U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 26, 2002

The Honorable F. James Sensenbrenner, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed please find responses to questions posed to the Attorney General on USA PATRIOT Act implementation in your letter of June 13, 2002, co-signed by Ranking Member Conyers. An identical response will be sent to Congressman Conyers.

We appreciate the additional time provided to the Department to submit responses to your questions, and we are continuing to address each of your questions thoroughly and as quickly as possible. As such, you will find answers to 28 out of the 50 questions submitted. The Department will send the additional questions under separate cover as soon as possible.

In addition, classified answers to question numbers 8, 10, 11, 12, 15, and 27 will be provided to the House Permanent Select Committee on Intelligence through the appropriate channels, as indicated in the attached unclassified responses.

We look forward to continuing to work with the Committee as the Department implements these important new tools for law enforcement in the fight against terrorism. If we can be of further assistance on this, or any other matter, please do not hesitate to contact this office.

Sincerely,

Daniel J. Bryant
Assistant Attorney General

Enclosure

Questions Submitted by the House Judiciary Committee
to the Attorney General on USA PATRIOT Act Implementation
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Submission 1 of 2

1. Section 103 of the Act authorizes funding for the FBI Technical Support Center originally authorized by section 811 of the Antiterrorism and Effective Death Penalty Act of 1996 (Pub. L. No. 104-132). What is the status of the Technical Support Center and what plans are in place or being developed to establish the FBI Technical Support Center?

Answer: The FBI received $32,541,000 for design and construction of the Technical Support Center (TSC) in the Department of Justice's FY 2002 Appropriations Act (P.L. 107-77). The FBI has completed a statement of requirements for the TSC and has incorporated the requirements within the Scope of Work for the acquisition of Architect and Engineering (A&E) services. The A&E's responding cost proposal was received on May 10, 2002, and the FBI has actively negotiated the final issues within the proposed task order contract. Contract award for A&E services is targeted for late July 2002. The total A&E services estimate of $3,000,000 includes multiple stages. The first stage tasking and award are proposed at approximately $500,000. Engineering and design services are anticipated to be completed approximately 16 months after the award of the A&E contract. Competitive source selection for the construction contractor, actual construction, and building outfitting are targeted for completion in the Fall of calendar year 2006.

3. Section 203 of the Act authorizes disclosure of grand jury information consisting of certain foreign intelligence or counterintelligence information to (A) other federal law enforcement officials; (B) intelligence officials; (C) protective officials; (D) immigration officials; (E) national defense officials; or (F) national security officials pursuant to Fed.R.Crim.P. 6(e)(3)(C)(i)(V).

A. How many times has the Department of Justice made such disclosures?

Answer: Disclosure of information obtained through grand juries convened under federal law as part of criminal investigations of matters involving foreign intelligence has been made on approximately 40 occasions. Some of this information sharing may have occurred prior to passage of the USA PATRIOT Act. In addition, such information may have been shared with officials who participate as members of the various Joint Terrorism Task Forces (JTTFs) around the country as well as representatives of pertinent law enforcement, intelligence, and defense agencies stationed at FBI SIOC.

B. For each disclosure, indicate whether the information related to a matter

involving foreign intelligence or counterintelligence (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. §401a)) or foreign intelligence information (as defined in Rule 6(e)(3)(C)(iv)).

Answer: The Department has not drawn a distinction between foreign intelligence, counterintelligence, or foreign intelligence information shared in these disclosures in part because information in international terrorism cases tends to qualify under all three definitions.

C. How many separate grand juries were the source of such information?

Answer: We do not maintain such data.

4. Section 203 of the Act also requires that the court supervising a grand jury be notified within a reasonable time when certain foreign intelligence or counterintelligence information is disclosed pursuant to that section. How many notices have been filed with U.S. courts pursuant to this requirement? What has been the average time period between the disclosure and the notice to the court? What has been the longest time period? What has been the shortest time period?

Answer: Notice to the court is made within a reasonable period of time as the rule requires, but practice varies among jurisdictions as to what constitutes a reasonable period of time. Disclosure notices have been filed in at least 38 districts. We do not maintain records on the time period between disclosure and notice to the court.

5. Section 203(b) authorizes disclosure of Title III electronic, wire, and oral intercept information consisting of certain foreign intelligence or counterintelligence information to (1) Federal law enforcement; (2) intelligence officials; (3) protective officials; (4) immigration officials; (5) national defense officials; or (6) national security officials. How many times has the Department of Justice made such disclosures under this authority?

Answer: The Department has made disclosure to the intelligence community under this authority on two occasions.

8. Section 206 of the Act authorizes the FISA court to issue an order that can be used to obtain assistance and information from any common carrier, landlord, or custodian when the court finds that the target of the surveillance may take actions that "may have the effect of thwarting the identification of a specified person" to assist in effectuating a FISA order. How many times has the Department of Justice obtained such "roving" orders?

Answer: The number of times that the Department has obtained authority for the

"roving" surveillance provided in section 206 of the USA PATRIOT Act is classified but will, in accordance with established procedures and practices under FISA, be provided to the intelligence committees in an appropriate channel. We can, in this channel, assure the committee that the Department's request for use of such authority, based upon a determination by the Foreign Intelligence Surveillance Court that there is probable cause to believe that the actions of the target of surveillance may have the effect of thwarting the identification of those carriers whose assistance will be necessary to carrying out the Court's orders, has been limited to those cases where the surveillance ordered by the Court would otherwise be, or would otherwise likely be, impossible.

9. Section 212 of the Act authorizes any electronic communications service provider to disclose communications if it reasonably believes that an emergency involving immediate danger of death or physical injury to any person requires disclosure. How many times has the Department of Justice received information under this authority? In how many of those cases did the government, not a private person, submit the information suggesting immediate danger of death or physical injury?

Answer: This important provision of the USA PATRIOT Act has given Internet service providers (ISPs) the legal authority that they need to disclose information in order to save lives. Although we have received anecdotal accounts of its use, there are no statistics detailing the number of times that disclosures have occurred or the basis for such disclosures. However, it has been used on several occasions, including to permit ISPs to disclose records that assisted law enforcement in tracing the source of a kidnapper's communications.

10. Section 214 authorizes the Department of Justice to obtain orders authorizing the use on facilities used by American citizens and permanent resident aliens of pen registers and trap and trace devices in foreign intelligence investigations. How many times has the Department of Justice obtained orders for use on facilities used by American citizens or permanent resident aliens? What procedures are in place to ensure that such orders are not sought solely on the basis of activities protected by the First Amendment to the U.S. Constitution?

Answer: The number of times the tools in section 214 have been used against U.S. persons, as defined by FISA, is classified but will, in accordance with established procedures and practices under FISA, be provided to the intelligence committees in an appropriate channel. In this channel, we can assure the committee that, in accordance with the provisions of that section, the Department has practices in place to ensure that pen/traps are not sought solely on the basis of activities protected by the First Amendment of the Constitution.

11. How many applications and orders, pursuant to Section 215 of the Act, have been made or obtained for tangible objects in any investigation to protect the United

States from international terrorism or clandestine intelligence activities? What procedures are in place to ensure that such orders are not sought solely on the basis of activities protected by the First Amendment to the U.S. Constitution? How many total applications have been made and of those, how many applications were made by FBI Assistant Special Agents in Charge, rather than a higher ranking official? How many orders have been issued upon the application of FBI Assistant Special Agents in Charge?

Answer: Section 215 amended the business records authority found in Title V of the Foreign Intelligence Surveillance Act (FISA). Under the old language, the FISA Court would issue an order compelling the production of certain defined categories of business records upon a showing of relevance and "specific and articulable facts" giving reason to believe that the person to whom the records related was an agent of a foreign power. The PATRIOT Act changed the standard to simple relevance and gives the FISA Court the authority to compel production in relation to an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a U.S. person is not conducted solely upon the basis of activities protected by the First Amendment to the Constitution. The number of times the Government has requested or the Court has approved requests under this section since passage of the PATRIOT Act, is classified, and will be provided in an appropriate channel.

12. **Has Section 215 been used to obtain records from a public library, bookstore, or newspaper? If so, how many times has Section 215 been used in this way? How many times have the records sought related to named individuals? How many times have the records sought been entire databases? Is the decision to seek orders for bookstore, library, or newspaper records subject to any special policies or procedures such as requiring supervisory approval or requiring a determination that the information is essential to an investigation and could not be obtained through any other means?**

Answer: Such an order could conceivably be served on a public library, bookstore, or newspaper, although it is unlikely that such entities maintain those types of records. If the FBI were authorized to obtain the information the more appropriate tool for requesting electronic communication transactional records would be a National Security Letter (NSL). The number of times the Government has requested or the Court has approved requests under this section since passage of the PATRIOT Act, is classified, and will be provided in an appropriate channel.

14. **Since enactment of the Act, how many FISA surveillance order applications certifying under section 218 of the Act that "a significant purpose" of the surveillance was the collection of foreign intelligence information could not have certified, pursuant to prior law, that "the purpose" was the collection of foreign**

intelligence information?

Answer: Because we immediately began using the new "significant purpose" standard after passage of the PATRIOT Act, we had no occasion to make contemporaneous assessments on whether our FISAs would also satisfy a "primary purpose" standard. Therefore, we cannot respond to the question with specificity. The "primary purpose" standard, however, has had its principal impact not with respect to the government's certification of purpose concerning the use of FISA itself, but rather in the FISC's tolerance of increased law enforcement investigations and activity connected to, and coordinated with, related intelligence investigations in which FISA is being used. Given the courts' approach in this area, the "significant purpose" amendment has the potential for helping the government to coordinate its intelligence and law enforcement efforts to protect the United States from foreign spies and terrorists.

15. How many U.S. citizens or lawful permanent residents have been subject to new FISA surveillance orders since enactment of the Act? How many U.S. citizens or lawful permanent residents were subject to such orders during the same period in the prior fiscal year?

Answer: In accordance with established procedures and practices under FISA, we will provide these numbers to the intelligence committees.

17. How many search warrants for electronic evidence have been served under section 220 of the Act in a jurisdiction other than the jurisdiction of the court issuing the warrant?

Answer: Although the exact number of search warrants for electronic evidence that have been executed outside the issuing district is unknown, the impact of Section 220 has plainly been significant. In the aftermath of September 11th, districts in which large Internet service providers reside (most notably the Eastern District of Virginia and the Northern District of California) were inundated with search warrant applications, placing a tremendous burden on federal agents and prosecutors and federal magistrates in those districts. The sheer volume of applications relevant to important investigations made it difficult to process them in a deliberate, timely fashion.

Section 220 has appreciably diminished the deluge of search warrant applications in the busiest districts. By so doing, Section 220 has removed an impediment to important investigations of terrorism and other crimes and has allowed federal prosecutors to apply for warrants before the federal magistrate most likely to be familiar with the particular facts of the investigation. In addition, the improvement in efficiency has proved invaluable in several time-sensitive investigations, including one involving tracking a fugitive and another involving a hacker who used stolen trade secrets to extort a company.

19. Has the sunset provision in section 224 of the Act hampered the DOJ in its efforts against terrorism or any other criminal or intelligence investigation?

Answer: The reforms of FISA in the USA PATRIOT Act has effected, in positive ways, the making, granting, and executing of every application for Court-authorized electronic surveillance and physical search under FISA. Those reforms have provided critical assistance to the efforts of the Department and the Administration against terrorists and spies in the U.S. The Department is unaware of present effect of the sunset provision looming over many of those reforms but hopes that those reforms will be allowed to continue past the expiration date in section 224 of the Act. Section 224 would remove critical tools against terrorists, in particular, long before the national effort against terrorism, as outlined by the President, will end.

22. Section 211 of the Act was intended to clarify what information cable companies could disclose to law enforcement authorities. How has this provision operated in practice?

Answer: Before the enactment of Section 211, when law enforcement sought to compel production of information relevant to a criminal investigation from cable companies that provided telephone or Internet service, the companies confronted a difficult dilemma: comply with the Cable Act and risk liability for violating the Electronic Communications Privacy Act (ECPA), or comply with ECPA and risk liability for violating the Cable Act. Important investigations were brought to a standstill while this conflict was debated by the providers' legal counsel or litigated in court. One particularly unfortunate case involved investigation of a suspected pedophile who distributed images of child pornography using a cable Internet connection and bragged that he was sexually molesting a minor girl. Law enforcement agents obtained a court order pursuant to ECPA that commanded the suspect's provider to disclose the suspect's name and address, but the provider refused to comply with the order, citing the pre-amendment Cable Act. The young girl was left at risk of sexual molestation for more than two weeks before investigators following other leads were able to identify and arrest the suspect. Only after the arrest did the cable company finally turn over the records.

Section 211 clarifies that ECPA, not the Cable Act, governs the disclosure of information regarding communication services provided by cable companies. This amendment ended all litigation on this question, and cable providers now routinely comply with legal process pursuant to ECPA without fear of liability under the Cable Act. Moreover, important investigations, such as that described above, are no longer hampered by this apparent conflict in the law.

27. How many FISA applications for "roving" surveillance authority and how many FISA applications for "roving" search authority have been approved since enactment of the Act? How many surveillances and how many searches have been

conducted pursuant to those approved applications?

Answer: The number of times the authority for roving surveillance under section 206 of the USA PATRIOT Act as been requested and granted is, as we said above, classified and will, in accordance with established procedures and practices under FISA, be provided in an appropriate channel to the intelligence committees. In this channel, however, we can say that, in accordance with the provisions of section 206, which give the Foreign Intelligence Surveillance Court only the authority to grant roving surveillance, no authority for roving searches has been requested or granted.

