

# **A Review of the September 2005 Shooting Incident Involving the Federal Bureau of Investigation and Filiberto Ojeda Ríos**

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**Office of the Inspector General**

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Glenn A. Fine, Inspector General of the U.S. Department of Justice, today issued a 171-page report examining the September 2005 shooting incident involving the Federal Bureau of Investigation (FBI) and Filiberto Ojeda Ríos. Ojeda was one of the founders and leaders of the Ejército Popular Boricua, also known as the "Macheteros" (Cane-Cutters), an organization that claimed credit for various violent crimes during the late 1970s and 1980s in pursuit of independence for Puerto Rico. Ojeda had been a fugitive for 15 years and was wanted in connection with the 1983 robbery of a Wells Fargo facility in West Hartford, Connecticut.

In early September 2005, the San Juan FBI determined that Ojeda and his wife were likely living in a house located on a rural hillside in Hormigueros, on the west side of Puerto Rico. On September 23, 2005, at 4:28 p.m., a team of FBI agents approached the residence to arrest Ojeda. The operation resulted in a brief but intense exchange of gunfire between Ojeda and the FBI. Ojeda fired 19 rounds, 8 of which struck FBI agents. One agent was wounded seriously in the abdomen. The FBI agents fired approximately 104 rounds during the initial gunfight, none of which struck Ojeda.

The gunfight was followed by a standoff during which Ojeda's wife came out of the house and surrendered, and FBI agents engaged in a dialog with Ojeda in an unsuccessful effort to persuade him to do the same. At 6:08 p.m., an FBI agent who was about 20 feet away saw Ojeda through a kitchen window with a gun in his hand. The agent fired three shots, one of which struck Ojeda. Several agents heard Ojeda cry out and fall.

The FBI did not enter the house until shortly after noon the next day, at which time the agents found Ojeda dead on the floor from a single bullet wound that had punctured his lung.

At the request of the FBI Director, the Office of the Inspector General (OIG) conducted this review of the circumstances surrounding the FBI's arrest operation and the death of Ojeda. The OIG sought to determine whether the FBI agents who discharged their weapons during the Ojeda operation complied with the Department of Justice Deadly Force Policy. The OIG also evaluated the reasons the FBI waited until the next day to enter the residence, more than 18 hours after Ojeda was shot. In addition, the OIG examined the FBI's initial decision to conduct an emergency daylight assault on the Ojeda residence in light of other potential options for apprehending Ojeda. We also assessed the FBI's negotiations with Ojeda during the standoff, as well as the FBI's communications with Commonwealth of Puerto Rico officials regarding the operation. Finally, the OIG examined allegations that the FBI had bypassed prior opportunities to arrest Ojeda under circumstances less likely to result in violence.

In the course of this review, the OIG interviewed over 60 individuals, including the agents involved in the attempted arrest of Ojeda, FBI Headquarters officials, officials from the U.S. Attorney's Office in Puerto Rico, and officials from the Department of Justice of the Commonwealth of Puerto Rico and the Police of Puerto Rico. We also conducted lengthy

interviews of the Executive Director of the Institute of Forensic Sciences, and other scientists involved in preparing the forensic reports. In addition, we reviewed thousands of pages of documents generated by the FBI and the U.S. Attorney's Office relating to the Ojeda matter, and relevant forensic reports prepared by the Puerto Rico Institute of Forensic Sciences, including the autopsy report, bullet and shell casing analyses, trajectory analysis, shooting reconstruction, and blood pattern analysis. Finally, the OIG consulted with three outside experts in tactical police operations to provide expert input and guidance on the FBI's tactical decisions in the Ojeda operation and application of the Department of Justice Deadly Force Policy.

Based on this extensive review, the OIG concluded that the FBI agents' use of force in the Ojeda operation did not violate the Department of Justice Deadly Force Policy. This Policy states that Department law enforcement officers may use deadly force when the officer "has a reasonable belief that the subject of such force poses an imminent danger of death or serious physical injury to the officer or to another person."

With regard to the initial gunfire, the OIG found that Ojeda became aware the FBI was coming to arrest him, made preparations to resist arrest, and opened fire on the agents as they attempted to enter the residence before any agents had discharged their weapons. We concluded that once Ojeda began firing he posed an imminent danger of death or serious injury to the agents, and the agents were justified in returning fire at Ojeda.

