

**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 "Armed" 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 "Armed 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 "Armed" 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 attorney-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 addition 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.