



# U.S. Department of Justice Office of the Inspector General

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## Report to Congress on Implementation of Section 1001 of the USA PATRIOT Act

*(as required by Section 1001(3) of Public Law 107-56)*

August 15, 2005

Section 1001 of the USA PATRIOT Act (Patriot Act), Public Law 107-56, directs the Office of the Inspector General (OIG) in the U.S. Department of Justice (DOJ or Department) to undertake a series of actions related to claims of civil rights or civil liberties violations allegedly committed by DOJ employees. It also requires the OIG to provide semiannual reports to Congress on the implementation of the OIG's responsibilities under Section 1001. This report – the seventh since enactment of the legislation in October 2001 – summarizes the OIG's Section 1001-related activities from January 1, 2005, through June 30, 2005.

## I. INTRODUCTION

According to the Inspector General Act, the OIG is an independent entity within the DOJ that reports to both the Attorney General and Congress. The OIG's mission is to investigate allegations of waste, fraud, and abuse in DOJ programs and personnel and to promote economy and efficiency in DOJ operations.

The OIG has jurisdiction to review programs and personnel in all DOJ components, including the Federal Bureau of Investigation (FBI), the Drug Enforcement Administration (DEA), the Federal Bureau of Prisons (BOP), the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the U.S. Attorneys' Offices, and other DOJ components.

The OIG consists of the Immediate Office of the Inspector General and the following divisions and offices:

- **Audit Division** is responsible for independent audits of Department programs, computer systems, and financial statements.
- **Evaluation and Inspections Division** provides an alternative mechanism to traditional audits and investigations to review Department programs and activities.
- **Investigations Division** is responsible for investigating allegations of bribery, fraud, abuse, civil rights violations, and violations of other criminal laws and administrative procedures that govern Department employees, contractors, and grantees.
- **Oversight and Review Division** blends the skills of attorneys, investigators, and program analysts to investigate or review high profile or sensitive matters involving Department programs or employees.

- **Management and Planning Division** assists the OIG by providing services in the areas of planning, budget, finance, personnel, training, procurement, automated data processing, computer network communications, and general support.
- **Office of General Counsel** provides legal advice to OIG management and staff. In addition, the office drafts memoranda on issues of law; prepares administrative subpoenas; represents the OIG in personnel, contractual, and legal matters; and responds to Freedom of Information Act requests.

The OIG has a staff of approximately 410 employees, about half of whom are based in Washington, D.C., while the rest work from 16 Investigations Division field and area offices and 7 Audit Division regional offices located throughout the country.

## **II. SECTION 1001 OF THE PATRIOT ACT**

Section 1001 of the Patriot Act provides the following:

The Inspector General of the Department of Justice shall designate one official who shall —

- (1) review information and receive complaints alleging abuses of civil rights and civil liberties by employees and officials of the Department of Justice;
- (2) make public through the Internet, radio, television, and newspaper advertisements information on the responsibilities and functions of, and how to contact, the official; and
- (3) submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate on a semi-annual basis a report on the implementation of this subsection and detailing any abuses described in paragraph (1), including a description of the use of funds appropriations used to carry out this subsection.

### **III. CIVIL RIGHTS AND CIVIL LIBERTIES COMPLAINTS**

*Review information and receive complaints alleging abuses of civil rights and civil liberties by employees and officials of the Department of Justice.*

The OIG's Special Operations Branch in its Investigations Division manages the OIG's investigative responsibilities outlined in Section 1001.<sup>1</sup> The Special Agent in Charge who directs this unit is assisted by two Assistant Special Agents in Charge (ASAC), one of whom assists on Section 1001 and DEA matters and a second who assists on FBI matters. In addition, four Investigative Specialists support the unit and divide their time between Section 1001 and FBI/DEA responsibilities.

The Special Operations Branch receives civil rights and civil liberties complaints via mail, e-mail, telephone, and facsimile. The complaints are reviewed by the Investigative Specialist and an ASAC. After review, the complaint is entered into an OIG database and a decision is made concerning its disposition. The more serious civil rights and civil liberties allegations that relate to actions of DOJ employees or DOJ contractors normally are assigned to an OIG Investigations Division field office, where OIG special agents conduct investigations of criminal violations and administrative misconduct.<sup>2</sup> Some complaints are assigned to the OIG's Oversight and Review Division for investigation.

