



**AUDIT OF THE OFFICE OF JUSTICE PROGRAMS
SOUTHWEST BORDER PROSECUTION
INITIATIVE FUNDING RECEIVED BY
THE STATE OF NEW MEXICO**

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

Audit Report GR-60-12-020
September 2012

**AUDIT OF OFFICE OF JUSTICE PROGRAMS
SOUTHWEST BORDER PROSECUTION
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THE STATE OF NEW MEXICO**

EXECUTIVE SUMMARY

The U.S. Department of Justice, Office of the Inspector General, Audit Division, has completed an audit of the Southwest Border Prosecution Initiative (SWBPI) funding awarded by the Office of Justice Programs (OJP) to the State of New Mexico (New Mexico). From fiscal years (FYs) 2008, 3rd quarter through 2010, New Mexico received SWBPI funding totaling \$3,637,439 on a pro-rata basis.

Many drug and other criminal cases occurring along the southwest border are initiated by a federal law enforcement agency or federal multi-jurisdictional task forces, e.g., High Intensity Drug Trafficking Areas and Organized Crime Drug Enforcement Task Forces. Many U.S. Attorneys have developed prosecution guidelines that govern the most common violations of federal law. These prosecution guidelines are used by law enforcement agencies to determine whether to file a case in federal, state, or county court. As a result, many federally initiated cases occurring near the southwest border are referred to the state or county for prosecution.

The SWBPI was established in FY 2002, when Congress began appropriating funds to reimburse state, county, parish, tribal, and municipal governments for costs associated with the prosecution of criminal cases declined by local U.S. Attorneys' offices. Reimbursements received from SWBPI funding may be used by applicant jurisdictions for any purpose not otherwise prohibited by federal law. For FY 2012, Congress appropriated \$10 million for Border Prosecution Initiatives to reimburse state, county, parish, tribal, or municipal governments for costs associated with the prosecution of criminal cases declined by local U.S. Attorneys' offices.

The objective of our audit was to determine if the SWBPI reimbursements received by New Mexico were allowable, supported, and in accordance with applicable laws, regulations, guidelines, and terms and conditions of the SWBPI.

We found that New Mexico claimed and was reimbursed for cases that were ineligible under the SWBPI guidelines. Based on the deficiencies listed below, we identified questioned costs totaling \$88,551.¹ Specifically, we found that New Mexico:

- Received unallowable reimbursements totaling \$62,474 for 19 cases that were investigated or prosecuted during concurrent periods of time with cases involving the same defendant that were also submitted for reimbursement.
- Received excess reimbursements totaling \$24,604 for the reporting period FY 2009 for which the average cost per case claim exceeded the actual average cost per case.
- Received unallowable reimbursements totaling \$1,367 for three cases that were not federally initiated.
- Received unallowable reimbursements totaling \$106 for one case that was submitted in the wrong reporting period.

These issues are discussed in detail in the Findings and Recommendations section of the report. Our audit Objectives, Scope, and Methodology appear in Appendix I.

¹ We reduced the total dollar-related findings detailed in Appendix II by the duplicated questioned costs that were questioned based on other SWBPI criteria. As a result, the total questioned costs figure excludes duplicate questioned costs that were questioned based on other SWBPI criteria.

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**AUDIT OF OFFICE OF JUSTICE PROGRAMS
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INTRODUCTION

The Office of the Inspector General, Audit Division, has completed an audit and issued a report on the Southwest Border Prosecution Initiative (SWBPI) funding awarded by the U.S. Department of Justice, Office of Justice Programs (OJP) to the State of New Mexico (New Mexico). The objective of the audit was to determine whether the SWBPI reimbursements received by New Mexico were allowable, supported, and in accordance with applicable laws, regulations, guidelines, and terms and conditions of the SWBPI guidelines.

