



**OFFICE OF INSPECTOR GENERAL**  
Department of Homeland Security

Washington, DC 20528 / [www.oig.dhs.gov](http://www.oig.dhs.gov)

JUL 23 2013

Mr. Alexander Abdo  
American Civil Liberties Union Foundation  
125 Broad Street, 18th Floor  
New York, NY 10004

Subject: Freedom of Information Act Request No. 2013-113 – Final Response  
(PRIV FOIA Request No. 2013-HQFO-00681)

Dear Mr. Abdo:

This responds to your Freedom of Information Act request to the Department of Homeland Security (DHS) Privacy Office (PRIV), dated May 13, 2013, and seeking, in summary, records pertaining to Executive Order 12333 (copy enclosed for reference). PRIV referred your request to the DHS Office of Inspector General (OIG) for processing and direct response to you. DHS-OIG received that referral on June 27, 2013.

DHS-OIG conducts independent investigations, audits, inspections, and special reviews of DHS personnel, programs, and operations to detect and deter waste, fraud, and abuse, and to promote integrity, economy, and efficiency within DHS. In response to your request, a search was conducted. We located the following inspection report, titled *DHS' Role in Nominating Individuals for Inclusion on the Government Watchlist and Its Efforts to Support Watchlist Maintenance*, which may be of interest to you. The report is posted on OIG's web site at [http://www.oig.dhs.gov/assets/Mgmt/OIG\\_11-107\\_Sep11.pdf](http://www.oig.dhs.gov/assets/Mgmt/OIG_11-107_Sep11.pdf). To be of some assistance, however, enclosed is a copy of that report. Please note that none of the redacted portions of this report are responsive to your FOIA request.

Additionally, we have determined that some of the records you seek pertain to a matter that is ongoing. Because your request covers documents involving an ongoing DHS-OIG inspection, the documents are withheld pursuant to the deliberative process privilege of Exemption 5 of the FOIA, 5 U.S.C. § 552(b)(5). Although other exemptions may be applicable to these records, OIG is not in a position to assert other exemptions at this time since this matter is still pending.

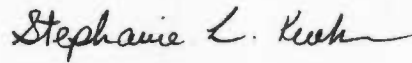
Please note that OIG posts all of its non-classified final reports on the OIG web site at <http://www.oig.dhs.gov/>. You may, therefore, wish to check this web site periodically to see if the final report of this inspection is posted, or in the alternative, sign up to receive e-mail notifications when a report is posted on our web site.

This is the final action this office will take concerning this matter. You have the right to appeal this response.<sup>1</sup> Your appeal must be in writing and received within 60 days of the date of this response. Please address any appeal to:

FOIA/PA Appeals Unit  
DHS-OIG Office of Counsel  
STOP 0305  
245 Murray Lane, SW  
Washington, DC 20528-0305

Both the envelope and letter of appeal must be clearly marked, "Freedom of Information Act/Privacy Act Appeal." Your appeal letter must also clearly identify the OIG's response. Additional information on submitting an appeal is set forth in the DHS regulations at 6 C.F.R. § 5.9. If you have any questions about this response please contact Traci Quan, FOIA/PA Disclosure Specialist, at 202-254-5402.

Sincerely,



Stephanie L. Kuehn  
Senior FOIA/PA Disclosure Analyst

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<sup>1</sup> For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

Requester's Name: Mr. Alexander Abdo

FOIA/PA NO.: 2013-113

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# Department of Homeland Security Office of Inspector General

## DHS' Role in Nominating Individuals for Inclusion on the Government Watchlist and Its Efforts to Support Watchlist Maintenance

~~SENSITIVE SECURITY INFORMATION~~



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**SENSITIVE SECURITY INFORMATION**

*Office of Inspector General*

**U.S. Department of Homeland Security**  
Washington, DC 20528



**Homeland  
Security**

Preface

The Department of Homeland Security (DHS) Office of Inspector General (OIG) was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*. This is one of a series of audit, inspection, and special reports prepared as part of our oversight responsibilities to promote economy, efficiency, and effectiveness within the department.

This report addresses the strengths and weaknesses of the DHS watchlisting process. It is based on interviews with employees and officials of relevant agencies and institutions, direct observations, and a review of applicable documents.

The recommendations herein have been developed to the best knowledge available to our office, and have been discussed in draft with those responsible for implementation. We trust this report will result in more effective, efficient, and economical operations. We express our appreciation to all of those who contributed to the preparation of this report.

A handwritten signature in black ink, appearing to read "Carlton I. Mann".

Carlton I. Mann

Assistant Inspector General for Inspections

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## Abbreviations

|       |   |
|-------|---|
| CBP   | U.S. Customs and Border Protection                |
| CLASS | Consular Lookout and Support System               |
| DHS   | Department of Homeland Security                   |
| E.O.  | Executive Order                                   |
| FBI   | Federal Bureau of Investigation                   |
| FDNS  | Fraud Detection and National Security Directorate |
| HIR   | Homeland Intelligence Report                      |
| HSI   | Homeland Security Investigations Directorate      |
| HSPD  | Homeland Security Presidential Directive          |

**SENSITIVE SECURITY INFORMATION**

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|----------|--|
| I&A      | Office of Intelligence and Analysis                    |
| ICE      | U.S. Immigration and Customs Enforcement               |
| IDENT    | Automated Biometric Identification System              |
| JTTF     | Joint Terrorism Task Force                             |
| NCTC     | National Counterterrorism Center                       |
| NTC-P    | National Targeting Center-Passenger                    |
| ODNI     | Office of the Director of National Intelligence        |
| OIG      | Office of Inspector General                            |
| OMB      | Office of Management and Budget                        |
| SOP      | standard operating procedure                           |
| TIDE     | Terrorist Identities Datamart Environment              |
| TSA      | Transportation Security Administration                 |
| TSC      | Terrorist Screening Center                             |
| TSDB     | Terrorist Screening Database                           |
| USCG     | U.S. Coast Guard                                       |
| USCIS    | U.S. Citizenship and Immigration Services              |
| US-VISIT | U.S. Visitor and Immigrant Status Indicator Technology |
| WLC      | Watchlisting Cell                                      |

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# OIG

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*Department of Homeland Security  
Office of Inspector General*

## **Executive Summary**

The Department of Homeland Security has opportunities to interact with, observe, and gather information from individuals seeking to enter the United States. Such information could contribute to external U.S. government watchlisting efforts, which are used to inform the federal government's interaction with U.S. citizens and foreign nationals. We reviewed these activities for seven department components to determine whether effective processes and standards exist; whether information the department collects and disseminates to federal partners is relevant, timely, and accurate; and which external federal departments and agencies receive component-generated information.

Although the department is predominantly a consumer of watchlist information, all seven components contribute to nominating individuals and to enhancing and maintaining watchlist information. The department recently established a Watchlisting Cell to serve as the central coordination point for all department nomination and maintenance efforts.

As the cell further refines its operational capabilities, it is necessary to develop guidance, provide advanced analysis, and ensure that departmental efforts do not contradict current component interactions with federal watchlisting entities. The Watchlisting Cell has demonstrated value and is streamlining processes in collaboration with department components. The department's most significant contribution to the watchlisting community is the collection and analysis of encounter packages. This information is critical to enhancing existing watchlist database records; however, quality and legibility issues exist with how this information is currently collected. The Watchlisting Cell should ensure that its resources are sufficient to provide relevant, accurate, and timely information to internal and external

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**DHS' Role in Nominating Individuals for Inclusion on the Government Watchlist and  
Its Efforts to Support Watchlist Maintenance**



watchlisting partners. We are making ten recommendations to improve the department's contributions to the federal government's watchlisting process.

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## Background

The *National Security Act of 1947* created the U.S. Intelligence Community to be a federation of Executive Branch agencies and organizations that work separately and together to perform intelligence activities necessary to conduct foreign relations and to protect the national security of the United States.<sup>1</sup> Executive Order (E.O.) 12333, as amended, defines the goals and direction of U.S. intelligence efforts and describes the roles and responsibilities of individual Intelligence Community elements.<sup>2</sup> The Intelligence Community is defined by the *National Security Act*, as amended, and E.O. 12333 to include 16 executive-level elements with oversight provided by the Office of the Director of National Intelligence (ODNI).<sup>3</sup>

The Department of Homeland Security (DHS), which was created by the *Homeland Security Act of 2002*, has two Intelligence Community members: the Office of Intelligence and Analysis (I&A) and the U.S. Coast Guard (USCG) National Intelligence Element.<sup>4</sup> The *Homeland Security Act* emphasizes the need for timely and effective information sharing processes as a means of safeguarding national security. Furthermore, the *Intelligence Authorization Act* for FY 2003 established the 9/11 Commission to investigate the facts and circumstances leading to the September 11, 2001, terrorist attacks.<sup>5</sup> As a result, the Commission made additional recommendations concerning the need for increased information sharing and collaboration across the federal government.

Most notably, in a 2004 Staff Report, the Commission highlighted multiple opportunities in which the 9/11 terrorist plot could have been disrupted. The Commission determined that the hijackers had previous contact with immigration and customs authorities 43 times, and entered the United States 33 times over 21 months

<sup>1</sup> 50 U.S.C. § 401 et seq. [hereinafter referred to as the *National Security Act*].

<sup>2</sup> Executive Order 12333, as amended [hereinafter referred to as E.O. 12333].

<sup>3</sup> 50 U.S.C. § 401a (4) and E.O. 12333 § 3.5 (h).

<sup>4</sup> 6 U.S.C. § 101 et seq. [hereinafter referred to as the *Homeland Security Act*].

<sup>5</sup> See generally Public Law 107-306, as amended; and 6 U.S.C. § 101 note.

through nine different ports of entry.<sup>6</sup> At least three hijackers carried passports with indicators of extremism linked to al Qaeda. The Commission concluded that these interactions with government officials represented missed opportunities. In light of these findings, it is imperative that DHS components collect and analyze relevant, timely, and accurate information as well as disseminate this information to external government partners.

As part of its mission, DHS personnel have opportunities to interact, observe, and gather information from individuals seeking admission to the United States. For example, on a daily basis U.S. Customs and Border Protection (CBP) processes nearly 1 million travelers entering the United States; U.S. Immigration and Customs Enforcement (ICE) houses 33,429 illegal aliens in detention facilities nationwide; the Transportation Security Administration (TSA) screens approximately 2 million passengers and their baggage; the USCG manages 3,500 commercial vessel transits through the marine transportation system; and U.S. Citizenship and Immigration Services (USCIS) processes 24,371 applications for immigration benefits.<sup>7</sup> Information gathered by DHS components when fulfilling these duties could be used to protect national security. In particular, such information could contribute to nominating individuals and maintaining data contained in various external U.S. government databases, which are used to inform the government's interaction with U.S. citizens and foreign nationals.

## **External Federal Government Watchlisting Partners**

Throughout the federal government, there are multiple databases used to protect against potential threats to national security. Some databases contain law enforcement information related to criminal offenses, while others contain intelligence information collected on known or suspected terrorists and their associates. Although DHS is a major consumer of information contained within multiple

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<sup>6</sup> *9/11 and Terrorist Travel*, Staff Report of the National Commission on Terrorist Attacks Upon the United States (August 21, 2004). See Preface and p. 7.

<sup>7</sup> "A Day in the Life of the Department of Homeland Security," DHS Office of Public Affairs, February 28, 2011.

external criminal and terrorist databases, it is also necessary for the department and its components to support federal partners by contributing to the watchlist nomination and maintenance process.

The content, completeness, and relevance of many databases depend on the ability of federal departments and agencies to collect and analyze derogatory information and nominate individuals for inclusion on specific lists. Some examples of relevant systems include the National Counterterrorism Center's (NCTC) Terrorist Identities Datamart Environment (TIDE), which is an aggregate of information that contains both the identifying and substantive derogatory information on known or suspected international terrorists; the Terrorist Screening Center's (TSC) Terrorist Screening Database (TSDB), which is the U.S. government's consolidated watchlist of all known or suspected terrorists; and the State Department's Consular Lookout and Support System (CLASS), used primarily as a name-checking system to screen all U.S. visa and passport applicants.

### **Role of the Office of the Director of National Intelligence in Watchlisting**

The *Intelligence Reform and Terrorism Prevention Act of 2004* created the Director of National Intelligence to serve as the head of the Intelligence Community.<sup>8</sup> Furthermore, the Director shall lead a unified, coordinated, and effective intelligence effort.<sup>9</sup> In accordance with this act and E.O. 12333, the Director functions as the principal adviser to the President, National Security Council, and the Homeland Security Council<sup>10</sup> for intelligence matters related to national security and manages the National Intelligence Program budget.<sup>11</sup> The goal of the ODNI is to integrate foreign,

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<sup>8</sup> 50 U.S.C. § 403 (b)(1).

<sup>9</sup> E.O. 12333 § 1.3.

<sup>10</sup> In May 2009, the Homeland Security Council was integrated into the National Security Council, although as of March 2011 there has been no subsequent change in legislation or executive order to reflect its re-designation.

<sup>11</sup> The National Intelligence Program funds intelligence activities in several federal departments and the Central Intelligence Agency. Detailed funding requests for intelligence activities are classified.

military, and domestic intelligence in defense of the homeland and of U.S. interests abroad.

Within the ODNI, the NCTC was established by E.O. 13354 and codified by the *Intelligence Reform and Terrorism Prevention Act of 2004* to implement a key recommendation of the 9/11 Commission. This recommendation called for the NCTC to serve as a center for joint operational planning and intelligence.<sup>12</sup> This act further directed that the NCTC will be the central and shared knowledge bank on known and suspected terrorists and international terror groups, as well as their goals, strategies, capabilities, and networks of contacts and support. The NCTC serves as the primary U.S. government organization for analyzing and integrating all intelligence possessed or acquired by the U.S. government pertaining to terrorism and counterterrorism.<sup>13</sup> However, the tasks of collecting and analyzing intelligence pertaining exclusively to domestic terrorists and domestic counterterrorism investigations, fall primarily under the purview of the Federal Bureau of Investigation (FBI).<sup>14</sup>

[REDACTED]

[REDACTED] For example, DHS provides detailees and liaisons from CBP, USCG, USCIS, TSA, and ICE.<sup>15</sup> Within the NCTC, the Terrorist Identities Group is responsible for maintaining TIDE, the central repository of information on international terrorist identities. TIDE is a classified database that includes, to the extent permitted by law, all identifying and derogatory information that

<sup>12</sup> See *Final Report of the National Commission on Terrorist Attacks Upon the United States*, at p. 403.

<sup>13</sup> 50 U.S.C. § 404o (d) (1).

<sup>14</sup> E.O. 12333 § 2.3 (e).

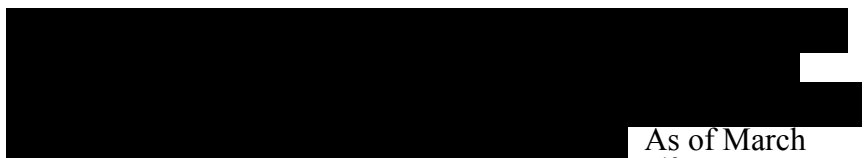
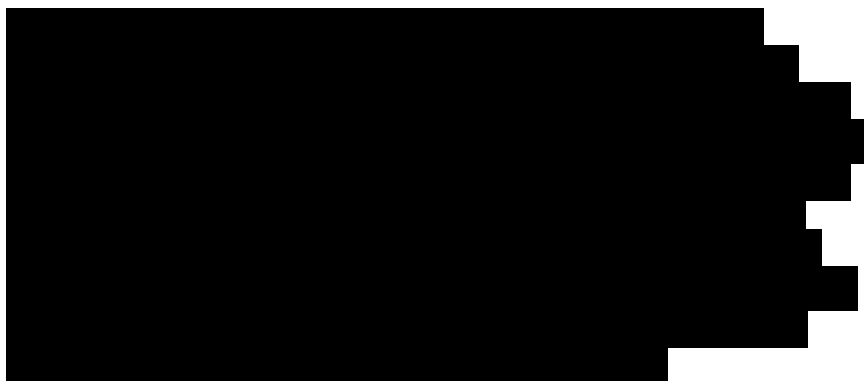
<sup>15</sup>

[REDACTED]

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the U.S. government possesses related to known or suspected terrorists.<sup>16</sup>

TIDE also serves as the authoritative database supporting the U.S. government's watchlisting system. Homeland Security Presidential Directive-6 (HSPD-6) requires the NCTC to provide the TSC with access to all appropriate information or intelligence in its possession that the TSC needs to perform its functions.<sup>17</sup> As a result, the NCTC provides the TSC with a sensitive but unclassified subset of TIDE and access to TIDE Online, a read-only copy of the database.