Given the number of complaints received compared to its limited resources, the OIG does not investigate all allegations of misconduct against DOJ employees. The OIG refers many complaints involving DOJ employees to internal affairs offices in DOJ components such as the FBI Inspection Division, the DEA Office of Professional Responsibility, and the BOP Office of Internal Affairs (OIA) for appropriate handling. In certain referrals, the OIG requires the components to report the results of their investigations to the OIG. In most cases, the OIG notifies the complainant of the referral.

Many complaints received by the OIG involve matters outside our jurisdiction. The ones that identify a specific issue for investigation are forwarded to the appropriate investigative entity. For example, complaints of mistreatment by airport security staff are sent to the Department of Homeland

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<sup>1</sup> This unit also is responsible for coordinating the OIG's review of allegations of misconduct by employees in the FBI and the DEA.

<sup>2</sup> The OIG can pursue an allegation either criminally or administratively. Many OIG investigations begin with allegations of criminal activity but, as is the case for any law enforcement agency, do not end in prosecution. When this occurs, the OIG is able to continue the investigation and treat the matter as a case for potential administrative discipline. The OIG's ability to handle matters criminally or administratively helps to ensure that a matter can be pursued administratively, even if a prosecutor declines to prosecute a matter criminally.

Security (DHS) OIG. We also have forwarded complaints to the OIGs at the Department of Veterans Affairs, Department of State, United States Postal Service, Department of Defense, Central Intelligence Agency, and the Equal Employment Opportunity Commission. In addition, we have referred complainants to a variety of police department internal affairs offices that have jurisdiction over the subject of the complaints.

When an allegation received from any source involves a potential violation of federal civil rights statutes by a DOJ employee, the complaint is discussed with the DOJ Civil Rights Division for possible prosecution. In some cases, the Civil Rights Division accepts the case and requests additional investigation by either the OIG or the FBI. In other cases, the Civil Rights Division declines prosecution.

### **A. Complaints Processed This Reporting Period**

From January 1, 2005, through June 30, 2005, the period covered by this report, the OIG processed **834** complaints that were sent primarily to the OIG's Section 1001 e-mail or postal address.<sup>3</sup>

Of these complaints, we concluded that **624** did not warrant further investigation or did not fall within the OIG's jurisdiction. Approximately one-third (**182** complaints) of the 624 complaints made allegations that did not warrant an investigation. For example, complaints in this category alleged that FBI agents sprayed chemicals around a complainant's bed, contaminated a complainant's food, injected individuals with "hypodermic behavioral instruments" as a deterrent for committing crimes, and converted a complainant's television into a surveillance mechanism. The remaining two-thirds of the 624 complaints (**442**) in this category involved allegations against agencies or entities outside of the DOJ, including other federal agencies, local governments, or private businesses. We referred those complaints to the appropriate entity or advised complainants of the entity with jurisdiction over their allegations.

Consequently, **210** complaints involved DOJ employees or components and made allegations that required further review. Of those complaints, **186** raised management issues rather than alleged civil rights or civil liberties abuses, and we referred them to DOJ components for appropriate handling. Complaints in this category included inmates' allegations about the general

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<sup>3</sup> This number includes all complaints in which the complainant makes any mention of a Section 1001-related civil rights or civil liberties violation, even if the allegation is not within the OIG's jurisdiction. The significant reduction in the total number of complaints processed this reporting period compared to prior reporting periods was largely attributable to the OIG's filtering of repeat complaints from individuals whose earlier complaints did not warrant investigation. In this report, we do not include in the statistics multiple complaints from the same person on the same subject.

conditions at federal prisons, such as the lack of hygiene products or deficient medical care. Four of the 210 complaints did not provide sufficient detail to make a determination whether an abuse was alleged. We requested further information but did not receive responses from these four complainants.

We requested that other DOJ components investigate **7** of these 210 complaints and report to us on the investigations' findings. Five of these complaints were referred to the BOP, one was referred to the DEA, and one was referred to the U.S. Marshals Service.