29. Section 401 authorizes the Attorney General to "waive any FTE cap on personnel assigned to the Immigration and Naturalization Service (INS) on the Northern Border."

A. How many Border Patrol Agents have been assigned or reassigned to the Northern Border under the authority conveyed by this provision?

Answer: The INS has not waived the FTE cap because Congress provided new resources in both the 2002 Appropriations Act and the Defense Appropriations Act. The 2002 Appropriations Act provided 570 Border Patrol Agent positions, of which 145 were assigned to the Northern Border. The Defense Appropriations Act, which contained additional funds for the INS, stipulated that 100 of the 174 Border Patrol Agent positions provided were for the Northern Border. As a result of this legislation, a total of 245 positions have been authorized for the Northern Border and the INS expects that all positions will be filled by the first quarter of FY 2003. Future budgets will address additional positions in order to fulfill ongoing requirements of the USA PATRIOT Act.

B. How many Inspectors have been assigned or reassigned to the Northern Border under the authority conveyed by this provision?

Answer: The INS has not waived the FTE cap because Congress provided new resources in both the 2002 Appropriations Act and the Defense Appropriations Act. Under these acts, the INS was authorized an additional 621 Immigration Inspector positions for Northern Border ports-of-entry (POEs). In addition, the INS has requested Inspectors for the Northern Border in its FY 2003 Budget in order to fulfill ongoing requirements of the USA PATRIOT Act.

C. How much do you estimate that this provision has cost?

Answer: As a result of new appropriations, the INS has not had to waive the FTE cap and thus no cost was incurred.

30. Section 402 authorizes appropriations to triple the number of INS Border Patrol Agents and Inspectors in each state along the Northern Border, and also authorizes appropriations to provide necessary personnel and facilities to support such personnel.

A. What steps has the INS taken to hire additional Inspectors at the Ports of Entry along the Northern Border?

Answer: The INS has extended the open hiring period for Immigration Inspectors, and redesigned the Immigration Inspector hiring process in order to manage its expected growth most efficiently. Under the new process, selections are centralized at the INS National Hiring Center. By centralizing the process, recruitment and hiring are streamlined and officers are brought onboard in a timely manner, without compromising security and personnel standards. The INS began selecting candidates in February towards filling the Northern Border enhancement positions. Many of these candidates are in various stages of the INS' pre-appointment process, which includes a written exam, oral board interview, medical and drug screening, and rigorous background investigation.

B. Has the INS been actively recruiting additional Inspectors for the Northern Border?

Answer: Yes. The INS has been advertising in national and local radio and newspaper markets, employment guides, magazines, diversity publications, and internet postings. In addition, candidates are recruited at job fairs, universities and colleges, and military installations across the country.

C. Has the INS reassigned other Inspectors from the other Ports of Entry to the Northern Border Ports? If so, how many Inspectors has it reassigned, and what has it done to replace those Inspectors?

Answer: The INS has not permanently reassigned Inspectors from other Ports-of-Entry to the Northern Border. However, since September 11, Inspectors have been detailed to the Northern Border from other Ports-of-Entry for temporary periods of time in order to meet operational needs and Threat Level One mandates.

D. Has the INS needed to expand its training capacity to accommodate additional Inspectors? If so, what has it done, and what has this cost?

Answer: Yes. Since January 2002, the Immigration Officer Academy (IOA) at the Federal Law Enforcement Training Center (FLETC) has conducted training classes 6 days per week in order to accommodate additional trainee officers.

Currently, the IOA commences an Immigration Inspector class every week and, where possible, doubles the class size. The IOA at FLETC added 26 Inspector classes (24 students per class) at a cost of $8,450 per student or $5,247,450.

E. What steps has the INS taken to hire additional Border Patrol Agents to serve along the Northern Border?

Answer: 245 Border Patrol positions along the Northern Border will be filled with current Border Patrol Agents. 199 positions were advertised beginning March 1 and selections were made in May. The remaining positions are supervisory and selections are currently being made.

i. Has the INS been actively recruiting additional Border Patrol Agents for the Northern Border?

Answer: Because the Border Patrol Agents along the Northern Border are being selected from existing Agents, the INS is not actively recruiting outside applicants. The INS issued an internal merit promotion announcement in March. That announcement generated close to 800 applicants from within the Border Patrol. Please see the response to Question 30 (E)(ii) for additional information about recruitment efforts.

ii. Has the INS reassigned other Border Patrol Agents from elsewhere in the United States to the Northern Border? If so, how many agents has it had to reassign, and what has it done to replace those Border Patrol Agents?

Answer: For FY 2002, the Border Patrol is enhancing staffing on the Northern Border by 245 agents. In order to backfill positions in other parts of the country, particularly along the Southern Border, the INS has an extensive recruitment initiative. This includes print and radio advertisements, and recruitment visits by over 300 trained Border Patrol Agents to colleges, universities, and military installations. Since September 2001, the INS has received over 65,000 applicants for Border Patrol Agent positions and the INS is making selections at the rate of 1,000 per month. These selections are in various stages of the pre-employment processing including the oral interview board, drug test, medical exam and an extensive background investigation.

iii. Has the INS needed to expand its training capacity to accommodate additional Border Patrol Agents? If so, what has it done to expand training capacity, and what has this cost?

Answer: The INS added five additional Border Patrol basic training classes to its FY 2002 training schedule. Also, the INS shifted classes from FLETC to the Border Patrol satellite facility in Charleston, South Carolina. Specifically, the INS and FLETC agreed to adjust the FY 2002 basic training schedule by shifting 10 of 12 classes scheduled at the FLETC's Glynco, Georgia facility to Charleston. This allowed FLETC to add training capacity in Glynco to train more law enforcement officers. This agreement changed the distribution of Border Patrol basic training classes from 12 Glynco classes and 25 Charleston classes, to 2 Glynco classes and 35 Charleston classes. The cost of adding five classes to the Charleston schedule was approximately $5 million.

31. Section 402 also authorizes the appropriation of $50,000,000 to the INS and the U.S. Customs Service to make improvements in technology for monitoring the Northern Border and acquiring additional equipment for the Northern Border.

A. What improvements in technology has the INS undertaken along the Northern Border using the appropriation in section 402 of the Act? Has the INS seen any improvement in its ability to monitor the Northern Border as a result of undertaking those improvements?

B. What additional equipment has the INS acquired for use at the Northern Border under the authority conveyed by section 402 of the Act? Has the INS seen any improvement in its ability to monitor the Northern Border as a result of adding that equipment?

Answer: INS is implementing the following technology improvements on the Northern border.

- Install the Integrated Intelligence Surveillance System (ISIS) at 55 Northern border sites, using funds in the FY 2002 appropriation and FY 2003 President's request. FY 2002 funds are 80% obligated and sites are undergoing 5-7 month environmental assessments (EA) prior to disturbing any land where a pole may be placed. These installations are planned at Spokane, Washington, Grand Forks, North Dakota, Detroit, Michigan and Buffalo, New York. Completion of all 55 installations will take approximately 18-24 months after environmental assessments, and will serve as a force-multiplier for agents deployed to stations in these areas.
- Implement IDENT system backup to provide maintenance of a redundant operations capability ensuring that the IDENT "Look Out" fingerprint database (including the FBI's and Marshals Service's wants and warrants) will continue to be available to agents even in the event of a catastrophic emergency. This redundancy will be important as INS is deploying ENFORCE/IDENT capability

across the Northern border.

INS is providing the following additional equipment to the Northern border.

- Deploy 3 new single-engine helicopters, one each to Grand Forks, Spokane and Swanton Sectors to increase air surveillance hours, as well as search and rescue capability, on the Northern border.
- Deploy five hundred (500) Infrared Scopes for Border Patrol Agents at the Northern border stations. These scopes significantly increase the night-vision capability of agents while on patrol.

Please see attachment for question #31.

33. Section 404 waives the overtime cap on INS employees in the Department of Justice Appropriations Act, 2001 (as enacted into law by Appendix B (H.R. 5548) of Public Law 106-553 (114 Stat. 2762A-58 to 2762A-59)) of $30,000 per employee per calendar year.

A. Do you anticipate that any INS employees will be paid more than $30,000 in overtime this fiscal year?

Answer: Yes, we anticipate that several INS employees will be paid more than $30,000 in overtime this fiscal year.

B. If so, how many INS employees do you anticipate will be paid more than $30,000 in overtime this calendar year?

Answer: As of June 1, 2002 (pay period 10), one employee has been paid more than $30,000 in overtime. This employee is a Special Agent and has been paid $30,283.76 in overtime through June 1, 2002. If employees continue earning overtime at their current rate, as many as 1,857 employees may be paid more than $30,000 in overtime this calendar year.

C. How much do you anticipate that this provision will cost this fiscal year?

Answer: The provision to waive the overtime cap for INS employees may cost $3,000,000 this fiscal year. This estimate assumes 300 employees exceed the cap by $10,000 each. We currently have received written waivers approving 257 employees to exceed the $30,000 overtime cap.

34. Section 405 requires the Attorney General, in consultation with the Secretaries of State, the Treasury, and Transportation, as well as other appropriate agency heads to report to Congress on the feasibility of enhancing the FBI's Integrated

Automated Fingerprint Identification System (IAFIS) and other identification systems to better identify aliens wanted in connection with criminal investigations in the United States or abroad, before those aliens are issued visas or are admitted to or allowed to leave the United States. The section authorizes an appropriation of $2,000,000 for this purpose.

A. Has the Justice Department started to evaluate the feasibility of using IAFIS and other databases to identify aliens wanted on criminal charges?

B. What steps has the Justice Department taken in response to this provision?

C. Is the Justice Department devising a comprehensive database to identify criminal aliens before they enter the United States? If so, what barriers do you anticipate Justice will encounter in achieving this goal?

Subtitle B of Title IV of the Act, captioned "Enhanced Immigration Provisions," amends the terrorism provisions of the Immigration and Nationality Act (INA), gives the Attorney General additional authority to detain certain suspected alien terrorists, and improves systems for tracking aliens entering and leaving the United States and for inspecting aliens seeking to enter the United States.

Answer: Public Law 107-117 appropriated $5 million to the Department of Justice to carry out Section 405 of the PATRIOT Act, including $2 million for a study to assess the feasibility of enhancing the FBI's IAFIS system to better identify aliens wanted in connection with criminal investigations in the United States or abroad. The following represents a summary of the FBI Criminal Justice Information Services (CJIS) Division's efforts to determine the feasibility of enhancing the Integrated Automated Fingerprint Identification System (IAFIS) in an effort to address the requirements of Section 405 of the USA PATRIOT Act.

Prior to the enactment of the USA PATRIOT Act, the CJIS Division had initiated an National Fingerprint-based Applicant Check (N-FACS) study to determine the feasibility of establishing a rapid and positive fingerprint-based identification background check system for authorized non-criminal justice purposes.

The focus of this study was to determine the impact of submitting ten "flat" fingerprint images as opposed to the current IAFIS requirement of accepting only ten "rolled" fingerprint images. The N-FACS study is comprised of five components from which data will be incorporated to formulate a final report. The five components of N-FACS are:

- **Ohio Web Check Pilot Project** - This cooperative effort between the CJIS Division and the state of Ohio's Bureau of Criminal Identification and Investigation (BCI&I) encompasses the collection of ten flat fingerprint images

during the BCI&I's applicant processing. The flat images will then be submitted to the CJIS Division's IAFIS for processing. During the pilot, metrics such as reliability, selectivity, and filter rates will be assessed as they relate to processing ten flat images rather than ten rolled images against the large rolled fingerprint repository housed within IAFIS.

- **Texas Flat-print Initiative -** The Texas Department of Public Safety is in the early stages of utilizing special live scan devices which will collect a full set of applicant rolled flat images and search both against the Texas AFIS system. This pilot will ultimately analyze the reliability of flat images verses rolled images at the state level. Potential expansion of this pilot may include forwarding these same images for processing by the FBI's IAFIS.

- **FBI Internal Flat Verses Rolled Testing** - Various testing on the IAFIS non-operational environment are currently being conducted to analyze the reliability, selectivity, and filter rates related to the processing of flat images verses rolled images.

- **Latent Testing** - The FBI's Laboratory Division is currently conducting various tests to analyze the impact of the collection of flat images on the latent community.

- **National Institute of Standards and Technology (NIST) Testing** - The NIST will be utilized to verify and validate various testing methodologies utilized for the N-FACS.

Subsequent to the passage of the USA PATRIOT Act, the potential for utilizing rapid-capture flat fingerprint devices for Visa and Passport purposes placed increased emphasis on this study.

Accordingly, to certify IAFIS accuracy, as required by the USA PATRIOT, Section 403, for the flat fingerprint to rolled fingerprint matching, an Algorithm Test Bed (ATB) has been ordered from Lockheed Martin Information Systems. The ATB will be delivered in early August and was purchased for $393,479 from funding allocated specifically for Section 405 of the USA PATRIOT Act. The ATB is essentially a small scale version of IAFIS containing 100,000 ten-print cards. The ATB will be provided to the NIST for various flat and rolled accuracy testing. The initial test results from NIST are scheduled for October 2002.

In addition to the determination of the efficacy of flat fingerprint records for identification, several other applications for IAFIS services are implied or required in the USA PATRIOT Act, the Enhanced Border Security and Visa Entry Reform Act, and the Aviation and Transportation Security Act. To avoid the possibility of redundant or

parallel development of solutions to address the new and proposed IAFIS applications, a study needs to be conducted to consolidate and evaluate all of the legislated and proposed IAFIS requirements. This study will include an evaluation of the inclusion of a secondary biometric program (i.e., facial imaging and identification) to the IAFIS business plan, following the standards being developed by the National Institute of Standards and Technology relative to multi-modal biometric applications. The proposed study will utilize simulations and models for capacity planning and throughput performance and will result in the development of a Concept of Operations to implement the recommended changes. It is anticipated that contractor support will be required to complete the study and associated documentation. Based on contracts of similar nature relative to the IAFIS evaluation, it is estimated that the proposed tasks will require $1.6 million to complete. We anticipate obligating these funds by the end of the fiscal year.