As of March 2011, TIDE contained more than 640,000 persons.<sup>18</sup> However, not all of these records correspond to separate and distinct "identities." The use of aliases and name variants results in a larger number of records than separate identities, because TIDE is a name-based system. Only a small percentage of TIDE records concern U.S. citizens and legal permanent residents.

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<sup>16</sup> Homeland Security Presidential Directive-11 defines "suspected terrorists" as "individuals known or reasonably suspected to be or have been engaged in conduct constituting, in preparation for, in aid of, or related to terrorism."

<sup>17</sup> HSPD-6, *Integration and Use of Screening Information to Protect Against Terrorism* (September 16, 2003).

<sup>18</sup> TIDE Fact Sheet, NCTC website, accessed April 4, 2011.

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After the conclusion of our fieldwork with the NCTC, ODNI officials informed us that the NCTC has now implemented TIDE 2 to support U.S. government watchlisting efforts. Unlike its predecessor TIDE, TIDE 2 uses a person-centric construct rather than the original identities construct.

**Role of the Department of Justice’s Federal Bureau of Investigation in Watchlisting**

HSPD-6 also instructed the U.S. Attorney General to establish an organization to consolidate the government’s approach to terrorism screening and to provide for the appropriate and lawful use of terrorist information in screening processes. To implement the directive, the Attorney General—acting through the Director of the FBI, and in coordination with the Secretary of State, Secretary of Homeland Security, and the Director of Central Intelligence—created the TSC.<sup>19</sup>

The TSC Director is appointed by the Attorney General, in consultation with the FBI, DHS, Central Intelligence Agency, and Department of State. The Director reports to the Attorney General through the Director of the FBI. A senior DHS official serves as the Principal Deputy Director. The TSC is staffed with employees from the various federal departments and agencies it supports.

[REDACTED]

Those authorized to be assigned from DHS to the TSC include staff from USCG, ICE, CBP, TSA, USCIS, I&A, U.S. Secret Service, and the Office of the General Counsel.

The TSC maintains the TSDB, which is populated with “information about individuals known or appropriately suspected to be or have been engaged in conduct constituting, in preparation for, in aid of, or related to terrorism...”<sup>20</sup> All information contained within the TSDB is sensitive but unclassified, so the broadest range of federal, state, local, and international terrorist

<sup>19</sup> *Memorandum of Understanding on the Integration and Use of Screening Information to Protect Against Terrorism*, Appendix 3 of the *Watchlisting Guidance*.

<sup>20</sup> HSPD-6, *Integration and Use of Screening Information to Protect Against Terrorism* (September 16, 2003).



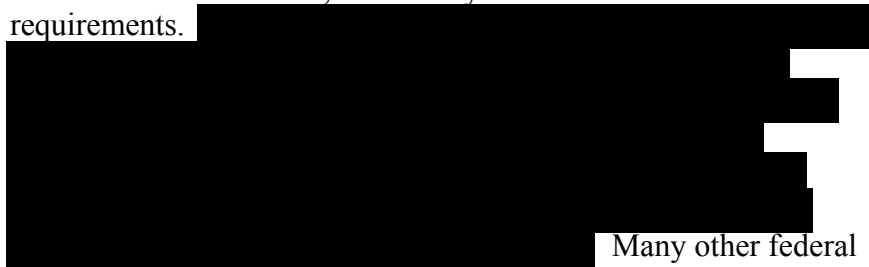
screening partners can benefit from using various screening systems and data subsets derived from the TSDB and exported by the TSC. The term “export” describes the transfer of record information from one database to another. Although the TSDB is the U.S. government’s consolidated terrorist watchlist, all information in the TSDB is derived from two sources. The only source for TSDB information relating to international terrorist identities is TIDE. The remaining information in the TSDB pertains solely to domestic terrorism information. This information is provided to the TSC directly from the FBI’s Automated Case Support system, which contains additional supporting information on domestic terrorists, beyond any biometric and biographic identifiers exported to the TSDB.

There are minimum substantive derogatory and identifying criteria for inclusion in the TSDB. The TSC reviews each nomination to ensure that it meets the watchlisting standards before creating a TSDB record. Although TIDE may accept nominations that do not fully meet the identifying criteria, the record will not export to the TSDB unless both minimum criteria are met.

As the U.S. government’s consolidated terrorist watchlist, the TSDB also exports data used in other screening systems and data subsets. These include, but are not limited to, the following:

- No Fly and Selectee Lists;
- TECS; and
- CLASS.

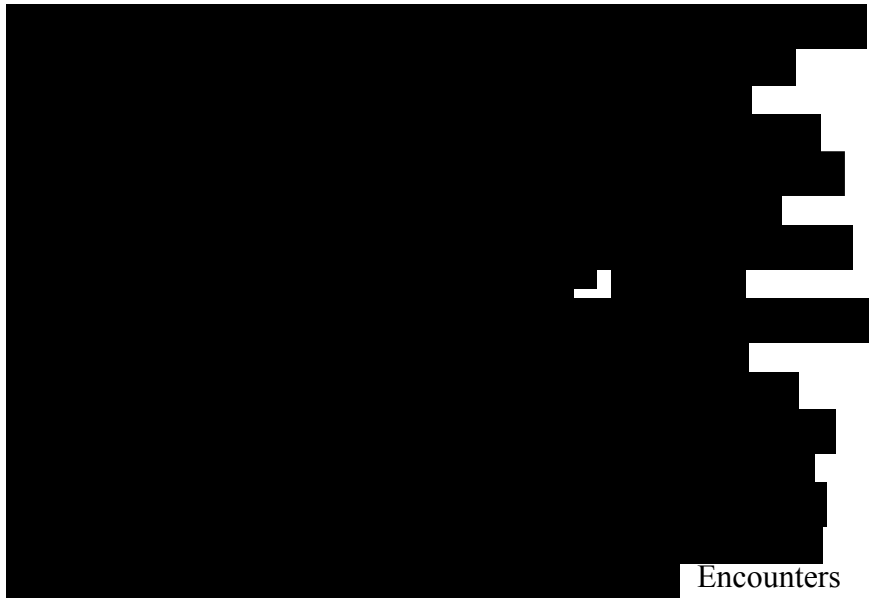
Some of these systems have their own minimum criteria or restrictions for inclusion, which may differ from TSDB requirements.



Many other federal law enforcement agencies also use TECS as a screening and case

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management system. CLASS, enhanced by law enforcement and national security information, is used primarily as a name-checking system to screen all U.S. visa and passport applicants.



Encounters can provide additional information to enhance current watchlist records.

In addition to notifying the TSC, DHS field components notify the FBI's Joint Terrorism Task Force (JTTF) of an encounter. JTTFs operate in approximately 106 cities nationwide and are composed of highly trained, locally based investigators, analysts, and other specialists from dozens of U.S. law enforcement and intelligence agencies. This multiple-agency effort, led by the Department of Justice and the FBI, is designed to promote information sharing to combat terrorism on a regional scale by combining federal, state, and local law enforcement resources. Four DHS components, CBP, ICE, U.S. Secret Service, and the Federal Protective Service, are full-time members of JTTFs, and other DHS components provide detailees and liaisons as requested. At headquarters, DHS is also involved in the National JTTF, which coordinates the efforts of the JTTFs and serves as an integrated force to combat

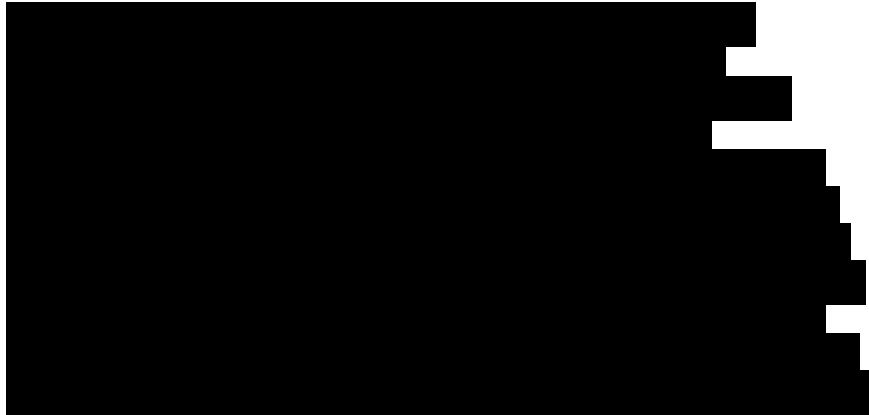
<sup>21</sup> *Watchlisting Guidance*, July 2010, Appendix 1.

terrorism on a national and international scale, with approximately 40 departments and agencies represented.

**Role of the Department of State’s Bureau of Consular Affairs in Watchlisting**


In addition to TIDE and the TSDB, the Department of State uses an unclassified database called CLASS. It is a name-checking system used to screen visa applications for travel to the United States. A visa allows a foreign national to travel to a U.S. port of entry to request admittance into the country. Consular officers abroad use CLASS to screen the names of all U.S. visa and passport applicants against information forwarded to CLASS from a number of government databases.

The central mission of the Department of State’s Bureau of Consular Affairs is to protect the lives and interests of American citizens abroad and to strengthen the security of U.S. borders through the vigilant adjudication of visas and passports. Another of its major duties is to administer the provisions of the *Immigration and Nationality Act*, as amended, and all other immigration and nationality laws relating to the powers, duties, and functions of U.S. diplomatic and consular officers.<sup>22</sup>



<sup>22</sup> 8 U.S.C. § 1101 et seq.

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As outlined in formal agreements between DHS and the Department of State, information from TECS is updated to CLASS in real-time for future use in adjudicating visa and passport applications. In addition, Bureau of Consular Affairs personnel have been detailed to CBP headquarters as well as to CBP's National Targeting Center-Passenger (NTC-P) to perform duties related to the watchlisting process. Through its NTC-P, CBP screens passenger manifests and related information prior to a passenger's departure to or from the United States. The NTC-P has an important role in analyzing, assessing, and making determinations of travel suitability based on TIDE, the TSDB, and other relevant intelligence and law enforcement information.

The Bureau of Consular Affairs works with other DHS component personnel at headquarters and at posts overseas. This relationship is demonstrated by ICE personnel assigned to foreign missions. The *Homeland Security Act* authorizes DHS' Secretary to assign department employees to each diplomatic and consular post at which visas are issued.<sup>24</sup> DHS accomplishes this through its Visa Security Program. Under the Visa Security Program, ICE attachés are responsible for conducting security reviews of visa applications. They review specific applications on their own initiative or when requested by a consular officer or other person charged with adjudicating such applications. ICE attachés also provide expert advice and training to consular officers regarding specific security threats related to the adjudication of visa applications.

Following the 1993 World Trade Center bombing, the Department of State directed consular offices to form Visa Viper committees to

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<sup>23</sup> When a Security Advisory Opinion request is received, the Bureau of Consular Affairs Visa Office, in conjunction with the TSC, confirms that the identity of the applicant matches the TSDB and underlying TIDE record. Once the individual's identity is confirmed, the Visa Office reviews the derogatory information on the individual, if any, and advises the consular officer regarding visa eligibility based on the *Immigration and Nationality Act*, as amended, as it relates to terrorism (8 U.S.C. § 1182(a)(3)(B)(i)).

<sup>24</sup> 6 U.S.C. § 236 (e).

ensure that the names of known or suspected terrorists are forwarded to domestic partners from overseas posts. All appropriate department and agency representatives at a foreign post, including ICE attachés, make up the Visa Viper committee. In addition, the information forwarded by these committees can result in nominations to TIDE and the TSDB.

The inter-agency procedures for Visa Viper were codified in the *Enhanced Border Security and Visa Entry Reform Act of 2002*, as amended.<sup>25</sup> Visa Viper committees are required by law to meet once a month and to use the cooperative resources of all elements of a U.S. mission to identify known or potential terrorists and to develop information on those individuals. The committees are also responsible for bringing this information to the attention of U.S. officials, and ensuring that the names of known or suspected terrorists are entered into the appropriate lookout databases.



## **Evolution of Federal Watchlisting Guidance**

In July 2008, the TSC Policy Board Working Group began revising the substantive derogatory criteria required for nominating known or suspected terrorists to the TSDB. In February 2009, the Office of the Deputy Attorney General published the new criteria in a document titled the *Protocol Regarding Terrorist Nominations*. Specifically, the Protocol contained an appendix identifying the minimum substantive derogatory criteria for acceptance of known or suspected terrorist nominations into the TSDB.

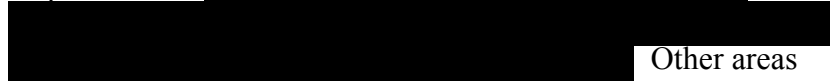
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<sup>25</sup> 8 U.S.C. § 1733.

In response to the December 25, 2009, attempted terrorist attack on Northwest Flight 253, the President issued a “corrective actions” memorandum that directed the TSC’s Interagency Policy Board Working Group to develop recommendations for changes to the Protocol. The changes were formally approved by the National Security Council and the Homeland Security Council Deputies Committee on May 25, 2010. The TSC issued this document, titled the *Watchlisting Guidance*, on July 16, 2010.



The *Watchlisting Guidance* was created to help departments and agencies standardize watchlist nominations and screening decisions. One of the most significant changes to the July 2010 *Watchlisting Guidance* includes the addition of Appendix 6, “Guidance Regarding Encounters Management with a Watchlisted Known or Suspected Terrorist and Encounter Information Exploitation.”



Other areas covered in the *Watchlisting Guidance* include terrorist nomination procedures, types of records in TIDE, the TSC’s automated file intake process, the standard nomination tool, expedited nomination procedures, and removal and redress procedures.

Section XVII of the July 2010 *Watchlisting Guidance*, describes additional roles and responsibilities for the watchlisting and screening community. [REDACTED]

[REDACTED]

This section of the *Watchlisting Guidance* led DHS to establish a central point of contact for nominations within the department.


### **Establishing DHS' Watchlisting Cell**

Prior to the July 2010 *Watchlisting Guidance*, DHS did not have a central point of contact for coordinating watchlist nominations. To meet the additional responsibilities outlined in the guidance, in December 2010 I&A established the department's Watchlisting Cell (WLC) to coordinate and submit DHS nominations and enhance the watchlisting process. This role is consistent with I&A's mission to strengthen the department's and its partners' ability to perform homeland security functions by accessing, integrating, analyzing, and sharing timely and relevant intelligence and information, while protecting the privacy and civil rights/civil liberties of the people they serve.

[REDACTED]

<sup>26</sup> *Watchlisting Guidance*, July 2010, Section XVII, p. 24.



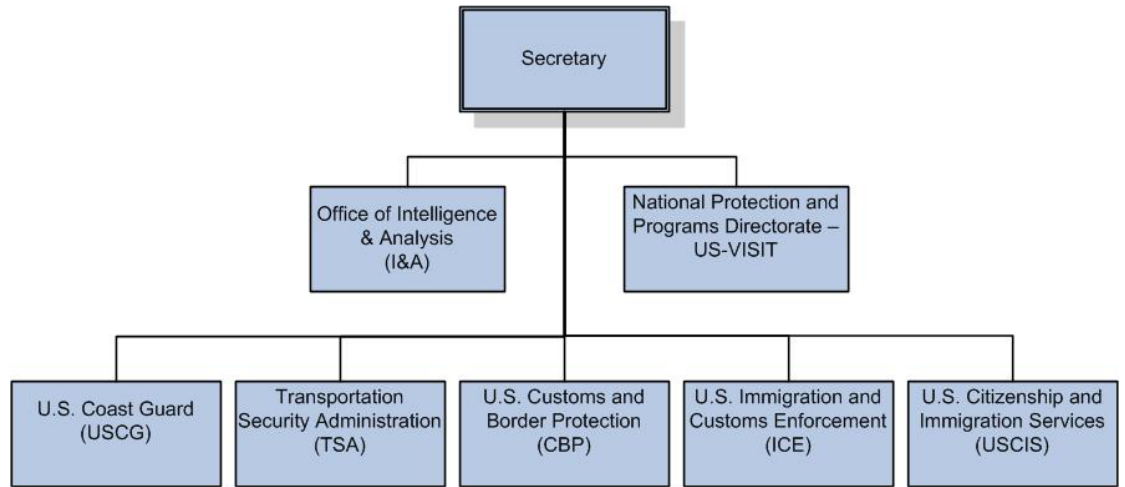


The WLC plans to implement a consolidated terrorist nomination process for DHS, as well as adhere to encounter management guidelines contained in Appendix 6 of the *Watchlisting Guidance*. In addition to serving as a central coordination point, the WLC is intended to be the single DHS entity responsible for submitting routine watchlist nominations to the NCTC for inclusion in TIDE and passage to the TSC for inclusion in the TSDB, as appropriate. As of March 2011, the WLC had drafted standard operating procedures (SOP) outlining steps in the nomination process, use of a standard nomination tool, and overall guidance to DHS components.

