



Office of the Inspector General
United States Department of Justice

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

before the

U.S. House of Representatives Committee on Appropriations
Subcommittee on Commerce, Justice, Science
and Related Agencies

concerning

The Department of Justice Office of the Inspector General's
Fiscal Year 2016 Budget Request

February 25, 2015

Chairman Culberson, Congressman Fattah, and Members of the Subcommittee:

Thank you for inviting me to testify today regarding the Department of Justice (Department or DOJ) Office of the Inspector General's (OIG) fiscal year (FY) 2016 budget request. At the outset, I want to thank the Subcommittee for its continued support of our work. Over the past 15 months, as a result of the appropriations we received in FY 2014 and FY 2015, we have been able to take significant steps to rebuild our staff, which shrank by nearly 10 percent during sequestration, thereby enhancing our ability to conduct the thorough and effective oversight of the Department that the taxpayers deserve and expect from us.

I would also like to thank the Subcommittee for their bipartisan support for our Office as we continue to face challenges in obtaining access to documents and records in the Department's possession that are relevant to our audits and reviews. In particular, Section 218 of the FY 2015 Appropriations Act was an important reaffirmation by Congress of the clear and unambiguous principle found in Section 6(a) of the Inspector General Act (IG Act) – that Inspectors General are entitled to unimpeded and timely access to documents in an agency's possession. In my testimony, I will discuss in more detail how Section 218 has assisted us in obtaining more timely access to records from certain Department components, but how the Federal Bureau of Investigation (FBI) is refusing to comply with Section 218 because of its legal position, and how that has resulted in a waste of taxpayer funds and delayed our access to records.

In January, I also became the Chair of the Council of the Inspectors General on Integrity and Efficiency (CIGIE), and I am honored to serve the Inspector General community in that position. In my capacity as Chair of the Council of IGs, I intend to reinforce the notion of effective oversight and collaboration among the Council's members.

In our FY 2016 budget, we are seeking funding at a level of \$93.7 million, which includes \$1.6 million in adjustments to base to cover, for example, rent increases and other inflationary costs, and a request to cover support for CIGIE. It also includes a requested increase of \$2.9 million to expand and enhance our oversight of contracting by the Department. For each of the past five years, contract spending at the Department has been approximately \$7 billion, according to USASpending.gov, which represents over 25 percent of the Department's discretionary budget. Throughout the federal government, procurement has historically been an area of risk and prone to fraud and waste. Improving management in this area, while minimizing loss, continues to be a daunting challenge and is a high priority for the OIG.

The requested program increase will allow us to support an additional 10 FTEs in our Audit Division and 5 FTEs in our Investigations Division, thereby enhancing our ability to audit higher risk contract expenditures, investigate allegations of waste and contract fraud for possible criminal or civil violations, evaluate the Department's development and implementation of prudent procurement policies and procedures, assess compliance with Department

procurement policies and the Federal Acquisition Regulations (FAR), and review the Department's suspension and debarment activities. In the past, much of the OIG's external audit work was focused on grant-related audits, because the amount of money being spent on grants by the Department had at that time far exceeded the amount it spent on contracts. As a result, our contract audit experience was limited, and our auditors mostly conducted contract performance audits rather than contract compliance audits. However, over the past few years, while the amount of money spent on grants by the Department has remained substantial (approximately \$2.3 billion in FY 2014), the amount spent by the Department on contracts has now far surpassed its grant spending.

Given these spending figures, I concluded that it was critical for the OIG to develop the same kind of deep experience auditing and investigating contract management as we have developed over the years with regard to overseeing the Department's grant management. As a result, following the end of sequestration and our hiring freeze, I had our Audit Division and Investigations Division develop a plan to enhance our contract audit experience and our ability to conduct more contract compliance audits. The implementation of that plan is moving forward aggressively, with our Audit Offices and Investigations Offices around the country having hired over the past 15 months a strong core of auditors with contract auditing experience and law enforcement agents with contract fraud investigation experience. And we also have initiated several important contract compliance audits, including one we will soon release of the second largest contract entered into by the Department – a nearly \$500 million contract between the Bureau of Prisons and Reeves County, Texas to operate the Reeves County Detention Center, a prison that Reeves County has subcontracted with the GEO Group, a private company, to manage.