In addition to the Section 405 project, the Department has been working for several years on a planned integration of INS' IDENT system with the FBI's IAFIS system. The IDENT/IAFIS Integration Project is designed to give INS the ability to determine whether a person they have apprehended is the subject of a want or warrant, was previously deported, or has a record in the FBI's criminal master file.

In FY 2002. the Department of Justice received a $9 million appropriation IDENT/IAFIS integration and the President's budget requests an additional $9 million in FY 2003. This funding will permit deployment to 30 locations (including northern border sites); systems engineering (to permit simultaneous search of both systems) and system upgrades; research and development of alternative fingerprinting systems; the development and analysis of performance measures; and program management and planning. The Administration's FY 2002 Counter-terrorism Supplemental Appropriations request includes $5.75 million for accelerated deployment to 30 additional ports of entry so that INS Inspectors may conduct rapid-response criminal background checks of suspect aliens at ports-of-entry prior to their admission.

At the present time an interim IDENT/IAFIS solution is being deployed, requiring each individual to be processed twice, once under IDENT and once using an expedited IAFIS check; however, the Department is in the process of devising a way for INS to take 10 rolled fingerprints and simultaneously search both systems. We expect to have this capability by the end of 2002. We are also working on a full integration of the IDENT and IAFIS systems. This larger effort could take as many as five years. A well-planned, phased deployment of the workstations is necessary to draw conclusions about potential operational impacts and resource needs that would result from the full deployment of an integrated system. Steps toward actual integration of the two systems are expected to begin in FY 2004.

As a further interim solution, the INS recently added approximately 100,000 records to IDENT for persons likely to be encountered by INS who are wanted by federal, state and

local law enforcement. This has greatly enhanced INS's capability to intercept criminal fugitives. Since January 1, these efforts have led to the identification of approximately 1,800 individuals wanted for a variety of offenses, including homicide, rape, drug crimes and parole violations. For example:

- On February 7, 2002, an alien arrived at the Hartsfield International Airport from Colombia seeking entry as a B-2 tourist visitor. She was referred to secondary processing where the Inspector enrolled the subject in the IDENT system. It was determined that she was the subject of an outstanding warrant by the FBI's Violent Crime Unit in Los Angeles, CA. The warrant involved a violent jewel theft. She also was the subject of a warrant from Mineola, NY, for jumping bail on another theft charge.

- On January 31, 2002, while performing normal processing of a group of aliens apprehended near Freer, TX, one of the subjects being processed through the IDENT system was identified as a homicide suspect wanted by Harris County, TX, on a 1989 warrant.

- On May 29th, at the Rainbow Bridge Port of Entry, in Niagara Falls, NY, a Pakistani male pedestrian attempted entry, using an assumed name and a Pakistani passport (with Canadian landed immigrant status). A check through IDENT revealed his true identity and a criminal record which included theft and battery, illegal entry, and failure to appear for a deportation hearing. Upon being notified by INS of the arrest, the Joint Terrorism Task Force indicated its desire to interview the subject about possible 9/11 involvement and his ties to Pakistan. He is now facing up to 5 years in jail on immigration charges.

35. Section 411 amends the INA to broaden the scope of aliens ineligible for admission or deportable due to terrorist activities. This section also defines "terrorist organization" and the term "engage in terrorist activity."

A. Has the INS relied upon the definitions provided under section 411 to file any new charges against any aliens in removal proceedings? If so, how many times has it used each provision?

Answer: Although no additional charges have been filed as a result of the changes to Section 411, we have and will continue to carefully assess each case for the potential of adding additional charges created by the PATRIOT Act.

B. Has any alien been denied admission on these new grounds of inadmissibility? If so, how many?

Answer: One alien has been denied admission under these new provisions. He was refused admission under the Visa Waiver Program as there is reason to believe that he is a money launderer.

C. What effect have the amendments to the INA in section 411 of the Act had on ongoing investigations in the United States?

Answer: Section 411's expanded definition of "engage in terrorist activity," as well as the new definitions of "terrorist organization" should enable the INS to charge more aliens with the security-related grounds of removal. On December 7, 2001, the Secretary of State, in consultation with the Attorney General, designated 39 organizations as "terrorist organizations" under Section 411(a)(1)(G) of the PATRIOT Act after finding that the organizations have committed, or have provided material support to further, terrorist acts. On July 22, 2002, the Attorney General requested that the Secretary of State designate an additional 9 organizations under the same provision. The INS is currently examining each potential terrorist-related investigation for appropriate use of the additional tools added by Section 411.

D. As amended by section 411 of the Act, section 212(a)(3)(B)(i)(VI) of the INA renders inadmissible any alien who has used his position of prominence within any country to endorse or espouse terrorist activity or to persuade others to support terrorist activity or a terrorist organization, in a way that the Secretary of State has determined undermines United States efforts to reduce or eliminate terrorist activities. Has the Secretary of State made such a determination under this provision?

Answer: The Department of Justice is awaiting information from the Department of State on this issue.

E. Section 212(a)(3)(F) of the INA, as amended by section 411 of the Act, renders inadmissible any alien who the Attorney General determines has been associated with a terrorist organization and intends while in the United States to engage solely, principally, or incidentally in activities endangering the United States. Has the Attorney General made such a determination with respect to any alien thus far?

Answer: No aliens have been found inadmissible on Section 212(a)(3)(F) of the INA, as amended by Section 411 of the USA PATRIOT Act. However, since inception of the USA PATRIOT Act, and due to the new provisions, the names of 304 aliens (254 money launderers and 50 spouses or children of suspected terrorists) have been added to the counter-terrorism database, TIPOFF. Additionally, during the period of November 2001 through May 2002, there have

been 25 aliens found inadmissible to the United States under previously existing terrorism grounds. Of these, 12 had their visas revoked prior to arrival so that they were subject to expedited removal; 10 applicants were refused under the Visa Waiver Program; one applicant was refused at pre-flight inspection; one applicant was permitted to withdraw his application for admission in lieu of a hearing before an Immigration Judge; and one alien was declared ineligible to transit without visa and his departure was conducted under safeguards.

F. Have there been any challenges to the constitutionality of the charges added to the INA by section 411 of the Act? If so, please identify the case(s) and the status of any proceeding.

Answer: No, the charges have not been used. As a result, there have not been any federal suits.

36. Section 412 of the Act (1) provides for mandatory detention of an alien certified by the Attorney General as a suspected terrorist or threat to national security; (2) requires release of such alien after seven days if removal proceedings have not commenced, or if the alien has not been charged with a criminal offense; (3) authorizes detention for additional periods of up to six months of an alien not likely to be deported in the reasonably foreseeable future if release will threaten our national security or the safety of the community or any person; and (4) limits judicial review to habeas corpus proceedings in the U.S. Supreme Court, the U.S. Court of Appeals for the District of Columbia, or any district court with jurisdiction to entertain a habeas corpus petition; and (5) limits the venue of appeal of any final order by a circuit or district judge under section 236A of the INA to the U.S. Court of Appeals for the District of Columbia.

A. How many times has the Attorney General issued a certification under section 236A(a)(3) of the INA?

Answer: Since September 11 and enactment of the PATRIOT Act, the INS has detained numerous aliens for violations of immigration law and who also present national security risks. It has been unnecessary, however, to use the new certification procedure added by the PATRIOT Act because traditional administrative bond proceedings have been sufficient to detain these individuals without bond.

B. If the Attorney General has issued certifications under this provision, how many of the aliens for whom certifications have been issued have been removed?

Answer: Please see the answer to Question 36 (A).

C. How many aliens for whom the Attorney General issued certifications are still detained? At what stage of the criminal or immigration proceedings are each of those cases?

Answer: Please see the answer to Question 36 (A).

D. What were the grounds for those certifications?

Answer: Please see the answer to Question 36 (A).

E. How many of the aliens who were certified have been granted relief? How many of those aliens are still detained?

Answer: Please see the answer to Question 36 (A).

F. Have any challenges to certifications under section 236A(a)(3) of the INA been brought in habeas corpus proceedings in accordance with section 236A(b)? If so, please identify the case(s) and the status of each proceeding?

Answer: Please see the answer to Question 36 (A).

G. Has the Attorney General released any aliens detained under section 236A of the INA because the alien was not charged with a criminal offense or placed into removal proceedings within seven days?

Answer: Please see the answer to Question 36 (A).

37. Section 413 authorizes the Secretary of State, to share, on a reciprocal basis, criminal- and terrorist-related visa lookout information in the State Department's databases with foreign governments.

A. Has the authority provided under section 413 been used?

B. If that authority has been used, has it uncovered relevant and material information on any pending or ongoing immigration matters? Has that authority led to the discovery of relevant and material information on suspected activity?

Answer: The Department of Justice is awaiting information from the Department of State on these issues.

38. Section 414 of the Act declares the sense of Congress that the Attorney General should: (1) fully implement the integrated entry and exit data system for airports,

seaports, and land border ports of entry with all deliberate speed; and (2) begin immediately establishing the Integrated Entry and Exit Data System Task Force. It also authorizes appropriations for these purposes, and requires the Attorney General and the Secretary of State, in developing the integrated entry and exit data system, to focus on the use of biometric technology and the development of tamper-resistant documents readable at ports of entry.

A. What steps has the Department of Justice taken to implement the integrated entry and exit data system for airports, seaports, and land border ports of entry?

Answer: The Administration has made a commitment to improve border management capabilities by establishing an integrated, Entry Exit Program. This commitment is supported by the INS Data Management Improvement Act of 2000, the Visa Waiver Permanent Program Act of 2000, and other related laws that establish statutory requirements for an automated system.

The INS has established a multi-agency Program Management Office to coordinate all activity associated with this effort, including infrastructure enhancements. External INS stakeholders include those organizations that may influence the Entry Exit Program from an external perspective. These include:

- Office of Homeland Security;
- Office of Science and Technology Policy;
- National Institute of Standards and Technology; and
- Data Management Improvement Act (DMIA) Task Force.

The internal program management body consists of the INS Commissioner, the Entry Exit program Management Office, and the Entry Exit Program Team (EEPT). The EEPT has been chartered to implement a border management program that includes an automated information system. The EEPT is comprised of the following organizations:

<u>INS</u>

- Office of Inspections;
- Office of Strategic Information and Technology Development;
- Office of Information Resources Management;
- Office of General Counsel;
- Office of Facilities;
- Office of Immigration Services; and
- Office of Public Affairs and Congressional Relations.

<u>Department of State</u>

- Bureau of Consular Affairs

Department of Transportation
- Transportation Security Administration

Department of Justice
- Justice Management Division

U.S. Customs Service
- Field Operations

B. How soon does the Justice Department think that the integrated entry and exit data system for airports, seaports, and land border ports of entry will be implemented? Will it be implemented for air-, land-, and seaports at the same time, or will it be implemented sequentially?

Answer: The Entry Exit System will follow an evolutionary, incremental model wherein planned "phases" will be used to scale, insert technology, and generally enhance the system's functionality.

The following deadlines are legislatively mandated:

- October 1, 2002—Entry Exit System operational at all air and sea POEs for visa waiver program travelers
- December 31, 2003—Entry Exit System operational for all travelers at all air and sea POEs
- December 31, 2004—Entry Exit System at the 50 largest land POEs
- December 31, 2005—Entry Exit System operational at all POEs for all travelers

C. How much will it cost to implement an integrated entry and exit data system for airports, seaports, and land border ports of entry?

Answer: Due to the initial nature of gathering the full requirements at this time, the preliminary baseline Life Cycle Cost Estimate (LCCE) is currently under development. It will describe the total estimated incremental costs of the Entry Exit Program to include the automated information system, facilities (both INS and the Department of State), biometric capability, upgrades of the information technology infrastructures at all POEs, program management, and operations and maintenance. We will provide you with the LCCE when that information is available.

D. How many meetings has the Entry and Exit Data System Task Force held

since the enactment of the Act?

Answer: The establishment of the DMIA Task Force was delayed due to the change in Administrations and the events of September 11. The kick-off DMIA Task Force meeting was held on February 20, 2002 at INS Headquarters in Washington, D.C. Subsequent informational briefings have been held for the Task Force. The Task Force is currently on target to have the next meeting in September to make decisions on the recommendations for the required report due to Congress by December 31, 2002.

E. What was the agenda of those meetings and what has been the outcome of those meetings?

Answer: The agenda of the February 20, 2002 meeting was to introduce members and discuss future activities of the Task Force. Additionally, an overview of the requirements of the DMIA was provided and then the meeting was open to the public for comment.

Subsequent informational briefing meetings resulted in the creation of subcommittees to perform fact-finding and research options on the entry exit system in the air, sea, and land border environments.

39. Section 415 amends the Immigration and Naturalization Service Data Management Improvement Act of 2000 to include the Office of Homeland Security in the Integrated Entry and Exit Data System Task Force. Has this been accomplished?

Answer: The Office of Homeland Security attended the February 20 th Task Force meeting and was provided a separate briefing from the Task Force. The Task Force provides information to the Office of Homeland Security through the Department of Justice. Additionally, the Entry Exit Program Team briefed the Office of Homeland Security on June 11, 2002.