All components are required to send their routine watchlist nomination requests to the WLC to ensure consistency and enable the review of all DHS holdings and equities, including biometrics and immigration information, prior to final submission. In addition, the WLC has begun to review and exploit encounter packages and other documents provided by DHS components during the watchlisting process. In exigent circumstances or outside of WLC operating hours, DHS components will submit expedited nomination forms directly to the NCTC and TSC with an additional copy transmitted to the WLC.

Within DHS, several components submit nominations of individuals for inclusion in TIDE and the TSDB, and other components submit information to support, enhance, and maintain nominations. We reviewed these activities for seven DHS components to determine whether effective processes and standards exist; whether information that DHS collects and disseminates to federal partners is relevant, timely, and accurate; and which external federal departments and agencies receive DHS-generated information (see figure 1).

**Figure 1: DHS Components Reviewed During OIG Fieldwork**



Source: OIG Analysis

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**DHS' Role in Nominating Individuals for Inclusion on the Government Watchlist and Its Efforts to Support Watchlist Maintenance**

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## Results of Review

### DHS Efforts to Contribute to Nominations and Maintenance of External Government Watchlist Information

Although DHS is predominantly a consumer of watchlist information, the department contributes to nominating individuals for inclusion, and to enhancing and maintaining information contained within federal government databases. For example, CBP is the single largest contributor of encounter information to external partners, and its NTC-P is CBP's central coordination point for these efforts. TSA, a major consumer of information through TSDB subsets, such as the No Fly and Selectee Lists, contributes independent analysis of transportation threat information. Although efforts are under way to assimilate USCG personnel into NTC-P operations, as of March 2011 USCG did not nominate individuals for inclusion on external government databases. The Visa Viper committee process provides ICE with a means to contribute nominations from overseas posts, and information is shared domestically through the FBI's JTTF process.

In addition, multiple components contribute information through Homeland Intelligence Reports (HIRs).<sup>27</sup> The department's U.S. Visitor and Immigrant Status Indicator Technology program (US-VISIT) primarily supports departmental efforts through its biometric identification service, and this program will provide increased support as DHS moves toward a centralized process for watchlist nominations. Furthermore, I&A's involvement in the watchlisting process is primarily through the WLC. The WLC is intended to serve as the central coordination point for all routine DHS watchlisting efforts.

#### **CBP Is the Largest Contributor of Encounter Information**

CBP is one of the largest and most complex DHS components, with a priority mission of keeping terrorists and their weapons out of the United States. It also has responsibility for securing and

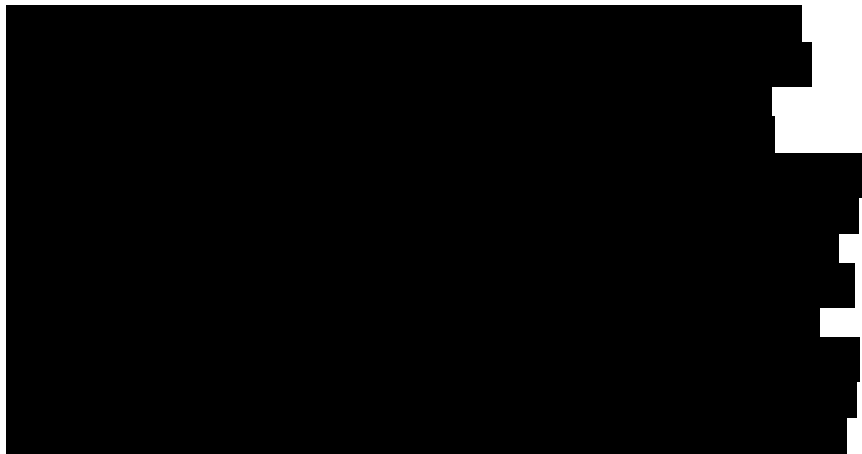
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<sup>27</sup> HIRs contain information that has yet to be fully evaluated. An HIR could contain information related to border encounters, information shared by a state or local fusion center, or other information of homeland security interest.

facilitating legitimate trade and travel, while enforcing hundreds of U.S. regulations and immigration laws. Therefore, CBP personnel have a major presence along the U.S. border and at established ports of entry.

To fulfill its responsibility for immigration enforcement, CBP collaborates and has a strong relationship with external government partners, such as the ODNI, the FBI, and the Department of State's Bureau of Consular Affairs. In addition, CBP contributes directly to information contained in the respective databases of these federal entities. CBP achieves the collaboration necessary to protect U.S. borders primarily through the operations of its NTC-P.

The NTC-P was established as a 24/7 operations center to provide advance targeting, research, and coordination among numerous law enforcement and intelligence agencies in support of CBP's anti-terrorism mission. The NTC-P has a dedicated staff of Watch Commanders, analysts, and support personnel who represent the CBP air, land, and sea environments. These multiple-disciplined experts are skilled in targeting inbound and outbound passengers and conveyances. In addition, NTC-P operations are supplemented by a group of dedicated analysts from CBP's Office of Intelligence and Operations Coordination. This office acts as a liaison to the Intelligence Community and provides timely and relevant information to the center.



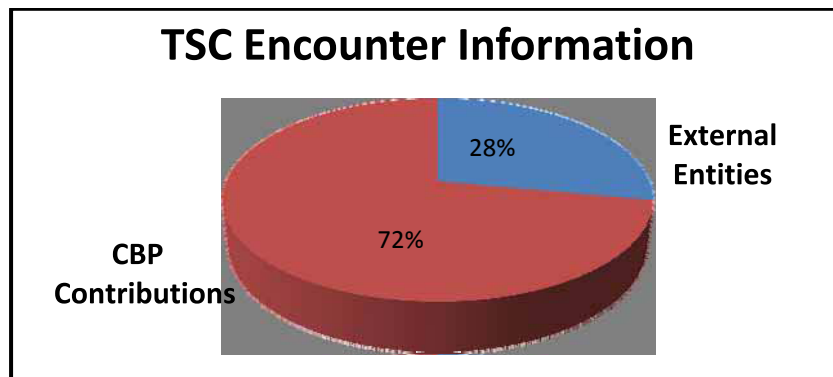
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[REDACTED]

As a result of its border enforcement mission, CBP, and particularly the NTC-P, are the largest contributors of encounter information to TIDE and the TSDB. [REDACTED]

[REDACTED] In FY 2010, CBP contributed 72% of all encounter information to the TSC (see figure 2).

**Figure 2: CBP Contribution of Encounter Information**



Source: *OIG Analysis*

**TSA Is a Consumer of TSDB Information and Provides Independent Analysis of Transportation Threat Information**

Within DHS, TSA is responsible for protecting the Nation’s transportation systems to ensure freedom of movement for people and commerce. TSA employs a risk-based strategy and layered approach to secure U.S. transportation systems, working with stakeholders in aviation, rail, transit, highway, and pipeline sectors as well as partners in law enforcement and the Intelligence Community. TSA collaborates with external federal entities such as the ODNI, FBI, and the Department of State’s Bureau of Consular Affairs. Relationships with these external government partners are important not only for maintaining TSDB derivative

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databases such as the No Fly and Selectee Lists, but also for establishing formal information sharing processes. TSA is predominantly a consumer of TSDB information; however, its Office of Intelligence provides additional independent analysis of transportation threat information.

TSA's Office of Intelligence identifies and shares information that strengthens security procedures and stops attacks before they reach the execution phase. Although this office focuses exclusively on transportation threats, its efforts are also coordinated with the broader Intelligence Community. Analysts and subject matter experts within the TSA Office of Intelligence analyze classified information gathered from Intelligence Community members around the world. This information is provided to DHS senior leadership to help anticipate potential threats and create specific courses of action to counter these threats.



**USCG Has Not Made Nominations to TIDE or the TSDB, but Coordination Efforts with the NTC-P Have Increased**

The USCG is a multiple-mission DHS component responsible for safeguarding U.S. maritime interests in the heartland, in the ports, at sea, and around the world. As the primary maritime law enforcement entity in the United States, the USCG is tasked with enforcing immigration laws at sea. Its personnel conduct patrols and coordinate with other federal departments and agencies and

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foreign governments to interdict undocumented migrants and deny entry via maritime routes.

The USCG conducts missions in coordination with other DHS components responsible for immigration enforcement, such as CBP and ICE, as well as with external law enforcement entities such as the FBI. Although authorized to conduct law enforcement operations, USCG intelligence elements are also members of the broader Intelligence Community.<sup>28</sup> As such, they are granted substantial collection authority under the law.<sup>29</sup> In addition, these elements may serve both the specific information and intelligence needs of the DHS Secretary and of the larger, integrated Intelligence Community.<sup>30</sup>



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<sup>28</sup> E.O. 12333 § 3.5 (h)(15).

<sup>29</sup> E.O. 12333 § 1.7 (h).

<sup>30</sup> E.O. 12333 § 1.7.

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After the end of our fieldwork, DHS officials indicated that USCG personnel responsible for prescreening functions have collocated with the NTC-P. This action was completed on March 15, 2011.

**ICE Coordinates Nominations Through the Department of State and Contributes Information Domestically to the FBI's JTTF Process**

ICE is the principal investigative arm of DHS for criminal and civil enforcement of federal laws governing border control, customs, trade, and immigration. ICE is the second largest investigative organization in the federal government. As such, ICE maintains immigration records, biographical information, and travel records on individuals as well as their known family members and associates. These records are of value to external government partners because they enable increased analysis of travel related to known or suspected terrorists. As a result, substantial inter-agency involvement already exists to facilitate information sharing.

ICE Homeland Security Investigations Directorate (HSI) investigates a wide range of domestic and international activities arising from the illegal movement of people and goods into, within, and out of the United States. Three principal entities within ICE HSI contribute to nominations and maintenance of data contained in external government databases: ICE HSI-Investigative Programs, ICE HSI-Intelligence, and ICE International Affairs.

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ICE HSI national security investigations are often conducted with the FBI and involve immigration crime, human rights violations, smuggling of contraband, financial crimes, cybercrime, and export enforcement issues. In addition, ICE special agents conduct investigations to protect critical infrastructure industries that are vulnerable to sabotage, attack, or exploitation. As a result, when ICE personnel become aware of information related to a known or suspected terrorist, they immediately direct this information to the FBI through the JTTF process, as the FBI is the lead for all domestic national security investigations related to terrorism.

In addition to ICE criminal investigations, ICE HSI oversees its intelligence and international affairs functions. ICE HSI-Intelligence collects, analyzes, and shares strategic and tactical data for use by DHS and ICE leadership and operational units. It also supports federal, state, local, tribal, and international law enforcement partners. ICE International Affairs coordinates investigations involving transnational criminal organizations and serves as ICE's liaison to counterparts in foreign law enforcement. In addition, ICE International Affairs represents ICE with international organizations, conducts international training, and oversees the Visa Security Program. As a result, ICE International Affairs coordinates nominations submitted by secure cable from Visa Viper committees located at foreign posts.

ICE HSI-Intelligence provides support for domestic nominations and encounters through the HIR process. HIRs contain raw intelligence—encounters or other information of homeland security interest that has not been corroborated by other sources—rather than finished analytical products. HIRs are intended to inform DHS components and external Intelligence Community members of potential intelligence issues and are viewable by state and local officials with access to classified networks.

### **USCIS Supports Information Requests from Law Enforcement and Intelligence Community Elements**

Within DHS, USCIS oversees lawful immigration to the United States and is predominantly a consumer of information from

external watchlist databases rather than a direct nominator. USCIS provides useful information to federal partners such as the ODNI, FBI, and the Department of State's Bureau of Consular Affairs. It also grants immigration and citizenship benefits, promotes awareness and understanding of citizenship, and ensures the integrity of the immigration system. Within USCIS, the Fraud Detection and National Security Directorate (FDNS) determines whether individuals or organizations filing for immigration benefits pose a threat to national security, public safety, or the integrity of the Nation's legal immigration system.

FDNS is USCIS' primary conduit to the law enforcement and intelligence communities. USCIS adjudication officers collaborate with FDNS officers, who in turn work with ICE, the JTTFs, state and major urban area fusion centers, and other federal, state, and local offices to resolve cases.<sup>31</sup> FDNS officers are present in every domestic USCIS center, district, field, and asylum office. They resolve background check information and other concerns that surface during the processing of immigration benefit applications and petitions. Resolution of these issues often requires communication and liaison with both law enforcement and intelligence entities.

The National Security Branch of FDNS develops and oversees national security policies and procedures and resolves national security concerns with relevant external government partners. By comparison, the Intelligence Branch of FDNS manages the analysis, reporting, production, and dissemination of immigration based intelligence products. Intelligence Research Specialists within the branch conduct research and analysis to identify previously unknown links, associations, emerging trends, correlations, anomalies, indications, and warnings with national security and public security threat implications.

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<sup>31</sup> A fusion center is generally defined as "a collaborative effort of two or more agencies that provide resources, expertise, and information to the center with the goal of maximizing their ability to detect, prevent, investigate, and respond to criminal and terrorism activity." See Department of Justice, *Fusion Center Guidelines – Developing and Sharing Information and Intelligence in a New Era*.

HIRs are USCIS' primary means for supporting nominations to external government databases, which include TIDE and the TSDB. These HIRs are first vetted and approved by I&A prior to issuance. It is noteworthy that the vast majority of encounters are paper-based and not physical encounters. USCIS often encounters watchlisted individuals as a result of background checks conducted in support of adjudicating applications and petitions. When USCIS encounters a watchlisted individual in the United States, the encounter information will be passed to the FBI for the appropriate USCIS coordination and dissemination.

USCIS officials assist DHS components and other external partners in supplementing and enhancing their products.



### **US-VISIT Supports Nominations and Encounters Through Biometric and Biographic Information**

The US-VISIT program supports DHS' mission by providing biometric identification services to federal, state, and local government officials. This information assists these entities in accurately identifying people they encounter and determining whether these individuals pose a risk to the United States. US-VISIT's most visible contribution to the watchlist nomination process is through the collection of digital fingerprints and photographs from international travelers at U.S. visa-issuing posts and ports of entry. The Automated Biometric Identification System, also known as IDENT, is used to store this information as well as information on known or suspected terrorists, criminals, immigration violators, and others.

Collecting such information helps consular and immigration and customs officers determine whether a person is eligible to receive a visa or gain admission to the United States. This information is also helpful in creating a viable means of identification for known or suspected terrorists contained in external government databases.

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Biometrics contained in IDENT have been synchronized with NCTC and FBI databases.

