



Office of the Inspector General  
United States Department of Justice

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*before the*

U.S. Senate Committee on Appropriations  
Subcommittee on Commerce, Justice, Science  
and Related Agencies

*concerning*

Hearing to Review the Fiscal Year 2016 Funding Request  
and Budget Justification for the U.S. Department of Justice

May 7, 2015

Chairman Shelby, Senator Mikulski, and Members of the Subcommittee:

Thank you for requesting my written statement for today's hearing regarding the Fiscal Year (FY) 2016 budget request for the Department of Justice (Department or DOJ) and the Office of the Inspector General (OIG). At the outset, I would like to thank the Subcommittee for its continued bipartisan support of our work. As a result of the appropriations we received in the last two fiscal years, we have been able to take significant steps to rebuild our staff, which shrank by nearly 10 percent as a result of 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 and to highlight the positive return on investment generated by Inspectors General, as noted in a recent report of the Brookings Institution (which can be found at: <http://www.brookings.edu/~media/research/files/papers/2015/04/30-inspectors-general-roi-hudak-wallack/cepmhudakwallackoig.pdf>).

## **OIG FY 2016 Budget Request**

In our FY 2016 budget, the OIG is 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 a strong core of auditors with contract auditing experience and law enforcement agents with contract fraud investigation experience. We also have initiated several contract compliance audits with the benefit of this increased contract auditing expertise.

We recently demonstrated the importance of such contract oversight in our compliance audit of a Federal Bureau of Prisons (BOP) contract to house federal inmates in two Reeves County, Texas detention facilities – a contract valued at an estimated \$493 million and the second largest contract at the Department since 2014. Reeves County subcontracted with the GEO Group to manage the two Detention Center compounds, and subcontracted with Correct Care Solutions to provide healthcare services to the inmates at these compounds. The report identified almost \$3 million that we either questioned as unallowable or unsupported, or believe should have been put to better use, and we also identified 12 employees who were underpaid over \$22,000. In addition, we had several significant concerns relating to compliance with the contract's requirements, including the provision of healthcare services, the BOP's approach to minimum staffing requirements, and the policies and procedures governing the operations of a modified monitoring unit at the facility (called the "J-Unit"). We made 18 recommendations for improvements to BOP in order to address the findings and

improve supervision of the detention facilities. This report can be found our OIG website at: <http://www.justice.gov/oig/reports/2015/a1515.pdf#page=1>.

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, supported by the results of our recent contract prison audit, that strengthening our ability to conduct 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.

## **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. Additional information regarding the OIG's work over the past six months and our ongoing initiatives is described in our upcoming Semiannual Report to Congress.

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. In addition, over the past six months, the OIG reported over \$7 million in questioned costs and \$900,000 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 \$5 million in fines, restitution, recoveries, and other monetary results. This is in addition to the more than \$140 million in audit-related findings and over \$46 million in investigative-related findings that the OIG reported from FY 2010 through FY 2014.

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 and Furious, the BOP's 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 yesterday, we released an important review assessing the aging federal inmate population's impact on the BOP's inmate management, including costs, health services, staffing, housing, and programming. We also assessed the recidivism of inmates who were age 50 and older at the time of their release. The OIG found that federal inmates age 50 and older increased 25 percent from 24,857 in FY 2009 to 30,962 in FY 2013, while the number of inmates under age 50 actually decreased during that same period. We also found that aging inmates on average cost 8 percent more per inmate to incarcerate, BOP institutions lack appropriate staffing levels to address the needs of an aging inmate population and provide limited training for this purpose, the physical infrastructure of BOP institutions cannot adequately house aging inmates, BOP does not provide programming opportunities specifically addressing the needs of aging inmates, and aging inmates commit less misconduct while incarcerated and have a lower rate of re-arrest once released. Additionally, aging inmates could be viable candidates for early release, resulting in significant cost savings, but BOP policy strictly limits those who can be considered resulting in few actual releases. Indeed, we found that one year after the BOP expanded its compassionate release policy to include inmates age 65 and older, as called for by the Attorney General's Smart on Crime initiative, only two inmates had been released under these new provisions. In this report, we make eight recommendations to improve the BOP's management of its aging inmate population and the BOP agreed with all of our recommendations.

