



Office of the Inspector General
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and Related Agencies

concerning

Oversight of the Department of Justice

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

Thank you for inviting me to testify about the activities and oversight work of the Office of the Inspector General (OIG) for the Department of Justice (Department or DOJ). It has been 11 months since I was sworn in as the Department's Inspector General, and it has been an extraordinarily busy 11 months for me and the Office. We have issued many significant reports during that time, and several of the most important ones were based in part upon requests from Members of this Subcommittee.

One of the first reports that I issued as Inspector General was our report on improper hiring practices in the Justice Management Division (JMD), which was initiated as a result of information provided to us by the Chairman. We not only corroborated this information but found numerous problems with nepotism in multiple offices in JMD. Our findings are particularly concerning given that the OIG had twice before issued reports involving improper hiring practices in JMD (in 2004 and 2008). We found that eight current or former JMD officials – many holding senior positions – violated applicable statutes and regulations in seeking the appointment of their relatives to positions within JMD. The OIG also found that a Deputy Assistant Attorney General in JMD responded inadequately to warning signs she received concerning the hiring of relatives of JMD employees. We made a number of stringent recommendations in an effort to ensure that these problems were finally remedied and that we do not need to issue a fourth report on the subject.

Another important report involved our review of the Department's handling of the Clarence Aaron clemency request, which Congressman Fattah requested that we investigate. We found that the Department's Pardon Attorney did not accurately represent material information to the White House in recommending that the President deny Aaron's clemency petition. We referred the findings regarding the Pardon Attorney's conduct to the Office of the Deputy Attorney General for a determination as to whether administrative action is appropriate, and we recommended that the Office of the Pardon Attorney review its files to determine if similar events occurred with respect to other cases.

And on Tuesday of this week, we issued a report on the Voting Section of the Civil Rights Division, which we initiated after requests by the Chairman, Congressmen Aderholt, Bonner, and Culberson of this Subcommittee, and other Members of Congress. We found significant differences between administrations in enforcement priorities, but we did not uncover evidence sufficient to conclude that enforcement decisions were based on race or partisan considerations under the past or current administrations. We did, however, raise questions about the handling of some of those cases, including the New Black Panther Party matter that we believe contributed to the

appearance of politicization of the work of the Voting Section. In addition, we found numerous and troubling examples of harassment and marginalization of employees and managers, as well as the unauthorized disclosure of confidential information, that appeared to result from ideological divisions within the Section. We believe such conduct is incompatible with the proper functioning of a component of the Department of Justice. The report also analyzed allegations of partisanship in both the hiring of experienced attorneys to work in the Voting Section under the current administration and in the prioritization of responses to records requests about voting matters. We did not find sufficient evidence to support these allegations. However, we did identify a number of issues and we made several recommendations to assist the Department in addressing these matters.

In addition to these reports that several Members of this Subcommittee requested, we completed our report on the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) Operation Fast and Furious and Operation Wide Receiver, which consumed a substantial amount of my first five months in office and which resulted in very important and troubling findings. The report detailed a pattern of serious failures in both ATF's and the U.S. Attorney's Office's handling of the investigations, as well as the Department's response to Congressional inquiries about those flawed operations. The OIG will closely monitor the Department's progress in implementing the recommendations we made in our report.

Additionally, there are the reports that do not necessarily make the headlines but that help make the operations of the Justice Department more effective and efficient, and that result in important savings of taxpayer dollars. For example, in my 11 months as Inspector General, we issued more than 70 audits, which included annual financial statement audits, information security audits, audits of grant recipients, and audits of state and local participants in the Federal Bureau of Investigation's (FBI) Combined DNA Index System (CODIS). Further, we issued reports on the Department's handling of suspension and debarment, the FBI's implementation of the Sentinel project, the FBI's handling of its forensic DNA case backlog, the U.S. Marshals Service's (USMS) management of its procurement activities, the Executive Office of Immigration Review's management of immigration cases, and the FBI's activities under Section 702 of the FISA Amendments Act. Additionally, during this time, our Investigations Division received approximately 10,000 complaints, had dozens of arrests and convictions involving corruption or fraud offenses, and investigated allegations that resulted in well over 100 administrative actions against Department employees.

I am also particularly proud of having appointed the DOJ OIG's first-ever whistleblower ombudsperson, and I am committed to ensuring that whistleblowers in the Department can step forward and report fraud, waste, and abuse without fear of retaliation. During my tenure, I have seen first-hand

the important role that whistleblowers play in advancing the OIG's mission to address wasteful spending and improve the Department's operations. We will do all we can to ensure that we are responsive to complaints that we receive, and that we ensure that allegations of retaliation are thoroughly and promptly reviewed.