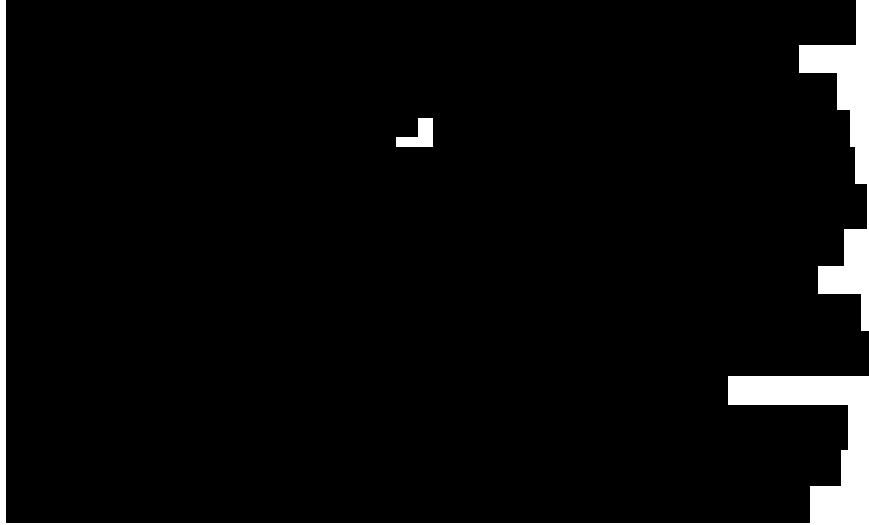
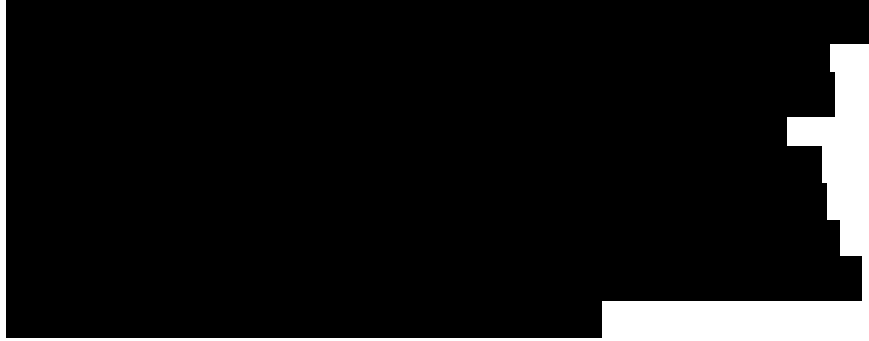
Although US-VISIT is not a nominator, it will report encounters to the TSC based on foreign government biometric matches in IDENT to known or suspected terrorists. [REDACTED]

[REDACTED] Although US-VISIT initially notifies the TSC of such information, US-VISIT has no continued involvement in this process.

### **I&A Is Involved in the Watchlisting Process Primarily Through Its Watchlisting Cell**

As a member of the Intelligence Community, I&A ensures that information related to homeland security threats is collected, analyzed, and disseminated to the full spectrum of homeland security customers within DHS, state, local, and tribal governments, the private sector, and the Intelligence Community. I&A's information sharing responsibilities include unifying watchlisting efforts and ensuring that DHS is developing and implementing effective information sharing policies and collaborative programs required for mission success.

I&A's role in the watchlist nominations process is through its WLC. WLC personnel view the creation of the cell as a "mandate" dictated by the July 2010 *Watchlisting Guidance*. Specifically, I&A officials cite language in Section XVII of the guidance. The WLC is to serve as the departmental entity responsible for submitting all DHS-generated nominations of known or suspected terrorists to the NCTC. The WLC was established to ensure that DHS nominations are comprehensive and include the maximum amount of identifying and derogatory information. WLC nominations are generated through either component submissions or the cell's review of HIRs, encounter packages, National Targeting Center daily reports, Intelligence Community coordination, and WLC-identified information.



## **Processes for Nominating Individuals for Inclusion on the Government Watchlist Need More Standardization**

As the WLC assumes responsibility for centralizing DHS' watchlisting nomination and maintenance efforts, it is necessary to develop departmental guidance that provides components with clear roles and responsibilities for the watchlisting process and to standardize key watchlisting definitions to ensure data integrity. The WLC needs to

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<sup>32</sup> The Electronic System for Travel Authorization is a free, internet-based system used to screen Visa Waiver Program applicants prior to traveling to the United States. These travelers must apply for and receive an approved travel authorization via the system to board a plane or vessel bound for the United States. As of March 2011, the Visa Waiver Program enables nationals of 36 participating countries to travel to the United States for tourism or business for stays of 90 days or less without obtaining a visa.

provide continued advanced analysis of all DHS HIRs. In addition, departmental efforts should not contradict current component interactions with established collaborative entities, such as JTTFs and Visa Viper committees. Although DHS detailees and liaisons to external government partners add value to the watchlisting process, attention must be given to how these positions are filled and experience is leveraged once individuals return to DHS. To enhance the department's overall watchlisting process, a DHS-centric working group should be established. Lastly, I&A will need to address concerns related to WLC staffing levels and the appearance of contractors performing inherently governmental functions.

### **CBP and ICE Have Established Watchlisting Procedures and Roles**

As of March 2011, of the seven DHS components we reviewed, only CBP and ICE have established watchlisting procedures and roles.

CBP's nominations and encounters directive was issued in September 2006, and it specifies how CBP officers should submit nominations and how to provide updated watchlist information through the NTC-P. The directive emphasizes that CBP personnel are to use the NTC-P for operational coordination with the TSC, NCTC, and National JTTF. In December 2009, CBP supplemented this directive with additional guidance that reemphasized the reasons for an individual to be nominated to the TSDB and the forwarding instructions for field operations personnel to submit a nomination request.

Additionally, CBP has provided its field operations personnel with a standardized NCTC Terrorist Watchlist Submission form, designed to be completed and submitted electronically. The form also includes detailed instructions for completing the submission. Although CBP's nominations and encounters directive predates the July 2010 *Watchlisting Guidance*, its overall processes were affected minimally.

In April 2008, ICE issued its directive for responding to TIDE encounters or subjects of national security interest at ports of entry



or pre-clearance facilities. 



In addition to the April 2008 directive on TIDE encounters, a memorandum to all Special Agents-in-Charge requires ICE JTTF agents to log the amount of time spent working on national security investigations with the JTTF. As a result, ICE is able to identify cases and track work hours dedicated to JTTF national security investigations better.

**Some DHS Components Rely on the Watchlisting Community for Guidance**

Although CBP and ICE have established watchlisting procedures, five other DHS components have not. At the component level, many officials said that because the components rarely submit nomination requests, formal watchlisting procedures have not been established. When necessary, some components rely on partnerships to guide watchlisting efforts, working with entities that have greater watchlisting experience, such as CBP. As the NTC-P has evolved into a multiple DHS component and external agency operation, many DHS components work through the center to resolve watchlisting issues.

The US-VISIT program is not a frequent nominator, but information sharing agreements are established with the FBI, TSC, and a number of foreign governments. TSA has a memorandum of understanding with the TSC for implementing the Secure Flight program. Through Secure Flight, TSA uses the TSDB's No Fly and Selectee Lists to identify individuals who are prohibited from boarding an aircraft or who are to receive additional physical screening prior to boarding an aircraft. Although USCIS and the USCG do not have formal watchlisting procedures, both share

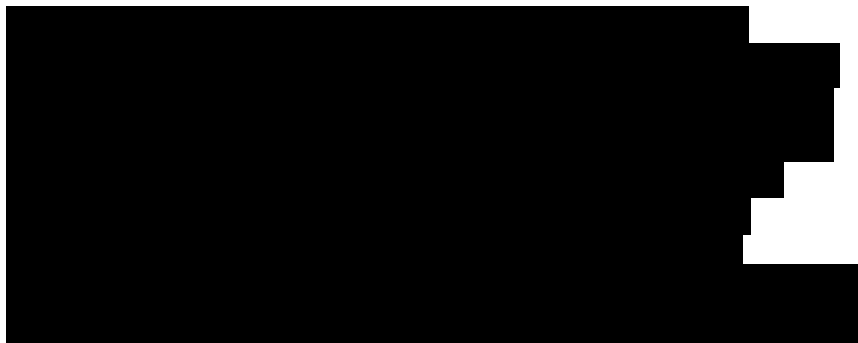
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watchlisting information with external government partners through standardized reporting products such as HIRs and Spot Reports, respectively.

DHS components use the revised July 2010 *Watchlisting Guidance*; however, there are inconsistencies among some components in interpreting and implementing the guidance. Although multiple DHS components were involved in revising the *Watchlisting Guidance*, the document is intended to apply to the entire watchlisting community and is not a DHS-specific directive. Appendix D provides a flow chart that depicts the nomination process as specified in the *Watchlisting Guidance*, prior to the WLC.

**With the Watchlisting Cell, DHS Intends to Standardize and Enhance Its Watchlisting Processes**

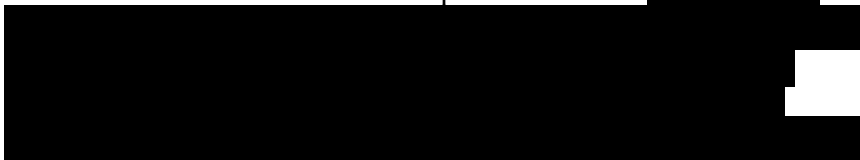
I&A officials view the WLC as a means of bringing consistency to DHS' role in nominating individuals for inclusion on government databases. Once the cell has further refined its operational capabilities, it will assume responsibility for reviewing and augmenting routine DHS watchlist nominations of known or suspected terrorists, while also allowing components to send expedited nominations directly to the NCTC in exigent circumstances. Appendix E identifies the nomination process with the WLC. As noted, the WLC will add a new layer of review in accordance with procedures outlined in the *Watchlisting Guidance*.



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### Clearer Nomination and Encounter Definitions Are Needed

Based on statements made by DHS officials and external federal partners involved in the watchlisting process, there are inconsistencies within DHS regarding how components define the terms nomination and encounter. The *Watchlisting Guidance* provides a definition for an encounter, but does not define a nomination. Even though there is a definition for the term encounter, DHS components interpret this term differently which could result in data integrity issues between components and federal partners. For example, US-VISIT officials define an encounter as an interaction with anyone coming across the U.S. border, not just an interaction with a known or suspected terrorist.



The watchlisting process requires significant interaction between DHS and external federal partners; therefore information sharing must be efficient to be effective. Multiple definitions hinder DHS' ability to communicate effectively and impede the department's full integration into the watchlisting process. Therefore, all participants must use the same terminology for pertinent definitions.

As the WLC develops specific SOPs for DHS' watchlisting process, it must include clear definitions for nominations and encounters, and use terms consistent with and supportive of the terminology used by the NCTC and the TSC. DHS components must then use these terms to provide accurate metrics of its watchlisting efforts.

### **Recommendation**

We recommend that the Under Secretary for Intelligence and Analysis, Office of Intelligence and Analysis:

**Recommendation #1:** Develop and disseminate to Department of Homeland Security components standardized definitions for all watchlisting terminology.

## Management Comments and OIG Analysis

We evaluated DHS' written comments and have made changes to the report where we deemed appropriate. A summary of the department's written response to the report recommendations and our analysis of the response follows each recommendation. A copy of DHS' response, in its entirety, is included as appendix C.

In addition, we received technical comments from departmental components I&A, CBP, USCIS, ICE, Office of General Counsel, and US-VISIT, as well as the FBI, NCTC, and the Department of State, and incorporated these comments into the report where appropriate. DHS components concurred with all ten recommendations contained in the report. We appreciate the comments and contributions made by each entity.

**Management Response:** I&A officials concurred with Recommendation 1. In its response, I&A said the WLC has completed its internal review process for the SOPs for DHS watchlisting, which includes definitions for watchlisting terminology. The WLC intends to provide the SOPs to DHS components for their review by late summer 2011, but it is unlikely that this will be completed within 90 days due to potential delays in the external process. I&A asserted that once this document is approved, it will reflect the DHS Enterprise approach to watchlisting and will be widely disseminated.

In addition, WLC members have completed "train the trainer" instruction on the Terrorist Watchlisting Overview Course, developed by the NCTC, and will be educating DHS components on the watchlisting process and the role of the WLC. Through this training, they intend to standardize expectations for the WLC and solidify the watchlisting vocabulary throughout DHS.

**OIG Analysis:** We consider I&A’s proposed actions responsive to the intent of this recommendation, which is resolved and open. The recommendation will remain open pending our receipt of finalized DHS watchlisting SOPs that establish clear definitions of watchlisting terminology, and the finalized training material and schedule for the watchlisting overview course.

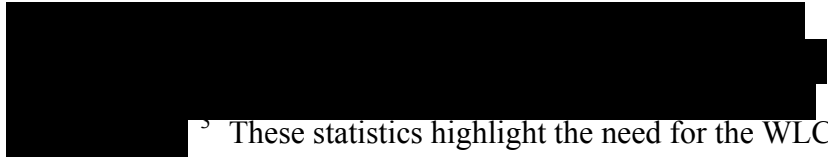
**DHS’ HIR Process Should Be Reviewed and Refined to Meet External Partner Needs**

ICE and USCIS rely on HIRs to share information for watchlisting purposes. USCIS sends HIRs to I&A for publishing and dissemination; however, USCIS officials did not know how long it takes I&A to publish an HIR or how HIRs are integrated into the databases, as no official feedback loop currently exists. ICE also sends HIRs to I&A for publication and dissemination to applicable departments and agencies, including the NCTC; however, ICE HIRs are not viewed prior to publication because ICE manages and staffs its own HIR program. HIRs can be accessed by Intelligence Community members and relevant information can be used to update or augment records in TIDE or the TSDB.

Although USCIS and ICE processes vary slightly, it is unclear how HIR information is used by external partners. As of March 2011, HIRs were not data sets in TIDE or TSDB records, and HIRs were not considered formal nominations or encounter packages. After our fieldwork ended, ICE officials indicated that ICE HIRs are now linked to records in TIDE, which enables HIR use in data sets.

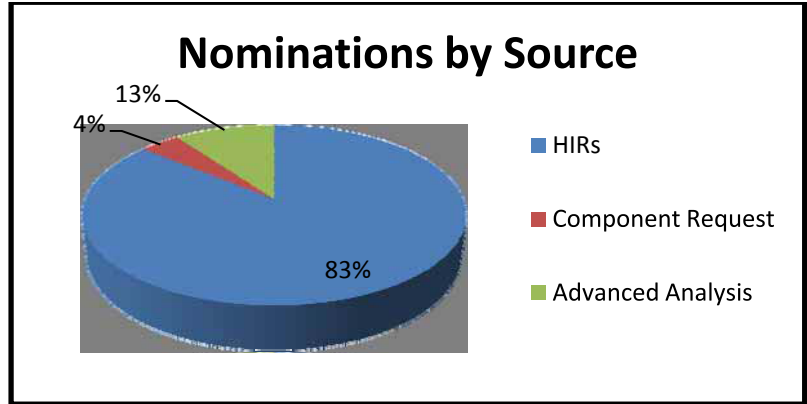
According to I&A officials, DHS is the only department that does not have a standard format for intelligence reports to be included in watchlisting records. External government officials said that due to staffing issues, HIRs from DHS components are not being analyzed on a regular basis. As the WLC further refines its operational capabilities, NCTC officials encourage the cell to assist with advanced analysis, culling important information from HIRs.

The WLC began reviewing published HIRs in January 2011 to determine whether any information should be forwarded as a nomination, or whether information could be used to augment current watchlisting records. The cell receives a weekly distribution list of published DHS HIRs, and is beginning to review the USCG Spot Reports as well. Due to the increasing workload, the WLC will review HIRs, Spot Reports, and encounter packages as time permits, and was experiencing a backlog as of March 2011.



<sup>33</sup> These statistics highlight the need for the WLC to continue analyzing DHS HIRs. Accordingly, the cell should establish processes and procedures to ensure that relevant HIR information is assimilated into TIDE and the TSDB.

**Figure 3: DHS Nominations in January 2011**



Source: WLC Kick-Off Conference Statistics

<sup>33</sup> The WLC defined a nomination as an addition, modification to, or deletion of a record in TIDE.

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## Recommendation

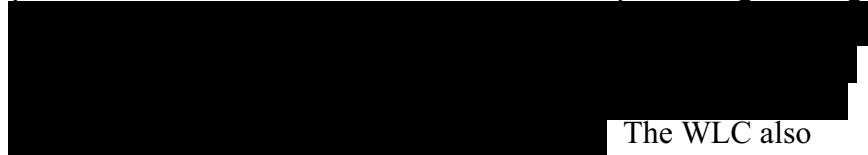
We recommend that the Under Secretary for Intelligence and Analysis, Office of Intelligence and Analysis:

**Recommendation #2:** Establish processes and procedures to ensure that relevant information from Homeland Intelligence Reports is integrated into external government databases in a timely manner.

## Management Comments and OIG Analysis

**Management Response:** I&A officials concurred with Recommendation 2. In its response, I&A said the WLC has established internal procedures for processing HIRs and continues to balance available resources to ensure that the most relevant information is processed in a timely manner. Currently, all HIRs are reviewed and culled for information that can be integrated into the government watchlist and databases. The WLC has determined that important information in many HIRs can be obtained more quickly through other means, such as CBP Daily Reports, component nominations, and encounter data. Other HIRs, however, contain unique information and the WLC has prioritized these for processing. The WLC evaluates work priorities continually via weekly team meetings and through communication with DHS components and Intelligence Community partners.