40. Section 416 of the Act directs the Attorney General to implement fully the foreign student monitoring program, and to expand that program to include other approved educational institutions like flight, language training, or vocational schools. In addition, that section authorizes appropriation of $36,800,000 to carry out the purposes of the section.

A. What steps has the Justice Department taken to implement the foreign student monitoring program, in accordance with section 416 of the Act?

Answer: The foreign student monitoring program under Section 416 of the Act is the Student and Exchange Visitor Information System (SEVIS). SEVIS is an

Internet-based system that provides tracking and monitoring functionality, with access to accurate and current information on non-immigrant students (F and M visa) and exchange visitors (J visa), and their dependents (F-2, M-2, and J-2). SEVIS enables schools and program sponsors to transmit electronic information and event notifications, via the Internet, to the Immigration and Naturalization Service (INS) and Department of State (DOS) throughout a student's or exchange visitor's stay in the United States.

The INS began preliminary enrollment of schools on July 1, 2002 for national availability of "real-time" interactive" SEVIS. Since July 1, over 1,000 schools have taken preliminary steps to begin registering with SEVIS. By January 1, 2003, SEVIS will be fully operational and available to schools for their use. On May 16, 2002, the INS published a proposed regulation that set January 30, 2003, as the compliance date by which time all schools and programs must be using SEVIS for all of their foreign students. However, a final rule will be forthcoming that will clarify the mandatory school compliance date. After that date, all student and exchange visitor applications will have to be printed from SEVIS or the applications will not be valid.

Steps taken to implement SEVIS include: establishment of an outreach program for eligible schools demonstrating the benefits of SEVIS; publication of the proposed regulation to implement SEVIS on May 16, 2002; development of SEVIS training program materials; INS field officer teleconference and in-person training sessions; development of a designated school official (DSO) requirements memorandum detailing the roles and responsibilities of each DSO; achievement of various technical milestones; initiation of a competitive process to select contractors to assist with the certification of schools prior to enrollment in SEVIS and publication of a Federal Register notice for voluntary enrollment on July 1, 2002.

B. How soon will the foreign student monitoring program be fully implemented?

Answer: The INS estimates that it will cost $36.8 million to fully implement the SEVIS program. In Fiscal Year 2002, Congress appropriated this amount in the Counter-terrorism supplemental. However, INS will need a funding stream that will fully recover the cost of maintaining the SEVIS program on an annual basis. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) authorized a fee, not to exceed $100, to be collected from nonimmigrant foreign students and exchange visitors to support the information collection program. A fee review will be underway in mid-July to determine the appropriate fee to charge in order to recover the full cost of the SEVIS program.

C. How much do you estimate it will cost to fully implement the foreign student monitoring program?

Answer: The INS estimates that it will cost $36.8 million to fully implement the SEVIS program. In Fiscal Year 2002, Congress appropriated this amount in the Counter-terrorism supplemental. However, INS will need a funding stream that will fully recover the cost of maintaining the SEVIS program on an annual basis. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) authorized a fee, not to exceed $100, to be collected from nonimmigrant foreign students and exchange visitors to support the information collection program. A fee review will be underway in mid-July to determine the appropriate fee to charge in order to recover the full cost of the SEVIS program.

D. Prior to full implementation of the program, how will the Justice Department monitor student compliance with the requirements of their student visas? Does the Department of Justice have the resources to take action against aliens who violate their student status in the United States? Since the date of enactment of the Act, how many removal proceedings have been initiated against foreign students who have violated the terms of their visas?

Answer: Currently, each INS District Office manages the degree to which schools are required to report on attending foreign students. SEVIS, part of the larger Student and Exchange Visitor Program (SEVP), will mitigate many of the problems stemming from the current, paper-based system.

Participation in SEVIS is voluntary on the part of educational institutions that are authorized by INS to issue Form 1-20 (Certificate of Eligibility for Nonimmigrant Students). Investigations resulting from information received regarding those students who do not arrive at the intended school are conducted at the local level by the INS district office having geographic jurisdiction. However, the INS has established a centralized electronic mailbox (Investigations — SEVIS Reports) to receive reports from educational institutions participating in SEVIS of out of status students including those who fail to appear. The information received in the electronic mailbox is reviewed to determine which INS district office would receive the information provided for follow-up inquiry.

INS is currently in the process of developing and reviewing internal proposals to establish a method to review and analyze the incoming material in conjunction with other law enforcement databases and other information sources prior to dissemination for possible enforcement action. Immigration law enforcement actions can then be prioritized in accordance with public safety interests, immigration system integrity, and resource considerations. It is anticipated that when fully operational, that SEVIS will generate 50,000 to 60,000 referrals of out

of status students, including those who fail to appear. To address the projected workload anticipated from the SEVIS referrals raises concerns regarding INS Investigations resources necessary to accomplish this task in addition to the other already existing INS Investigations Division mission commitments and mandates.

Although the INS tracks the number of removal proceedings initiated against individuals who have overstayed the terms of their visa, this data does not accurately capture visa category. Additionally, in light of the tragic events of September 11, the INS has directed the use of its limited resources at this time specifically toward the identification and apprehension of terrorists and criminal aliens.

41. Section 417 of the Act requires the Secretary of State to perform audits and submit to Congress reports on implementation of the requirement that visa waiver countries under section 217 of the INA issue their citizens machine-readable passports. It also advances the date by which aliens are seeking admission under the visa-waiver program are required to present machine-readable passports from October 1, 2007 to October 1, 2003. A waiver is provided to this requirement for nationals of countries that the Secretary of State finds (1) are making progress toward providing machine-readable passports and (2) have taken appropriate measures to protect their non-machine-readable passports against misuse. Has the Justice Department been working with the Secretary of State in fulfilling his responsibilities under section 417 of the Act? If so, please describe the actions the Justice Department is taking to work with the Secretary of State.

Answer: The Department of Justice has been working with the Department of State (DOS) in fulfilling the Secretary's responsibilities under the Act. The Attorney General and the Secretary have established an Interagency Working Group (IWG), comprised of representatives of both Departments. The purpose of this IWG is to coordinate implementation of the Visa Waiver Program (VWP), including the machine-readable passport provision contained in Section 417 of the Act. Since October of 2001, the IWG has convened on a periodic basis to formulate planned actions needed to fulfill various mandates required under Section 217 of the INA. In addition, the INS' Forensic Document Laboratory continues to work closely with the DOS Bureau of Consular Affair's Fraud Prevention Program to disseminate fraud reports and antifraud recommendations, which many VWP countries have found helpful in protecting the integrity of their passports.

43. Subtitle C of the Title IV of the Act generally authorizes the Attorney General to preserve immigration benefits for those aliens who would otherwise have lost eligibility for those benefits due to the terrorist attacks on September 11, 2001.

A. How many applications for special immigrant status from principal aliens

under section 421 of the Act has the INS received since that provision was enacted?

Answer: These cases are filed on Form I-360 which covers a range of special immigrant categories, and not uniquely identified in a manner that would allow the Service to identify the number of USA PATRIOT Act-related cases upon receipt. These cases are only identifiable as qualifying under this section at the time of adjudication. To date, no cases of this type have been identified.

B. How many applications for special immigrant status filed by spouses and children of principal aliens under section 421 of the Act has the INS received since that provision was enacted?

Answer: Please see the response to Question 43 (A). To date, INS Service Centers report that no applications of this type have been identified.

C. How many applications for special immigrant status filed by grandparents of orphans under section 421 of the Act has the INS received since that provision was enacted?

Answer: To date, none have been identified.

D. How many aliens does the Justice Department anticipate will be eligible for benefits under section 421?

Answer: The INS is unable to provide an estimate of this figure.

E. Describe the process that the INS is using to adjudicate and to investigate applications for special immigrant status under section 421 of the Act.

Answer: Each application is adjudicated on a case-by-case basis following standard procedures for assessing the quality of evidence submitted and applying applicable laws and regulations to determine eligibility. Interviews are conducted at local field offices on cases needing further clarification not obtainable by correspondence or where fraud is suspected.

F. Has the INS determined that any of the applications filed under section 421 of the Act were fraudulent? If so, how many applications were determined to be fraudulent?

Answer: Please see the response to Question 43 (A) and (B).

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

August 26, 2002

The Honorable F. James Sensenbrenner, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed please find responses to questions posed to the Attorney General on USA PATRIOT Act implementation in your letter of June 13, 2002, co-signed by Ranking Member Conyers. An identical response will be sent to Congressman Conyers.

We appreciate the additional time provided to the Department to submit responses to your questions. On July 26, 2002, the Department provided answers to 28 out of the 50 questions. With this letter, we are pleased to forward to the Committee the remaining questions.

The Department remains committed to working with the Committee as we continue to implement these important new tools for law enforcement in the fight against terrorism. If we can be of further assistance on this, or any other matter, please do not hesitate to contact this office.

Sincerely,

Daniel J. Bryant
Assistant Attorney General

Enclosure

Questions Submitted by the House Judiciary Committee
to the Attorney General on USA PATRIOT Act Implementation
- - - - -
Submission 2 of 2

2. Section 106 of the Act authorizes the President to confiscate property of foreign persons, organizations, or countries involved in armed hostilities. According to press reports, the President has ordered on several occasions the confiscation of property pursuant to that section. How often and under what circumstances has the President exercised that authority? Has the President's exercise of that authority been challenged in court? If so, please identify the case(s) and provide the status of any proceeding involving the exercise of that authority?

Answer: The President's authority under the International Emergency Economic Powers Act (IEEPA), as amended by Section 106 of the USA PATRIOT Act of 2001, to confiscate property in certain circumstances has not been invoked to date by the Department of the Treasury in any of its actions with respect to the property of persons or organizations that have become the targets of IEEPA-based sanctions. IEEPA provides authorities to the President, the exercise of which is most often delegated to the Secretary of the Treasury and subsequently delegated to the Office of Foreign Assets Control. However, there are some circumstances in which IEEPA authority is delegated to the Department of State and the Department of Commerce. We are seeking information from both Departments as to whether they have exercised this new authority. We will forward any affirmative responses to the Committee. To date, there have been no court challenges regarding the President's exercise of this authority.

6. Section 203(c) of the Act requires the Attorney General to establish procedures for disclosures to the court of grand jury foreign intelligence or counterintelligence information and electronic wire and oral intercept information that identifies an American citizen or a permanent resident alien. Have those procedures been established? Please provide a copy of them to the Committee.

Answer: The Department has been consulting with the Intelligence Community in drafting those procedures, which will be established shortly and provided to the Committee when completed.

7. Section 203(d) of the Act authorizes the disclosure of certain foreign intelligence or counterintelligence or foreign intelligence information to (1) Federal law enforcement; (2) intelligence officials; (3) protective officials; (4) immigration officials; (5) national defense officials; or (6) national security officials. How many times has the Department of Justice disclosed such information?

Answer: Both before and after the enactment of the USA PATRIOT Act, Federal law

enforcement agencies have utilized established channels of communication with the intelligence community and other federal officials authorized to receive information in order to share foreign intelligence acquired in the course of criminal investigations. Because information is being shared in different manners, and through multiple channels, it is impossible to calculate the number of times such information has been disclosed. The Department will soon issue guidelines under sections 203 and 905 of the Act that will formalize the existing framework for information sharing and ensure to the fullest extent possible the continued expeditious sharing of such information.

13. How many roving pen register and trap and trace orders have been issued under section 216 of the Act?

Answer: None. Section 216 of the act did not create the authority for a "roving" pen register or trap and trace device, as that term is commonly understood in the context of a court order for the interception of the content of communications. Unlike a "roving" wiretap order, a pen/trap order does not follow the target from one "telephone" to another. Instead, the order identifies the facility at which the pen/trap device will be installed, and it allows the government to uncover the true source or destination of communications to or from that facility even if several different companies in different judicial districts carry those communications. Accordingly, no roving pen register and trap and trace orders have been issued under section 216 of the Act.

Section 216 does authorize a court to order "the installation and use of a pen register or trap and trace device anywhere within the United States." Although the exact number of pen/trap orders that have been executed outside of the district of the authorizing magistrate is unknown, such orders have proved to be critically important in a variety of terrorist and criminal investigations. In particular, out-of-district orders have been used to trace the communications of (1) terrorist conspirators, (2) kidnappers who communicated their demands via e-mail, (3) a major drug distributor, (4) identity thieves who obtained victims' bank account information and stole their money, (5) a fugitive who fled on the eve of trial using a fake passport, and (6) a four-time murderer.

How many "Armey" notices, reporting on the details of the installation of roving pen registers or trap and trace devices, have been filed with U.S. courts pursuant section 216 of the Act?

Answer: We are aware of two instances where 18 U.S.C. § 3123(a)(3), as amended by section 216 of the Act (the "Armey Amendment"), required the filing of notices pertaining to a pen/trap order executed by the Federal Bureau of Investigation. That provision requires the filing of records within 30 days after termination of the order (including any extensions thereof).

How many "Armey" notices were related to a terrorism investigation?

Answer: One (1) of the two (2) instances referenced above.

16. How many single-jurisdiction search warrants have been issued pursuant to Rule 41(a)(3) of the Federal Rules of Criminal Procedure as amended by section 219 of the Act?

Answer: As of June 24, 2002, federal courts have issued three single-jurisdiction search warrants pursuant to Rule 41(a)(3) of the Federal Rules of Criminal Procedure as amended by section 219 of the Act.

18. Have any claims been filed against the United States or has any official of the Department of Justice been sued or disciplined administratively pursuant to section 223 of the Act for violations of Title III, chapter 121, or FISA?

