created policies and procedures to address known risks posed by KSTs admitted into the WITSEC Program. We found that some of these new policies have been effective.

(U//LES) However, not all of these policies and procedures have proven sufficient to address the risks sought to be mitigated, nor has the implementation been as effective as originally anticipated. We identified weaknesses in the implementation of the policies and procedures created to improve information sharing among national security stakeholders.

(U) Recommendations

(U) We recommend that:

1. (U//LES) [REDACTED]

[REDACTED]

2. (U//LES) [REDACTED]

3. (U//LES) [REDACTED]

4. (U//LES) [REDACTED]

i. [REDACTED]

ii. [REDACTED]

iii. [REDACTED]

iv. [REDACTED]

v. [REDACTED]

5. (U//LES) [REDACTED]

6. (U//LES) [REDACTED]

7. (U//LES) [REDACTED]

8. (U//LES) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(U) STATEMENT ON COMPLIANCE WITH LAWS AND REGULATIONS

(U) As required by the *Government Auditing Standards*, we tested, as appropriate given our audit scope and objectives, selected transactions, records, procedures, and practices, to obtain a reasonable assurance that the USMS's, FBI's, and OEO's management complied with federal laws and regulations, for which noncompliance, in our judgment, could have a material effect on the results of our audit. The USMS's, FBI's, and OEO's, management is responsible for ensuring compliance with applicable federal laws and regulations. In planning our audit, we identified the following laws and regulations that concern the operations of the auditees and that were significant within the context of the audit objectives:

- (U) Organized Crime Control Act of 1970,
- (U) Comprehensive Crime Control Act of 1984,
- (U) 28 C.F.R. § 0.85 (1969),
- (U) Homeland Security Presidential Directive 6, and
- (U) Executive Order 13388 on Further Strengthening the Sharing of Terrorism Information to Protect Americans.

(U) Our audit included examining, on a test basis, the USMS's, FBI's, and OEO's compliance with the aforementioned laws and regulations that could have a material effect on the USMS's, FBI's, and OEO's operations. We did so by interviewing operational staff and supervisors, requesting and reviewing OEO, USMS, and FBI WITSEC and KST records, evaluating oversight procedures, and assessing relevant internal policies and practices. Nothing came to our attention that caused us to believe that the USMS, FBI, or OEO was not in compliance with the aforementioned laws and regulations.

(U) STATEMENT ON INTERNAL CONTROLS

(U) As required by the *Government Auditing Standards*, we tested as appropriate, internal controls significant within the context of our audit objectives. A deficiency in an internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to timely prevent or detect: (1) impairments to the effectiveness and efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws and regulations. Our evaluation of the USMS's, FBI's, and OEO's internal controls was *not* made for the purpose of providing assurance on its internal control structure as a whole. The USMS, FBI, and OEO are responsible for the establishment and maintenance of internal controls.

(U//~~LES~~) As noted in the Findings and Recommendations Section of this report, we identified deficiencies in the USMS's, FBI's, and OEO's, internal controls that are significant within the context of the audit objectives and based upon the audit work performed that we believe adversely affect the Department's ability to ensure that the handling of KSTs admitted into the WITSEC Program effectively address risks to the public. In performance audits, a deficiency in internal control exists when the design or operation of a control does not prevent or detect and correct noncompliance with provisions of laws or regulations on a timely basis. Our fieldwork suggested that the process of reviewing case files to identify further KSTs in the WITSEC Program and the process of notifying FBI [REDACTED] of KSTs [REDACTED] [REDACTED] constitute controls that were not properly designed and led to deficiencies that were significant in this audit. In addition, the USMS's management and oversight for tracking documentation provided to and received from individuals in the process of being admitted and while participating in the WITSEC Program reflects poor internal controls.

(U) Because we are not expressing an opinion on the USMS's, FBI's, and OEO's internal control structures as a whole, this statement is intended solely for the information and use of the Department. The restriction is not intended to limit the distribution of the report, which is a matter of public record. However, we are limiting the distribution of this report because it contains sensitive information that must be appropriately controlled.²⁴

²⁴ (U) A redacted copy of this report with sensitive information removed will be made available publicly.

APPENDIX 1

(U) AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

(U) Audit Objectives

(U) The objectives of the audit were to evaluate the Department's: (1) handling of KSTs admitted to the WITSEC Program; (2) practices for watch-listing and the processing of encounters with this group of WITSEC Program participants; and (3) procedures for mitigating risks to the public through restrictions placed on this high-risk group of Program participants.

