



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

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

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PUBLIC SUMMARY

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INTERIM REPORT

ON THE DEPARTMENT OF JUSTICE'S

HANDLING OF KNOWN OR SUSPECTED TERRORISTS

ADMITTED INTO THE FEDERAL WITNESS SECURITY PROGRAM

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

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

Background

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

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

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

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

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

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

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

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

National Security Vulnerabilities

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DEPARTMENT OF JUSTICE RESPONSE



U.S. Department of Justice

Office of the Deputy Attorney General


Washington, D.C. 20530

May 6, 2013

MEMORANDUM

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

Through: Raymond J. Beaudet
Assistant Inspector General for Audit

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I. Evolution of the WitSec Program to Include Terrorism Prosecutions

Created by Congress over 40 years ago as part of the Organized Crime Control Act of 1970⁵ to combat organized crime syndicates, the WitSec Program has played a crucial role in the protection of witnesses to violent crimes, enabling law enforcement officials and federal prosecutors to bring to justice some of the world's most dangerous criminals. The Program successfully has protected an estimated 18,300 participants – including innocent victim-witnesses and cooperating defendants and their dependents – from intimidation and retribution. No witness or family member of a witness who has followed Program guidelines ever has been seriously injured or killed as a result of his or her cooperation. This vital and effective prosecution tool allows the government to protect witnesses whose assistance is necessary as part of criminal investigations and whose testimony is critical to secure convictions in United States courts of law, military tribunals, and even foreign prosecutions.

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

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

⁶ See *The Effectiveness of the Department of Justice Witness Security Program Created Under the Organized Crime Act of 1970 to Protect Witnesses Who Testify Against Traditional Organized Crime Figures: Hearing Before the Senate Committee on the Judiciary*, 104th Cong. 873, at 43 (1996) (statement of John C. Keeney, Acting Assistant Attorney General, Criminal Division, U.S. Department of Justice) ("Although our efforts continue to focus on the type of traditional organized criminal activity, the detection and neutralization of other types of very dangerous criminal organizations, such as *terrorist groups*, international narcotics traffickers, and violent street gangs, became an unfortunate reality for federal law enforcement. Obtaining the cooperation of insiders is crucial to the successful prosecution of these organizations. Securing the testimony of insider witnesses is often impossible without the Witness Security Program.") (emphasis added), available at <http://www30.us.archive.org/stream/oversightofdepar00unit#page/n0/mode/1up>.

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

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

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

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

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

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

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

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

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

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

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

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

following reforms prior to the commencement of this audit:

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

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

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

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

APPENDIX I

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

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

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

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

Department Actions to Address OIG Recommendations

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

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

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

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

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

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

The Department's Implementation of Terrorist-Related Protocols

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

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

The Department’s Identification of Known or Suspected Terrorists

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