While these past 11 months have been a remarkably busy time, they are typical of the extraordinary work that the DOJ OIG regularly produces, and it is indicative of the return on investment that the taxpayers receive from our office. Indeed, over the past 10 fiscal years, the OIG has identified nearly \$1 billion in questioned costs – far more than the OIG's budget during the same period. In addition, we have identified over \$250 million in taxpayer funds that could be put to better use by the Department, and our criminal and administrative investigations have resulted in the imposition or identification of more than \$65 million in fines, assessments, restitution, and other recoveries over that period.

We have accomplished these results over the past 10 years by being very productive because, while our FTE has increased by more than 9 percent, from approximately 400 to 437, the Department's FTE has increased almost 25 percent from approximately 90,400 to 112,800. As a result of sequestration, we have received a 5 percent reduction to our base this fiscal year, and are scheduled to receive an additional 2 percent reduction in FY14. Because 78 percent of our expenditures are related to personnel, this equates to a permanent reduction of approximately 30 FTEs. As you would expect from careful stewards of taxpayer money, we have been planning for the possibility of sequestration for several months. As a result we already are 20 FTEs below our FTE hiring level from last fiscal year, and we expect to further restrict our spending for the remainder of the fiscal year in order to meet the budget reduction. That will require us to restrict travel and will likely mean that we conduct fewer audits and investigations given our reduced staffing levels, but I am confident that the dedicated professionals in the DOJ OIG will continue to provide extraordinary service to the American public.

Future Work and Top Challenges Facing DOJ

Now that I have outlined for you what we have done during the past year, let me look forward to our future work.

Each year since 1998, the OIG has compiled a list of top management and performance challenges for the Department of Justice for use by the Attorney General and top DOJ officials. We identified the major challenges for the Department in 2013 as Safeguarding National Security, Enhancing Cyber Security, Managing the Federal Prison System, Leading the Department in an Era of Budget Constraints, Protecting Civil Rights and Civil Liberties, Restoring Confidence, Coordinating Among Law Enforcement Agencies, Enforcing Against

Fraud and Financial Offenses, Administering Grants and Contracts, and Ensuring Effective International Law Enforcement. In my testimony today, I will highlight a few of the top management and performance challenges for the Department that we identified during this past year based on our oversight work, research, and judgment. The full list of top challenges facing the Department, along with a detailed discussion of our assessment of each, is available on our website at <http://www.justice.gov/oig/challenges/2012.htm>.

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

National Security Remains a Top Challenge

Safeguarding national security has appropriately remained the Department's highest priority and the focus of substantial resources. Yet the OIG's oversight has consistently demonstrated that the Department faces many persistent challenges in its efforts to protect the nation from attack.

One such challenge is ensuring that national security information is appropriately shared among Department components and the intelligence community so that responsible officials have the information they need to act in a timely and effective manner. The OIG is currently conducting numerous reviews in this area. For example, we are examining the Department's coordination of its efforts to disrupt terrorist financing, to manage the consolidated terrorist watchlist, and to use the FBI's Foreign Terrorist Tracking Task Force to provide information that helps keep foreign terrorists and their supporters out of the United States or leads to their removal, detention, prosecution, or other legal action. Each of these critical functions requires careful coordination between Department components and with other agencies to ensure that the Department has every opportunity to prevent terrorist attacks before they occur.

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

The FBI has implemented many of these recommendations and continues to make progress in implementing others. However, some

recommendations remain outstanding, and we are now conducting our third review of NSLs to assess the FBI's progress in responding to those recommendations and to evaluate the FBI's automated system for tracking NSL-related activities and ensuring compliance with applicable laws. This review also includes the OIG's first review of the Department's use of pen register and trap-and-trace devices under the *Foreign Intelligence Surveillance Act* (FISA).

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

Cyber Security is of Increasing Importance

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

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

In recognition of this trend, the Department has identified the investigation of cyber crime and the protection of the nation's network infrastructure as one of its top priorities. The Department has sought to strengthen cyber security by responding to recommendations made in OIG reports relating to cyber security, including our September 2011 report examining the operations of the Justice Security Operations Center, and our April 2011 audit report assessing the National Cyber Investigative Joint Task Force and the capabilities of FBI field offices to investigate national security cyber intrusion cases.

