

**Questions Submitted by the House Judiciary Committee
to the Attorney General on USA PATRIOT Act Implementation**

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:

INS

- 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.

Department of State

- 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 20th 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 I-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 Affairs' 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).