The WLC updated recent nomination metrics to reflect its re-prioritization of effort as well as a reduction in processing backlog.

 The WLC also publishes its production on a monthly basis to ensure that key stakeholders are aware of its operations.

**OIG Analysis:** We consider I&A's proposed actions responsive to the intent of this recommendation, which is resolved and open. The recommendation will remain open pending our receipt of the

finalized internal procedures for processing HIRs and documentation evidencing the content and frequency of WLC monthly production reports.

**DHS Components Assist Inter-Agency Watchlisting Efforts Through Participation on JTTFs and Visa Viper Committees**

Although some DHS components are not directly involved in the watchlist nomination process, they coordinate with and support other departments and agencies that are. By sharing information with external government partners, DHS components can improve internal products and conduct link analysis for specific individuals and known associates. ICE and USCIS officials said their most significant contribution to the watchlisting process is through their work with the JTTFs and Visa Viper committees.

Domestically, all DHS components we reviewed interact directly with the JTTFs through detailees and liaisons. Internationally, DHS personnel at foreign posts participate in the watchlisting process through Visa Viper committees. ICE is an important member of both of these external structures. [REDACTED]

These coordination efforts allow DHS components to share intelligence information directly with external government partners without the need for review by the department. [REDACTED]

[REDACTED] Therefore, these nominations are not considered DHS nominations.

DHS component officials expressed initial concerns as to how the WLC may alter these processes. Specifically, the reporting procedures for the JTTFs and Visa Viper committees are



established in law and policy and do not fall under the purview of the WLC. In addition, some watchlist nominations are derived entirely from law enforcement activities and are submitted directly through the JTTFs. Although I&A is the lead DHS component for collecting and disseminating intelligence, it does not have the authority to insert itself into JTTF and Visa Viper processes. As the WLC finalizes its SOPs and becomes fully operational, it is important that the cell considers the role of DHS components in these established collaborative partnerships.

## **Recommendation**

We recommend that the Under Secretary for Intelligence and Analysis, Office of Intelligence and Analysis:

**Recommendation #3:** Ensure that the standard operating procedures of the Watchlisting Cell do not contradict existing external watchlisting processes of the Joint Terrorism Task Forces and Visa Viper committees.

## **Management Comments and OIG Analysis**

**Management Comments:** I&A officials concurred with Recommendation 3. In its response, I&A said that WLC members conducted extensive outreach with DHS components and Intelligence Community partners during the development of the DHS watchlisting SOPs. I&A asserts that these procedures do not contradict existing processes of the FBI or Department of State.

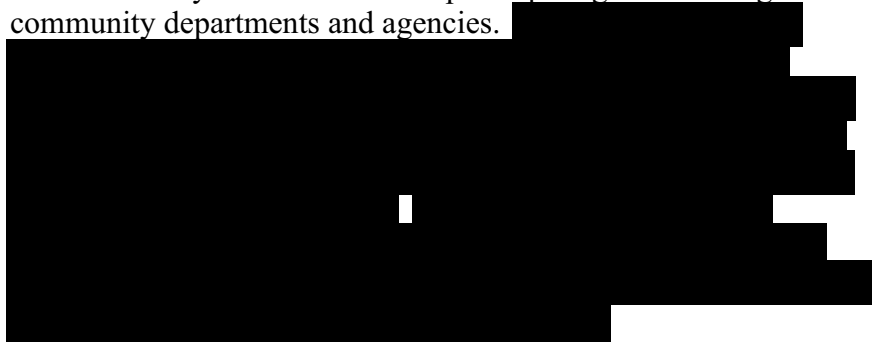
**OIG Analysis:** We consider I&A's proposed actions responsive to the intent of this recommendation, which is resolved and open. The recommendation will remain open pending our receipt of finalized DHS watchlisting SOPs that establish clear processes for coordination with external partners.

**DHS Detailees and Liaisons Add Value to Information Sharing with External Partners**

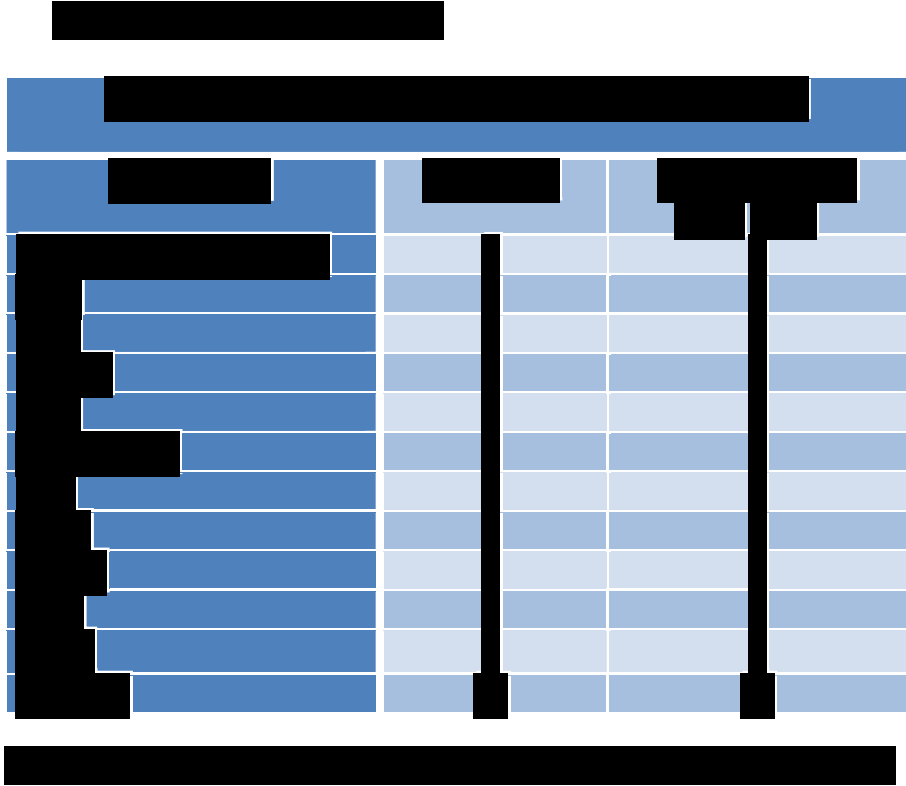
To add value to the watchlisting process, government departments and agencies must share information. The use of detailees and liaisons helps improve communication and enhance coordination. Therefore, external government partners support DHS' practice of providing component detailees and liaisons to their respective organizations. NCTC and TSC officials said that DHS detailees and liaisons are subject matter experts and contribute unique skills.

DHS is well represented at overseas posts with personnel from CBP, TSA, and ICE. ICE liaison officers and Visa Security Unit officers at U.S. Embassies and Consulates around the world provide added watchlisting expertise to the Visa Viper committees. NCTC currently has representatives from several DHS components, but center officials indicate that more detailees from the watchlisting community would improve collaboration between the ODNI and other departments and agencies.

Created as a multiple-agency organization, the TSC was designed to be staffed by detailees from all participating watchlisting community departments and agencies.



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Many DHS personnel detailed to the TSC said that the shortage of DHS staff within the TSC is detrimental to the department. The following factors contribute to DHS' reduced staffing numbers:

- Not enough available staff within the components/department;
- Shortage of Top Secret/Sensitive Compartmented Information clearances; and
- Insufficient emphasis placed on the importance of TSC details.

DHS detailees also note that their preparation for the working conditions in an operations center is insufficient, and TSC-acquired skills are not leveraged sufficiently when they return to



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the department. The concern of “being forgotten” while at the TSC adds to the reluctance of some who might otherwise volunteer for a detail. Current DHS staffing shortages are especially pronounced for attorneys and personnel with customs and immigration experience.



The benefits of detailing DHS personnel to the TSC include being integrated into the center’s management structure, which allows for greater interaction between the department and FBI unit chiefs. DHS components can coordinate and leverage additional department resources to address questions or concerns, and detailees return to DHS with enhanced skills and a better understanding of the watchlisting process. In addition, DHS has equities in policy development, and details with other government departments and agencies allow DHS employees to cross-train in different specialty areas, gain valuable experience, provide subject matter expertise on DHS-related issues in an operational environment, and improve overall coordination with external partners.

## **Recommendation**

We recommend that the Under Secretary for Intelligence and Analysis, Office of Intelligence and Analysis, in coordination with the CBP, TSA, ICE, USCIS, US-VISIT, and the USCG:

**Recommendation #4:** Develop and document a process which leverages and takes full advantage of the knowledge and experience of Department of Homeland Security detailees returning from an assignment at the Terrorist Screening Center or National Counterterrorism Center and their enhanced understanding and knowledge of watchlisting operations.

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## Management Comments and OIG Analysis

**Management Comments:** I&A officials concurred with Recommendation 4. In its response, I&A welcomed the participation of DHS components within the WLC. To capitalize on the experience of DHS officers, I&A has proposed establishing permanent DHS component intelligence and operations officer detailee rotations within the WLC. Establishing permanent detailee rotations within the WLC will require an update to departmental policy, which will not likely be concluded in the next 90 days.

**OIG Analysis:** We consider I&A's proposed actions not responsive to the intent of this recommendation, which is unresolved and open. Although we encourage establishing a rotational program within the WLC, this action does not address the current recommendation as written. After we issued the draft report and had subsequent discussions with I&A, we modified Recommendation 4 to read, "Develop and document a process which leverages and takes full advantage of the knowledge and experience of DHS detailees returning from an assignment at the TSC or NCTC and their enhanced understanding and knowledge of watchlisting operations."

To be responsive to the intent of this recommendation, I&A should provide documentation that evidences the development of a process which takes full advantage of the unique knowledge and experience of DHS personnel returning to their component from details to the TSC or NCTC. This process should also be clearly communicated to respective DHS components.

### **To Enhance the Overall Watchlisting Process, the Department Needs a DHS-Centric Working Group**

In addition to participating in multiple-agency organizations such as the TSC, DHS components are involved in many intergovernmental working groups related to watchlisting. The July 2010 revision of the *Watchlisting Guidance* created the need for departments and

agencies to meet and work together. Emphasis on inter-agency coordination and communication continues through the Information Sharing and Access Interagency Policy Committee working groups on nominations, database enhancement, screening, and encounters. There are also various policy boards and committees focused on information sharing led by external government partners (see table 2).

**Table 2: DHS Component Involvement in Working Groups**

| <i>Examples of Some External Working Groups</i>  |
|--|
| <ul style="list-style-type: none"><li>• <b>TSC Policy Board</b></li><li>• <b>HSPD-6 Inter-agency Working Group</b></li><li>• <b>NCTC Bi-weekly Working Group at ODNI</b></li><li>• <b>Department of State Bi-weekly Teleconference</b></li><li>• <b>TSC Monthly Watch Commander Meeting</b></li><li>• <b>Senior Guidance Team with CBP, USCG, and ICE</b></li><li>• <b>Maritime Intelligence Targeting Working Group</b></li><li>• <b>Information Sharing and Access Interagency Policy Committee Working Groups</b></li></ul> |

*Source: OIG Analysis*

These working groups are all beneficial for inter-agency cooperation, but there is a need for intra-departmental communication and coordination within DHS. Although individual components may meet, there is currently no DHS working group focused solely on the watchlisting process.

The WLC began such conversations as it reached out to individual DHS components during the cell’s development stage, but department officials were not brought together until a WLC kick-off meeting in March 2011. As the WLC becomes more established, open and active communication should continue between DHS components involved in the watchlisting process. As the WLC is in a unique position to identify DHS components instrumental in the watchlisting process, it should involve offices with non-traditional support roles such as US-VISIT. Bringing together all relevant components will allow DHS to bridge gaps in

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current processes and integrate components fully in department-wide watchlisting efforts.

## **Recommendation**

We recommend that the Under Secretary for Intelligence and Analysis, Office of Intelligence and Analysis, in coordination with the CBP, TSA, ICE, USCIS, US-VISIT, and the USCG:

**Recommendation #5:** Establish a Department of Homeland Security working group focused solely on the watchlisting process to coordinate the roles and responsibilities of all components involved.

## **Management Comments and OIG Analysis**

**Management Comments:** I&A officials concurred with Recommendation 5. In its response, I&A stated that the WLC is properly situated to lead a DHS working group focused on the watchlisting process as its members currently participate in a bi-weekly Intelligence Community Watchlisting Working Group and in several working groups addressing more strategic issues. The WLC intends to initiate such efforts through a forum for the coordination of the SOPs. The WLC will then coordinate the development of the working group and its schedule with the participants.

**OIG Analysis:** We consider I&A's proposed actions responsive to the intent of this recommendation, which is resolved and open. The recommendation will remain open pending our receipt of meeting minutes from the forum for coordinating the SOPs and a charter establishing the DHS-centric watchlisting working group. This charter should set forth the mission, objectives, membership, and schedule of the working group. All DHS components with a role in the watchlisting process should be represented within the forum and the proposed watchlisting working group.

**Issues Raised Concerning Watchlisting Cell Staff Levels and the Appearance of Contractors Performing Inherently Governmental Functions**

[REDACTED]

For the cell to be successful, it must support DHS component needs, rather than having components support its operations. To do so, adequate staffing is necessary to provide effective communication, coordination, and outreach to DHS components, and the WLC's services need to be tailored to DHS components' unique missions and responsibilities. Given the current model, it is unclear whether the WLC has the requisite staffing levels to serve as DHS' central entity responsible for all department watchlist nominations.

In addition, there is an appearance that WLC contract personnel are performing inherently governmental functions. On June 1, 2010, the comment period for a proposed policy memorandum related to inherently governmental functions closed with little consensus as to a uniform definition of the term. As of March 2011, a final policy memorandum had yet to be issued, and as such, existing legal authorities provide the proper framework for this discussion. There are two main definitions of inherently governmental within federal law and policy. A statutory definition has been enacted as part of the *Federal Activities Inventory Reform Act of 1998*.<sup>35</sup> This definition states that an inherently governmental function is so intimately related to the public interest as to require performance by federal government employees.

The other definition is policy oriented and contained in Office of Management and Budget (OMB) Circular A-76, dated May 29, 2003. This definition states that an inherently governmental activity is one that is so intimately related to the public interest as to mandate performance by government personnel. OMB Circular A-76 outlines categories of activities that can be considered inherently governmental. Most notably, it

<sup>35</sup> See generally Public Law 105-270, as amended; and 31 U.S.C. § 501 note.



declares that inherently governmental activities involve the following:

- Binding the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise;
- Determining, protecting, and advancing economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise;
- Significantly affecting the life, liberty, or property of private persons; or
- Exerting ultimate control over the acquisition, use, or disposition of United States property, including establishing policies or procedures for the collection, control, or disbursement of appropriated and other federal funds.<sup>36</sup>

DHS officials and external government partners said that the WLC's operations are dependent on contract personnel. The cell is staffed with contractors tasked with determining whether component nominations are suitable for dissemination to external databases such as TIDE and the TSDB. As a result, there is an appearance that contractors are acting as the final arbiters of specific nominations.

To determine whether DHS' WLC contractor activities constitute inherently governmental activities, it is necessary to examine DHS Management Directive 0476 and OMB Policy Letter 92-1, dated September 23, 1992. Management Directive 0476 applies to DHS' performance of commercial activities, and its requirements generally follow those of the *Federal Activities Inventory Reform Act of 1998*, the revised OMB Circular A-76, and applicable Federal Acquisition Regulations. As Management Directive 0476 notes, the determination that work is mission essential is not a part of the definition of inherently governmental activities under either the statutory definition, or the definition contained in OMB Circular A-76.

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<sup>36</sup> OMB Circular A-76, Attachment A, (2003).

OMB Policy Letter 92-1 provides additional policy guidance related to service contracting and inherently governmental functions. This guidance is also reflected in Federal Acquisition Regulation section 7.503 and is provided to assist executive branch officers and employees in avoiding unacceptable transfer of official responsibility to government contractors. Although Policy Letter 92-1 Appendix A is not intended to define the factors used in making a legal determination regarding inherently governmental activities, it provides an illustrative list of activities that are inherently governmental as a matter of policy. These functions include the following:

- Direct conduct of criminal investigations;
- Determination of agency policy, such as determining the content and application of regulations;
- Determination of federal program priorities and budget requests;
- Direction and control of federal employees; and
- Direction and control of intelligence and counterintelligence operations.