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

Cyber intrusion and attack also pose risks to the security of the Department's information, the continuity of its operations, and the effectiveness of its law enforcement and national security efforts. The Department consequently faces the challenge of protecting its own systems, including systems that protect its sensitive and classified information. Partly in response to the highly publicized 2010 incident in which an Army intelligence analyst admittedly provided classified combat footage and hundreds of thousands of classified State Department documents to a website devoted to publishing secret information, news leaks, and classified media from anonymous sources, the President issued an executive order requiring a government-wide program for deterring, detecting, and mitigating insider threats. As a result, in March 2012 the Department established an Insider Threat Detection and Prevention Working Group. The Department plans to issue a strategy and guidance on how components should implement an insider threat program and to provide training on insider threats.

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

The current budgetary environment also presents critical challenges for the Department. Of particular importance, the Department's mission has remained substantially unchanged since 2001 even as the budgetary environment in which the Department operates has changed dramatically. It now appears likely that Department leadership will face the significant challenge of fulfilling this mission without the assurance of increased resources in coming years.

The Department has taken some initial steps to reduce its budget. However, the Department proposed approximately \$228 million in program increases for FY 2013. We acknowledge that these increases are intended for such critical activities as financial and mortgage fraud, civil rights, cyber security, intellectual property, transnational organized crime, and immigration services, as well as to ensure prisoners and detainees are confined in secure facilities and to improve federal prisoner reentry. Each of these areas merits

additional attention from the Department. But that is the point: even in an era of constrained budgets, the demands on the Department continue to grow. The Department must therefore have in place an innovative and transparent strategic vision for how to fulfill its mission in the long term without requiring additional resources.

Nowhere is this problem more pressing than in the federal prison system, where the Department faces the challenge of addressing the growing cost of housing a continually growing and aging population of federal inmates and detainees. The federal prison system is consuming an ever-larger portion of the Department's budget, making safe and secure incarceration increasingly difficult to provide, and threatening to force significant budgetary and programmatic cuts to other DOJ components in the near future. In FY 2006, there were 192,584 inmates in BOP custody. As of October 2012, the BOP reported 218,730 inmates in its custody, an increase of more than 13 percent. Not surprisingly, these trends mirror the increased number of federal defendants sentenced each year, which rose from approximately 60,000 in FY 2001 to more than 86,000 in FY 2011, according to the U.S. Sentencing Commission.

The Department's own budget reports demonstrate the fundamental financial challenges facing the Department. Fifteen years ago, the BOP's enacted budget was \$3.1 billion, which represented approximately 14 percent of the Department's budget. In comparison, the Department has requested \$6.9 billion for the BOP in FY 2013, or 26 percent of the Department's total FY 2013 budget request. Moreover, the President's FY 2013 budget projects the budget authority for federal correctional activities to rise from \$6.9 billion to \$7.4 billion by 2017.

The Department has been aware of the problems associated with a rapidly expanding prison population for years. The Department first identified prison overcrowding as a programmatic material weakness in its FY 2006 Performance and Accountability Report, and it has been similarly identified in every such report since. In fact, prison overcrowding was the Department's only identified material weakness last year. To reduce overcrowding in existing federal prisons as the inmate population continues to grow, the BOP has contracted with private sector, state, and local facilities to house certain groups of low-security inmates, and it recently purchased an existing state facility. The Department also has expanded existing federal facilities, and the GAO recently reported that from FY 2006 through FY 2011 the BOP increased its rated capacity by approximately 8,300 beds as a result of opening 5 new facilities.

Yet despite this increase in bed space since FY 2006, and despite the growth in BOP budget authority from approximately 22 percent of the DOJ budget in FY 2006 to the requested 26 percent in FY 2013, conditions in the

federal prison system continued to decline. Since FY 2000, the BOP's inmate-to-staff ratio has increased from about four-to-one to a projected five-to-one in FY 2013. Since FY 2006, federal prisons have moved from 36 percent over rated capacity to 39 percent over rated capacity in FY 2011, with medium security facilities currently operating at 48 percent over rated capacity and high security facilities operating at 51 percent over rated capacity. Moreover, the Department's own outlook for the federal prison system is bleak: the BOP projects system-wide crowding to exceed 45 percent over rated capacity through 2018.