According to media reports, Ojeda's widow, Elma Beatriz Rosado Barbosa (Rosado), has alleged that the FBI agents fired first. While Rosado declined to be interviewed by the OIG, we did not find that the evidence supported her statements. However, the OIG determined that an FBI agent detonated a non-lethal "flash bang" grenade outside the house as a diversionary tactic when the FBI approached the house, before any gunfire began, and we believe Rosado may have thought this explosion was gunfire initiated by the FBI.

In addition, the OIG assessed the three shots fired by an FBI agent into the kitchen window at 6:08 p.m., including the shot that struck and killed Ojeda. We concluded that these shots also did not violate the DOJ Deadly Force Policy. The agent told the OIG that he fired after seeing Ojeda through the window illuminated by a refrigerator light, crouched down with a pistol in his left hand pointing out the window. When the FBI agents entered the house the next day, they found a cocked and loaded pistol on the floor at Ojeda's side, confirming that he was holding the weapon when he was shot. The bullet trajectory evidence was also consistent with the agent's statement to the OIG. Moreover, Ojeda had already fired from the window and had demonstrated an intent to shoot at the FBI agents. Taking all of these factors into consideration, the OIG concluded that at the moment the agent saw Ojeda, the agent reasonably believed that Ojeda presented an imminent threat to the agent or others, and therefore the agent did not violate the Department's Deadly Force policy by firing at Ojeda.

The OIG also evaluated the FBI's decision to conduct an emergency daylight assault on the residence to arrest Ojeda on September 23. The FBI had initially planned to arrest Ojeda before dawn on September 24. The FBI moved up the operation when agents who had been conducting surveillance of the residence reported their belief that they had been detected by several persons near the residence. The FBI was concerned that these persons might be sympathetic to Ojeda and alert him that the FBI was near the property. Consequently, FBI

supervisors changed their plans and ordered an immediate, emergency daylight assault on the residence in an attempt to arrest Ojeda. An arrest team of 10 FBI agents was airlifted by helicopters to a location near Ojeda's residence and transported to the front yard of the residence in an SUV. The agents then advanced up Ojeda's front steps and onto the front porch, exposing themselves to close-range fire from inside the house.

The OIG concluded that this daylight assault was extremely dangerous and not the best option available to the FBI. Had Ojeda been more heavily armed, several FBI agents likely would have been killed or seriously wounded. The daylight assault also was based on the unrealistic assumption that the FBI would still retain the advantage of surprise, despite the FBI's belief that Ojeda was likely alerted to the FBI's presence. Moreover, the FBI should have expected that the noise from the helicopter airlift would further alert Ojeda to the FBI's presence, and he also would be able to see the agents coming up the front steps well before they could enter the residence. The FBI had sufficient information to expect that Ojeda would be prepared to resist an arrest attempt with violence, as he had done in the past, and that he would have significant advantage over the arresting agents in terms of cover, elevation, and visibility. The OIG concluded that a strategy of surrounding the residence and calling for Ojeda to surrender, with the option of using chemical agents such as tear gas to force Ojeda outside, would have been a safer and more effective strategy. The OIG also found that the FBI gave little or no consideration to the option of withdrawing without taking immediate action to arrest Ojeda .

The OIG also examined the reasons that the FBI conducted the operation on El Grito de Lares, a local holiday of particular significance to supporters of independence for Puerto Rico. The OIG found no support for the allegation that the FBI conducted the arrest on that day, September 23, for symbolic reasons, such as to intimidate supporters of Puerto Rican independence. The FBI actually planned to arrest Ojeda on September 24, but conducted the emergency assault a day early only because the agents conducting surveillance reported that they had been detected.

The OIG also examined the reasons that the FBI did not enter the residence until more than 18 hours after Ojeda was shot. Shortly after Ojeda was shot at 6:08 p.m., the FBI in Puerto Rico began making preparations to enter the house after dark. But before this operation could take place, senior officials at FBI Headquarters assumed control over the entry decision and determined that no entry would take place until the next day when a relief team of FBI agents would arrive in Puerto Rico.