Of the remaining complaints, the OIG identified **13** matters that we believed warranted opening a Section 1001 investigation or conducting a closer review to determine if Section 1001-related abuse occurred. Of the 13 new matters, the OIG retained **7** for investigation because the allegations were of a potentially criminal or egregious nature.<sup>4</sup> The OIG referred the remaining **6** matters, which appeared to raise largely administrative issues, to Department components for further investigation or review and requested that the components report their findings to us.

None of the complaints we processed during this reporting period alleged misconduct by DOJ employees relating to use of a provision in the Patriot Act.

The following is a synopsis of the new complaints processed during this reporting period:

<b>Complaints processed:</b>	<b>834</b>
<b>Unrelated complaints:</b>	<b>624</b>
<b>Complaints within OIG's jurisdiction warranting review:</b>	<b>210</b>
<b>Non-Section 1001 matters</b>	
<b>Management issues:</b>	<b>186</b>
<b>Referred to DOJ components for investigation:</b>	<b>7</b>
<b>OIG unsuccessfully sought further details:</b>	<b>4</b>
<b>Section 1001 matters warranting review:</b>	<b>13</b>

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<sup>4</sup> We provide in the next section summaries of these seven complaints.

## **B. Section 1001 Cases This Reporting Period**

### **1. Complaints Investigated by the OIG**

#### **a. New matters**

During this reporting period, the OIG opened seven new Section 1001-related investigations, continued four ongoing Section 1001-related cases, and closed one Section 1001 investigation from a previous reporting period. The seven new matters opened by the OIG are:

- The OIG is investigating a complaint from a former Muslim BOP correctional officer alleging that staff members referred to certain inmates as terrorists; displayed offensive posters depicting Muslim prisoners throughout the facility; referred to him as “Bin Laden,” “terrorist,” and “towel-head;” and posted a picture of an eagle with its middle finger raised which read “Jihad this.”
- The OIG is investigating allegations raised by a Muslim inmate in a BOP correctional facility that he was praying in the facility’s library when a correctional officer ordered him to stop, made derogatory remarks about his religious beliefs, issued him an incident report, and placed him in solitary confinement.
- The OIG is investigating a complaint in which a BOP inmate alleged that a correctional officer ordered him to drop his Koran on the floor outside of his cell. According to the complaint, when the inmate complied with the order, the officer kicked the Koran and walked away.
- The OIG is investigating an allegation from a BOP inmate that while the inmate was at prayer services an Assistant Warden entered his cell and ordered a correctional officer to confiscate his prayer rug and Koran and to dispose of the items in the garbage incinerator.
- The OIG investigated allegations from a BOP inmate that Muslim prisoners at a BOP facility were subjected to intimidation, physically and mentally abused, and denied adequate medical treatment. In an interview with the OIG, the complainant inmate admitted that he had not been subjected to any physical abuse and that his allegation of inadequate medical care was based on the fact that he had to wait several months to obtain eyeglasses. This matter subsequently was referred to the BOP, which concluded that the inmate received appropriate medical care. The OIG closed this matter and provided a copy of its report to the BOP.

- The OIG investigated allegations from a Muslim inmate that he was physically abused and threatened by correctional officers and told that it was because “one of his Muslim brothers” had stabbed an officer. The inmate alleged the officers placed him in a holding cell, removed his clothing, placed a rope around his neck, and told him, “We can call this the new Abu Ghraib.” In an OIG interview, the inmate admitted that he fabricated these allegations. The OIG closed this matter and provided its report of investigation to the BOP.
- The OIG investigated allegations raised by a Muslim inmate that he was physically assaulted; verbally abused; denied clothing, food, and water; and unjustly detained in solitary confinement for 2 years. When the inmate was interviewed, he denied being subjected to any type of physical abuse. The OIG plans to close this matter as unsubstantiated and provide a copy of its report to the BOP.