Answer: Section 223 of the Act adds 18 USC § 2712 (b), which reads in relevant part:

> Any action against the United States under this section may be commenced only after a claim is presented to the appropriate department or agency under the procedures of the Federal Tort Claims Act, as set forth in title 28, United States Code."(2) Any action against the United States under this section shall be forever barred unless it is presented in writing to the appropriate Federal agency within 2 years after such claim accrues or unless action is begun within 6 months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented. The claim shall accrue on the date upon which the claimant first has a reasonable opportunity to discover the violation."

The Federal Tort Claims Act ("FTCA") and implementing regulations having government-wide effect, 28 CFR, Part 14, requires that before suit can be commenced, a claimant must present a claim to the agency and wait six months or until the claim is denied. Claims must be submitted to the agency whose acts or omissions give rise to the claim. Within the Department of Justice, claims arising from activities of major components (such as the FBI or INS) are sent to the component whose activities gave rise to claim. For other components (such as a legal division or United States Attorney's Office), the Civil Division resolves the claims. All proposed settlements exceeding $50,000 for any component's claim would also must be submitted to the Civil Division.

To date, the Department of Justice has not received any claims pursuant to section 223 of the Act for violations of Title III, chapter 121. Similarly, no claims have been filed against the United States or has any official of the Department of Justice been sued or disciplined administratively pursuant to section 223 of the Act for violations of FISA.

20. Have sections 205 (relating to employment of translators by the FBI), 908 (relating

to training government officials regarding identification and use of foreign intelligence), 1001 (relating to certain duties of the Inspector General of the Department of Justice), 1005 (relating to assisting first responders), 1007 (relating to DEA Police Training in Southeast Asia), 1008 (relating to a study of biometric identifiers), 1009 (relating to study of access) of the Act been implemented? If so, please provide an explanation of the steps that have been taken to implement these provisions and the results. If these provisions have not been implemented, please explain why they have not been utilized?

Answer:

Section 205: Title V and security requirements in place prior to the Patriot Act have not hindered the FBI's ability to hire linguists. To date, the FBI's success in recruiting, vetting, and hiring linguists has eliminated the need to implement the provisions set forth in Section 205 of the Act.

Section 908: The Department of Justice, in consultation with the Director of Central Intelligence and other relevant Federal law enforcement agencies, is in the process of finalizing Guidelines pursuant to sections 203 and 905 of the USA PATRIOT Act on the sharing of foreign intelligence gathered in the course of a criminal investigation, including during grand jury proceedings and Title III wiretaps. Once these Guidelines are completed, the Department of Justice, pursuant to section 908 of the USA PATRIOT Act and in consultation with the Director, the Assistant to the President for Homeland Security, and other Federal law enforcement agencies, will develop a training curriculum and program to ensure that law enforcement officers receive sufficient training to identify foreign intelligence subject to the disclosure requirements under these Guidelines.

Section 1001: With regard to the Office of the Inspector General, please see response to question 50 below.

Section 1005: This section relating to first responders has not yet been implemented by the Office of Justice Programs because funds have not yet been made available for this provision. Further, the authorization for this provision does not begin until Fiscal Year 2003.

Section 1007: The Drug Enforcement Administration has not yet implemented this provision because funds have not yet been made available for this purpose.

Section 1008: The Foreign Terrorist Tracking Task Force completed a draft study in coordination with the FBI's Criminal Justice Information Service and the Immigration and Naturalization Service. The Department is currently consulting with the Department of State and the Department of Transportation, as required by

the Act.

Section 1009: The FBI, the Transportation Security Administration (TSA), and the air carriers recognize the need to compare passenger records electronically against databases and/or lists of suspected terrorists. In fact, we are all engaged in making comparisons now and in developing more sophisticated methods for the future.

Since 9/11/2001, the air carriers have had electronic access, and been able to compare passenger names, to lists of terrorists suspected by the FBI and other U.S. government agencies of being a threat to U.S. civil aviation security. Immediately after the 9/11 attacks, the FBI electronically transmitted lists of suspected terrorists to the major air carrier trade associations for forwarding to the air carriers. Approximately one week after the attacks, the Federal Aviation Administration (FAA), at the air carriers' request, began electronically forwarding the lists to the air carriers under a Security Directive requiring comparison by the air carriers of passenger names to the lists. The FAA also posted the lists on a secure Internet site accessible to regulated air carriers. Currently, the TSA issues and posts the lists as did the FAA.

In addition to air carrier comparisons of passenger data against these suspected terrorist lists, the Immigration and Naturalization Service cross-checks international inbound passenger names against National Crime Information Center (NCIC) files, including those containing information on suspected terrorists.

Currently under study and/or development by the FBI, the TSA and the aviation industry, cooperatively with information management sectors, is the integration of existing technology and analytical software with passenger data, to compare it against risk assessors, including terrorist lists and other databases to identify potential matches.

The FBI has not yet implemented the requirement of this report to Congress because funds have not yet been made available for this purpose.

21. Please explain how the amendments made by sections 207, 214, 215, and 218, of the Act and section 314 of the Intelligence Authorization Act for Fiscal Year 2002 (Pub. L. No. 107-108) have helped intelligence investigations both operationally and administratively?

Answer: The sections of the USA PATRIOT Act and the Intelligence Authorization Act for Fiscal Year 2002 cited in your question have collectively greatly improved the ability of the Government to use the tools of FISA quickly and efficiently against the intelligence and terrorist threats to our nation. The extension provided in Section 207 of the duration

of an order of the Foreign Intelligence Surveillance Court (FISC) for coverage of certain non-U.S. person members and officials of foreign powers has enabled the Government and the FISC to focus their efforts and attention upon U.S. person and other cases with more complex factual and legal issues. The streamlining in Section 214 of the process by which the Government may request, and the FISC may approve, the use of pen registers and trap and trace devices has made these less-intrusive tools of FISA more reasonable tools of investigation and more available as alternatives to the other tools of the Act. Section 215 made access to business and other records possible under a more reasonable standard than previously.

Section 218 (along with Section 504) should allow for greater coordination between intelligence and law enforcement officials in the context of foreign intelligence and foreign counterintelligence investigations in which FISA is being used. On March 6, 2002, the Department adopted new internal procedures designed to implement the authority of Sections 218 and 504. On May 17, 2002, the Foreign Intelligence Surveillance Court (FISC) accepted in part and rejected in part the March 2002 Procedures, thus limiting the government's ability to engage in coordination. The FISC recently provided its opinion and order to Congress. The government has filed an appeal to the Foreign Intelligence Surveillance Court of Review that challenges the holding of the FISC.

Finally, Section 314 of the Intelligence Authorization Act for Fiscal Year 2002, which extended from 24 to 72 hours the duration of the Attorney General emergency approval authority under FISA, has enabled the Government to respond more quickly and ably to the pace of operations by the FBI and other agencies in counterintelligence and especially in counterterrorism investigations. This provision has been particularly helpful.

In sum, these and the other reforms of FISA in the USA PATRIOT Act and in the Intelligence Authorization Act have enabled the Government, under authority of the FISC and within the rule of law, to respond more efficiently and effectively to the intelligence and terrorist threats against us.

23. Have sections 310 and 313 of the Intelligence Authorization Act for Fiscal Year 2002 (Pub. L. No. 107-108) been complied with and if not, why not?

Answer:

Section 310: Section 310 of the Intelligence Authorization Act for Fiscal Year 2002 (Pub. L. 107-108) directed the Attorney General, in consultation with the Secretaries of Defense, State, and Energy; the DCI, and the heads of such other departments, agencies, and entities of the United States Government he considered appropriate, to carry out a comprehensive review of current protections against the unauthorized disclosure of classified information. The review was to consider any mechanisms available under civil

or criminal law, or under regulation, to detect the unauthorized disclosure of such information; and any sanctions available under civil or criminal law, or under regulation, to deter and punish the unauthorized disclosure of such information. The statute required that the report include a response to two specific questions:

- whether the administrative regulations and practices of the intelligence community are adequate, in light of the particular requirements of the intelligence community, to protect against the unauthorized disclosure of classified information; and

- whether recent developments in technology, and anticipated developments in technology, necessitate particular modifications of current protections against the unauthorized disclosure of classified information in order to further protect against the unauthorized disclosure of such information.

The report was to include:

- A comprehensive description of the review, including the findings of the Attorney General as a result of the review.

- An assessment of the efficacy and adequacy of current laws and regulations against the unauthorized disclosure of classified information, including whether or not modifications of such laws or regulations, or additional laws or regulations, are advisable in order to further protect against the unauthorized disclosure of such information.

Section 310, likewise, required the report to be submitted to Congress by May 1, 2002.

The Attorney General established an interagency task force to consider each of the issues outlined in the statute. Participating on the interagency task force were officials from the Departments of Justice, State, Defense, and Energy; the Central Intelligence Agency; and the National Security Council staff. Based upon the work of the task force, on April 29, 2002, the Attorney General tendered his report on unauthorized disclosures of classified information for Administration clearance. Once cleared through the multi-agency process, the report will be submitted to the Congress.

Section 313: The Department submitted to Congress the report required by Section 313.

24. FBI Director Mueller, in an April 19, 2002 speech before the Commonwealth Club of California, stated that the FBI's investigation, among other things, "ha[s] helped prevent more terrorist attacks." The Committee is extremely interested in learning about terrorist attacks that have been prevented and cooperation with our partners both at home and abroad. Therefore, please advise the Committee as to how many

terrorist attacks have been prevented since September 11, 2001, how (in general terms without divulging classified sources and methods) were they prevented, and where were these terrorist attacks planned to have taken place? Please describe what authorities in the Act were used and how they helped to prevent these attacks.

Answer: It is impossible to know exactly how many terrorist attacks have been prevented, but the FBI, Department of Justice, and all relevant Federal agencies, along with our international allies and colleagues in State and local government have been aggressively working to prevent another attack. As the case of Abdullah Al Muhajir (Jose Padilla) demonstrates, Al Qaeda and other terrorist organizations are constantly attempting to plan and carry out future operations within the United States. The enhanced tools and information sharing authorized under the PATRIOT Act strengthens our ability to detect and disrupt such plans in a coordinated and effective manner.

25. Were any authorities in the Act used in the investigations of Zacarias Moussaoui, John Walker Lindh, Richard Reid, Jose Padilla, and Abu Zubaydah? If so, which authorities were used and, without compromising evidence in pending cases or sources or methods, what leads or evidence did they produce?

Answer: In all of these investigations, pursuant to section 203 and other provisions of the USA PATRIOT Act, criminal investigative information has been disclosed to intelligence, defense, and other federal authorities. Since these cases and investigations remain pending, it would be inappropriate to detail the leads or evidence produced.

26. Some public officials have complained that shortly after the September 11 attacks, the Department of Justice improperly detained hundreds of potential suspects and kept their names secret from the public. What authorities, if any, under the Act were used to detain these individuals and keep their names secret? If no authorities under the Act were used, please explain on what authority these individuals were detained and their names kept secret?

Answer: The Department did not rely on the USA PATRIOT Act to arrest or detain persons who were of interest to the investigation into the September 11 attacks. Such persons were arrested and detained for violations of federal immigration statutes and regulations, for violations of federal criminal statutes (including some which were created or amended by the Act), or pursuant to judicially issued material witness warrants.

For aliens charged with immigration violations, section 236 of the Immigration and Nationality Act, 8 U.S.C. § 1226, authorizes (and in some cases requires) the administrative detention of such aliens in removal proceedings, pending a decision on whether they should be removed from the United States. See Carlson v. Landon, 342 U.S. 524, 538 (1952) (``Detention is necessarily a part of this deportation procedure. Otherwise aliens arrested for deportation would have opportunities to hurt the United

States during the pendency of deportation proceedings."). The Department has declined to release the names of the INS detainees because to do so would interfere with the ongoing investigation into the September 11th attacks. No provision of law requires that the Department release the names of INS detainees, since the Department of Justice has properly invoked the law enforcement exceptions of the Freedom of Information Act, 5 U.S.C. § 552(b)(7), and the applicable procedural rule, 8 C.F.R. § 3.27(b), authorizes an immigration judge to close a removal proceeding for the purpose of protecting the public interest, witnesses, and parties.

Individuals charged with criminal violations have been detained pursuant to 18 U.S.C. § 3142(e) based upon a federal court order. With one exception, the names of all criminal defendants have been made public. The one exception is a case in which the defendant is still a fugitive and the case is sealed by federal court order, as is routinely done in this context.

Finally, with respect to material witnesses, all such individuals have been detained pursuant to court order issued under 18 U.S.C. § 3144. We are prohibited by Federal Rule of Criminal Procedure 6(e) from disclosing information about material witnesses because such information is relevant to a grand jury investigation.

28. The Department of Justice promulgated regulations that permitted in certain cases listening to conversations between prisoners and their lawyers. What authority, if any, under the Act was used to promulgate that regulation? If no authority under the Act was used, please explain the authority used to promulgate the regulation.

Answer: 28 C.F.R. § 501.3(d) – which authorizes the Department, after proper notice and under stringent safeguards to minimize intrusion into the attoney-client relationship, to monitor communications of a small group of prisoners who pose grave threat to national security-- was promulgated without reliance upon the USA PATRIOT Act. The authority for these regulations is cited at 66 Fed. Reg. 55,065 (Oct. 31, 2001), and includes, primarily, 5 U.S.C. § 301, authorizing department heads to issue regulations for the conduct of their departments, 18 U.S.C. § 4001, which specifically vests the control and management of federal civilian penal and correctional institutions in the Attorney General and authorizes him to promulgate regulations for their government, and 18 U.S.C. § 4042, which places the Bureau of Prisons, under the direction of the Attorney General, in charge of the management and regulation of federal civilian penal and correctional institutions.