(U) Scope and Methodology

(U) We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

(U//LES) Our audit scope is from May 2013, when we issued the interim report on this topic, through 2015. To accomplish our objectives, we performed fieldwork at agencies, within the Department, tasked with handling KSTs admitted to the WITSEC program. Specifically, we conducted interviews with officials and reviewed standard operating procedures at OEO and USMS headquarters, the NJTTF and TSC of the FBI, and the NCTC to determine whether these agencies adhered to established internal controls in managing risks posed by these WITSEC Program participants. A judgmental sampling design was applied to capture numerous aspects of the WITSEC case files, TSDB records, and [REDACTED] records. This non-statistical sample design does not allow projection of the test results to the population.

(U//LES) To evaluate the adequacy of the watchlisting policy for WITSEC KSTs, we reviewed [REDACTED] records provided by the TSC, each representing an encounter with a WITSEC Program participant [REDACTED]. In addition, we evaluated the accuracy and completeness of the consolidated terrorist watchlist by comparing TSDB records to case files [REDACTED]. Our testing consisted of [REDACTED] KST WITSEC Program participants, judgmentally selected from a list of [REDACTED] KSTs on a list OEO provided to us [REDACTED]. Our judgmental selection was based on whether or not a KST WITSEC Program participant: [REDACTED]

[REDACTED]

(U//LES) To assess the implementation of protocols on handling this group of WITSEC Program participants [REDACTED], we judgmentally selected [REDACTED] and interviewed available officials from the [REDACTED] FBI and USMS [REDACTED]. Our judgmental selection was generally based on the history of geographic movements of the [REDACTED] WITSEC KSTs that we reviewed for TSDB accuracy and completeness.

(U//LES) To obtain a better understanding concerning law enforcement agencies' response to KST 70's [REDACTED], we [REDACTED] [REDACTED] interviewed officials who had knowledge of this incident, and reviewed case-related documents.

(U) To evaluate the Department's efforts of identifying any other WITSEC Program participants who might be KSTs, we obtained case file review records maintained by the USMS, NJTTF, and OEO. We reviewed these records to determine how the USMS and OEO assessed and referred appropriate WITSEC Program participants to the NJTTF for consideration of watchlisting, as well as the NJTTF's decision on such referrals. We judgmentally selected 46 case files to review OEO's decision not to share the individual's information with the NJTTF.

**(U) RECOMMENDATIONS FROM THE MAY 2013 INTERIM REPORT
ON THE DEPARTMENT OF JUSTICE'S
HANDLING OF KNOWN OR SUSPECTED TERRORISTS
ADMITTED INTO THE
FEDERAL WITNESS SECURITY PROGRAM**

(U) In our May 2013 report, we recommended to the Office of the Deputy Attorney General that it:

- (U) Evaluate current practices and formalize procedures for the enhanced sharing of identity information with DOJ national security stakeholders for known or suspected terrorists in the WITSEC Program, in light of any legal structures.
- (U) Ensure that OEO and the USMS compare the true names of all WITSEC Program participants and their dependants that have been admitted into the WITSEC Program against the consolidated terrorist watchlist.
- (U//LES) [REDACTED]
- (U//LES) Ensure that OEO authorizes the USMS to provide to the TSC the new, government-provided identities of all known or suspected terrorists, [REDACTED]
- (U//LES) [REDACTED]
- (U//LES) [REDACTED]
- (U) Ensure that OEO authorizes the USMS to disclose and that the USMS discloses to the FBI identification and other necessary information on known or suspected terrorists in the WITSEC Program.
- (U) Ensure that the USMS and FBI coordinate to verify the current physical location of all known or suspected terrorists who have been admitted into the WITSEC Program.

- (U//~~LES~~) [REDACTED]
- (U) Determine the appropriate inclusion of DOJ national security stakeholders in decisions and processes for admitting and monitoring WITSEC Program participants who are considered to be known or suspected terrorists.
- (U//~~LES~~) [REDACTED]
- (U//~~LES~~) [REDACTED]
- (U//~~LES~~) [REDACTED]
- (U) Ensure that the USMS completes the development of protocols to require USMS Inspectors to meet regularly with and maintain up-to-date information on active WITSEC Program participants who are also known or suspected terrorists.
- (U) Develop a mechanism for the FBI to review known or suspected terrorist WITSEC Program participant case files for information that demonstrates a potential nexus to terrorism.
- (U//~~LES~~) Ensure that OEO authorizes the USMS to inform and ensure the USMS does inform the FBI whenever a known or suspected terrorist [REDACTED], voluntarily leaves the WITSEC Program, is relocated, or is removed from the WITSEC Program.