Since my appearance before the Subcommittee last year, the OIG also released reports on the policies governing off-duty conduct by Department employees working overseas, and the handling of sexual harassment and misconduct allegations by the Department's four law enforcement components domestically and abroad. Both reports, which had been requested by several Members of Congress, including Senator Collins, following our review of the Drug Enforcement Administration's (DEA) involvement in the prostitution scandal in

Cartagena in 2012, highlighted the risks from a lack of consistent procedures, training, and effective reporting, investigation, and adjudication practices. In addition, we conducted a review of the Department's handling of sex offenders in the federal Witness Security Program (WITSEC). The OIG identified significant concerns with the management of the Program and found that the DOJ had not taken sufficient steps to mitigate the threat by Program participants, including sex offenders, who commit crimes after being terminated from the Program.

Another important OIG report involved the FBI's Philadelphia Regional Computer Forensic Laboratory (PHRCFL) in Radnor, Pennsylvania. The OIG found that the PHRCFL had mixed results in achieving its performance goals and identified several concerns relating to the PHRCFL's cell phone investigative kiosks, its training program, and its annual statistical reports to the FBI and Congress. Specifically, the OIG found that PHRCFL lacked sufficient controls to ensure that users accessed the kiosks - that allow users to quickly and easily view, extract, and compile data stored on a cell phone or other electronic media - only for law enforcement matters.

The OIG's ongoing work includes 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 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 FBI's implementation of its Next Generation Cyber Initiative, which is intended to enhance the FBI's ability to combat cyber intrusions. The OIG is also examining the efforts of the U.S. Attorney's Offices and the Executive Office for 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 are 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. In the past six months alone, the Investigations Division received more than 5,500 complaints, had nearly 80 arrests and convictions resulting from corruption and fraud cases, and obtained more than 110 administrative actions against Department employees and contractors.

For example, the OIG 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 series of contracts. 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 OIG Investigations Division conducted an investigation of allegations that an FBI Special Agent in Washington, D.C., tampered with and stole narcotics for personal consumption seized in FBI drug investigations. The FBI Special Agent, who was a member of the Cross-Border Task Force, pleaded guilty to 20 counts of obstruction of justice, 18 counts of falsification of records, 13 counts of conversion of property, and 13 counts of possession of heroin. He is awaiting sentencing.

In addition, the OIG Investigations Division was involved in an ongoing investigation that led to the arrest of a former DEA agent and former Secret Service agent for wire fraud and money laundering for stealing Bitcoin currency. Our agents also are working on an investigation into DEA's payment of over \$800,000 to an Amtrak employee. And, just last week, our agents arrested a former FBI Assistant Special Agent in Charge in Boston who was charged with perjury and obstruction of justice related to the trial of James "Whitey" Bulger.

Further, last month, Sprint Communications, Inc. agreed to pay \$15.5 million to resolve allegations of overcharging law enforcement agencies for court-ordered wiretaps. A joint investigation by the U.S. Attorney's Office and the OIG revealed that from 2007 to 2010, Sprint improperly included in its intercept charges the costs of making certain upgrades to its system.

## **Top Challenges Facing the Department of Justice**

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](http://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, which I previously outlined above.

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 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 is currently reviewing the results of the independent assessment as part of its review of the BOP's use of restrictive housing for inmates with mental illness. 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 (GPR) Modernization Act of 2010 updated the federal government's performance management framework. As the Department implements the GPR 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 in obtaining timely access to records, which has seriously affected our independence and ability to conduct effective oversight. For example, the failures of the DEA and the FBI to promptly provide all the information we requested impeded our March 2015 review of the handling of sexual harassment and misconduct allegations by the Department's law enforcement components. Both agencies raised baseless legal objections to providing us with certain information despite the clear language of the Inspector General Act and they only relented months later when I personally elevated the issue to agency leadership. These delays created an unnecessary waste of time and resources, both on the part of the OIG personnel and the component personnel, and delayed us in completing our report describing significant systemic concerns.