**b. Cases opened during previous reporting periods that the OIG continues to investigate**

- The OIG continues an investigation of the FBI’s conduct in connection with the erroneous identification of a latent fingerprint found on evidence from the March 2004 Madrid train bombing as belonging to Brandon Mayfield, an attorney in Portland, Oregon. As a result of the identification, the FBI initiated an investigation of Mayfield that resulted in his arrest as a “material witness” and his detention for approximately 2 weeks. Mayfield was released when Spanish National Police matched the fingerprints on the evidence to an Algerian national. The OIG is examining the cause of the erroneous identification and the FBI’s handling of the matter. The Department’s Office of Professional Responsibility is reviewing the conduct of the prosecutors in the case. The OIG is drafting a report of investigation related to our findings in this matter.
- The OIG is investigating allegations made by an Egyptian national that during his detention at a BOP facility he was subjected to a body cavity search in the presence of numerous people, including a female officer; placed alone in a cell under severe restrictions for more than 2 months; and had his ability to practice his religion undermined intentionally by the prison staff. The OIG continues to investigate this matter, along with the United States Attorney’s Office for the Eastern District of Texas.
- The OIG is investigating allegations made by a BOP inmate that correctional officers humiliated and abused Muslim inmates because of their hatred of Muslims. The inmate alleged that correctional officers used excessive force on him, gave other inmates permission to assault him, and then covered up the incidents. The inmate also alleged that



BOP staff improperly denied him showers, social visits, and the right to attend religious services.

- The OIG is concluding its investigation of allegations that a BOP correctional officer verbally and physically abused a Muslim inmate while the inmate was being transported to the prison's hospital and that the inmate was placed improperly in solitary confinement following the incident. The U.S. Attorney's Office for the Eastern District of New York declined criminal prosecution, and the OIG is drafting its final report of investigation for consideration of administrative action by the BOP.

### **c. OIG investigations completed during this reporting period**

- The OIG completed its investigation into allegations made by a Muslim inmate that prior to his arrival at a BOP facility, correctional officers informed other inmates that he was a radical Muslim who would try to take over the leadership of other Muslim inmates. He further alleged that upon his arrival at the BOP facility he was subjected to excessive, undocumented searches; placed in segregation in retaliation for "writing up" correctional officers; and verbally abused, physically threatened, and spat upon by a correctional officer. The investigation did not develop sufficient evidence to substantiate the allegations. Further, the investigation concluded that the staff at the facility made efforts to accommodate the religious requirements of the Muslim inmates. The OIG provided its report of investigation to the BOP.

## **2. Complaints Referred to Other Components**

During this reporting period, the OIG referred six complaints to internal affairs offices within DOJ components for investigation or closer review. One of the complaints was referred to the FBI as a "Monitored Referral," which means the FBI is required at the end of its investigation to send a report of the investigation to the OIG for review. In this complaint, a Muslim citizen alleged that her family's civil rights were violated when they were stopped from boarding an aircraft and questioned for 45 minutes by airport officials. After receiving permission to board the aircraft, the complainant and her family were asked by an FBI official to leave the plane because their names appeared in a database as possible matches for persons of interest.

The OIG referred five of the remaining six complaints to the BOP OIA. The complaints included allegations that BOP staff verbally abused and threatened Muslim inmates, retaliated against Muslim inmates for filing complaints, placed Muslim inmates in segregation, confiscated Muslim inmates' religious articles, and denied Muslim inmates telephone privileges. All of the complaints sent to the BOP were designated by the OIG as "Monitored

Referrals.” Of these five complaints, the BOP closed one matter as unsubstantiated and has open investigations in the four other matters.

### **C. Other OIG Activities Related to Allegations of Civil Rights and Civil Liberties Abuses**

The OIG conducts other reviews that go beyond the explicit requirements of Section 1001 in order to implement more fully its civil rights and civil liberties oversight responsibilities. Given the multi-disciplinary nature of its work force, the OIG can extend its oversight beyond traditional investigations to include evaluations, audits, and special reviews of DOJ programs and personnel. Using this approach, the OIG has initiated or continued several special reviews that relate, in part, to the OIG’s duties under Section 1001.

#### **1. Review of FBI Conduct Relating to Detainees in Military Facilities in Guantanamo Bay and Iraq**

In December 2004, the OIG initiated a review of FBI employees’ observations and actions regarding alleged abuse of detainees at Guantanamo Bay, Abu Ghraib prison, and other venues controlled by the U.S. military. The OIG is examining whether FBI employees participated in any incident of detainee abuse, whether FBI employees witnessed incidents of abuse, whether FBI employees reported any abuse, and how those reports were handled by the FBI. In addition, our review will investigate whether the FBI took inappropriate action or inappropriately retaliated against any FBI employee who reported any incident of abuse.