During our fieldwork, WLC contractors gave the appearance of performing inherently governmental functions. They were exerting direction and control of intelligence operations and were also determining department policy, namely the inclusion of individuals in external government databases such as TIDE and the TSDB. Although some DHS officials may have viewed this staffing model as a necessary means for establishing the WLC, it is essential that the cell reduce its overall reliance on contract personnel.

## Recommendation

We recommend that the Under Secretary for Intelligence and Analysis, Office of Intelligence and Analysis:

**Recommendation #6:** Reduce overall Watchlisting Cell reliance on contract personnel to avoid the appearance that contractors are performing inherently governmental functions, and enhance efforts to replace existing contractors with full-time federal employees.

## Management Comments and OIG Analysis

**Management Response:** DHS officials concurred with Recommendation 6. In its response, I&A acknowledged that the current operational situation of the WLC could give rise to the potential appearance that contract officers are performing inherently governmental functions. Program officials asserted, however, that contract officers assigned to the WLC do not exert control of intelligence operations or determine department policy. They stated that the WLC government lead determines whether component nominations meet minimum biographic and derogatory requirements for watchlisting and also makes the final determination regarding whether to reject a DHS component nomination.

I&A noted that the report did not examine the *Omnibus Appropriations Act of 2009* and its more recent definition of the term “inherently governmental functions” in its analysis of WLC contractors. I&A further emphasized that DHS benefits from the use of contract officers with specialized experience in the area of watchlisting. Nonetheless, I&A intends to convert some contractor positions in FY 2012 to achieve a better balance between government and contractor staffing in the WLC. This initiative will be dependent on approval of the FY 2012 budget request.

**OIG Analysis:** We consider I&A’s proposed actions responsive to the intent of this recommendation, which is resolved and open. The *Omnibus Appropriations Act of 2009* does not contain a modified or more recent definition of the term inherently governmental functions. Rather, it codifies an already existing definition found in Federal Acquisition Regulation subpart 7.5. This definition was discussed during the course of our analysis.

The *Omnibus Appropriations Act of 2009* also creates a new category of “functions closely associated with inherently governmental functions.” Although our report asserted that contractors in the WLC appear to be performing inherently governmental functions, it should be noted this new requirement provides even less latitude in regard to what types of functions

may be performed by contractors. Specifically, it requires that “special consideration” be given to using federal employees to perform such functions.

Although the description of WLC personnel duties in the DHS response is helpful to our analysis, these duties have yet to be included in finalized SOPs. The recommendation will remain open pending our receipt of documentation demonstrating that the roles of WLC personnel have been formally adopted in finalized SOPs and that I&A has taken steps to convert existing contractors to government employees.

### **Although the Watchlisting Cell Adds Value, Timeliness and Quality Challenges Remain**

The WLC has demonstrated value and is beginning to streamline the watchlisting process in collaboration with DHS components. I&A and the WLC have direct access to intelligence information, but analytical support exists throughout DHS and should be leveraged effectively. DHS’ most significant contribution to the watchlisting process is the collection and analysis of encounter packages. This information is critical to enhancing existing watchlist database records, but quality and legibility issues exist with how this information is collected. To achieve effective coordination with external partners, DHS components use formal and informal information sharing processes. As the central point for DHS efforts, I&A should ensure that WLC resources are sufficient to provide relevant, accurate, and timely information to internal and external watchlisting partners.

#### **The Watchlisting Cell Is Reviewing and Enhancing Nomination Packages, but Timeliness Concerns Exist**

Even though DHS is not a primary federal government nominating entity, it is the foremost partner in providing encounter information that contributes to the accuracy and reliability of external government databases. Prior to the WLC, DHS’ nomination process was decentralized and component specific. CBP and TSA, two major contributors, adopted their own nomination submission

methods.

[REDACTED]

The WLC is reviewing and enhancing nomination packages by analyzing all DHS holdings, including biometric and immigration information. The WLC will also lead DHS' effort to implement the NCTC computer-based standard nomination tool, which reduces NCTC personnel manual data entry into TIDE as information is uploaded onto the system instantly once received. Most important, the cell is beginning to provide analysis of previously published HIRs submitted by ICE and USCIS for possible inclusion in TIDE and the TSDB.

An additional benefit of the WLC is the notification process it provides to components. Until January 2011, DHS components did not receive formal notification from external departments and agencies when nominations were received or included in TIDE and the TSDB. Components had to search multiple databases to verify when nominations had been entered. The WLC notifies DHS components when it receives the nomination request and when the nomination has been added to an external database. In addition, the WLC is tracking transactions and maintaining a log of all watchlisting activities. As a result, the WLC intends to develop metrics that will further analyze trends and patterns in the DHS watchlisting process.

Until the WLC fully refines its operational capabilities, it is unclear whether the cell will have the anticipated benefits of providing more comprehensive nomination packages, consolidating tracking and metrics, and serving as the single point of contact for watchlisting issues. In the interim, the consolidated watchlisting process raises some concerns about the timeliness of nomination submissions.

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[REDACTED]

Although NCTC officials were generally pleased with the accuracy of DHS information, they welcomed a central point of contact within DHS and a more streamlined information sharing process. TSC officials did not comment on the accuracy and timeliness of DHS nominations because most information is processed through the NCTC, with the exception of domestic nominations sent directly to the FBI.

**Analytical Support Exists Throughout DHS and Should Be Leveraged by the Watchlisting Cell**

Even though I&A is a member of the Intelligence Community and has access to intelligence information, some DHS components have their own analytical capabilities, which augment their nomination processes. For example, the NTC-P is supported by CBP analysts from its Office of Intelligence and Operations Coordination, who have access to intelligence information, related cable traffic, TIDE, and relevant DHS databases. This office provides pertinent information to the NTC-P to support its daily operations. TSA, ICE, USCIS, and the USCG also have dedicated analysts who provide independent support to augment the watchlisting process. In addition to analytical support, multiple components have had long-standing relationships with the NCTC, the TSC, and the FBI. These relationships have allowed components to verify and coordinate nomination information informally prior to submission.

As the WLC assumes responsibilities for DHS watchlisting efforts, emphasis should be given to understanding the unique missions, abilities, and products of each component so that the cell can leverage existing subject matter expertise and relationships with external partners.

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## Recommendation

We recommend that the Under Secretary for Intelligence and Analysis, Office of Intelligence and Analysis:

**Recommendation #7:** Develop and document a process with Department of Homeland Security components that engages subject matter experts and limits duplication of effort among components and the Watchlisting Cell's analytical support staff.

## Management Comments and OIG Analysis

**Management Response:** I&A officials concurred with Recommendation 7. In its response, I&A said the WLC leverages component subject matter expertise through extensive communication and collaboration with component analytical support staff at CBP, ICE, USCG, TSA, and USCIS, in addition to external partners such as the FBI, National Security Agency, Central Intelligence Agency, and NCTC. Program officials further stated that during the period between the conclusion of this review's fieldwork and publication of the draft report, the WLC worked with DHS components and noted no duplication of effort.

**OIG Analysis:** We consider I&A's proposed actions responsive to the intent of this recommendation, which is resolved and open. The recommendation will remain open pending our receipt of documentation demonstrating that the roles of WLC personnel have been formally adopted in finalized SOPs and that these roles are not duplicating component analytical support.

### **Encounter Information Is Critical to Enhancing Existing Watchlist Records, but Quality Issues Exist**

Due to the volume of DHS encounters, the NTC-P has a well-established process for collecting, processing, and submitting information. The TSC is an integral part of this process and is the first entity contacted to verify names and identities in the TSDB.

[REDACTED]

[REDACTED]

NCTC officials stated that the usefulness of encounter data depends on its completeness, readability, and the analysis that is performed on this material. When a port of entry has access to the requisite software and appropriate equipment, it can scan information directly into the NTC-P case management system, referred to as the Intelligence and Operations Framework System.

[REDACTED]

[REDACTED]

Furthermore, CBP personnel would likely require additional training related to compiling encounter packages to demonstrate why quality and uniformity are necessary.

## Recommendations

We recommend that the Under Secretary for Intelligence and Analysis, Office of Intelligence and Analysis:

**Recommendation #8:** Coordinate and collaborate with external government watchlisting partners to develop a standard encounter



tool capable of automatically exporting and integrating information into external databases.

We recommend that Assistant Commissioner for the Office of Field Operations, Customs and Border Protection:

**Recommendation #9:** Ensure adherence to standard operating procedures at the ports of entry for processing encounter packages and improve the quality and timeliness of submissions to the National Counterterrorism Center and Terrorist Screening Center.

## **Management Comments and OIG Analysis**

**Management Response:** I&A officials concurred with Recommendation 8. The WLC noted that advanced analysis is necessary to exploit pocket litter and that integrating this source of data into TIDE and the TSDB cannot be fully automated. Nonetheless, I&A will work with other members of the DHS Enterprise to address solutions to this issue, although a final solution is constrained by coordination requirements and funding approval.

**OIG Analysis:** We consider I&A's proposed actions responsive to the intent of this recommendation, which is resolved and open. The recommendation will remain open pending our receipt of documentation demonstrating the development of a standard encounter tool capable of automatically exporting and integrating information into external U.S. government databases.

**Management Response:** CBP officials concurred with Recommendation 9. In its response, CBP said five GS-1801 National Security Specialist positions have been allocated to augment CBP's NTC-P staff who record and share encounter packages. In addition, summer intern assistance has decreased the backlog of packages to fewer than 100 as of June 22, 2011. Currently, requirements for the package are sent directly to the ports of entry, specifying what items should be included. A July 22, 2009, memorandum titled "Packet Requirements for All Positive TIDE Encounters" was distributed to the field, further

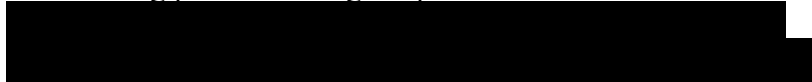
outlining expectations for encounter packets, including subject items, timeframe for forwarding, and possible repercussions for non-compliance.

**OIG Analysis:** We consider CBP's proposed actions responsive to the intent of this recommendation, which is resolved and open. Although CBP has used personnel to decrease the backlog of encounter packages, it is imperative that this duty be performed throughout the year. In addition, our report highlighted issues specifically related to encounter material readability. The recommendation will remain open pending receipt of information indicating that additional National Security Specialist positions are staffed and that corrective action has been taken to address readability concerns.

**DHS Components Collaborate and Contribute to External Government Partners Through Informal Information Sharing Processes**

Although the NTC-P provides the majority of encounter information to external watchlisting partners, other DHS components contribute to the watchlisting process through either data exchange or on-site liaisons at the NTC-P. As of March 2011, ICE, USCIS, TSA's Office of Intelligence, and the Federal Air Marshal Service provided liaisons to the NTC-P. In addition, liaisons from the FBI and Department of State provide daily support. The USCG is scheduled to move resources to the NTC-P in calendar year 2011 to allow for closer coordination and use of the NTC-P's databases for screening passengers and cargo. The collocation of component personnel allows the NTC-P to generate, verify, and coordinate information immediately and ensure the most accurate, timely, and relevant information exchange with external departments and agencies.

In addition to providing liaisons, DHS components support the watchlisting process through department-wide information sharing.



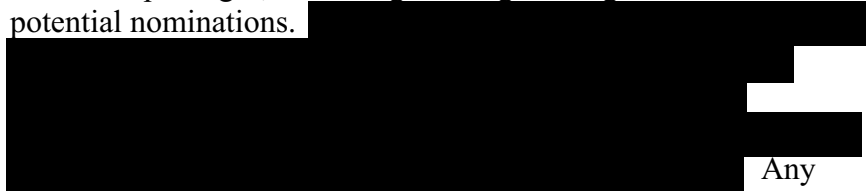
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USCIS' Intelligence Branch provides analytical support and submits HIRs through I&A on information deemed of interest to the Intelligence Community. The National Security Branch of FDNS also works in coordination with its Intelligence Branch. It is possible that USCIS may encounter known or suspected terrorists who file petitions or applications for immigration benefits, and in event of such an encounter USCIS would contact the TSC to verify the individual's identity and coordinate efforts through the JTTF.

**Existing Resources May Affect the Watchlisting Cell's Ability to Provide Advanced Analysis**

The WLC is beginning to assist in the analysis of submitted encounter packages, reviewing and augmenting information for potential nominations.



Any

information obtained will be used to generate additional nominations and to modify or delete existing records.

NCTC officials consider the WLC's activities critical to the encounter process. Advanced analysis prior to submission to the NCTC would help reduce any existing backlog experienced by external government partners. The need for an automated encounter tool and difficulty reviewing large volumes of material for each encounter package makes data entry into external databases slow and arduous.

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Despite the importance of in-depth analysis of encounter information, WLC officials stated that any analysis of encounter packages or other information, such as HIRs, can be conducted only when time permits. With the current staffing level, the cell's first priority is reviewing any nominations submitted by the DHS Secretary or components. Any other tasks will be secondary and can be accomplished only as resources become available. As a result, it is important that the WLC be provided adequate resources to conduct advanced analysis.

## **Recommendations**

We recommend that the Under Secretary for Intelligence and Analysis, Office of Intelligence and Analysis:

**Recommendation #10:** Ensure that the Watchlisting Cell is provided with adequate staffing and resources to conduct advanced analysis on all encounter packages and Homeland Intelligence Reports in a timely manner.

## **Management Comments and OIG Analysis**

**Management Response:** I&A officials concurred with Recommendation 10. In its response, I&A said initial budgeting for the WLC was provided by ODNI and future plans to address staffing are subject to funding approval. During the first six months of its existence, the WLC has identified data sources and processes that will enable it to plan for future staffing needs. Future initiatives will also be dependent on approval of the FY 2012 budgetary framework.

**OIG Analysis:** We consider I&A's proposed actions responsive to the intent of this recommendation, which is resolved and open. The recommendation will remain open pending our receipt of documentation demonstrating that the WLC has generated a staffing plan and that DHS is executing appropriate action in support of this plan.

**Appendix A**  
**Purpose, Scope, and Methodology**

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As part of the *Office of Inspector General FY 2011 Annual Performance Plan*, we reviewed DHS' role in nominating individuals for inclusion on the government watchlist and its efforts to support watchlist maintenance. Our objectives were to determine: (1) which DHS components contribute to the nomination and maintenance of data contained in external government databases; (2) whether processes and standards for nominating individuals for inclusion in external databases exist within DHS and the effectiveness of these efforts; (3) whether the information DHS components collect and disseminate to federal partners is relevant, timely, and accurate; and (4) which external federal departments and agencies receive DHS-generated information.

We reviewed the process for nominating individuals for inclusion in external databases and updating existing entries, examined the policies and procedures relating to these processes, reviewed relevant memoranda between DHS and external federal government partners, and interviewed DHS and other federal government officials with a role in the nomination process.

We interviewed DHS officials from the following components: Office of Policy, Screening Coordination Office, I&A, CBP, USCIS, ICE, USCG, TSA, and the National Protection and Programs Directorate's US-VISIT Program. In addition, we met with officials from the Department of State's Bureau of Consular Affairs, the Department of Justice's FBI, and the ODNI's NCTC. This allowed us to assess the effectiveness of DHS' efforts, as well as the level of collaboration between DHS components and external federal departments and agencies involved in the watchlisting process.

We also reviewed applicable legislation, regulations, directives, policies, operating procedures, and official guidance documents and manuals. In addition, we studied work previously performed by our office in this and associated areas, as well as the work conducted by the Government Accountability Office, the

**Appendix A**  
**Purpose, Scope, and Methodology**

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Department of Justice Office of Inspector General, and the  
Congressional Research Service.

Our fieldwork was conducted between October 2010 and March 2011. We initiated this review under the authority of the *Inspector General Act of 1978*, as amended, and according to the *Quality Standards for Inspections*, issued by the President's Council on Integrity and Efficiency.

## Appendix B Recommendations

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We recommend that the Under Secretary for Intelligence and Analysis, Office of Intelligence and Analysis:

**Recommendation #1:** Develop and disseminate to Department of Homeland Security components standardized definitions for all watchlisting terminology.

**Recommendation #2:** Establish processes and procedures to ensure that relevant information from Homeland Intelligence Reports is integrated into external government databases in a timely manner.