Regrettably, this was not an isolated incident. Rather, we have faced repeated instances over the past several years in which our timely access to records has been impeded, including on very significant matters such as the information sharing and handling prior to the Boston Marathon Bombing, the Department's use of the Material Witness Statute, the FBI's use of National Security Letters, and ATF's Operation Fast and Furious.

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 has had a positive impact on our ability to get timely access to records with some Department components, including the DEA.

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 continues to take the position that the OIG is not legally entitled to review certain records in the FBI's possession, including but not limited to grand jury, wiretap, and Fair Credit Reporting Act (FCRA) information, even if those materials are relevant to an OIG audit or review. As a result, the OIG has sent four letters to this Subcommittee reporting the FBI's failure to comply with Section 218 by refusing to provide the

OIG, for reasons unrelated to any express limitation in Section 6(a) of the IG Act, with timely access to certain records, thereby impeding those reviews. Indeed, in the five matters covered in those four letters, the outstanding document requests at issue are now over 6 months old.

Recently, in an attempt to have documents produced more quickly to the OIG, the Acting Deputy Attorney General issued a memorandum revising the Department's procedure for reviewing records responsive to an OIG document request that the FBI believes it is legally prohibited from producing to the OIG. While we appreciate the Acting Deputy Attorney General's interest in attempting to accelerate the FBI's document production process, the revised procedure still requires the OIG to ask the Attorney General or Deputy Attorney General for permission to obtain these categories of materials, and it still requires the Attorney General or the Deputy Attorney General to make a finding, before granting the OIG permission to access such records, that the specific reviews will assist them in the performance of their duties. However, no such permission is necessary under the IG Act and such a requirement is inconsistent with Section 218. Moreover, requiring an OIG to obtain permission from agency leadership in order to review agency documents seriously impairs Inspector General independence.

Additionally, the procedure ignores an unbroken history of more than 20 years of cooperation and compliance by the Department and FBI with the records production requirements of the Inspector General Act. At no time before 2010 did the FBI, any Department component, or Department leadership raise any concerns over the legality of providing to the OIG grand jury, wiretap, or FCRA material; prior to this time, the OIG routinely received such material from the Department. Further, in 1998 and 1999, based on legal arguments presented by the Department, two U.S. District Court Judges entered orders endorsing the Department's position that OIG attorneys were "attorneys for the government," and were therefore permitted to receive grand jury material without approval of the court. In short, the procedure institutionalizes a process that is wholly inconsistent with the Inspector General Act and over 20 years of practice at the Department, yet is fully consistent with the FBI's current legal position.

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, nearly a year 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 above 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.

Lastly, despite the FBI's repeated failure to comply with Section 218, the Department's budget request seeks to have the provision removed from the FY

2016 appropriations law. Because I was not provided with an opportunity by the Department to provide comments on its proposal to remove Section 218 prior to its budget's transmission to the President, as required by Section 6(f)(2) of the Inspector General Act, I would like to take a moment to explain why I believe it should not be removed from the FY 2016 appropriations law. First, despite the actions by the FBI, the provision has had a positive effect. Department components other than the FBI have taken notice of Section 218 and it appears to have improved our ability to obtain timely access to records; in fact, in our meetings with components to make them aware of the provision, component officials indicated their intention to comply with the provision. Second, removing the provision, in the face of the FBI's failure to comply with it, could lead other components to conclude that it is acceptable to raise legal objections to the OIG's access to certain records despite the plain language of the IG Act. Finally, Congress should not remove the provision at a time when the Department has still not released the Office of Legal Counsel opinion that the Department requested nearly one year ago and that the Department has consistently maintained it needs in order to resolve these matters. Unless and until the Department ensures that the OIG will get full, timely, and independent access to records in its possession that are necessary for OIG audits and reviews, Section 218 should remain as a strong and clear reaffirmation of Congress's intent that Section 6(a) of the IG Act means what it says.

## **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.