Background

Prior to 1994, most southwest border counties in the states of Arizona, California, New Mexico, and Texas did not prosecute drug cases resulting from the illegal importation of controlled substances at U.S. borders. Typically, these cases were prosecuted exclusively by U.S. Attorneys in federal courts. However, in late 1994, U.S. Attorneys, and state and local prosecutors established partnerships through which the state and local governments began prosecuting federally referred criminal cases. These partnerships allowed the U.S. Attorneys to focus on addressing major drug trafficking organizations and prosecuting deported criminal aliens who returned to the U.S. illegally. As state and local governments began to prosecute a growing number of federally referred criminal cases, the partnerships led to an increased financial and resource burden. Congress recognized this problem and began appropriating funds under the SWBPI in fiscal year (FY) 2002 to support state and local prosecutions along the southwest border.

For FY 2012, Congress appropriated \$10 million in funding for the SWBPI and Northern Border Prosecution Initiative combined, Pub. L. No. 112-55 (2011), to reimburse state, county, parish, tribal, or municipal governments for costs associated with the prosecution of criminal cases declined by local U.S. Attorneys' offices. Reimbursements received from the SWBPI funding may be used by applicant jurisdictions for any purpose not otherwise prohibited by federal law; however, the direct support and enhancement of jurisdictions' prosecutorial services are encouraged.

For cases disposed between the third and fourth quarter of FY 2008, jurisdictions may only receive reimbursements for the actual number of prosecutor hours charged to the case and the number of days the defendant was detained prior to the disposition of the case. Prosecutors' salaries charged to the case were based on the average hourly rate for the county's prosecutors and cannot include fringe benefits.

For cases disposed after FY 2008, jurisdictions may receive reimbursements based on the personnel costs associated with prosecuting a case, including the personnel costs for prosecutors, paralegals, judges, judicial staff, public defenders, clerical staff, and indigent screening personnel. The allowable costs are then allocated to each case based on the percentage of eligible SWBPI cases prosecuted by the jurisdiction out of the total number of cases prosecuted during the period. This percentage is calculated separately for misdemeanor cases and felony cases, and then is multiplied by the total allowable misdemeanor and felony costs to arrive at total allowable prosecution costs per case.

Pursuant to the SWBPI guidelines, when reimbursement requests exceed available funding, applicants receive funds on a uniform, pro-rata basis. The pro-rata reimbursement percentages for New Mexico are shown in Exhibit 1.

**EXHIBIT 1
PRO-RATA REIMBURSEMENT BASIS TO NEW MEXICO**

REPORTING PERIOD	START DATE	END DATE	PERCENTAGE REIMBURSED
FY08, 3 rd Quarter	04/01/08	06/30/08	111.05%
FY08, 4 th Quarter	07/01/08	09/30/08	109.15%
FY09, All Quarters	10/01/08	09/30/09	100.00%
FY10, All Quarters	10/01/09	09/30/10	100.00%

Source: Office of Justice Programs

New Mexico received reimbursements from SWBPI funds totaling \$3,637,439 from FYs 2008 through 2010, as shown in Exhibit 2.

**EXHIBIT 2
REIMBURSEMENTS MADE TO NEW MEXICO¹**

REPORTING PERIOD	START DATE	END DATE	AMOUNT REQUESTED	AMOUNT REIMBURSED
FY08, 3 rd Quarter	04/01/08	06/30/08	\$146,835	\$163,059
FY08, 4 th Quarter	07/01/08	09/30/08	128,740	140,517
FY09, All Quarters	10/01/08	09/30/09	1,870,865	1,870,865
FY10, All Quarters	10/01/09	09/30/10	1,462,997	1,462,997
TOTAL				\$3,637,439

Source: Office of Justice Programs

¹ Throughout the report, the differences in the total amounts are due to rounding, in that the sum of individual numbers prior to rounding reported may differ from the sum of the individual numbers rounded.