APPENDIX 3

**(U) BACKGROUND ON THE WITSEC PROGRAM
AND CONSOLIDATED TERRORIST WATCHLIST**

(U) WITSEC Program and Watchlist Background

(U) The WITSEC Program was authorized by the Organized Crime Control Act of 1970 and amended by the Comprehensive Crime Control Act of 1984, Pub. L. No. 91-452 (1970), and Pub. L. No. 98-473 (1984), respectively. The WITSEC Program provides for the security, health, and safety of government witnesses who are at risk of harm as a result of their testimony against organized crime members, drug traffickers, terrorists, and other major criminals. The WITSEC Program is administered through three Department entities: (1) OEO oversees the WITSEC Program and authorizes witnesses into the WITSEC Program, (2) the USMS is responsible for the protection of active WITSEC Program participants who are not incarcerated, and (3) the Federal Bureau of Prisons (BOP) protects WITSEC Program participants while they are incarcerated in federal facilities.

(U) The Organized Crime Control Act of 1970, amended by the Comprehensive Crime Control Act of 1984, (the Act) states that the Attorney General is authorized to provide for the relocation and protection of potential witnesses, and their family members, who are involved in an official proceeding concerning an organized crime activity or other serious offense. The Act also states that the Attorney General shall take actions to protect the health, safety, and welfare of WITSEC Program participants, including their psychological well-being and social adjustment. Among other measures, the Act authorizes the Attorney General to: (1) provide suitable documents to enable the WITSEC Program participant to establish a new identity, (2) provide housing for the WITSEC Program participant, (3) provide to the WITSEC Program participant financial assistance to meet basic living expenses, (4) assist the WITSEC Program participant in obtaining employment, and (5) provide other services necessary to assist the WITSEC Program participant in becoming self-sustaining.

(U//LES)



[REDACTED]

(U//LES) The Attorney General has delegated to the Director of OEO the authority to decide who is admitted to the WITSEC Program, [REDACTED]

[REDACTED]

26

(U) The Act requires the Attorney General to enter into a Memorandum of Understanding (MOU) with individuals participating in the WITSEC Program. As described in the Act, individuals admitted into the WITSEC Program must agree to certain requirements that are incorporated in the MOU, including: (1) not committing any crime, (2) taking all necessary steps to avoid detection of their participation in the WITSEC Program, (3) regularly informing the USMS of their current address, and (4) not traveling without USMS approval. If an individual substantially breaches the terms of the MOU or provides false information to authorities concerning the circumstances under which the participant was provided protection, the Act authorizes the Attorney General to remove that individual from the WITSEC Program. As the Attorney General's designee, the Director of OEO makes this determination to remove an individual from the WITSEC Program after

²⁵ (U//LES) [REDACTED]

²⁶ (U//LES) 18 U.S.C. § 3521 authorizes the Attorney General to delegate the responsibility initially to authorize witness relocation and protection only to the Deputy Attorney General, Associate Attorney General, any Assistant Attorney General in charge of the Criminal Division or National Security Division of the Department of Justice, Assistant Attorney General in charge of the Civil Rights Division of the Department of Justice (insofar as the delegation relates to a criminal civil rights case), and to one other officer or employee of the Department of Justice. The most recent delegation of this authority was made to the Director of OEO on March 18, 2011. We were provided documentation that this delegation was made to OEO since at least 1984.

considering the severity of the breach along with the importance of the witness's testimony.

(U//LES) [REDACTED]
[REDACTED]:

- (U//LES) [REDACTED]
- (U//LES) [REDACTED]
- (U//LES) [REDACTED]
- (U//LES) [REDACTED]

(U//LES) [REDACTED]

(U) Terrorist Watchlist Nomination Process

(U) According to the President's National Strategy for Counterterrorism issued in June 2011, the primary goal of the nation's counterterrorism efforts is to identify suspected terrorists and prevent them from harming U.S. citizens both at home and abroad. An essential element of these efforts is the maintenance of a consolidated terrorist watchlist that contains a complete and accurate record of the names and identifying information of KSTs. The Terrorist Screening Center (TSC), which is a multiagency entity managed by the FBI, is responsible for maintaining the government's consolidated watchlist of KSTs.