The new procedures build upon Department of Justice regulations, promulgated in 1996, under which the Attorney General can authorize Special Administrative Measures (SAMs) that permit monitoring of, and restrictions upon, communications of inmates in federal prisons where there is substantial risk that those communications could cause death or serious injury to others. Such restrictions have been upheld by the courts. See

e.g. United States v. El-Hage, 213 F.3d 74, 81 (2d Cir.) (restrictions on prisoner's communications with outside appropriate given "ample evidence of the defendant's extensive terrorist connections"), cert. denied, 531 U.S. 881(2000); United States v. Felipe, 148 F.3d 101, 109-10 (2d Cir.) (upholding district court's restrictions on communications of inmate who had orchestrated numerous murders from prison), cert. denied, 525 U.S.907, 1059 (1998).

32. Section 403 requires the Attorney General and the Director of the Federal Bureau of Investigation (FBI) to provide the State Department and the INS access to criminal history record information contained in the National Crime Information Center's Interstate Identification Index (NCIC-III), Wanted Persons File, as well as to any other files maintained by the NCIC that may be mutually agreed upon by the Attorney General and the agency receiving the access, for the purpose of determining whether or not a visa applicant or an applicant for admission has a criminal history record indexed in any such file. Access is to be provided by placing extracts of the records in the automated visa lookout or other appropriate database. In order to obtain access to full records, the requesting entity must submit fingerprints and a fingerprint processing fee to the FBI.

A. What steps have been taken by the Department of Justice to implement this section?

Answer: On April 11, 2002, the Attorney General issued a major directive on Coordination of Information Relating to Terrorism. That directive provides in relevant part:

> I hereby direct all investigative components within the Department of Justice to establish procedures to provide, on a regular basis and in electronic format, the names, photographs (if available), and other identifying data of all known or suspected terrorists for inclusion in the following databases:
>
> > The Department of State TIPOFF System. This system is designed to detect known or suspected terrorists who are not U.S. citizens as they apply for visas overseas or as they attempt to pass through U.S., Canadian, and Australian border entry points. Expanding terrorist information in the database will preclude the issuance of visas to known terrorists; warn U.S. diplomatic posts of the security risk posed by certain applicants; and alert intelligence and law enforcement agencies of the travel plans of suspected terrorists.
> >
> > The FBI National Crime Information Center (NCIC). The NCIC is

the nations principal law enforcement automated information sharing tool. It provides on-the-street access to information to over 650,000 U.S. local, state, and federal law enforcement officers. The inclusion of terrorist information in this powerful database will assist in locating known foreign terrorists who have entered the U.S. undetected, warn law enforcement officers of a potential security risk, and alert intelligence and law enforcement agencies of the presence of a suspected terrorist at a specific location and time. Agencies contributing terrorist information should establish procedures and protocols for direct electronic input of the data into NCIC, observing applicable restrictions on the entry of classified information into the system. To expand further local and state law enforcement access to relevant terrorist information, the FBI shall establish procedures with the Department of State that will enable, on a recurring basis, the inclusion of qualifying TIPOFF data into NCIC. The FBI shall establish procedures that inform law enforcement officers what action should be taken when encountering suspected terrorists. Furthermore, the NCIC must properly characterize individuals as either suspected terrorists or known terrorists, with the latter designation reserved for individuals against whom sufficient evidence exists to justify such a determination.

The U.S. Customs Service Interagency Border Inspection System (IBIS). This system is the primary automated screening tool used by both the Immigration and Naturalization Service (INS) and U.S. Customs Service at ports-of-entry. The inclusion of terrorist data in this integrated database will help preclude the entry of known and suspected terrorists into the U.S., warn inspectors of a potential security threat, and alert intelligence and law enforcement agencies that a suspected terrorist is attempting to enter the U.S. at a specific location and time. Such information on known or suspected foreign terrorists must be placed in IBIS unless it is already accessible through an automated IBIS query of NCIC.

The Attorney General further directed the FBI "to establish procedures to obtain on a regular basis the fingerprints, other identifying information, and available biographical data of all known or suspected foreign terrorists who have been identified and processed by foreign law enforcement agencies. The FBI shall also coordinate with the Department of Defense to obtain, to the extent permitted by law, on a regular basis the fingerprints, other identifying information, and available biographical data of known or suspected foreign terrorists who have been processed by the

U.S. Military. Such information shall be placed into the Integrated Automated Fingerprint Identification System (IAFIS) and other appropriate law enforcement databases to assist in detecting and locating foreign terrorists."

For the past several years, the INS has been working with the FBI and United States Customs Service (USCS) on an initiative to provide NCIC III data on alien passengers to INS officers at air ports-of-entry. This approach utilizes the Advance Passenger Information System (APIS), which is a subsystem of the Interagency Border Inspection System (IBIS). Deployment of this system is on schedule to be completed by the end of FY 2003. Although this approach is the INS' preferred method of accessing NCIC III information relating to APIS passengers, it does not provide a means of notifying primary inspectors of possible criminal history information pertaining to non-APIS passengers. The NCIC III extracts loaded into IBIS, with some additional programming in the IBIS mainframe, could cover these non-APIS passengers.

Since 9/11, the INS has increased its utilization of IBIS. INS is anticipating further increases and also requires additional functionality not currently provided by IBIS. INS is assessing the technical capacity of the existing IBIS system against our anticipated future utilization and new requirements (including those related to the NCIC III extracts) to determine whether it is feasible to continue to build upon the current IBIS system or seek a different technical solution. This review is currently underway and the INS will provide its findings as the analysis is completed.

Pursuant to Section 403 of the PATRIOT Act, CJIS has provided to the Department of State extracts from the National Crime Information Center's (NCIC) Wanted Persons File and Interstate Identification Index (III), for inclusion in their CLASS database.

B. What has been the cost of implementing this provision?

Answer: As stated above, the INS has not placed NCIC III extracts into IBIS. However, the cost of implementing the API NCIC III program has been approximately $700,000 for program modifications and a separate data line to the FBI NCIC III database.

C. Has the Department of Justice agreed to provide access to other files maintained by NCIC to either the INS or State Department? If so, which files, and to which entity have you provided access?

Answer: The Federal Bureau of Investigation (FBI), Criminal Justice Information Systems Division (CJIS) has provided an Integrated Automated Fingerprint Identification System (IAFIS) extract of 83,000 fingerprint based records of Wanted Persons having foreign places of birth for inclusion in the Automated Biometric Identification System (IDENT). CJIS has also provided INS with two CDs containing information regarding military detainees in Afghanistan and Pakistan (received from Legat, Islamabad), as well as those detained at Guantanamo Bay, Cuba, to allow INS to search against IDENT and their fingerprint based records. CJIS has also given INS varying levels of access to NCIC for criminal justice purposes.

In addtional to information provided under Section 403 of the USA PATRIOT Act, per a memorandum of understanding between the Department of State and the FBI-CJIS, extracts are provided from the NCIC's Deported Felon File, Foreign Fugitive File, and the Violent Gang and Terrorist Organizations File. All of the extracts are updated monthly. The number of total NCIC records provided to date are approximately 425,000, and the III records are almost 8 million. The Diplomatic Security Service is the only criminal justice entity within the Department of State, and they have direct access to NCIC.

D. Have any applicants seeking admission or seeking visas who have criminal histories been identified under this provision thus far? If yes, how many? How many of those aliens would not have been identified in the visa or admission application process if access to NCIC-III had not been provided to the identifying entity?

Answer: As stated above, the INS has not implemented this provision. However, query of scripted Advance Passenger Information (API) data into the NCIC II criminal history files has demonstrated considerable success. For example, at John F. Kennedy and Newark International Airports in FYs 2000, 2001, and the first half of FY 2002, the INS intercepted 5,440 aliens with prior criminal history records who would have not otherwise been apprehended. This number includes 693 criminal aliens who had active warrants and 1,820 aggravated felons.

Additionally, under the direction of the Department of Justice, the INS and the FBI are integrating the "IDENT" and "IAFIS" fingerprint databases. As part of this process, the United States Marshals Service Federal Fugitive fingerprints were added to IDENT on August 15, 2001. Building on this success, in December 2001, INS worked with the FBI to include FBI fingerprints of foreign nationals wanted by law enforcement. This overall effort has resulted in the identification of over 1,600 individuals wanted for felony crimes that include homicide, rape, drug crimes, and weapons violations.

37 Section 413 authorizes the Secretary of State, to share, on a reciprocal basis, criminal- and terrorist-related visa lookout information in the State Department's databases with foreign governments.

A. Has the authority provided under section 413 been used?

B. If that authority has been used, has it uncovered relevant and material information on any pending or ongoing immigration matters? Has that authority led to the discovery of relevant and material information on suspected activity?

Answer to (A-B): Because Section 413 establishes the requirements of reciprocity, limited purposes for the release of information, and (for database sharing) an agreement with the foreign government, information has not been received to date. However, the construction of frameworks to satisfy Section 413 and provide a basis for visa lookout exchanges is well underway.

Discussions with Canada have progressed to the point that a revision to a 1999 Statement of Mutual Understanding on the sharing of visa information has been drafted and presented to the Regional Strategies Working Group of the Border Vision process. Once the document has been signed by State, INS and Citizenship and Immigration Canada (expected to occur at the September 19 Border Vision plenary meeting), it would establish a basis for reciprocity with Canada and describe an authorized purpose that conforms to the requirements in Section 413 for case-by-case visa information.

There have been additional discussions with Canada in the Border Vision framework, preliminary to an agreement for the exchange of visa lookout databases and visa refusal/issuance databases. In advance of securing Circular 175 authority to negotiate and sign an agreement, the Bureau of Consular Affairs has prepared a working draft that states purposes that are consistent with Section 413, identifies the types of information to be shared, addresses the extent to which information may be shared with other agencies, and provides a mechanism for systems interface modifications as technical upgrades warrant. Once an agreement has been reached (targeted for this fall), it will be a template for database sharing accords with other governments. The governments of Mexico, Netherlands, and G-8 countries are among the governments to have expressed an interest in sharing visa lookout databases.

It should be noted that consular officers continue to share visa information, including lookouts, with foreign counterparts on a case-by-case basis when it would further the administration or enforcement of U.S. law, in accordance with the exception to confidentiality provisions in the chapeau to Section 222(f) of the

Immigration and Nationality Act, the same section that was amended by Section 413 of the USA Patriot Act. However, the State Department does not maintain an index of cases that were impacted by information received from foreign governments.

If you require further information, please contact the Department of State's Bureau of Consular Affairs.

42. Section 418 of the Act directs the Secretary of State to review how consular officers issue visas to determine if consular shopping is a problem. Has the Justice Department been working with the State Department in completing this review? If so, please describe the actions the Justice Department is taking to work with the Secretary of State.

Answer: The Department of State reported that it has completed, and forwarded to Congress on April 23, 2002, its review of visa shopping as required by section 418. The Department of State review was conducted internally and was not coordinated with INS.

44. Section 422 of the Act states that an alien who was legally in a nonimmigrant status and was disabled as a direct result of the September 11 attacks may remain in the United States until his or her normal status termination date or September 11, 2002. That section includes in such extension of status the spouse or child of such an alien or of an alien who was killed in those attacks, and authorizes employment during the period of that status. It also extends specified immigration-related deadlines and other filing requirements for aliens (and spouses and children) who were directly prevented from meeting such requirements as a result of the September attacks respecting: (1) nonimmigrant status and status revision; (2) diversity immigrants; (3) immigrant visas; (4) parolees; and (5) voluntary departure.

1. Describe the process that the INS is using to evaluate applications for extension of nonimmigrant status under section 422(a) of the Act.

1. How many aliens have applied for extensions under that section?

Answer: The INS received two Forms I-539 for extension of stay that were determined to fall under the general provisions of the Act at the time of adjudication. However, the specific section of the Act under which they qualified was not manually tracked nor is there a unique identifier in the database to allow for tracking.

2. Is the INS investigating the veracity of those applications? Describe the steps that the INS is taking to investigate those applications.

Answer: Please see the response to Question 43(E).

3. **Has the INS identified any fraud in connection with those applications? If so, how many were believed to be fraudulent?**

Answer: Neither of the two I-539s submitted was identified as fraudulent.

2. **How many aliens have applied for extension of the filing deadline for extension or change of nonimmigrant status under section 422(b)(1) of the Act?**

Answer: Please refer to the response to Question 44 (A)(i) wherein it is noted that two applications for extension of stay have been adjudicated. Additionally, the INS reports receiving one Motion to Reopen (on a denied I-539 for an Extension of Stay) in which the economic downturn due to the September 11th attacks was cited as negatively impacting the beneficiary's ability to secure employment. However, in this instance, the Act was not specifically cited as a basis for relief.

1. **Describe the process for extending those deadlines.**

Answer: Pursuant to our established practice of applying discretion, each case is reviewed to see if it qualifies for discretionary relief.

2. **Describe the steps that the INS is taking to assess the veracity of applications to extend those deadlines.**

Answer: Please refer to the response to Question 44 (A)(ii).

3. **Has the INS identified any fraud in connection with those applications? If so, how many applications were believed to be fraudulent?**

Answer: No.

C. **How many departure delays under section 422 of the Act has the Justice Department seen since the implementation of that act?**

Answer: Please see the response to Question 44 (A)(i).

D. **Has the INS received any applications from aliens who were unable to return to the United States and apply for extensions of nonimmigrant status in a timely manner because of the September 11 terrorist attacks?**

Answer: The INS identified two Forms I-539 as noted in the response to Question 44 (A)(ii).

E. How many applications for waiver of the fiscal-year limitation on diversity visas under section 422(c) of the Act has the INS received?