**Recommendation #3:** Ensure that the standard operating procedures of the Watchlisting Cell do not contradict existing external watchlisting processes of the Joint Terrorism Task Forces and Visa Viper committees.

We recommend that the Under Secretary for Intelligence and Analysis, Office of Intelligence and Analysis, in coordination with the CBP, TSA, ICE, USCIS, US-VISIT, and the USCG:

**Recommendation #4:** Develop and document a process which leverages and takes full advantage of the knowledge and experience of Department of Homeland Security detailees returning from an assignment at the Terrorist Screening Center or National Counterterrorism Center and their enhanced understanding and knowledge of watchlisting operations.

**Recommendation #5:** Establish a Department of Homeland Security working group focused solely on the watchlisting process to coordinate the roles and responsibilities of all components involved.

We recommend that the Under Secretary for Intelligence and Analysis, Office of Intelligence and Analysis:

**Recommendation #6:** Reduce overall Watchlisting Cell reliance on contract personnel to avoid the appearance that contractors are performing inherently governmental functions, and enhance efforts to replace existing contractors with full-time federal employees.

## Appendix B Recommendations

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**Recommendation #7:** Develop and document a process with Department of Homeland Security components that engages subject matter experts and limits duplication of effort among components and the Watchlisting Cell's analytical support staff.

**Recommendation #8:** Coordinate and collaborate with external government watchlisting partners to develop a standard encounter tool capable of automatically exporting and integrating information into external databases.

We recommend that the Assistant Commissioner for the Office of Field Operations, Customs and Border Protection:

**Recommendation #9:** Ensure adherence to standard operating procedures at the ports of entry for processing encounter packages and improve the quality and timeliness of submissions to the National Counterterrorism Center and Terrorist Screening Center.

We recommend that the Under Secretary for Intelligence and Analysis, Office of Intelligence and Analysis:

**Recommendation #10:** Ensure that the Watchlisting Cell is provided with adequate staffing and resources to conduct advanced analysis on all encounter packages and Homeland Intelligence Reports in a timely manner.



## Appendix C Management Comments to the Draft Report

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U.S. Department of Homeland Security  
Washington, DC 20528



**Homeland  
Security**

JUL 19 2011


Carlton I. Mann  
Assistant Inspector General for Inspections  
DHS Office of Inspector General  
1120 Vermont Ave NW  
Washington, D.C. 20005

RE: Draft Report OIG-09-206-ISP-DHS, *DHS' Role in Nominating Individuals for Inclusion on Government Watchlists and Its Efforts to Support Watchlists Maintenance*

Dear Mr. Mann:

The Department of Homeland Security (Department/DHS) appreciates the opportunity to review and comment on the Office of Inspector General (OIG) draft report for OIG-09-206-ISP-DHS, *DHS' Role in Nominating Individuals for Inclusion on Government Watchlists and Its Efforts to Support Watchlists Maintenance*. The Department, particularly the Office of Intelligence and Analysis (I&A), is actively resolving the issues identified in the report.

The Department appreciates the finding of the program evaluators that "the [DHS] Watchlisting Cell has demonstrated value and is streamlining processes in collaboration with Department components." DHS realizes that properly informing government watchlists in a timely manner is a critical task in protecting the American populace, critical infrastructure and key resources, and means and nodes of transportation. Consequently, the Department believes that the OIG report mentioned above would be more complete by including the following points:

- The DHS WLC coordination process includes proactively redressing nominations concerning subjects of ongoing investigation by component agencies and thus serves to address component operational concerns. OIG does not mention this aspect of the WLC in its discussion of WLC establishment, beginning on page 13 and referenced again on page 40;
- 
- U. S. Customs and Border Protection (CBP) has historically been the single largest producer of Homeland Intelligence Reports (HIRs) based upon individuals either on the Terrorist Identities Datamart Environment (TIDE) list or cross referenced as a known and suspected terrorist (KST) in TECS. However, the OIG fails to mention this production in its section that discusses contributions to watchlist information beginning on page 15;

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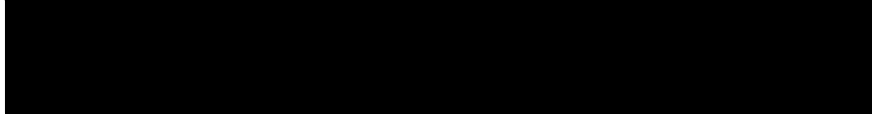
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**DHS' Role in Nominating Individuals for Inclusion on the Government Watchlist and  
Its Efforts to Support Watchlist Maintenance**

## Appendix C Management Comments to the Draft Report

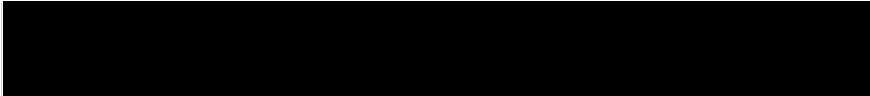
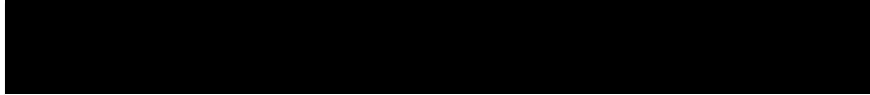
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- 2 -

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- The description of the relevant legal sources informing the determination as to whether certain functions are inherently governmental provided on pages 37-38 of the draft report is incomplete. Part D, section 736(b)(5) of the Omnibus Appropriations Act of 2009 (P.L.111-8), provides the most recent statutory definition of “inherently governmental functions” and adds a new category of “functions closely associated with inherently governmental functions.”

The Department would also like to note the significant time lapse between the conclusion of fieldwork related to this engagement and the publication of the draft report. The period from March to June of 2011 noted significant changes in DHS watchlisting that are not reflected in the report. Consequently, many of the findings and recommendations in the report are either outdated or have been addressed by the ongoing maturation process of watchlisting operations. In addition to our responses to the specific recommendations in the report, it should be noted that:

- On page 19 and again on page 44, OIG notes the plan by U.S. Coast Guard (USCG) to collocate personnel with the National Targeting Center – Passenger (NTC-P). This action was completed on March 15, 2011;

- 
- 

The Department’s responses to each of the recommendations from the draft report can be found below:

**We recommend that the Under Secretary for Intelligence and Analysis:**

**Recommendation #1:** Develop and disseminate to Department of Homeland Security components standardized definitions for all watchlisting terminology.

**DHS Response: Concur.** The DHS Watchlisting Cell (WLC) has completed internal coordination on the standard operating procedures for DHS watchlisting, which includes definitions for watchlisting terminology, and intends to begin external coordination of the document with DHS components as early as July 2011. Due to the potential for delays in the external coordination process, it is unlikely that this will be completed within 90 days. When approved, this document will reflect the DHS Enterprise approach to watchlisting and will be

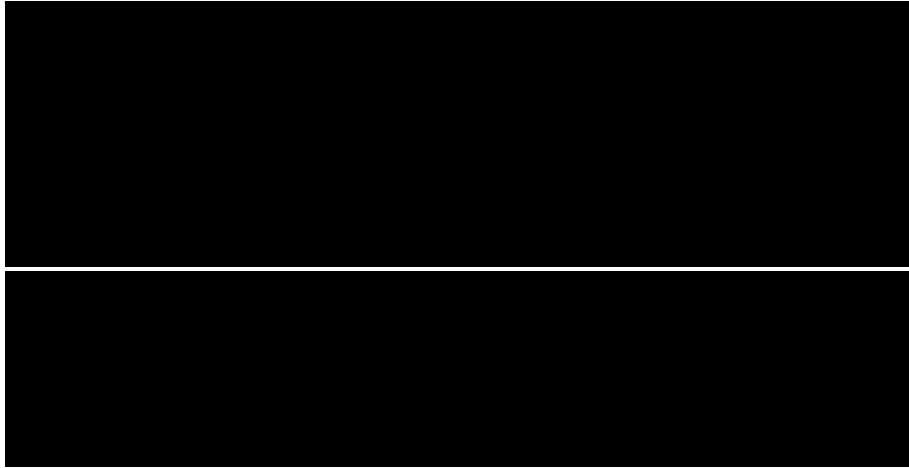
## Appendix C Management Comments to the Draft Report

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- 3 -

shared broadly. In addition, WLC team members have completed “train the trainer” instruction on the Terrorist Watchlisting Overview Course, developed by NCTC, and will be educating DHS Enterprise members on the basics of watchlisting and the WLC’s role in it, which will serve to standardize expectations for the WLC and solidify the watchlisting vocabulary throughout the Department. This education process will be an ongoing effort that will adapt itself to personnel changes throughout the Department.

**Recommendation #2:** Establish processes and procedures to ensure that relevant information from Homeland Intelligence Reports (HIRs) is integrated into external government watchlists in a timely manner.



I&A believes that it has accomplished the spirit of this recommendation and respectfully requests its closure.

**Recommendation #3:** Ensure that the standard operating procedures of the Watchlisting Cell do not contradict existing external watchlisting processes of the Joint Terrorism Task Forces and Visa Viper committees.

**DHS Response: Concur.** WLC members conducted extensive outreach with DHS components and IC partners during the development of the DHS Watchlisting standard operating procedures. DHS Enterprise watchlisting activities do not contradict existing processes of the FBI or Department of State. I&A believes that it has accomplished the spirit of this recommendation and respectfully requests its closure.

**We recommend that the Under Secretary for Intelligence and Analysis, in coordination with the CBP, TSA, ICE, USCIS, and the USCG:**

## Appendix C Management Comments to the Draft Report

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**Recommendation #4:** Leverage the knowledge and experience of Department of Homeland Security detailees returning from an assignment at the Terrorist Screening Center or National Counterterrorism Center and take full advantage of their enhanced understanding and knowledge of watchlisting operations.

**DHS Response: Concur.** The Department appreciates the broad latitude provided by OIG to determine the best means of leveraging DHS detailee expertise. I&A welcomes the participation of DHS Enterprise partners within the WLC. DHS can capitalize on the experience of these officers by establishing permanent DHS component intelligence and operations officer detailee rotations within the WLC. The establishment of permanent DHS detailee rotations within the WLC will require an update to Departmental policy, which will not likely be concluded in the next 90 days.

**Recommendation #5:** Establish a Department of Homeland Security working group focused solely on the watchlisting process to coordinate the roles and responsibilities of all components involved.

**DHS Response: Concur.** The WLC is properly situated to lead this effort as its members currently participate in a bi-weekly IC Watchlisting Working Group and in several working groups addressing more strategic issues. The WLC will initiate the recommendation initially as a forum for the coordination of the standard operating procedures and will then coordinate the development of the group and its schedule with the participants. While every effort will be made to accomplish this within the next 90 days, coordination delays may push its completion beyond that time period.

**We recommend that the Under Secretary for Intelligence and Analysis:**

**Recommendation #6:** Reduce overall Watchlisting Cell reliance on contract personnel to avoid the appearance that contractors are performing inherently governmental functions, and enhance efforts to replace existing contractors with full-time federal employees.

**DHS Response: Concur.** While contract officers assigned to the WLC do not exert direction and control of intelligence operations or determine department policy and therefore do not perform inherently governmental functions, DHS acknowledges that the current operational situation of the WLC could give rise to the potential appearance of contract officers performing such actions. DHS benefits through the use of contract officers with specialized experience in this area but intends to convert some contractor positions in FY 2012 to achieve a better balance between government and contractor staffing in the WLC. The Department's ability to convert those positions will be driven by approval of its FY 2012 budget request.

To help forestall any erroneous conclusions about contractor duties within the WLC, the Department would also like to provide the following information. The WLC government lead determines whether component nominations meet minimum biographic and derogatory requirements for watchlisting, as provided in Appendix 9 and 10 of the TSC *Watchlisting Guidance* (July 2010). Further, the WLC is only tasked by the government lead to re-contact the nominator to elicit additional information if a nomination is assessed to be inadequate. The

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**DHS' Role in Nominating Individuals for Inclusion on the Government Watchlist and  
Its Efforts to Support Watchlist Maintenance**



## Appendix C Management Comments to the Draft Report

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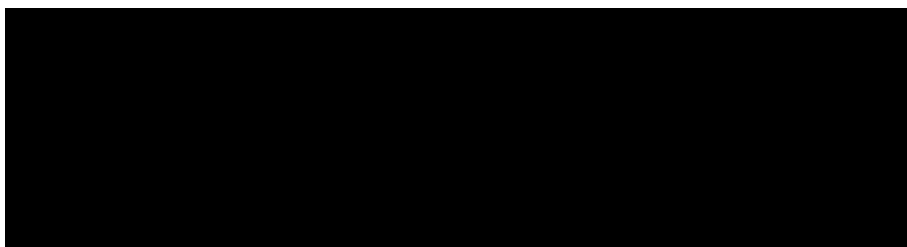
- 5 -

government lead makes the final determination regarding rejection of DHS component nominations.

**Recommendation #7:** Leverage Department of Homeland Security component subject matter expertise and limit duplication of efforts among components and the Watchlisting Cell's analytical support staff.

**DHS Response: Concur.** The Department appreciates the broad latitude provided by OIG to determine the best means of leveraging DHS component subject matter expertise. The WLC leverages this expertise through extensive communication and collaboration with component analytical support staff at CBP, ICE, USCG, TSA, and USCIS, in addition to external partners such as FBI, NSA, CIA, and NCTC. During the period between the conclusion of this review's fieldwork and publication of the draft report, the WLC worked with DHS components and has noted no duplication of effort. I&A believes that it has accomplished the spirit of this recommendation and respectfully requests its closure.

**Recommendation #8:** Coordinate and collaborate with external government watchlisting partners to develop a standard encounter tool capable of automatically exporting and integrating information into external watchlists.



**We recommend that the Assistant Commissioner for the Office of Field Operations, Customs and Border Protection:**

**Recommendation #9:** Ensure adherence to standard operating procedures at the ports of entry for processing encounter packages and improve the quality and timeliness of submissions to the National Counterterrorism Center and Terrorist Screening Center.

**DHS Response: Concur.** Five GS-1801 National Security Specialist positions have been allocated to augment CBP's National Targeting Center-Passenger (NTC-P) staff who record and share the encounter packages. Summer intern assistance has decreased the backlog of packages to less than 100 (as of June 22, 2011). Requirements for the package are sent to the ports of entry (POEs) currently upon each encounter, specifying what items should be included. A July 22, 2009 memo, entitled "Packet Requirements for All Positive TIDE Encounters," was issued to the field outlining expectations for encounter packets, including subject items, timeframe for forwarding and possible repercussions for not complying with the request. A copy of this memo will be submitted separately. CBP believes that it has successfully implemented this

## Appendix C Management Comments to the Draft Report

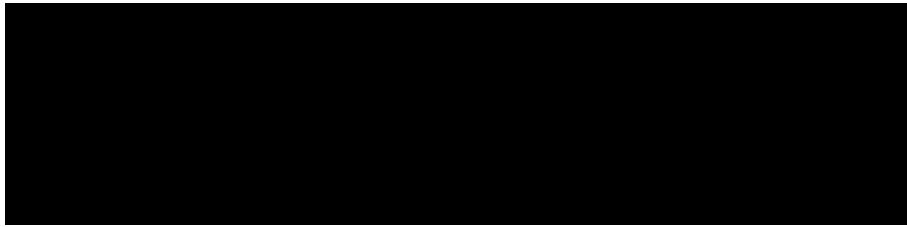
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recommendation and respectfully requests closure of the recommendation. Supporting documentation to close this recommendation will be submitted separately for the OIG's consideration.

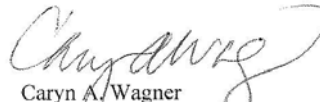
**We recommend that the Under Secretary for Intelligence and Analysis:**

**Recommendation #10:** Ensure that the Watchlisting Cell is provided with adequate staffing and resources to conduct advanced analysis on all encounter packages and Homeland Intelligence Reports in a timely manner.



Again, we appreciate this opportunity to review and comment on the draft report. In addition to this response, technical comments and a sensitivity review were provided under separate cover. The Department looks forward to working with you on future Homeland Security engagements.