#### **2. Supplemental Report on September 11 Detainees’ Allegations of Abuse at the Metropolitan Detention Center in Brooklyn, New York**

An OIG special review issued in December 2003 (and described in detail in our January 2004 Section 1001 report) examined allegations that some correctional officers physically and verbally abused some detainees held in connection with the Department’s terrorism investigation at the Metropolitan Detention Center (MDC) in Brooklyn, New York.<sup>5</sup> We concluded that certain MDC staff members abused some of the detainees, and we found systemic problems in the way detainees were treated at the MDC. In December 2003, we provided the results of our investigation to the BOP for its review and appropriate disciplinary action.

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<sup>5</sup> See “Supplemental Report on September 11 Detainees’ Allegations of Abuse at the Metropolitan Detention Center in Brooklyn, New York” (MDC Report), issued December 18, 2003. The MDC Report supplemented an OIG report issued in June 2003 entitled, “The September 11 Detainees: A review of the Treatment of Aliens Held on Immigration Charges in Connection with the Investigation of the September 11 Attacks.” Both reports can be found on the OIG’s internet website ([www.usdoj.gov/oig](http://www.usdoj.gov/oig)) under “Special Reports.”

In response to our report and recommendations, the BOP OIA initiated an investigation based on the OIG's findings to determine whether discipline was warranted. During this reporting period, the OIA completed its review and sustained many of the OIG's findings. The BOP has initiated the disciplinary process. The OIG continues to monitor the BOP's actions with regard to disciplinary action.

In addition, the OIG has continued its investigation into the MDC's failure to provide the BOP and OIG hundreds of videotapes that were discovered by the BOP in February 2005. These tapes were relevant to the OIG's supplemental review regarding abuse related to the September 11 detainees, but were not provided previously to the OIG – or to the BOP OIA – as required. Some of the videotapes included additional instances of video- and audio-taped meetings between detainees and their attorneys at the MDC. The OIG and the BOP OIA reviewed the newly discovered videotapes, and evidence from those tapes was incorporated into the BOP OIA's review of staff treatment of detainees.

### **3. Recommendations in the Detainee Report**

In the June 2003 Detainee Report, the OIG made 21 recommendations related to issues under the jurisdiction of the FBI, the BOP, leadership offices at the DOJ, as well as immigration issues now under the jurisdiction of the DHS. As of this reporting period, 20 of the recommendations have been resolved. The one open recommendation calls for the Department and the DHS to enter into a memorandum of understanding (MOU) to formalize policies, responsibilities, and procedures for managing a national emergency that involves alien detainees. Discussions between the Department and the DHS over the language of this MOU are ongoing.

### **4. Review of the FBI's Implementation of Attorney General Guidelines**

In May 2002, the Attorney General issued revised domestic Guidelines that govern general crimes and criminal intelligence investigations. The OIG is reviewing the FBI's implementation of four sets of Attorney General Guidelines: Attorney General's Guidelines Regarding the Use of Confidential Informants; Attorney General's Guidelines on FBI Undercover Operations; Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Terrorism Enterprise Investigations; and Revised Department of Justice Procedures for Lawful, Warrantless Monitoring of Verbal Communications.

The OIG's review examined what steps the FBI has taken to implement the Guidelines, analyzed how effective those steps have been, and assessed the FBI's compliance with key provisions of the Guidelines. Because the FBI's

adherence to these Guidelines could implicate civil rights or civil liberties issues under Section 1001, we are including a description of the review in this report.

The OIG is in the final stages of completing its report regarding this review.

#### **IV. EXPENSE OF IMPLEMENTING SECTION 1001**

*Submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate on a semi-annual basis a report...including a description of the use of funds appropriations used to carry out this subsection.*

During this reporting period, the OIG spent approximately **\$1,050,794** in personnel costs, **\$18,183** in travel costs (for investigators to conduct interviews), and **\$3,362** in miscellaneous costs, for a total of **\$1,072,339** to implement its responsibilities under Section 1001. The personnel and travel costs reflect the time and funds spent by OIG special agents, inspectors, and attorneys who have worked directly on investigating Section 1001-related complaints, conducting special reviews, and implementing the OIG's responsibilities under Section 1001.