(U) The Department's watchlist nomination process is centralized through the FBI, which is the sole agency in the Department responsible for nominating to the watchlist the Department's information on KSTs.²⁸ The TSC shares watchlist information with other agencies by exporting or sending data "downstream" to frontline screening databases, such as the Transportation Security

²⁷ (U//LES) [REDACTED]

²⁸ (U) The Deputy Attorney General informed ". . . all components [of the Department of Justice] to provide the FBI with all domestic and international terrorism information or terrorist identifiers so that the FBI can make appropriate nominations to the consolidated terrorist watchlist." Deputy Attorney General, Department of Justice, memorandum for the heads of Department components, Department of Justice Protocol Regarding Terrorist Watchlist Nominations, October 3, 2008.

Administration's (TSA) No Fly and Selectee Lists and Secure Flight Program; the Department of State's Consular Lookout and Support System passport and visa modules; the FBI's NCIC system's Known or Suspected Terrorist File; the U.S. Customs and Border Patrol's (CBP) Treasury Enforcement Communications System database; and select foreign governments.

(U) The consolidated terrorist watchlist information is utilized by law enforcement, screening, and intelligence officials across the country and around the world. These agencies use the watchlist information to take appropriate action when encountering a KST, including prohibiting them from boarding a commercial aircraft if the individual is on the TSA's No Fly List or subjecting the individual to increased examination of questioning if crossing the border or when stopped by local law enforcement for a traffic violation.²⁹

(U) The consolidated terrorist watchlist should include the most current and complete information known to the government on KSTs. If the government has information about an individual who is a threat to national security, that individual's information should be included on the consolidated terrorist watchlist to ensure that the individual is appropriately handled by law enforcement, screening, and intelligence officials. Even a single omission of a KST from the watchlist could create an opportunity for an individual to evade detection and commit terrorist attacks.

²⁹ (U) "Encounter" means local, state, tribal, or federal law enforcement and homeland security screeners have come across a KST during normal job duties (e.g. traffic stops, checking of airplane manifests, or evaluating an application for a U.S. passport or visa).

APPENDIX 4

**(U) PRIOR OIG REPORTS ISSUED ON THE
WITSEC PROGRAM, THE WATCHLIST PROCESS, AND
THE TERRORIST SCREENING CENTER**

(U) The Department of Justice, Office of the Inspector General has issued several reports over the years on the government's Witness Security Program, the Department's watchlist process, and the Terrorist Screening Center. Those reports are:

1. (U) U.S. Department of Justice Office of the Inspector General, *Admission into the Department of Justice's Witness Security Program by the Criminal Division*, Audit Report 93-24 (September 1993).
2. (U) U.S. Department of Justice Office of the Inspector General, *United States Marshals Service's Responsibilities Under the Witness Security Program*, Audit Report 94-7 (November 1993).
3. (U) U.S. Department of Justice Office of the Inspector General, *The Federal Witness Security Program, Criminal Division*, Audit Report 02-05 (January 2002).
4. (U) U.S. Department of Justice Office of the Inspector General, *United States Marshals Service Administration of the Witness Security Program*, Audit Report 05-10 (March 2005).
5. (U) U.S. Department of Justice Office of the Inspector General, *Review of the Terrorist Screening Center*, Audit Report 05-27 (June 2005).
6. (U) U.S. Department of Justice Office of the Inspector General, *Review of the Terrorist Screening Center's Efforts to Support the Secure Flight Program*, Audit Report 05-34 (August 2005).
7. (U) U.S. Department of Justice Office of the Inspector General, *Follow-up Audit of the Terrorist Screening Center*, Audit Report 07-41 (September 2007).
8. (U) U.S. Department of Justice Office of the Inspector General, *Audit of the Department of Justice Terrorist Watchlist Nomination Processes*, Audit Report 08-16 (March 2008).
9. (U) U.S. Department of Justice Office of the Inspector General, *The Federal Bureau of Prisons Witness Security Program*, Audit Report 09-01 (October 2008).

10. (U) U.S. Department of Justice Office of the Inspector General, *The Federal Bureau of Investigation's Terrorist Watchlist Nomination Practices*, Audit Report 09-25 (May 2009).
11. (U) U.S. Department of Justice Office of the Inspector General, *The Department of Justice's Handling of Known or Suspected Terrorists Admitted into the Federal Witness Security Program*, Audit Report 13-23 (May 2013).
12. (U) U.S. Department of Justice Office of the Inspector General, *The Federal Bureau of Investigation's Management of Terrorist Watchlist Nominations*, Audit Report 14-16 (March 2014).
13. (U) U.S. Department of Justice Office of the Inspector General, *Review of Termination and Appeals Notice to Witness Security Inmate Participants*, Evaluation and Inspections Report I-2014-005 (August 2014).
14. (U) U.S. Department of Justice Office of the Inspector General, *The Department of Justice's Handling of Sex Offenders in the Federal Witness Security Program*, Audit Report 15-10 (March 2015).