Sincerely,

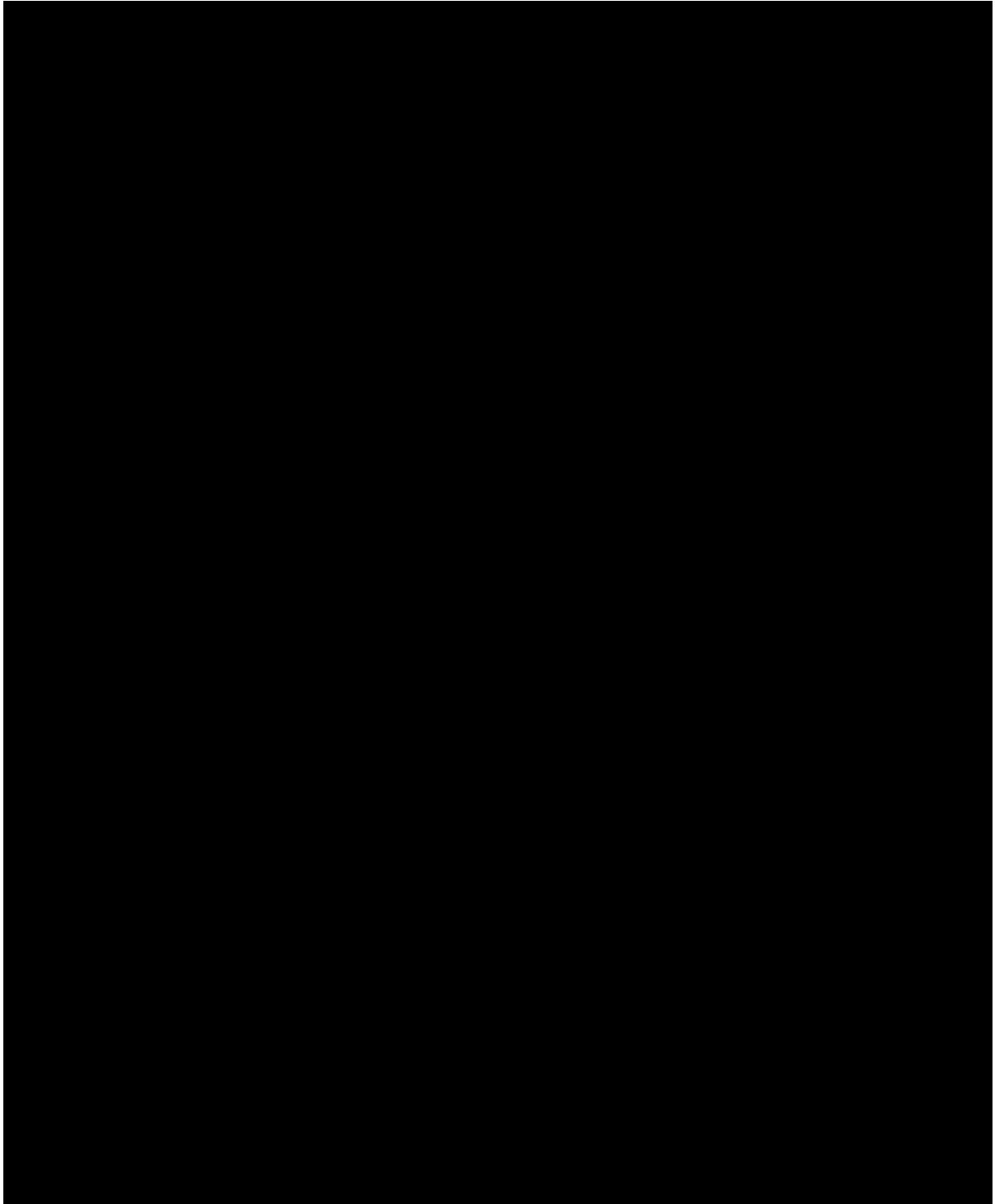
  
Caryn A. Wagner  
Under Secretary for Intelligence  
and Analysis

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**Appendix D**

**U.S. Government Nomination Process as Outlined in the *Watchlisting Guidance***

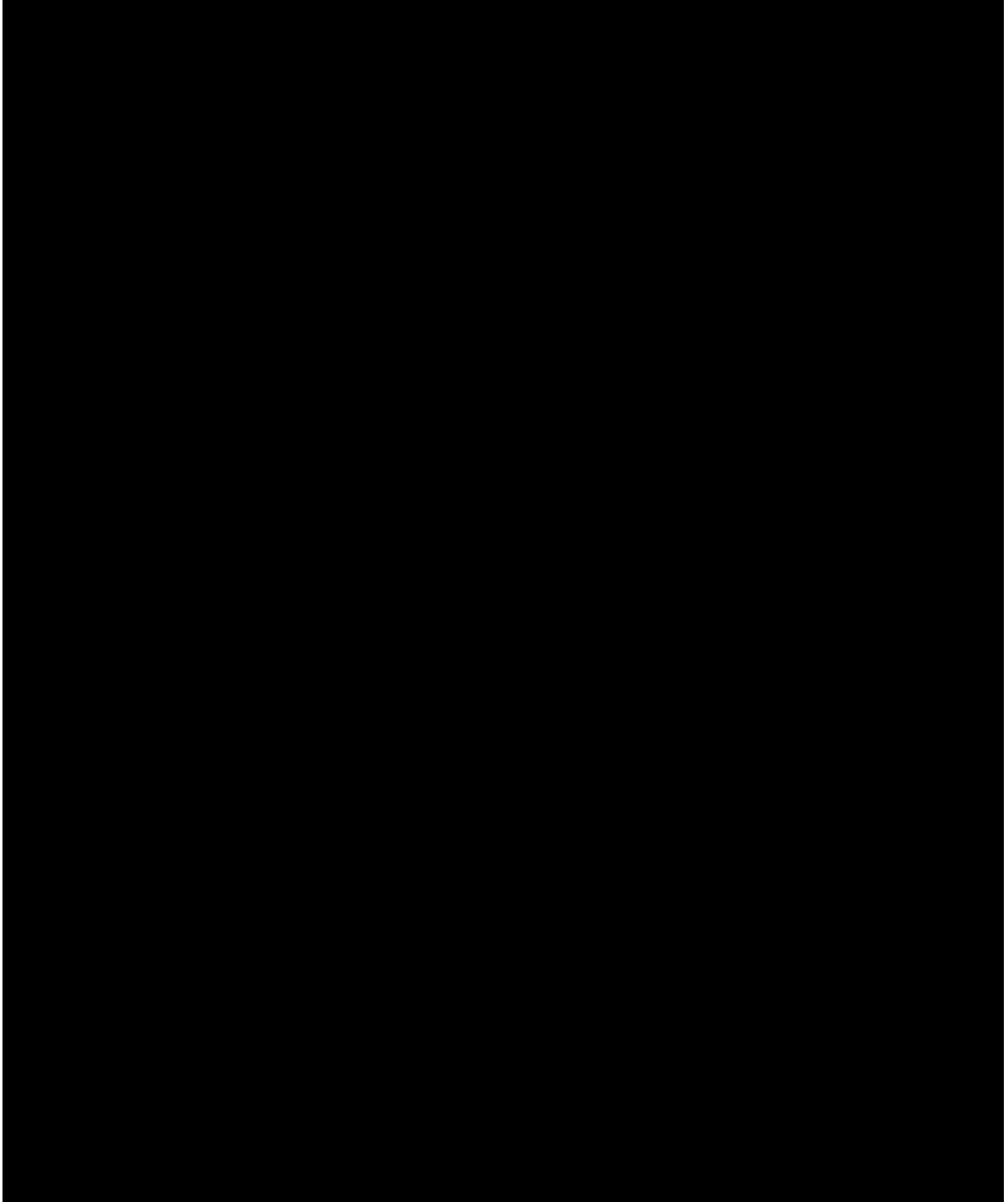
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**Appendix E**  
**DHS Watchlisting Cell Nomination Process**

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**DHS' Role in Nominating Individuals for Inclusion on the Government Watchlist and  
Its Efforts to Support Watchlist Maintenance**



**Appendix F**  
**Major Contributors to this Report**

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Marcia Moxey Hodges, Chief Inspector  
Dagmar Firth, Senior Inspector  
McKay Smith, Senior Inspector  
Amy Tomlinson, Inspector

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**Appendix G**  
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Commissioner, U.S. Customs and Border Protection  
Commandant, U.S. Coast Guard  
Director, National Targeting Center-Passenger  
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**U.S. Department of Justice**

Director, Terrorist Screening Center  
GAO/OIG Liaison

**U.S. Department of State**

Assistant Secretary, Bureau of Consular Affairs

**Appendix G**  
**Report Distribution**

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**Office of the Director of National Intelligence**

Director, National Counterterrorism Center  
Chief, Terrorist Identities Group,  
National Counterterrorism Center  
Director, Analytic Enhancement Group,  
National Counterterrorism Center

**Office of Management and Budget**

Chief, Homeland Security Branch  
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- Write to us at:  
DHS Office of Inspector General/MAIL STOP 2600,  
Attention: Office of Investigations - Hotline,  
245 Murray Drive, SW, Building 410,  
Washington, DC 20528.

The OIG seeks to protect the identity of each writer and caller.

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Request



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MAY 30 2013

## PRIVACY OFFICE

May 13, 2013

### BY USPS MAIL

Jonathan Cantor, Acting Chief Privacy Officer/Chief FOIA Officer  
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 U.S. Department of Homeland Security  
 245 Murray Drive SW  
 STOP-0655  
 Washington, DC 20528-0655

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 UNION FOUNDATION  
 NATIONAL OFFICE  
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 18TH FL.  
 NEW YORK, NY 10004-2400  
 T/212 549 2500  
 F/212 549 2651  
 WWW.ACLU.ORG

OFFICERS AND DIRECTORS  
 SUSAN N. HERMAN PRESIDENT

ANTHONY D. ROMERO  
 EXECUTIVE DIRECTOR

**RE: FREEDOM OF INFORMATION ACT REQUEST**

Dear Mr. Cantor,

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the "ACLU") submit this request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for access to documents relating to Executive Order 12,333, 3 C.F.R. 200 (1981 Comp.) ("EO 12,333"). Specifically, we request the following records<sup>1</sup>:

1. Any records construing or interpreting the authority of the Department of Homeland Security ("DHS") under Executive Order 12,333 or any regulations issued thereunder;
2. Any records describing the minimization procedures<sup>2</sup> used by the DHS with regard to both intelligence collection and intelligence interception conducted pursuant to the DHS's authority under EO 12,333 or any regulations issued thereunder; and
3. Any records describing the standards that must be satisfied for the "collection," "acquisition," or "interception" of communications, as the DHS defines these terms, pursuant to the DHS's authority under EO 12,333 or any regulations issued thereunder.

<sup>1</sup> Records include but are not limited to electronic records, letters, correspondence, tape recordings, notes, data, memoranda, reports, email, computer source and object code, technical manuals, technical specifications, legal opinions, policy statements, and any other materials.

<sup>2</sup> Minimization procedures include but are not limited to rules, policies, or procedures addressing the collection, interception, handling, use, retention, and destruction of information relating to U.S. persons that is acquired in the course of intelligence activities.



## Request for a Fee Limitation and Public Interest Fee Waiver

The ACLU requests a waiver of search and review fees because the requested records are not sought for commercial use and because the ACLU is a “representative of the news media.” 5 U.S.C. § 552(a)(4)(A)(ii)(II). Dissemination of information about actual or alleged government activity is a critical and substantial component of the ACLU’s mission and work. The ACLU disseminates this information to educate the public and promote the protection of civil liberties. Its regular means of disseminating and editorializing information obtained through FOIA requests include: a paper newsletter distributed to approximately 450,000 people; a bi-weekly electronic newsletter distributed to approximately 300,000 subscribers; published reports, books, pamphlets, and fact sheets; a widely read blog; heavily visited websites, including an accountability microsite, <http://www.aclu.org/accountability>; and a video series.

The ACLU therefore meets the statutory definition of a “representative of the news media” as an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); *see also Nat’l Sec. Archive v. Dep’t of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *cf. Am. Civil Liberties Union v. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group to be “primarily engaged in disseminating information”). Indeed, the ACLU recently was held to be a “representative of the news media.” *Serv. Women’s Action Network v. Dep’t of Defense*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012); *see also Am. Civil Liberties Union of Wash. v. Dep’t of Justice*, No. C09-0642RSL, 2011 WL 887731, at \*10 (W.D. Wash. Mar. 10, 2011) (finding ACLU of Washington to be a “representative of the news media”), *reconsidered in part on other grounds*, 2011 WL 1900140 (W.D. Wash. May 19, 2011).

The ACLU also requests a waiver of all search, review, or duplication fees on the ground that disclosure of the requested information is in the public interest because: (1) it “is likely to contribute significantly to public understanding of the operations or activities of the government,” and (2) it “is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). This request clearly satisfies these criteria.

First, the requested material concerns “the operations or activities” of the DHS. E.O. 12,333 is “intended to enhance human and technical collection techniques, especially those undertaken abroad, and the acquisition of significant foreign intelligence, as well as the detection and countering of international terrorist activities and espionage conducted by foreign powers.” EO 12,333 § 2.2. It authorizes the intelligence community, including the DHS, to collect intelligence, and it sets forth certain limitations on intelligence-gathering activities relevant to civil liberties. In its brief in a recent case

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before the Supreme Court of the United States, the Government emphasized its authority to conduct surveillance of Americans' foreign contacts abroad under Executive Order No. 12,333, without conforming to various statutory restrictions. Brief for Petitioners, *Clapper v. Amnesty Int'l USA*, No. 11-1025, 2012 WL 3090949, at \*45 (U.S. 2012). How the Government actually does this, and whether it appropriately accommodates the constitutional rights of American citizens and residents whose communications are intercepted in the course of that surveillance, are matters of great significance.

Moreover, the requested materials will "contribute significantly to the public understanding" of the DHS's operations or activities. 5 U.S.C. § 552(a)(4)(A)(iii). Though the subject of foreign-intelligence collection is a matter of great public interest and concern, little information on how the American intelligence community construes the authority conferred by EO 12,333 and its implementing regulations is currently publicly available.

For example, in the *Clapper* brief described above, the government makes no argument beyond a handful of one-sentence assertions of its authority under EO 12,333. See Brief for Petitioners, *Clapper v. Amnesty Int'l USA*, No. 11-1025, 2012 WL 3090949 at \*4, \*33, \*41, \*45. Likewise, the publicly available administrative agency materials typically do little more than restate EO 12,333's limits on the intelligence community in slightly different ways or provide predictable definitions for terms left undefined in the executive order. See, e.g., Dep't of Def., DOD 5240 1-R, *Procedures Governing the Activities of DOD Intelligence Components that Affect United States Persons* § C2.3.12 (Dec. 1982); Nat'l Sec. Agency, *United States Signals Intelligence Directive* 18 (July 1993); Army Regulation 381-10, *U.S. Army Intelligence Procedures* § 2-2(l) (2007). Judicial treatments of EO 12,333 contribute equally little to the public understanding of the limits of intelligence-gathering powers under EO 12,333. See, e.g., *United States v. Marzook*, 435 F. Supp. 2d 778 (N.D. Ill. 2006); *United States v. Poindexter*, 727 F. Supp. 1470 (D.D.C. 1989); *United Presbyterian Church in the U.S.A. v. Reagan*, 738 F.2d 1375 (D.C. Cir. 1984).

For these reasons, we respectfully request that all fees related to the search, review, and duplication of the requested records be waived. If the search and review fees will not be waived, we ask that you contact us at the email address listed below should the estimated fees resulting from this request exceed \$100.

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We request that responsive electronic records be provided electronically in their native file format, if possible. See 5 U.S.C. § 552(a)(3)(B). Alternatively, we request that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency's possession, and in separate, Bates-stamped files.

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We also request that you provide an estimated date on which you will finish processing this request. *See* 5 U.S.C. § 552(a)(7)(B).

If this FOIA request is denied in whole or in part, please provide the reasons for the denial, pursuant to 5 U.S.C. § 552(a)(6)(A)(i). In addition, please release all segregable portions of otherwise exempt material in accordance with 5 U.S.C. § 552(b). Furthermore, if any documents responsive to this request are classified, please identify those documents, including a date and document number where possible, so we may begin the process of requesting a Mandatory Declassification Review under the terms of Executive Order 13,526 (2010).

Thank you for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact us at the email address listed below. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), we expect a response regarding this request within the twenty working-day statutory time limit.

Sincerely,

  
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