This is the first program enhancement that I have requested from the Subcommittee since becoming Inspector General, and as someone whose primary responsibility is to be a strong steward of the public's money, I recognize the significance of the request and make it only after undertaking careful planning and an evaluation of our needs. I do so because I believe that adding 10 additional auditors in our audit field offices around the country, along with 5 additional agents in our investigations field offices, will enable us to develop the same strong and leading contract audit and investigations capability that we have put in place for grants management, and that this will produce positive and quantifiable results for the taxpayers. Over the prior 5 fiscal years, the OIG issued nearly 200 grant-related audit reports containing over 1,000 recommendations and over \$100 million of "dollar-related" findings, which have included both questioned costs and funds that we found could have been put to better use. In addition, from FY 2010 through FY 2014, the OIG opened 101 grant-related investigations that resulted in 19 convictions and over \$5.8 million in fines, restitutions, and recoveries. While I could change the focus of these auditors and agents from grant-related work to contract-related work, given the risks we continue to find as a result of our grant management efforts, I believe our commitment to grant management oversight needs to remain at the level at which it is currently set. I further believe that bringing in additional expertise in contract oversight will produce positive results

and a strong return on investment for the taxpayers similar to the demonstrated results our Office has consistently produced in the area of grant management. I very much appreciate the Subcommittee's careful consideration of our request.

Recent DOJ OIG Oversight of the Department's Operations

I now would like to highlight some examples of our recent and ongoing oversight work, discuss the significant challenges facing the Department that will impact its FY 2016 budget, and outline the difficulties that the OIG continues to face in performing our work due to limitations being placed on our timely access to information.

The OIG delivers outstanding value to the taxpayer. In FY 2014, the OIG identified over \$23 million in questioned costs and nearly \$1.3 million in taxpayer funds that could be put to better use by the Department. And our criminal, civil, and administrative investigations resulted in the imposition or identification of almost \$7 million in fines, restitution, recoveries, and other monetary results last fiscal year. This is in addition to the \$136 million in audit-related findings and over \$51 million in investigative-related findings that the OIG identified from FY 2009 through FY 2013.

These monetary savings and recoveries, however, do not take into account some of our most significant reviews, which cannot be translated into quantifiable dollar savings but which address fundamental issues affecting national security, civil liberties, safety and security at federal prisons, effectiveness of Department programs, and the conduct of Department employees. Examples include our reviews of the FBI's use of its authorities under the PATRIOT Act and the FISA Amendments Act, the Bureau of Alcohol, Tobacco, Firearms, and Explosives' (ATF) Operation Fast & Furious, the Bureau of Prison's (BOP) management of the compassionate release program, the Department's handling of known or suspected terrorists in the Witness Security Program, the FBI's management of the terrorist watchlist, the U.S. government's sharing of information prior to the Boston Marathon bombings, nepotism by Department personnel, and our investigation of the FBI's corrupt relationship with James "Whitey" Bulger.

Just last month, we also conducted a review of the Drug Enforcement Administration's (DEA) use of "cold" consent encounters, which raise civil rights concerns about potential improper profiling. These encounters occur when an agent approaches an individual based on the officer's perception that the person is exhibiting characteristics indicative of drug trafficking without the officer having any independent predicated information. Our review found that the DEA only collects data on cold consent encounters when it results in a seizure of assets, and therefore we were unable to assess whether they are being conducted impartially or effectively. We also found that the DEA's management of interdiction task force groups does not ensure that training and operational requirements are clearly established, communicated to task force members, or followed. We also found that from 2009 to 2013, these DEA task forces seized \$163 million in 4,138 individual cash seizures, that 21 percent of these seizures were contested, and that all or a

portion of the seized cash in 41 percent of those contested cases was returned — a total of \$8.3 million.