**THE DEPARTMENT OF JUSTICE'S RESPONSE
TO THE DRAFT REPORT**



U.S. Department of Justice

Office of the Deputy Attorney General

Office of the Deputy Attorney General

Washington, D.C. 20530

May 5, 2017

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MEMORANDUM

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

Through: Jason R. Malmstrom
Assistant Inspector General for Audit

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

Subject: Response to Draft Audit Report entitled *Department of Justice's Handling of Known or Suspected Terrorists Admitted into the Federal Witness Security Program* (April 21, 2017)

(U) The Department appreciates the opportunity to respond to the Office of the Inspector General's draft audit report entitled *Department of Justice's Handling of Known or Suspected Terrorists Admitted into the Federal Witness Security Program (OIG Audit Report)*. The collaborative audit process has prompted significant improvements in the Federal Witness Security Program (WitSec Program or Program).

(U) Created by Congress over 40 years ago as part of the Organized Crime Control Act of 1970 to combat organized crime syndicates, the Program has played a crucial role in the protection of witnesses to violent crime, and has enabled federal investigators and prosecutors to bring to justice some of the world's most dangerous criminals. *See* Pub. L. No. 91-452, §§ 501-04, 84 Stat. 922, 933-34 (1970) (current version codified at 18 U.S.C. §§ 3521-28). The Program successfully has protected an estimated 18,300 participants – including innocent victim-witnesses and cooperating defendants and their dependents – from intimidation and retribution. 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 securing convictions in United States courts of law, military tribunals, and foreign prosecutions.

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(U) Over the last 20 plus years, as the government has devoted significant resources to the prosecution of terrorism cases, the WitSec Program necessarily has included a small number of former known or suspected terrorists and their family members, as well as innocent victims and eyewitnesses. These witnesses have provided invaluable assistance to the United States and foreign governments in identifying and dismantling terrorist organizations and in 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. 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.

(U) The Department has considered the eight recommendations reflected in the draft *OIG Report*. As detailed below, the Department concurs with all eight recommendations and has made continued progress in implementing the policies and procedures necessary to warrant closure. At this time, the Department requests that the OIG close Recommendation Nos. 3-6, and 8. We will continue to provide updates on our progress on the remaining resolved recommendations.

~~(U//LES)~~ [REDACTED]

~~(U//LES)~~ [REDACTED]

~~(U//LES)~~ [REDACTED]

~~(U//LES)~~ The Department concurs with this recommendation. The FBI concurs with OIG's assessment that documentation of these investigations was insufficient. [REDACTED]

[REDACTED]

(U//LES) [REDACTED]

(U//LES) The Department concurs with this recommendation. [REDACTED] Accordingly, the Department recommends that this recommendation be closed.

4. (U//LES) [REDACTED]

(U//LES) The Department concurs with this recommendation. On [REDACTED] USMS Assistant Director [REDACTED] issued a [REDACTED] to all Division personnel directing adherence to the above-referenced recommendations, [REDACTED]

[REDACTED]

[REDACTED]

(U//LES) A copy of the [REDACTED] has been provided to the OIG Audit Team contemporaneously with the submission of this response. Accordingly, the Department requests that this recommendation be closed.

5. (U//LES) [REDACTED]

(U//LES) The Department concurs with this recommendation. [REDACTED]

(U//LES) [REDACTED]

(U//LES) [REDACTED]

(U) Accordingly, the Department requests that this recommendation be closed.

6. (U//LES) [REDACTED]

(U//LES) See response to Recommendation 5.

(U//LES) [REDACTED]

(U//LES) The Department concurs with this recommendation. The FBI has located all newly watchlisted [REDACTED] Witnesses to the extent lawfully authorized with [REDACTED] exception.

[REDACTED] notifications have been provided for all located newly watchlisted [REDACTED] witnesses.

(U//LES) [REDACTED]

(U//LES) The Department concurs with this recommendation. [REDACTED]

(U//LES) [REDACTED]

[REDACTED]

(U//LES) [REDACTED]

[REDACTED]

(U//LES)

[REDACTED]

(U//LES)

[REDACTED]

(U) Accordingly, the Department requests that this recommendation be closed.