Answer: The INS estimates that less than 50 such cases were received. Due to the specific language of the statute, the relief was only available to those whose applications could not be adjudicated to completion by the end of the fiscal year as a direct result of the events of September 11, 2001. The INS New York District Office had virtually all of the cases affected by this provision.

i. Describe the process that the INS is using to assess the veracity of applications to extend those deadlines.

Answer: Nearly all those who benefited from this provision were obviously impacted by the closure of the New York District Office for a period of time after September 11, 2001. These were applicants with pending applications awaiting interview appointments that could not be completed before the September 30 deadline.

ii. Has the INS identified any fraud in connection with those applications? If so, how many were believed to be fraudulent?

Answer: To date, there have been no confirmed cases involving fraud.

F. How many visas that would have expired but for the extension in section 422(d) of the Act has the INS processed?

Answer: The INS estimates that approximately 50 visas would have expired.

45. Section 424 of the Act amends the INA to extend the visa categorization of "child" of aliens who are the beneficiaries of applications or petitions filed on or before September 11, 2001, for aliens whose 21st birthday is in September 2001 (90 days), or after September 2001 (45 days).

A. In how many cases has the special "age-out" provision in section 424 of the Act been utilized since the enactment of that provision?

Answer: A total of 45 adjustment of status applications (Form I-485) have been adjudicated under Section 424 of the Act (42 employment-based and 3 Haitian Refugee Immigrant Fairness Act cases).

B. How many aliens does the INS believe are in the possible class of aliens who would benefit from the special "age-out" provision in section 424 of the Act?

Answer: The Immigration and Naturalization Service is unable to estimate that number at this time, however, it should be noted that the statute does not limit this provision to those who were directly affected by the events of September 11, 2001. Potentially, all Immigrant Visa petitions and Applications for Adjustment of Status that were filed on or before September 11, 2001, may be eligible for this limited age-out protection.

46. Section 425 of the Act authorizes the Attorney General to provide temporary administrative relief to an alien who, as of September 10, 2001, was lawfully in the United States and was the spouse, parent, or child of an individual who died or was disabled as a direct result of the September attacks.

A. Have regulations implementing this provision been implemented?

Answer: Section 425 of the Act authorizes the Attorney General to provide temporary administrative relief for a qualified alien. Under existing law, such administrative relief include granting qualifying aliens deferred action, employment authorization, and/or parole. These forms of administrative relief are covered by extant regulations and therefore no additional regulatory action is required to implement section 425.

B. How many applications for relief under this provision has the INS received?

Answer: INS has not separately tracked applicants or petitioners who are eligible for benefits under the provisions of the Act. However, the Field Offices have received a limited number of requests for relief under the Act.

C. How many applications for relief under this provision has the INS granted?

Answer: Please see the response to Question 46 (B).

D. What sorts of relief is the INS granting under this provision?

Answer: Please see the response to Question 46 (B).

47. Section 426 of the Act directs the Attorney General to establish evidentiary guidelines for death, disability, and loss of employment or destruction of business in connection with the provisions of this subtitle.

A. Has the Attorney General promulgated regulations for use in accordance with section 426 of the Act?

Answer: No, the Attorney General has not promulgated regulations, as section 426(b) permits the Attorney General to implement this section without first promulgating regulations and the Immigration and Naturalization Service has already issued field guidance (see below).

B. Does the Attorney General plan to promulgate regulations for implementation of this provision?

Answer: No, the Attorney General has no immediate plans to promulgate regulations to implement this provision, as section 426(b) permits the Attorney General to implement this section without first promulgating regulations and the Immigration and Naturalization Service has already issued field guidance (see below).

C. Has the Attorney General established standards under section 426 of the Act? In what form (guidelines, operating instructions, guidance memoranda) are those standards set forth? Please provide a copy of those standards.

Answer: On November 20, 2001, the Immigration and Naturalization Service issued an informational memorandum summarizing the immigration benefits-related provisions of the USA PATRIOT Act. On March 8, 2002, the Immigration and Naturalization Service issued a memorandum that establishes the procedures and standards by which the Immigration and Naturalization Service shall implement sections 421 through 428 of the USA PATRIOT Act. Both memoranda are attached.

48. Section 427 of the Act prohibits benefits to terrorists or their family members. Have any family members of the terrorists responsible for the September terrorist attacks attempted to file for benefits under the Act?

Answer: The Immigration and Naturalization Service has no evidence to indicate that any family members of the terrorists responsible for the September terrorist attacks have attempted to file for benefits under the USA PATRIOT Act.

49. Section 806 authorizes the Department of Justice to use its civil asset seizure authority to seize assets of terrorist organizations. Has the Department of Justice used this power? If so, what is the status of the seized assets? Have any seizures under this section been challenged in court? If so, what was the result? What procedures are in place to prevent this power from being abused when, for example,

assets allegedly involved in domestic terrorism are seized prior to prosecution of the alleged terrorists?

Answer: Currently, there is a single case ongoing, which is not a matter of public record. The assets have been seized pursuant to a court authorized seizure warrant. An administrative notice has been filed, and the government applied for and received an extension on the 90 day deadline imposed by the Civil Asset Forfeiture Reform Act (CAFRA) in which to file a civil forfeiture complaint. No seizures under this section have been challenged in court.

Procedures governing Section 806 seizures are contained within Section 316 of the USA PATRIOT Act, which provides for a right to contest the basis of the forfeiture, gives innocent owners certain procedural protections, and sets forth the procedures and evidentiary rules to challenge the seizure in federal court. Additionally, all other provisions of CAFRA, such as the strict time limits for the government to file an action, the availability of attorney fees for prevailing claimants, and the right to a jury trial, are available to those wishing to contest the seizure and forfeiture.

50. Section 1001 of the Act requires the Department of Justice Inspector General to collect and investigate complaints of civil rights and civil liberties abuses by Department of Justice employees and to publicize his responsibilities. How many such complaints have been received? How many investigations have been initiated? What is the status of those investigations? In what ways has the Inspector General publicized these responsibilities?

Answer: Section 1001 directs the Inspector General (OIG) to "receive and review" complaints of civil rights and civil liberties abuses by Department of Justice employees; to advertise through newspapers, radio, TV, and the Internet how people can contact the OIG to file a complaint; and to submit a semi-annual report to Congress discussing our implementation of these responsibilities. Pursuant to this last directive, the OIG submitted its first report to Congress on July 15, 2002. The full report is available on the OIG's website at <http://www.usdoj.gov/oig/special/patriot_act/index.htm>.

The following briefly summarizes OIG activities discussed in this initial semiannual report. As of June 15, 2002, the OIG had received approximately 450 complaints by letter, e-mail, telephone, or by referral from the Civil Rights Division. The majority of these allegations do not implicate Department of Justice employees - most are complaints against local police or other state and federal agencies. To date, the OIG has opened 9 civil rights/civil liberties cases. The OIG will pursue these cases to their conclusion - that is, even if the criminal aspect of the case cannot be substantiated, the OIG will continue to work the case as a possible administrative matter.

With respect to the advertising provisions in Section 1001, part 2, the OIG has posted

information prominently on its website and the Department's website describing its jurisdiction and outlining ways for members of the public to file a complaint; issued a press release announcing the OIG's new responsibilities under Section 1001 that ran in several newspapers and was included in community newsletters and websites; and sent representatives to speak at several community forums that targeted minority groups most affected by the government's response to the terrorist attacks. In addition, the OIG has initiated an advertising campaign to educate the public on its responsibilities. To date, display advertisements have appeared in The Washington Post, The Washington Times, the Beirut Times in Los Angeles, and the Arab American News in Dearborn, Michigan.

Finally, to assess the Department of Justice's treatment of individuals detained as a result of post-September 11 terrorist investigations, the OIG is assessing the detention conditions at two facilities - the Metropolitan Detention Center in Brooklyn, New York, and the Passaic County Jail in Paterson, New Jersey. This OIG review is examining three primary issues: (1) the detainees' ability to obtain legal counsel; (2) the government's timing for issuance of criminal or administrative charges; and (3) the general conditions of detention experienced by the detainees, including allegations of physical and verbal abuse, restrictions on visitation, medical care, duration of detention, confinement policies, and housing conditions. The OIG intends to issue a public report of its findings in October 2002.

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

September 20, 2002

The Honorable F. James Sensenbrenner, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

On July 26 and August 26, the Department submitted written responses to questions posed by the Committee in your letter of June 13, 2002 on USA PATRIOT Act implementation, co-signed by Congressman John Conyers. The Department was subsequently contacted by staff of the Judiciary Committee seeking additional information on a number of the responses. Enclosed please find responses to those follow-up questions.

Additionally, part of the answer to follow-up question number 11 requires the submission of classified information. As such, the information will be provided to the Committee under separate cover.

Thank you for this opportunity to provide additional information to the Committee on implementation of the USA PATRIOT Act. If we can be of further assistance on this, or any other matter, please do not hesitate to contact this office.

Sincerely,

Daniel J. Bryant
Assistant Attorney General

Enclosure

cc: The Honorable John Conyers, Jr.
Ranking Minority Member

3. Follow-up Question: Under what authority was grand jury information shared prior to PATRIOT? What is the precise meaning/significance of the last sentence of the answer in 3(a)?

Answer: Prior to the PATRIOT Act, grand jury information was shared under Rule 6(e)(3)(A)(ii) which provides that disclosure of "matters occurring before the grand jury, other than its deliberations and the vote of any grand juror, may be made to such government personnel (including personnel of a state or subdivision of a state) as are deemed necessary by an attorney for the government to assist an attorney for the government in the performance of such attorney's duty to enforce criminal law." In the context of the 9/11 investigation, grand jury information was shared with members of numerous JTTFs around the country who participated in the PENTBOMB investigation as well as the representatives of the various agencies stationed at SIOC. The reason for this is that it is often necessary to disclose grand jury information to those involved in an investigation in order to take necessary follow-up steps to advance the investigation. Among other practical difficulties, however, Rule 6(e)(3)(A)(ii) requires the government attorney to provide the Court in each district with a list of every individual investigator who receives grand jury information from that district. In the context of the 9/11 investigation and other terrorism investigations that are national and international in scope and may involve literally thousands of investigators and dozens of grand juries, this requirement was onerous and a diversion of resources from investigative activity. Section 203 of the PATRIOT Act alleviates many of these practical difficulties.

3(c). Follow-up Question: How many separate grand juries were used?

Answer: Thirty-nine separate grand juries were used.

4. Follow-up Question: What do the notices look like? Please go back and determine the exact time periods requested.

Answer: Notices to the courts supervising the pertinent grand juries are in the form of pleadings filed with the court under seal (as required by Rule 6(e)(3)). The precise requirements of the notice and the time frame in which it was filed vary, depending on the practice in the particular district and the circumstances of the particular grand jury investigation. Attached is a redacted exemplar notice. The courts supervising the grand juries are responsible for supervising the filing of notices and for disciplining any failure to file such notices.

9. Follow-up Question: Any more specifics about the anecdotes provided on the use of section 212?

Answer: High School officials canceled classes, and bomb-sniffing dogs swept through their school, after an anonymous person, claiming to be a student, posted a death threat to

an Internet message board in which he singled out a faculty member and several students to die by bomb and gun. The owner and operator of the Internet message board initially resisted disclosing to federal law enforcement officials the evidence on his computer that could lead to the identification of the threat maker because he had been told that he would be liable if he volunteered anything to the government. Once he understood that the USA PATRIOT Act had created a new emergency provision allowing the voluntary release of information to the government in cases of possible death or serious bodily injury under 18 U.S.C. § 2702(b)(6)(C) and (c)(4), he voluntarily disclosed information that led to the timely arrest of a student at the high school. Faced with this evidence, the student confessed to making the threats. At the time the owner of the message board finally volunteered the information, he disclosed that he had been worried for the safety of the students and teachers at the high school for several days and stated his relief that he could help because of the change in the law.

10. Follow-up Question: Can the practices referred to ensure that pen\traps are not made solely for 1st Amendment activities be made public or otherwise provided to the Committee?

Answer: A great deal of care is given to ensure that an order authorizing the installation and use of a pen register or trap and trace device is not sought solely on the basis of activities protected by the First Amendment. In each case in which an order is sought from the Foreign Intelligence Surveillance Court, the attorney for the government conducts a review of the factual basis underlying the investigation and the request for pen/trap authority. The Attorney General or his designee, the Counsel for Intelligence Policy (the head of Office of Intelligence Policy and Review), personally approves the filing of every application with the Court. A brief statement of facts in each case is then presented to the Court, along with the Government's certification, signed by the individual applicant, that the order is not being sought solely for activities protected by the First Amendment.

11. Follow-up Question: Can the practices used to ensure that applications for orders for the production of tangible things are not made solely for 1st Amendment activities be made public or otherwise provided to the Committee?

Answer: A great deal of care is given to ensure that an order authorizing the production of tangible things is not sought solely on the basis of activities protected by the First Amendment. In each case in which an order is sought from the Foreign Intelligence Surveillance Court, the attorney for the government conducts a review of the factual basis underlying the investigation and the request for section 215 authority. The Director of the FBI or his designee at a rank no lower than Assistant Special Agent in Charge personally approves the filing of every application with the Court. A brief statement of facts in the case is then presented to the Court, along with the Government's certification, signed by the individual applicant, that the order is not being sought solely for activities protected

by the First Amendment.

Follow-up Question: When will the semi-annual report which covers the period of time up until June 30, 2002, and discusses the use of Section 215, be ready? Is it possible for that information to be provided to the Committee at this time?