The OIG continues to conduct extensive oversight of the Department's programs and operations. For example, we are conducting reviews of the Department's oversight of asset seizure activities focusing on policies, practices, and outcomes of such programs in light of the Attorney General's recent order regarding some such activities; the ATF's oversight of its storefront undercover operations and its Monitored Case Program; the FBI's use of bulk telephony metadata obtained under Section 215 of the Patriot Act; and the impact of BOP's aging inmate population. The OIG is also examining the efforts of the U.S. Attorney's Offices and the Executive Office of U.S. Attorneys to collect criminal and civil debts, and the use of pre-trial diversion as an alternative to prosecution and incarceration. Further, we are conducting a review looking at how the BOP manages its private contract prisons, whether the three contract prisons we are reviewing meet BOP and other safety and security requirements and how contract facilities compare with similar BOP facilities in terms of inmate safety and security. These examples represent only a sampling of the continuing robust oversight efforts of the OIG. Descriptions of all of our Ongoing Work can be found on our website at: <http://www.justice.gov/oig/ongoing/>.

In addition to our reviews, the wide range of criminal and administrative misconduct cases handled by our Investigations Division represents an additional means by which the OIG deters and identifies instances of waste, fraud, abuse, and other violations of federal law. During FY 2014, the Investigations Division received more than 12,000 complaints, had more than 100 arrests and convictions resulting from corruption and fraud cases, and investigated allegations that resulted in more than 200 administrative actions against Department employees and contractors. For example, the Investigations Division conducted an investigation that recently led to the successful prosecution of an FBI Counter-Intelligence Special Agent and two co-conspirators for obstruction of justice and bribery charges related to a kickback scheme involving a \$54 million Department of Defense contract. In a related investigation, the same FBI agent and two co-conspirators pleaded guilty to bribery charges for a scheme whereby the FBI agent sold confidential internal law enforcement information. In yet another case, the Investigations Division is conducting an investigation of allegations that an FBI Special Agent in Washington, D.C., stole narcotics seized in FBI drug investigations for personal consumption.

Future Work and Top Challenges Facing the DOJ

Let me turn now to issues that we feel represent significant challenges facing the Department in 2015, and that will impact its budget in the coming fiscal year. We have identified seven major challenges for the Department in the coming year: *Addressing the Persisting Crisis in the Federal Prison System; Safeguarding National Security Consistent with Civil Rights and Liberties; Enhancing Cybersecurity in an Era of Ever-Increasing Threats; Effectively Implementing Performance-Based Management; Ensuring Effective and Efficient Oversight of Law Enforcement Programs; Upholding the Highest Standards of Integrity and Public Service; and*

Protecting Taxpayer Funds from Mismanagement and Misuse. A detailed discussion of our assessment of each challenge is available in the “Top Management Challenges” section of our website, www.justice.gov/oig. I would like to briefly highlight for the Subcommittee two of these challenges.

The Persisting Crisis in the Federal Prison System

The Department continues to face two interrelated crises in the federal prison system. First, despite a decrease in the total number of federal inmates in FY 2014, the Department projects that the costs of the federal prison system will continue to increase. Second, federal prisons remain significantly overcrowded and therefore face a number of important safety and security issues.

The costs to operate the federal prison system continue to grow, resulting in less funding being available for the Department’s other critical law enforcement missions. Although the federal prison population decreased last year for the first time since 1980, and the Department projects that the number of inmates will decrease again in FY 2016, the downward trend has yet to result in a decrease in federal prison system costs. For example, in FY 2000, the budget for the BOP totaled \$3.8 billion and accounted for about 18 percent of the Department’s discretionary budget. In comparison, in FY 2015, the BOP’s enacted budget totaled \$6.9 billion and accounted for about 25 percent of the Department’s discretionary budget. During this same period, the rate of growth in the BOP’s budget was almost twice the rate of growth of the rest of the Department. The BOP currently has more employees than any other Department component, including the FBI, and has the second largest budget of any Department component, trailing only the FBI.

Our work has identified several areas that will present particularly significant cost challenges in future years. For example, inmate healthcare costs constitute a rapidly growing portion of the federal prison system budget. According to BOP data, inmate healthcare costs increased 55 percent from FY 2006 to FY 2013. The BOP spent almost \$1.1 billion on inmate healthcare services in FY 2014, which nearly equaled the entire budget of the U.S. Marshals Service (USMS) or the ATF. The rapid increase in these costs can partly be attributed to the growth of the aging inmate population. From FY 2009 to FY 2013, the population of sentenced inmates age 50 and over in BOP-managed facilities increased 25 percent, while the population of sentenced inmates under the age of 30 decreased by 16 percent. As I mentioned earlier, the OIG is completing a review of the impact of the BOP’s aging inmate population on inmate and custody management, including evaluating inmate programs and activities, housing, and other costs, and assessing the recidivism rate of inmates aged 50 and older that were released from FY 2006 through FY 2013.