FINDINGS AND RECOMMENDATIONS

We found that New Mexico claimed and was reimbursed for cases that were ineligible under the SWBPI guidelines. Specifically, we found cases that were: (1) reimbursed at an incorrect rate, (2) investigated or prosecuted concurrently, (3) not federally initiated, and (4) submitted in the wrong reporting period. As a result, we identified questioned costs totaling \$88,551.²

Case Eligibility

Pursuant to the SWBPI guidelines, an eligible case is any federally initiated criminal case that the U.S. Attorney declined to prosecute and referred to the state or local government for prosecution, which was prosecuted by the state or local government and disposed of during an eligible reporting period. The SWBPI guidelines define federally initiated as a case resulting from a criminal investigation or an arrest involving federal law enforcement authorities for a potential violation of federal criminal law. This may include investigations resulting from multi-jurisdictional task forces, e.g., High Intensity Drug Trafficking Areas and Organized Crime Drug Enforcement Task Forces. The SWBPI guidelines further state that, "referred cases are eligible regardless of whether the case was formally declined and referred by a U.S. Attorney, or through a blanket federal declination-referral policy, an accepted federal law enforcement practice, or by federal prosecutorial discretion." Federally referred cases that are declined and not prosecuted by the state or local government are ineligible for reimbursement.

We analyzed the 1,352 cases submitted for reimbursement by New Mexico to determine whether the cases were eligible for reimbursement under the requirements of the SWBPI guidelines. In addition, we reviewed all cases submitted to determine if: (1) the approved prosecution award was used to calculate the prosecution reimbursement claimed, (2) there were duplicates or concurrently prosecuted cases, (3) cases had federal law enforcement involvement, and (4) reimbursements were submitted in the period the cases were disposed.

² We reduced the total dollar-related findings detailed in Appendix II by the duplicated questioned costs that were questioned based on other SWBPI criteria. As a result, the total questioned costs figure excludes duplicate questioned costs that were questioned based on other SWBPI criteria.

Based on our review, we found that New Mexico received SWBPI funds totaling \$63,947 for 23 cases that were not eligible for reimbursement pursuant to the SWBPI guidelines. A detailed listing of the cases claimed by New Mexico that were not eligible for reimbursement is provided in Appendix III. Specifically, we found that New Mexico:³

- Received unallowable reimbursements totaling \$62,474 for 19 cases that were investigated or prosecuted during concurrent periods of time with cases involving the same defendant that were also submitted for reimbursement.
- Received unallowable reimbursements totaling \$1,367 for three cases that were not federally initiated.
- Received unallowable reimbursements totaling \$106 for one case that was submitted in the wrong period.

Accuracy of Prosecution Reimbursement Calculation

The State of New Mexico received reimbursements from SWBPI funds for FYs 2009 and 2010 based on average prosecution cost per case. Pursuant to SWBPI guidelines, the total prosecution salary costs for a jurisdiction are divided by the total number felony or misdemeanor cases prosecuted and resolved by the jurisdiction. The average prosecution cost per case is then multiplied by the number of SWBPI cases to equal the total amount of prosecution costs to be reimbursed.

We reviewed the calculations originally utilized by the State of New Mexico to request reimbursements for prosecution costs and compared them to supporting documentation provided to the auditors. Based on our review, we determined that the reimbursement requests were not supported by the actual prosecution costs resulting in excess reimbursements totaling \$24,604, as shown in Exhibit 3.

³ The number of unallowable cases detailed includes cases that have duplicate questioned costs because the cases were questioned previously, based on other SWBPI reimbursement criteria. The total amount of duplicate questioned costs has been reduced from the total dollar-related findings detailed in Appendix II.

**EXHIBIT 3
NEW MEXICO'S REPORTED AND ACTUAL PROSECUTION COSTS**

	PROSECUTION COSTS	NO. FELONY CASES	AVERAGE COST PER CASE	NO. SWBPI CASES	REIMBURSEMENT
FY09 Reported	\$62,546,597	17,184	\$3,640	514	\$1,870,865
FY09 Actual	\$61,655,858	17,165	\$3,592		\$1,846,263
FY09 Questioned Costs					\$24,604

Source: Office of Justice Programs and the State of New Mexico

Recommendations

We recommend that OJP:

1. Remedy the \$62,474 in questioned costs received by New Mexico for 19 cases that were investigated or prosecuted during concurrent periods of time with cases involving the same defendant that were also submitted for reimbursement.
2. Remedy the \$24,413 in questioned costs received by the State of New Mexico due to the average cost per case claim exceeding the actual average cost per case.
3. Remedy the \$1,367 in questioned costs received by New Mexico for three cases that were not federally initiated.
4. Remedy the \$106 in questioned costs received by New Mexico for one case that was submitted in the wrong period.