Whatever approach the Department wishes to take to address the growing cost of the federal prison system, it is clear that something must be done. In an era where the Department's overall budget is likely to remain flat or decline, it is readily apparent from these figures that the Department cannot solve this challenge by spending more money to operate more federal prisons unless it is prepared to make drastic cuts to other important areas of the Department's operations. The Department must therefore articulate a clear strategy for addressing the underlying cost structure of the federal prison system and ensuring that the Department can continue to run our prisons safely and securely without compromising the scope or quality of its many other critical law enforcement missions.

There are many approaches available to the Department for cutting its costs. Among them, it could redouble its efforts to adopt and implement OIG recommendations designed to reduce costs. As of September 2012, 819 OIG recommendations to the Department remained open, including many recommendations that could lead to substantial cost savings, and our FY 2012 audits and related single audits identified approximately \$25 million in questioned costs that the Department should make every effort to resolve and, if necessary, recover. The Department should also focus on getting more for its spending. For example, numerous OIG audits in recent years have identified ineffective spending on large information technology projects. The Department must focus on avoiding similar problems in the future.

The Department should also continue to strengthen its efforts to collect criminal penalties, civil judgments, and other funds owed to the Department, while also ensuring that enforcement efforts across its components and sub-components remain equally and appropriately vigorous. In FY 2011, for example, the U.S. Attorneys' Offices collected \$6.5 billion in criminal and civil actions – \$2.7 billion in restitution, criminal fines, and felony assessments, and \$3.8 billion in individually and jointly handled civil actions – as well as an additional \$1.68 billion collected through asset forfeiture actions in partnership with other divisions and agencies. However, at the end of FY 2011, the U.S. Attorneys' Offices reported an ending principal balance of nearly \$75 billion relating to criminal and civil actions that remained uncollected. In

addition, collection efforts may vary substantially among the U.S. Attorneys' Offices.

Leading the Department in this climate of budget constraints will require careful budget management and significant improvements to existing operations. Discrete operating efficiencies are unlikely to fully address the significant challenges of moving the Department from an era of expanding budgets into an era of budget constraints without sacrificing its mission. It is therefore incumbent upon the Department to plot a new course for the current budgetary environment, one that streamlines the Department's operations while simultaneously taking on the most important and fundamental questions about how the Department is structured and managed.

The Department Must Continue to Focus on Maintaining the Public's Trust and Confidence

The Department must ensure that it strengthens and maintains the public's trust in its fairness, integrity, and efficiency. Several recent and ongoing OIG reviews have demonstrated the Department's challenges in doing so.

We have completed many of these reviews in my first 11 months as Inspector General, including this week's report assessing the operations of the Voting Section of the Civil Rights Division, which documented a disappointing lack of professionalism by some Department employees over an extended period of time, during two administrations, and across various facets of the Voting Section's operations. Our review of ATF's Operations Wide Receiver and Fast and Furious provides another example, as that review determined that the investigations profiled in our report were plagued by several systemic problems, including inadequate attention to public safety, a lack of sufficient supervisory controls and oversight from ATF Headquarters, inappropriate use of cooperating federal firearms licensees, and a failure to coordinate with other law enforcement agencies. This review also found that the Department responded to a congressional inquiry about ATF firearms trafficking investigations with inaccurate information. Other examples from my tenure as Inspector General include our investigation into improper hiring processes within JMD – our third such investigation of JMD in the last 8 years – and our recent report on the Department's handling of Clarence Aaron's clemency petition. Incidents such as these tarnish the Department's reputation for fairness, integrity, and effectiveness, and they greatly enhance the need to focus on restoring the public's confidence in the Department's operations.

In addition to the reviews we recently completed, the OIG is closely monitoring other matters capable of affecting the public's trust and confidence in the Department. For example, the OIG is examining the effectiveness of the

discipline system used by U.S. Attorneys' Offices and the Executive Office for U.S. Attorneys when investigating allegations of employee misconduct. This review is the sixth OIG review since 2001 to assess a component's disciplinary system. Previous OIG evaluations examined the disciplinary systems of the USMS, BOP, DEA, ATF, and FBI and made many recommendations to these components. But the Department faces a broader challenge than simply ensuring that individual components maintain internally consistent and effective disciplinary system: it must also ensure that disciplinary procedures remain consistent across components so that all of the Department's employees, attorneys and non-attorneys alike, are held to the same tough but fair standards.