Given this crisis in the prison system, the Department needs to better utilize programs that can assist in prison population management, particularly existing programs and policies that Congress has already authorized. The OIG found in its 2013 review of the BOP’s Compassionate Release Program that a more effectively managed program could assist the BOP with its prison capacity issues, which would

result in cost savings for the BOP. Similarly, in our 2011 review of the Department's International Prisoner Transfer Program, which permits certain foreign national inmates from treaty nations to serve the remainder of their sentences in their home countries, the OIG found that the Department rejected 97 percent of transfer requests by foreign national inmates, and that few foreign inmates were transferred to their home countries. The potential significance of this program is demonstrated by the fact that approximately 24 percent of all BOP inmates are non-U.S. nationals, and last year over 42 percent of all defendants sentenced in federal court were non-U.S. nationals. Following our review, the BOP took steps to ensure that the treaty transfer program was communicated more effectively to inmates. The OIG anticipates completing its follow-up review of the treaty transfer program shortly, and plans to report on whether additional progress can be made.

At the same time it focuses on prison costs, the Department must continue its efforts to ensure the safety and security of staff and inmates in federal prison and detention facilities. In its FY 2014 Agency Financial Report, the Department once again identified prison overcrowding as a programmatic material weakness, as it has done in every such report since FY 2006. Yet, the federal prisons remain only slightly less crowded today than they were in FY 2006. As of October 2014, federal prisons operated at 30 percent overcapacity (as compared to 36 percent overcapacity in FY 2006), with 52 percent overcrowding at higher security facilities and 39 percent at medium security facilities. Overcrowding in the federal prison system has prevented the BOP from reducing its inmate-to-correctional officer ratio, which according to the Congressional Research Service has remained at approximately 10-to-1 for more than a decade – greater than the ratio found in the 5 largest state prison facilities.

The safe and secure incarceration of federal inmates not only implicates BOP-managed facilities, but also privately managed BOP contract facilities, as the riot last Friday at the contractor-run Willacy County Correction Center most recently demonstrated. Effective oversight is critical since the proportion of inmates housed in contract facilities has increased substantially, from 2 percent of the prison population in 1980 to 19.5 percent in 2013. The OIG is examining how the BOP monitors its private contract prisons, and how contract facilities compare with similar BOP facilities in terms of inmate safety and security. The use of segregated housing in private contract facilities and federal prisons also raises inmate safety and security concerns. In 2013, the BOP agreed to have an independent assessment conducted on its use of segregated housing. The OIG recently received the report and is in the process of reviewing its findings. We will continue to monitor the BOP's management of restrictive housing operations.

Effectively Implementing Performance-Based Management

A second significant Challenge for the Department is ensuring, through performance-based management, that its programs are achieving their intended purposes. As of this past November, the Department's 40 components have about 500 performance measures for programs with varied goals that include preventing

terrorism and promoting national security, reducing violent crime, enforcing federal laws, and ensuring the fair and efficient administration of justice. Establishing annual and long-term performance measures with ambitious targets is a challenge for many of the Department's programs given that programmatic outcomes are frequently not easily measured. However, the Department's ability to accomplish its strategic goals is significantly affected by how well it can gather and use data to evaluate program performance and improve management decisions; in addition, empirical evidence can assist in resource allocations.