OBJECTIVES, SCOPE, AND METHODOLOGY

The objective of the audit was to determine whether reimbursements claimed for costs under the SWBPI are allowable, supported, and in accordance with applicable laws, regulations, guidelines, and terms and conditions of the SWBPI guidelines.

We conducted this audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. The scope of our audit included reimbursements received by New Mexico for FYs 2008, 3rd quarter through 2010.

We tested compliance with what we consider to be the important conditions of the reimbursements under the SWBPI. Unless otherwise stated in our report, the criteria we audit against are contained in the SWBPI guidelines. We tested New Mexico SWBPI activities in case eligibility and compliance with regulations.

In addition, our testing was conducted by judgmentally selecting a sample of cases submitted for reimbursement. Judgmental sampling design was applied to obtain broad exposure to numerous facets of the reimbursements reviewed. This non-statistical sample design does not allow projection of the test results to all reimbursements received.

We did not test internal controls for New Mexico as a whole. The Single Audit Report for New Mexico was prepared under the provisions of Office of Management and Budget Circular A-133 for the fiscal year ended June 30, 2010. We reviewed the independent auditor's assessment to identify internal control weaknesses and significant non-compliance issues related to New Mexico or federal programs. The auditor's assessment disclosed no material control weaknesses or significant non-compliance issues related to the SWBPI. In addition, we performed testing of source documents to assess the accuracy of reimbursement requests; however, we did not test the reliability of the financial management system as a whole.

SCHEDULE OF DOLLAR-RELATED FINDINGS

QUESTIONED COSTS:	<u>AMOUNT</u>	<u>PAGE</u>
Unallowable duplicate cases and cases that were prosecuted concurrently.	\$62,474	5
Excess reimbursements for cases that were claimed with an inflated average cost per case.	24,604	5
Unallowable cases that were not federally initiated.	1,367	5
Unallowable cases that were submitted in the wrong period.	106	5
Total Questioned Costs: ⁴	\$88,551	
Less: Duplicated Questioned Costs	(\$191)	
TOTAL DOLLAR-RELATED FINDINGS	\$88,360	

⁴ **Questioned Costs** are expenditures that do not comply with legal, regulatory or contractual requirements, or are not supported by adequate documentation at the time of the audit, or are unnecessary or unreasonable. Questioned costs may be remedied by offset, waiver, recovery of funds, or the provision of supporting documentation.

APPENDIX III

DETAILS OF QUESTIONED COSTS

CASES THAT WERE CONCURRENTLY PROSECUTED⁵

DOCKET No.	REPORTING PERIOD	JUDICIAL DISTRICT	AMOUNT QUESTIONED
D-307-CR-201000008	FY10	3rd	\$3,194
D-307-CR-201000057	FY10	3rd	3,194
D-307-CR-201000446	FY10	3rd	3,194
D-504-CR-200700276	FY09	5th	3,640
D-504-CR-200800284	FY09	5th	3,640
D-504-CR-200900039	FY10	5th	3,194
D-504-CR-200900313	FY10	5th	3,194
D-504-CR-201000132	FY10	5th	3,194
D-1116-CR-201000054	FY10	11th	3,194
D-1116-CR-201000205	FY10	11th	3,194
D-1116-CR-201000185	FY10	11th	3,194
D-1116-CR-201000539	FY10	11th	3,194
D-1116-CR-201000501	FY10	11th	3,194
D-1116-CR-201000570	FY10	11th	3,194
D-1215-CR-200900445	FY10	12th	3,194
D-1215-CR-201000122	FY10	12th	3,194
D-1314-CR-200800099	FY09	13th	3,640
D-1329-CR-200800051	FY09	13th	3,640
D-1329-CR-200900152	FY10	13th	3,194
Total			\$62,474

⁵ All tables in this appendix reflect questioned costs for all cases questioned, including duplicated questioned costs. Appendix II details dollar-related findings and the adjustment for duplicated costs.