¹ (U//LES) This recommendation appears to be derived from the termination of KST 12. As noted in the *OIG Audit Report*, the USMS proposed termination of this witness on four separate occasions within a nine-month period, but the Director of the Program did not terminate KST 12 until it was evident that the witness had engaged in conduct that established a substantial breach of the MOU. See *J.S. v. T'Kach*, 714 F.3d 99 at 108 (2d Cir. 2013) (recognizing that Congress explicitly required the Director of the Program to “find a substantial breach of the participant’s MOU [and to] provide notice to the person involved of the termination and the reasons for termination.”).

[REDACTED]

U//LES//SSI

**(U) OFFICE OF THE INSPECTOR GENERAL
ANALYSIS AND SUMMARY OF ACTIONS
NECESSARY TO CLOSE THE REPORT**

(U) The OIG provided a draft of this audit report to the Department. The Department's response is incorporated in Appendix 5 of this final report. The following provides the OIG analysis of the Department's response and summary of actions necessary to close the report.

Recommendations for the Department:

1. (U//LES) [REDACTED]

(U) Resolved. The Department concurred with our recommendation. In its response, the Department stated that [REDACTED]

Furthermore, [REDACTED] The Department stated that this [REDACTED]

(U) This recommendation can be closed when we receive documentation that the [REDACTED]

2. (U//LES) [REDACTED]

(U) Resolved. The Department concurred with our recommendation. In its response, the Department stated that [REDACTED]

The Department stated that [REDACTED] The Department stated that this [REDACTED]

This recommendation can be closed when we receive evidence from [REDACTED]
[REDACTED]

3. (U//LES) [REDACTED]
[REDACTED]

(U)Resolved. The Department concurred with our recommendation. [REDACTED]
[REDACTED] Based on this information, the Department requested that this recommendation be closed.

This recommendation can be closed when we receive evidence that [REDACTED]
[REDACTED]

4. (U//LES) [REDACTED]:
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(U) Resolved. The Department concurred with our recommendation. In its response, the Department stated that on [REDACTED], a USMS Assistant Director issued a [REDACTED] to all Division personnel directing adherence to this recommendation. The Department provided to us a copy of the

[REDACTED], memorandum, which required WITSEC officials to [REDACTED]
[REDACTED]
[REDACTED]. This memorandum
further states [REDACTED]
[REDACTED]
[REDACTED] The same memorandum further
requires [REDACTED]
[REDACTED]

Based on this information, the Department requested that this recommendation be closed.

We learned during the audit that the [REDACTED]
[REDACTED] does not address [REDACTED]
[REDACTED] Consequently, this recommendation can be closed when we
receive evidence that [REDACTED]
[REDACTED]

5. (U)

[REDACTED]
[REDACTED]
[REDACTED]

(U)Resolved. The Department concurred with our recommendation. In its response, the Department stated that the [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Based on this information, the Department requested that this recommendation be closed.

However, we noted that the [REDACTED]

[REDACTED]

Similarly, we learned during the audit that the [REDACTED]

[REDACTED]

(U) This recommendation can be closed when we receive evidence that the [REDACTED]

[REDACTED]

6. (U)

[REDACTED]

(U) Resolved. The Department concurred with our recommendation and in response to this recommendation referred to its response for Recommendation 5. Specifically, the Department refers to the [REDACTED]

[REDACTED]

The Department's response states that [REDACTED]

[REDACTED]

However, the Department's response does not address [REDACTED]

[REDACTED]

(U) As a result, this recommendation can be closed when the Department provides evidence that the [REDACTED]

[REDACTED]

7. (U//LES)

[REDACTED]

(U)Resolved. The Department concurred with our recommendation. In its response, the Department stated that the FBI has located all but [REDACTED] of the [REDACTED] newly watchlisted [REDACTED] witnesses. The [REDACTED] was [REDACTED]. The Department further stated that [REDACTED] notificaitons have been provided for all located [REDACTED] witnesses, who have been newly watchlisted. [REDACTED]

(U)This recommendation can be closed when we receive evidence from the Department that all [REDACTED] KSTs have been located and the corresponding [REDACTED] have been notified of [REDACTED].

8. (U//LES)

[REDACTED]

(U)Resolved. The Department concurred with our recommendation. [REDACTED]

[REDACTED]

[REDACTED]

(U) Nevertheless, during the audit we reviewed [REDACTED]

[REDACTED]

As a result, this recommendation may be closed when the Department provides evidence that [REDACTED]

[REDACTED]

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