The Government Performance and Results (GPRA) Modernization Act of 2010 updated the federal government's performance management framework. As the Department implements the GPRA Modernization Act requirements, it must continue its efforts to develop meaningful outcome-oriented goals and performance metrics. Some of the Department's performance goals and indicators are focused on inputs, workload, or processes, rather than on outcomes and results. For example, several of the performance measures for the USAOs, such as the number of matters handled or total judgments and settlements, are output rather than outcome focused. These measures may provide information about the number of cases being handled, but they do not assess the significance and impact of those cases, nor do they address the goals of the Attorney General's Smart on Crime initiative. Given the significant role federal prosecutors play in combating crime, serving justice, and keeping the public safe, meaningful and outcome-based USAO performance measures can serve as powerful incentives to allocate resources and ensure focus toward achieving priorities. Achieving results-oriented measurement is particularly difficult in areas such as litigation and law enforcement, but of critical importance if the Department is to effectively monitor whether its programs are accomplishing their intended goals.

Department leadership has acknowledged the Department's need to embrace data in its evaluation of program performance, such as through advanced data analytics. Adopting a data-driven, analytical approach will be especially important for assessing the implementation of the Smart on Crime initiative. Much of the Smart on Crime initiative promotes the increased use of prevention and reentry programs, such as the expanded use of pre-trial diversion and drug court programs as alternatives to incarceration. We are currently engaged in an evaluation of the Department's efforts in these areas. A comprehensive approach to the collection and analysis of data on how well these programs are reducing incarceration costs, deterring crime, and improving public safety will help the Department to focus its resources and make strategic investments.

An essential building block to achieving performance-based management is having reliable data, an issue that has proven to be a challenge for the Department. Multiple OIG audits and reviews have identified problems with inaccurate or unreliable performance data. For example, in a 2014 audit, the OIG found that the Department could not provide readily verifiable data related to its mortgage fraud efforts because of potential underreporting and misclassification in the Executive Office for U.S. Attorneys' case management system. The OIG also found there was no established methodology for verifying the mortgage fraud statistics announced

during the Attorney General's October 2012 press conference, which reported approximately five times the actual number of criminal defendants charged, and ten times the actual total estimated losses associated with cases. Also, a 2014 OIG audit of the John R. Justice grant program found that the Bureau of Justice Assistance did not collect standardized, relevant baseline information, which resulted in limited data being available for a quantitative analysis of the program's impact. In a 2012 review, the OIG found that the Executive Office for Immigration Review's performance reporting was flawed for both the immigration courts and the Board of Immigration Appeals. As a result, the Department could not accurately assess how well these bodies were processing immigration cases and appeals, or identify needed improvements.

Although the Department has taken actions to meet the requirements of the GPRA Modernization Act, it must continue to reexamine its performance measures. The use of reliable data will aid the Department in effectively measuring its programs, which in turn will enhance the Department's ability to achieve its strategic management objectives and allocation of resources.

Continuing Challenges to Our Ability to Conduct Independent Oversight

While our Office has been able to generate substantial results, we continue to face significant issues and challenges that affect our independence and ability to conduct effective oversight. Timely access to information in the Department's files remains an important issue and challenge. As I have testified on multiple occasions, in order to conduct effective oversight, an Inspector General must have timely and complete access to documents and materials needed for its audits, reviews, and investigations. This is an issue of utmost importance, as evidenced by the fact that 47 Inspectors General signed a letter in August 2014 to the Congress strongly endorsing the principle of unimpaired Inspector General access to agency records.

The Inspector General Act (IG Act) could not be clearer – Inspectors General are entitled to complete, timely, and unfiltered access to all documents and records within the agency's possession. Delaying or denying access to agency documents imperils an IG's independence, and impedes our ability to provide the effective and independent oversight that saves taxpayers money and improves the operations of the federal government. Actions that limit, condition, or delay access have profoundly negative consequences for our work: they make us less effective, encourage other agencies to take similar actions in the future, and erode the morale of the dedicated professionals that make up our staffs.

My Office knows these problems all too well, and we continue to face challenges in getting timely access to information from Department components. In particular, the FBI continues to take the position it first raised in 2010 that Section 6(a) of the IG Act does not entitle the OIG to all records in the FBI's possession and therefore has refused OIG requests for various types of records. The OIG and the Council of IGs strenuously disagree with the FBI's position, which we have both made clear to the Department's leadership.