CASES THAT WERE NOT FEDERALLY INITIATED

DOCKET No.	INITIATING AGENCY	REPORTING PERIOD	JUDICIAL DISTRICT	AMOUNT QUESTIONED
D0424-CR-2008-00159	NEW MEXICO STATE POLICE	FY08, 3rd Qtr	1ST	\$218
D-0117-CR-2008-00010	NEW MEXICO STATE POLICE	FY08, 4th Qtr	1ST	423
D-1314-CR-2007-00126	NEW MEXICO STATE POLICE	FY08, 3rd Qtr	13TH	726
TOTAL				\$1,367

CASES REIMBURSED IN THE WRONG REPORTING PERIOD

DOCKET No.	DISPOSITION DATE	REPORTING PERIOD	JUDICIAL DISTRICT	AMOUNT QUESTIONED
D-0117-CR-2008-00063	06/19/2008	FY08, 4th Qtr	1ST	\$106
TOTAL				\$106

NEW MEXICO'S RESPONSE TO THE DRAFT REPORT



Administrative Office of the District Attorneys
Henry R. Valdez, Director

September 17, 2012

David Sheeren, Regional Audit Manager
Robert Steele, Auditor
U.S. Department of Justice
Office of the Inspector General
Denver Regional Audit Office
1120 Lincoln, Suite 1500
Denver, Colorado 80203

Office of Justice Programs

Re: Draft Audit Response from the SWBPI New Mexico District Attorneys

Dear Mr. Sheeren and Mr. Steele:

Thank you for the opportunity (and the time) to further review to this Draft of the audit of the New Mexico District Attorneys' Southwest Border Prosecution Initiative funding. Although the audit was correct on some points, it was in error on others. We would appreciate that where errors were made, that particular District not be required to pay the money back at this time, but rather that any future New Mexico SWBPI awards be reduced by the revised error amount. AODA will, in turn, make allocations from that award that reduces payments to the proper Districts in accord with the overpayments.

Here is what we found:

- 1) All of the DA districts listed in Appendix III on page 10 of the Draft Audit Report felt that the cases listed as concurrently prosecuted should be removed from the list, as they were separate events.

- a. The 13th DA District wrote:

On page 10 of the Audit Report "Cases that were Concurrently Prosecuted" we did note an error on 2 cases because there were 2 different incidents, but our office on the plea consolidated both case numbers D-1314-CR-200800099 and D-1329-CR-200800051 so we don't object to these 2 cases.

But the one I do object to is D-1329-CR-200900152 the defendant (Kara Smith) on this case did not have other cases reported during this time frame. She did have a prior case

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that qualified for SWBPI on another reporting period. But case # D-1329-CR-200900152 was never plead or sentenced in 2 case numbers and this was a new incident.

b. The 11th DA Division 1 (Farmington Office) wrote:

According to my original submission the following submissions were made only once[therefore correctly] for the following defendants: Jamie Oaxaca-Araiza—D-1116-CR-201000205; David Shane Maestas-- D-116-CR-201000185; Jeovanny Cisneros-Rodriguez—D-16-CR-201000570. We will concede the other three submissions. [These results are tabulated in an attached spreadsheet, which should work as openable Excel Spreadsheets.]

c. The 11th DA Division 2 (Gallup Office) wrote:

(Referring to Exhibit 3 on Page 6 of the Draft Audit Report): After carefully going through the recent submission of the 1,193 cases, I came across cases that were closed after the original submission of 1,176. I found a difference of 16 cases that were closed in 2010 after the original numbers were run. This changes our felony case count to 1,177, leaving a difference of 1 case from our original submission. I hope this clears things up and this submission will be accepted. [Spreadsheet attached].