Another crucial aspect of maintaining the public's confidence is protecting the legal rights of those employees who report waste, fraud, abuse, and mismanagement. Whistleblowers play a crucial role in ensuring accountability of government, yet they are too often subject to retaliation for their disclosures. The OIG has conducted numerous investigations into allegations of retaliation, and we recently appointed an OIG Whistleblower Ombudsperson responsible for, among other things, ensuring that complaints of retaliation within the OIG's jurisdiction are reviewed and addressed in a prompt and thorough manner, and for communicating with whistleblowers about the status and resolution of such complaints. The OIG will continue to monitor this important issue.

Coordination Among Law Enforcement Agencies, Both Domestically and Internationally, Remains a Challenge

Law enforcement represents a central element of the Department's mission, yet the ability and willingness of Department components to coordinate and share intelligence, resources, and personnel with one another and with other law enforcement agencies pose many significant challenges.

One challenge is the confusion created when components have overlapping jurisdictions. The Department has four primary law enforcement agencies – the FBI, Drug Enforcement Administration (DEA), ATF, and USMS – yet these components' jurisdictions are not exclusive. Some overlap between these four components is unavoidable and may even help ensure proper law enforcement focus and attention. However, the Department should clarify the jurisdictional boundaries of each component wherever possible, and it may also benefit from considering whether consolidation of any operational functions or administrative functions, such as information technology, human resources, budgeting, and records management, could yield operational benefits, improve law enforcement safety, or save costs. Similarly, the Department should consider ways to increase the sharing of lessons learned and best practices among law enforcement components.

The Department must also ensure that its law enforcement components have the proper level of consistency in their standard procedures, protocols, and manuals. While the Department's law enforcement components generally adhere to the Attorney General's Guidelines and policies for law enforcement activities, specific protocols and procedures for particular investigative techniques often vary from component to component, and for certain investigative activities, uniform Department guidance and improved oversight is needed. In particular, our review of new policies ATF implemented after Operation Fast and Furious underscored the agency's delay in completing its integration into the Department and in implementing controls to protect the public that were used in other Department law enforcement components. For example, we found that ATF had not until recently used review committees to evaluate either its undercover operations or its use of high-level and long-term confidential informants, and that its confidential informant policies were not revised to conform to the Attorney General's Guidelines Regarding the Use of Confidential Informants until 8 years after ATF joined the Department. We believe that Department-led, cross-component assessments designed to compare the law enforcement components' policies could identify opportunities for improvements that would make the Department's law enforcement operations more consistent and efficient.

The challenge of coordinating law enforcement functions also extends to international crime, which is becoming more sophisticated and widespread in light of evolving communications technologies, the global banking system, and porous borders in international conflict zones. To address this issue, the DEA, FBI, ATF, and USMS have stationed personnel abroad who work with their foreign counterparts to investigate and prosecute violations of U.S. law. These resources must be well managed and efficiently coordinated with each other. They must also be coordinated with both domestic and foreign law enforcement organizations, which requires putting agreements and frameworks in place before joint investigations begin, including clear lines of investigative authority among law enforcement agencies, appropriate mechanisms to share foreign intelligence both inside and outside the Department, and appropriate and consistent training of all personnel involved in international operations. Addressing these challenges will greatly enhance the Department's ability to fight crime at home and abroad.

In addition to robust partnerships with foreign allies, effective and efficient international law enforcement requires cooperation and coordination with other federal agencies. For example, our examination of Operation Fast and Furious raised questions about how information was shared among various offices of ATF, the DEA, and the FBI. We also saw coordination and information sharing issues between ATF and U.S. Immigration and Customs Enforcement (ICE), a component of the Department of Homeland Security. Our report noted instances where ATF resisted ICE conducting any independent or coordinated investigations that were related to Operation Fast and Furious

through recovered firearms. In light of ICE's jurisdiction over export violations involving munitions and firearms, close coordination with ICE was essential in an investigation that purported to target a cartel in Mexico and had as a goal identifying the border crossing mechanism the cartel was using to obtain firearms from the United States.

Conclusion

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

In concluding, I want to address a question that I frequently have been asked: why I left private practice after 10 years to return to the Justice Department to become the Inspector General. For me, the answer to that question is easy: I returned because of my love for public service and our country, and because of my deep commitment to the mission of the Department of Justice, where I served as a prosecutor for over 11 years. The Department is much more than just another federal agency. It is a guardian of our system of justice and is responsible for enforcing our laws fairly, without bias, and, above all, with the utmost of integrity. The Inspector General plays a critical role in fulfilling that mission, and every day that I go to the office, I have an opportunity to serve the American public by improving the effectiveness of this vitally important institution.

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