The OIG concluded that the FBI's cautious approach toward entering the residence after Ojeda was shot was motivated by considerations of agent safety, not by any desire to withhold medical treatment from Ojeda or to let him die. The FBI's concern during this period was that Ojeda might not be incapacitated or that there was a second gunman inside the house, because the arrest team believed that more than one weapon had been fired at them during the initial gunfight. FBI Headquarters officials also were concerned that it would be difficult to detect improvised explosive devices inside the house at night. We found that the senior FBI officials who ordered the delayed entry believed that the concerns about agent safety outweighed Ojeda's need for medical attention.

While we did not conclude that the decision to delay entry until the next day was improper, we also found that distance and multiple layers of reporting between the agents at the scene and

FBI Headquarters officials in Washington affected the information that was the basis of the Headquarters' decision. The agents at the scene believed that Ojeda had been seriously wounded or killed, and over the course of the evening they became less concerned about the possibility of other persons in the house. But their assessments did not reach officials at FBI Headquarters, who made the decision not to enter the house until the next day based on the belief that Ojeda still posed a threat and might have an accomplice.

However, the OIG also found that the decision to delay entry until the next day likely had no impact on Ojeda's death. The forensic pathologist from the Puerto Rico Institute of Forensic Sciences who performed the autopsy estimated that Ojeda died from blood loss approximately 15 to 30 minutes after being shot, which would place the time of death between 6:23 p.m. and 6:38 p.m. According to this estimate, even if FBI agents at the scene had implemented their plan to enter the residence after dark on September 23, Ojeda already would have died. If the pathologist's estimate was correct, the only chance to save Ojeda's life would have been for the agents to enter the residence within a short time after the three shots were fired and evacuate Ojeda immediately. Given the uncertainty regarding Ojeda's condition and the belief that more than one weapon had been fired from inside the house during the gunfight, an immediate effort to enter the house would have been a dangerous action and the OIG did not conclude that the FBI acted improperly when it took a more cautious approach.

The OIG also reviewed the FBI's negotiations with Ojeda during the standoff, before he was shot. We found that the FBI agents who planned the operation should have accepted an offer in advance of the operation from the FBI's Crisis Negotiation Unit in Quantico, Virginia, to provide highly trained negotiators in case of a standoff. Although the FBI utilized a negotiator from its San Juan office during the standoff, the FBI did not comply with its own policies regarding the integration of negotiators into operations planning or the use of multiple negotiators.

The OIG also examined the FBI's communications with the public and officials from the Commonwealth of Puerto Rico regarding the Ojeda operation. We found that the FBI missed opportunities to provide accurate information to the public and to Commonwealth officials regarding the reasons for the delay in entering Ojeda's residence, including the FBI's concern about a second gunman. We believe that the FBI should have provided more accurate information, which might also have reduced the criticism regarding why the FBI did not enter the residence immediately.

In addition, allegations were raised that the FBI had sufficient information regarding Ojeda's whereabouts and habits over a period of years to enable it to safely arrest Ojeda away from his home. The OIG did not find evidence substantiating these allegations. Although the FBI had previously received information suggesting Ojeda's possible presence in Hormigueros, we found that the FBI did not intentionally bypass opportunities to arrest Ojeda at a different location.

Finally, the OIG report made ten systemic recommendations relating to problems we found in the conduct of the Ojeda arrest operation. Our recommendations, which are intended to improve the planning and conduct of future FBI arrest operations, include such things as assuring the reconsideration of all relevant tactical options when circumstances change and ensuring that negotiators are integrated into tactical planning for operations in which a standoff is a foreseeable contingency.

Inspector General Fine stated, "Although our report did not find that the FBI violated the Deadly Force Policy or intentionally allowed Ojeda to die, we did find deficiencies in the FBI's conduct of the arrest operation. FBI decisions suffered from inadequate consideration of alternative options and inadequate preparation for foreseeable scenarios. We believe our report and recommendations can help the FBI avoid similar problems in future operations."

The OIG's full report and a Spanish language version of the report's Executive Summary are available on the OIG's website at [www.usdoj.gov/oig](http://www.usdoj.gov/oig) under the headings "What's New" and "Special Reports."

We can be reached at (202) 514-3435 if you have any questions.

Paul Martin  
Cynthia Schnedar