2. As for the denial of "concurrent" cases per Page 10, where a District listed the same defendant twice within the reporting period (even though a separate case), we have checked this thoroughly and agree the audit finding is correct, that this error was made. Therefore, we will not oppose the deduction from our next award for in the amount of \$2,178, and will break that down pro-rata between the Districts.

In closing, we hope this further round of information can lay these audit concerns to rest. We acknowledge we did make some errors and will endeavor not to repeat them in the future. Again, any consideration you can give for our proposed solution for remedying this situation will be gratefully appreciated.

Sincerely,

Mary Lynne Newell
Sixth Judicial District Attorney & SWBPI Liaison

Michael J. Hall
AODA SWBPI Liaison

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OFFICE OF JUSTICE PROGRAMS' RESPONSE TO THE DRAFT REPORT



U.S. Department of Justice

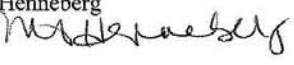
Office of Justice Programs

Office of Audit, Assessment, and Management

Washington, D.C. 20531

SEP 14 2012

MEMORANDUM TO: David M. Sheeren
Regional Audit Manager
Denver Regional Audit Office
Office of the Inspector General

FROM: Maureen A. Henneberg
Director 

SUBJECT: Response to the Draft Audit Report, *Audit of Office of Justice Programs Southwest Border Prosecution Initiative Funding, Received by the State of New Mexico*

The Office of Justice Programs (OJP) appreciates the opportunity to review and comment on the Office of the Inspector General's (OIG's) draft report, entitled "Audit of Office of Justice Programs Southwest Border Prosecution Initiative Funding, Received by the State of New Mexico," dated August 15, 2012. We consider the subject report resolved and request written acceptance of this action from your office.

As a result of the OIG's audit of the Southwest Border Prosecution Initiative (SWBPI) Program in fiscal years (FYs) 2008 and 2010, and the Office of Audit, Assessment, and Management's (OAAM) review of this program in FY 2011, the Bureau of Justice Assistance (BJA) made the following enhancements: 1) modified the SWBPI application system to require that each prosecution case submitted by a jurisdiction for reimbursement contain the case/docket number, defendant's first and last name, referring Federal agency, referred date, resolution type, and resolved date; 2) established new internal guidelines to ensure that SWBPI reimbursements are analyzed to identify anomalies that may indicate unallowable or unsupported payments to specific jurisdictions; and 3) implemented a process to identify overlapping requests for detention expenses between SWBPI and the State Criminal Alien Assistance Program.

BJA's enhanced monitoring process over SWBPI payments has resulted in increased scrutiny, and now includes a review of a minimum of 10% of the annual payments made under the program. With regard to the subject audit, the majority of costs questioned under the State of New Mexico's (New Mexico) SWBPI awards were not part of the sample reviewed by BJA. Additionally, some of the ineligible SWBPI cases, identified by the OIG during this audit, were for cases submitted by New Mexico prior to changes that BJA implemented for the SWBPI program, beginning in October 2008.

The report contains **four** recommendations and **\$88,360¹** in questioned costs. The following is OJP's analysis of the draft audit report recommendations. For ease of review, the recommendations are restated in bold and are followed by our response.

1. **We recommend that OJP remedy the \$62,474 in questioned costs received by New Mexico for 19 cases that were investigated or prosecuted during concurrent periods of time with cases involving the same defendant that were also submitted for reimbursement.**

We agree with the recommendation. We will coordinate with New Mexico to remedy the \$62,474 in questioned costs related to the 19 cases that were investigated or prosecuted during concurrent periods of time with cases involving the same defendant that were also submitted for reimbursement.

2. **We recommend that OJP remedy the \$24,413 in questioned costs received by New Mexico due to the average costs per case claim exceeding the actual average cost per case.**

We agree with the recommendation. We will coordinate with New Mexico to remedy the \$24,413 in questioned costs related to reimbursements received by New Mexico due to the average costs per case claim exceeding the actual average cost per case.