Answer: The next semi-annual report covering sections 1861-1862 of FISA (access to business records), as amended by section 215 of the USA PATRIOT Act, will be submitted, as a classified report, to the Intelligence and Judiciary committees at the same time that all of our other semi-annual reports will be submitted. Although not required by statute, the Department's practice is to submit the reports covering January 1 - June 30 of a given year, by the end of December of that year. Accordingly, we anticipate providing this semi-annual report regarding business records covering the period January 1, 2002 through June 30, 2002 by December 31, 2002.

The Department is able at this time to provide information pertaining to the implementation of section 215 of USA PATRIOT Act from January 1, 2002 to present (September 13, 2002). That information is classified at the SECRET level and, accordingly, is being delivered to the Committee under separate cover.

17. Follow-up Question: Why was an exact number not provided?

Answer: Law enforcement agents involved in a particular investigation have no operational need to keep track of information concerning whether electronic evidence was obtained from a service provider outside rather than inside the district issuing a warrant. Because law enforcement has no reason to track this information, the Department cannot provide the exact number of search warrants for electronic evidence that have been executed outside the issuing district.

20. Follow-up Questions:

(A) Section 205(c) of PATRIOT requires some specific information on the number of translators employed by FBI, etc.

Answer: The FBI currently employs 403 Language Specialists who are FBI employees serving as full-time translators and interpreters in 25 languages critical to the FBI mission. The funded staffing level for Language Specialists is 446.

In addition, the FBI contracts with 658 Contract Linguists and Contract Monitors in 58 languages to provide surge capabilities in the critical languages and additional language support in less-commonly spoken languages.

The FBI routinely requests language assistance from other Intelligence Community agencies. Competing demands for high volume languages and the

need for linguists to be cleared at the Top Secret level hinders the sharing of linguists from some government, state and local agencies.

Since 09/17/2001, the FBI has received more than 20,000 applications for its Contract Linguist position and more than 2,500 applications for its Special Agent position from individuals claiming a proficiency in both English and a foreign language. On the basis of careful workforce planning, the FBI has been able to selectively screen and expedite the processing of the best qualified candidates in order to meet current and projected FBI needs. The FBI's workforce planning in this area was recently the subject of significant praise by the General Accounting Office within its January 2002 report to Congress, titled, "Foreign Languages, Human Capital Approach Needed to Correct Staffing and Proficiency Shortfalls." The processing of each candidate involves proficiency testing, a polygraph examination, and an FBI-conducted background investigation. Special Agent candidates are also subject to a panel interview. Despite the rigors of this process, thus far in FY 2002 the FBI has brought on board 266 Contract Linguists; 23 Language Specialists, and over 40 Special Agents with at least a professional level proficiency in English and a foreign language. Several hundred more candidates remain at various stages of processing.

Even prior to 09/11/2001, the FBI was actively engaged in the recruitment and processing of individuals claiming both an English and foreign language proficiency for our Special Agent, Language Specialist, and Contract Linguist positions. During the five year period that ended 09/30/2001, the FBI brought on board 122 Special Agents, 445 Contract Linguists, and 144 Language Specialists with a professional-level proficiency or higher in both English and a foreign language.

The FBI will continue to direct its recruitment and applicant processing resources towards those critical skills needed by the FBI, including foreign languages, as it adapts to its evolving investigative mission.

Through extensive recruitment and through careful workforce planning, the FBI has successfully brought on board many of the linguists needed to meet investigative mission requirements. The FBI is currently working with other Department of Justice components, as well as the Intelligence Community, to implement the Law Enforcement and Intelligence-agency Linguist Access (LEILA) system to maximize the use and availability of linguists who are currently on contract to any one of the partner agencies. The LEILA database will store information regarding the proficiency and security clearance levels of linguists currently on contract as independent contractors or through translation companies. Partner agencies who are interested in procuring the services of linguists may then contract for translation services directly through the companies

who are on the GSA Schedule for Language Services.

(B) Section 1008

Answer: The Department submitted the report required by section 1008 of the PATRIOT Act on September 12, 2002 to the Chairmen and Ranking Members of the Senate and House Committees on the Judiciary, the Senate Foreign Relations Committee, and the House Committee on International Relations. On that same day, representatives from the Department and the Foreign Terrorist Tracking Task Force briefed staff of the House Judiciary Committee on the report.

(C) Section 1009

Answer: The Department submitted the report required by section 1009 of the PATRIOT Act on September 13, 2002. Representatives of the Department briefed staff of the House Judiciary Committee on the report on September 12, 2002.

26. Follow-up Question: There is an apparent internal inconsistency in the first paragraph of the answer. It says the Department did not rely on the PATRIOT Act to arrest or detain anyone -- but later say that some of the criminal detentions were for violations of "federal criminal statutes (including some which were created or amended by the Act)." Isn't that some reliance on PATRIOT? What does that paragraph mean?

Answer: 18 U.S.C. § 3142(e) provides the legal authority for the federal courts to order the detention of a criminal defendant pending trial. That statute, which focuses on the risk of flight and the safety of the community, applies to all criminal defendants and was not amended by the USA PATRIOT Act. Accordingly, whether the defendants were charged with violations of the criminal laws as amended by the USA PATRIOT Act or under preexisting criminal laws, the basis for their detention was a federal court order under 18 U.S.C. § 3142(e), not any amendments made by the USA PATRIOT Act relating to pre-trial detention. Moreover, as to criminal defendants, the Department makes public the names of all defendants (except for fugitives) in accordance with the existing rules relating to criminal prosecutions.

As discussed in the initial response to Question 26, the Department relied on preexisting legal authority to detain and withhold the names of aliens being held under the Immigration and Nationality Act pending the completion of their removal proceedings, as well as to detain and withhold the names of persons being held as material witnesses.

Subsequent to enactment of the USA PATRIOT Act, three of the detainees were charged with violations of federal criminal statutes amended or created by the PATRIOT Act.

John Walker Lindh was charged under 18 U.S.C. § 2332. The penalties related to § 2332 were modified by the PATRIOT Act. Richard Reid was also charged under 18 U.S.C. § 2332, as well as 18 U.S.C. § 1993, a new statute created by the PATRIOT Act. This charge under § 1993 was ultimately dismissed by the court. Mohamed Hussein was charged in Boston with operating an unlicensed money transmitting business under 18 U.S.C. §1960. He has been convicted and sentenced.

Attachment to Follow-up Question 4:

IN THE UNITED STATES DISTRICT COURT

FOR THE xxxxxxxxxx DISTRICT

IN RE:	)	**UNDER SEAL**
JOHN DOE NO. 01-246	)	GRAND JURIES NO. 02-1, 02-2, 02-3, 02-4

NOTICE PURSUANT TO RULE 6(e)(C)(iii) OF THE
FEDERAL RULES OF CRIMINAL PROCEDURE

Pursuant to Section 203(a) of the USA PATRIOT Act of 2001, Pub. L. No. 107-56, 115 Stat. 272, 279 (2001), codified as Fed. R. Crim. P. 6(e)(3)(C), the undersigned attorney for the government hereby provides notice to the Court regarding the disclosure to certain Federal departments, agencies, and entities of criminal investigative information that may include "matters occurring before" the above-captioned grand jury regarding xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx and related criminal activity, as follows:

1. Grand juries empaneled in this district have issued subpoenas and engaged in other investigative activities in conjunction with xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx and related criminal activity. To the extent that information relating to the grand juries's activities constitutes "matters occurring before the grand jury" within the meaning of Rule 6(e)(2) of the Federal Rule of Criminal Procedure, it may not be disclosed "except as otherwise provided for" under the Rules. See Fed. R. Crim. P. 6(e)(2).

2. Section 203(a) of the USA PATRIOT Act, which was signed into law on October 26, 2001, amends Rule 6(e)(3)(C)(i) to authorize disclosure of matters occurring before the grand jury:

> (V) when the matters involve foreign intelligence or counterintelligence (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 401a)), or foreign intelligence information (as defined in clause (iv) of this subparagraph), to any Federal law enforcement, intelligence, protective, immigration, national defense, or national security official in order to assist the official receiving that information in the performance of his official duties.

Fed. R. Crim. P. 6(e)(3)(C)(i)(V).

3. The investigation into the September 11 attacks and related criminal activity involves such "foreign intelligence or counterintelligence"[1] and foreign intelligence information."[2]

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[1] 50 U.S.C. § 401a provides:

> (2) The term "foreign intelligence" means information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, or foreign persons, or international terrorist activities.
>
> (3) The term "counterintelligence" means information gathered, and activities conducted, to protect against espionage, other intelligence activities, sabotage, or assassinations conducted by or on behalf of foreign governments or elements thereof, foreign organizations, or foreign persons, or international terrorist activities.

[2] Fed. R. Crim. P. 6(e)(3)(C)(iv)provides:

> In clause (i)(V) of this subparagraph, the term 'foreign intelligence information' means–
>
> (I) information, whether or not concerning a United States person, that relates to the ability of the United States to protect against--
>
> (aa) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;
>
> (bb) sabotage or international terrorism by a foreign power or an agent of a foreign power; or
>
> (cc) clandestine intelligence activities by an intelligence service or

Moreover, the sharing of information developed during the investigation assists a variety of "Federal law enforcement, intelligence, protective, immigration, national defense, [and] national security official[s]" in the performance of their official duties. Consequently, criminal investigative information, which may include matters occurring before grand juries, has been disclosed and will continue to be disclosed to such officials. Of course, an official who receives such information "may use that information only as necessary in the conduct of that person's official duties subject to any limitations on the unauthorized disclosure of such information." Fed. R. Crim. P. 6(e)(3)(C)(iii).

4. The amended rule requires that, "[w]ithin a reasonable time after such disclosure, an attorney for the government shall file under seal a notice with the court stating the fact that such information was disclosed and the departments, agencies, or entities to which the disclosure was made." Id. Unlike the notice required in other contexts, see Fed. R. Crim. P. 6(e)(3)(B), in matters involving these sort of intelligence interests, which may (as in this case) involve literally thousands of Federal law enforcement and other officials, the rule does not require the notice to name each individual official to whom the grand jury information has been disclosed, only their "departments, agencies, or entities."

5. Accordingly, the undersigned attorney for the government hereby notifies the Court that information relating to the above-captioned grand jury investigations, which may

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network of a foreign power or by an agent of foreign power; or

(II) information, whether or not concerning a United States person, with respect to a foreign power or foreign territory that relates to--

(aa) the national defense or the security of the United States; or

(bb) the conduct of the foreign affairs of the United States.

include "matters occurring before the grand jury," has been and will be disclosed to the following Federal departments, agencies, and entities pursuant to Fed. R. Crim. P. 6(e)(C)(i)(V):

(a) Department of Justice (including Federal Bureau of Investigation).

(b) Department of Treasury.

(c) Department of Defense.

(d) Department of State.

(e) Department of Transportation.

(f) Department of Energy.

(g) Postal Inspection Service.

(h) Central Intelligence Agency.

(i) National Security Agency.

(j) National Security Council.

(k) Naval Criminal Investigative Service

(l) Nuclear Regulatory Commission.

(m) Federal Aviation Administration.

(n) Social Security Administration Inspector General.

6. Pursuant to Rule 6(e)(3)(C)(iii), this notice is filed UNDER SEAL.

Respectfully submitted,

xxxxxxxxxxxxxxxxx
United States Attorney

By: _____
xxxxxxxxxxxxxxxxxxxxxxxxxxx
Assistant United States Attorney

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

October 4, 2002

The Honorable F. James Sensenbrenner, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

In your meeting with Attorney General Ashcroft on Tuesday, September 24, 2002, you expressed interest in the grand jury notices submitted under section 203 of the USA PATRIOT Act. As you are aware, the notices are filed with the court supervising the grand jury when certain foreign intelligence or counterintelligence information is shared with federal agencies. The Act requires that the notice be submitted to the court within a reasonable time after the information was shared.

We should reiterate that, as was noted at the time, our original response covered information about the PENTTBOM/9-11 investigation that was disclosed both before and after the enactment of the USA PATRIOT Act and the time when districts around the country began making use of its provisions. In response to your inquiry about the notices, we have canvassed the 38 districts involved in the disclosure of information stemming from 39 grand juries as noted in our earlier response. We have heard from 36 districts and are still awaiting responses from 2 districts. All 36 districts that responded thus far either filed the appropriate USA PATRIOT Act disclosure notice with the court after the disclosure was made (18 districts) or, prior to making disclosure and in accordance with pre-USA PATRIOT Act procedure, filed a motion and obtained an order from the court permitting such disclosure (27 districts), in which case no subsequent notice was required. Some districts did both (11 districts). A number of districts filed multiple notices to keep their courts apprised of continuing disclosures. We are also able to report that none of the 36 districts reported any instance of a complaint from the court as to the timeliness of the notice filed.

The Criminal Division has provided individual guidance to attorneys in those cases in which foreign intelligence acquired in the course of a grand jury investigation has been disclosed to another federal official. The Department is in the process of formulating and disseminating more formal guidance to the field with respect to the Rule 6(e)(3)(C)(iii) notification requirements. In addition, at the end of October, each of the 94 National Security Coordinators will attend a conference at the National Advocacy Center at which they will be briefed

extensively on these notification requirements. The Department will also include in its forthcoming policy and field guidance a mechanism for the reporting of any complaints by courts about the untimely filing of notices under section 203.

Thank you for this opportunity to further expand upon our answers to your oversight questions on USA PATRIOT Act implementation. We assure you that the Department will continue to work with the Committee as we implement and evaluate the important new tools provided in the USA PATRIOT Act. If we may be of further assistance on this, or any other matter, please do not hesitate to contact this office.

Sincerely,

Daniel J. Bryant
Assistant Attorney General

cc: The Honorable John Conyers, Jr.
Ranking Minority Member