In May 2014, the Department's leadership asked the Office of Legal Counsel (OLC) to issue an opinion addressing the legal objections raised by the FBI. However, over nine months later, we are still waiting for that opinion even though, in our view, this matter is straightforward and could have been resolved by the Department's leadership without even requesting an opinion from OLC. I cannot emphasize enough how important it is that OLC issue its opinion promptly because the existing process at the Department, which as described below essentially assumes the correctness of the FBI's legal position, undermines our independence and impairs the timeliness of our reviews by requiring us to seek permission from the Department's leadership in order to access certain records. The status quo cannot continue indefinitely.

We appreciate the strong bipartisan support we have received from Congress in trying to address these serious issues. Most significantly, in December 2014, this Subcommittee included a provision in the Fiscal Year 2015 Appropriations Act – Section 218 – which prohibits the Justice Department from using appropriated funds to deny, prevent, or impede the OIG's timely access to records, documents, and other materials in the Department's possession, unless it is in accordance with an express limitation of Section 6(a) of the Inspector General Act. The provision also included a requirement to inform Congress of violations of this section. While the law only recently went into effect, it is clear that some Department components have taken notice of it, and it has already had a positive impact on our ability to get access to records in certain reviews.

However, despite Congress's reaffirmation in Section 218 of its support for the OIG's access to records in the Department's possession, the FBI is repeatedly failing to comply with it because it continues to maintain that Section 6(a) of the IG Act does not authorize access to certain records in its possession, such as grand jury, Title III electronic surveillance, and Fair Credit Reporting Act information, because of disclosure limitations in statutes other than the IG Act. As a result, the FBI is continuing the costly and time-consuming process it put in place prior to Section 218's enactment of reviewing documents responsive to DOJ OIG requests prior to producing them to us. The FBI has been undertaking this process in order to determine whether to withhold from the OIG records that the FBI believes we are not legally entitled to receive, absent an order from the Attorney General or Deputy Attorney General. This FBI document review process, in addition to consuming the FBI's appropriated funds, has significantly impacted the timely production of material to us in several matters, including whistleblower retaliation investigations.

On February 3, 2015, and again on February 19, 2015, we reported as required by Section 218 that the FBI had failed to provide the OIG with timely access to certain records regarding two whistleblower retaliation investigations and then our review of the DEA's use of administrative subpoena authority. The OIG will continue reporting to Congress, consistent with the requirement in Section 218, impediments imposed by the FBI, or any DOJ component, to our timely access to records in the Department's possession.

It is time to resolve this legal dispute. The FBI's position that Section 6(a) of the IG Act does not authorize the OIG to have access to various categories of records in its possession contradicts the plain language of the IG Act, Congress's clear intent when it created the OIG (as confirmed by the recent enactment of Section 218), the FBI's and the Department's practice prior to 2010 of frequently providing the very same categories of information to the OIG without any legal objection, court decisions by two different Federal District Judges in 1998 and 1999 stating that the OIG could receive grand jury material, and the reasoning of a 1984 decision by the Office of Legal Counsel concluding that grand jury material could be provided to the Department's Office of Professional Responsibility.

The Department, in response to the FBI's legal position, has imposed a process whereby the Attorney General or the Deputy Attorney General may grant permission to the OIG to access such records if they conclude that specific reviews will assist them in the performance of their duties, and they have so far done so in each review where the issue has arisen. However, no such permission is necessary under the IG Act. Moreover, requiring an OIG to obtain permission from agency leadership in order to review agency documents seriously impairs Inspector General independence, creates excessive delays, wastes taxpayer money, and may lead to incomplete, inaccurate, or significantly delayed findings or recommendations.

We remain hopeful that the OLC opinion that has been sought by the Department's leadership will conclude that the IG Act entitles the OIG to independent access to the records and information to which we are entitled under the express terms of the IG Act. However, should the OLC interpret the IG Act in a manner that undercuts Congress's clear intent and limits the OIG's access to documents, I would be pleased to work with the Congress to develop a legislative remedy to address this issue.

Conclusion

Thank you again for the Subcommittee's continued support for our mission, which allows the OIG to conduct aggressive and thorough oversight of the Department in order to help make its operations more effective and efficient, and to root out waste, fraud, abuse, and mismanagement. I look forward to continuing to work closely with the Subcommittee to ensure that our office can continue its vigorous oversight through FY 2016 and beyond. This concludes my prepared statement and I would be pleased to answer any questions you may have.