3. **We recommend that OJP remedy the \$1,367 in questioned costs received by New Mexico for three cases that were not Federally initiated.**

We agree with the recommendation. We will coordinate with New Mexico to remedy the \$1,367 in questioned costs received by New Mexico for three cases that were not Federally initiated.

¹ Total questioned costs figure excludes \$191 in duplicate questioned costs that were questioned based on other SWBPI criteria.

4. **We recommend that OJP remedy the \$106 in questioned costs received by New Mexico for one case that was submitted in the wrong period.**

We agree with the recommendation. We will coordinate with New Mexico to remedy the \$106 in questioned costs received for one case that was submitted in the wrong period. However, if all of the other case requirements were met, OJP will not require the funds to be returned.

If you have any questions or require additional information, please contact Jeffery A. Haley, Deputy Director, Audit and Review Division, on (202) 616-2936.

cc: Jeffery A. Haley
Deputy Director, Audit and Review Division
Office of Audit, Assessment, and Management

Tracey Trautman
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Justice Management Division

OJP Executive Secretariat
Control Number 20121379

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

The OIG provided a draft of this audit report to OJP and the State of New Mexico. OJP's response, which is included in Appendix V of this report, states that OJP agrees with our recommendations and that it will coordinate with the State of New Mexico to remedy questioned costs and funds to better use. OJP also states that "BJA's enhanced monitoring process over SWBPI payments has resulted in increased scrutiny, and now includes a review of a minimum of 10 percent of the annual payments made under the program. With regard to the subject audit, the majority of costs questioned under the State of New Mexico's (New Mexico) SWBPI awards were not part of the sample reviewed by BJA. Additionally, some of the ineligible SWBPI cases, identified by the OIG during this audit, were for cases submitted by New Mexico prior to changes that BJA implemented for the SWBPI program, beginning in October 2008." We recognize the changes that OJP made to the SWBPI program based on recommendations provided in prior OIG reports.⁶ However, questioned costs related to the ineligible cases submitted must still be remedied. The following provides the OIG analysis of the response and summary of actions necessary to close the report.

Recommendation Number

- 1. Resolved.** OJP concurred with our recommendation to remedy the \$62,474 in unallowable questioned costs received by the State of New Mexico for 19 cases that were investigated or prosecuted during concurrent periods of time with cases involving the same defendant that were also submitted for reimbursement. OJP stated in its response that it will coordinate with the State of New Mexico to remedy the \$62,474 in questioned costs related to the 19 cases that were concurrently prosecuted.

New Mexico states in its response (pages 12-13 of this report):
"[T]he defendant (Kara Smith) [with case number D-1329-CR-200900152] on this case did not have other cases reported during

⁶ U.S. Department of Justice Office of the Inspector General, *Southwest Border Prosecution Initiative Reimbursement Program*, Audit Report 08-22 (March 2008); and U.S. Department of Justice Office of the Inspector General, *Southwest Border Prosecution Initiative Reimbursements*, Audit Report 10-20 (March 2010).

this time frame. She did have a prior case that qualified for SWBPI on another reporting period. But case # D-1329-CR-200900152 was never plead or sentenced in 2 case numbers and this was a new incident." New Mexico's statement that the defendant Kara Smith did not have other cases reported during this time frame is inaccurate. New Mexico submitted two cases for SWBPI reimbursement in FY 2010 with Kara Smith listed as the defendant. For both cases (D-1329-CR-200900152 and D-1329-CR-200900355), New Mexico reported to OJP that the defendant Kara Smith plead guilty on December 3, 2009. The SWBPI guidelines state that "[o]ne defendant charged in multiple cases should be claimed as only one case to the extent that defendant's cases are being investigated and/or prosecuted during concurrent periods of time." As a result, New Mexico should not have submitted a reimbursement claim for both cases.

New Mexico states in its response (page 13 of this report): "According to my original submission the following submissions were made only once [therefore correctly] for the following defendants: Jamie Oaxaca-Araiza – D-1116-CR-201000205; David Shane Maestas – D-116-CR-201000185 [sic]; Jeovanny Cisneros-Rodriquez – D-16-CR-201000570." New Mexico's statement that the defendants in these three cases were submitted for SWBPI reimbursement only once is inaccurate. New Mexico submitted case number D-1116-CR-201000205 for SWBPI reimbursement with the defendant's name reported as Jaime Oaxaca-Aragon.⁷ This same defendant was also submitted for SWBPI reimbursement in the same reporting period with case number 16-CR-2010-0279. Both cases had the same referral date of January 27, 2010. New Mexico also reported that in both cases the defendant plead guilty on June 14, 2010. As a result, New Mexico should not have submitted a reimbursement claim for both cases.

For the remaining two cases, both case numbers involved multiple defendants. The defendants which New Mexico named in their response are not the cases which are being questioned. Case number D-1116-CR-201000185 involved two defendants, David Shane Maestas and Manuel Lujan. The OIG questioned the case involving defendant Manuel Lujan. During the same reporting period case number D-1116-CR-201000539, which also listed Manuel Lujan as the defendant, was submitted to OJP for SWBPI reimbursement.

⁷ Given the similarities of the names and the same case number, it appears that the difference in the last name is a typographical error.

Both cases had the same referral date of January 27, 2010. New Mexico also reported that in both cases the defendant plead guilty on June 22, 2010. Case number D-1116-CR-201000570 involved two defendants, Jeovanny Cisneros-Rodriguez and Matthew Cole. The OIG questioned the case involving defendant Matthew Cole. During the same reporting period case number D-1116-CR-201000576, which also listed Matthew Cole as the defendant, was submitted to OJP for SWBPI reimbursement. New Mexico reported that both cases shared the same resolution date of September 27, 2010, when the case was dismissed. As a result, New Mexico should not have submitted a reimbursement claim for both cases.

This recommendation can be closed when we receive documentation that OJP remedied the \$62,474 in unallowable questioned costs received by the State of New Mexico for 19 cases that were concurrently prosecuted.

2. **Resolved.** OJP concurred with our recommendation to remedy the \$24,413 in unallowable questioned costs received by the State of New Mexico due to the average cost per case claim exceeding the actual average cost per case. OJP stated in its response that it will coordinate with the State of New Mexico to remedy the \$24,413 in questioned costs due to the average cost per case claim exceeding the actual average cost per case.

New Mexico's response (page 13 of this report) states: "After carefully going through the recent submission of the 1,193 cases, I came across cases that were closed after the original submission of 1,176. I found a difference of 16 cases that were closed in 2010 after the original numbers were run. This changes our felony case count to 1,177, leaving a difference of 1 case from our original submission." New Mexico's response provided additional documentation subsequent to our audit to support that the 11th District, 2nd Division, only prosecuted and resolved 1,177 cases during FY 2010. This supporting documentation was sufficient to remedy questioned costs totaling \$22,426. Therefore, the remaining questioned costs for remedy in association with this recommendation are \$1,987 (\$24,413 - \$22,426).

This recommendation can be closed when we receive documentation that OJP remedied the \$1,987 in unallowable questioned costs received by the State of New Mexico due to the average cost per case claim exceeding the actual average cost per case.

3. **Resolved.** OJP concurred with our recommendation to remedy the \$1,367 in unallowable questioned costs received by the State of New Mexico for three cases that were not federally initiated. OJP stated in its response that it will coordinate with the State of New Mexico to remedy the \$1,367 in questioned costs related to the three cases that were not federally initiated.

This recommendation can be closed when we receive documentation that OJP remedied the \$1,367 in unallowable questioned costs received by the State of New Mexico for three cases that were not federally initiated.

4. **Resolved.** OJP concurred with our recommendation to remedy the \$106 in unallowable questioned costs received by the State of New Mexico for one case that was submitted in the incorrect reporting period. OJP stated in its response that it will coordinate with the State of New Mexico to remedy the \$106 in questioned costs related to the one case that was submitted in the incorrect reporting period.

This recommendation can be closed when we receive documentation that OJP remedied the \$106 in unallowable questioned costs received by the State of New Mexico for the one case that was submitted in the incorrect reporting period.