



**AUDIT OF THE OFFICE OF JUSTICE PROGRAMS  
SOUTHWEST BORDER PROSECUTION  
INITIATIVE FUNDING RECEIVED BY  
KLEBERG COUNTY, TEXAS**

U.S. Department of Justice  
Office of the Inspector General  
Audit Division

Audit Report GR-60-12-015  
July 2012

**AUDIT OF OFFICE OF JUSTICE PROGRAMS  
SOUTHWEST BORDER PROSECUTION  
INITIATIVE FUNDING RECEIVED BY  
KLEBERG COUNTY, TEXAS**

**EXECUTIVE SUMMARY**

The U.S. Department of Justice, Office of the Inspector General, Audit Division, has completed an audit of the Southwest Border Prosecution Initiative (SWBPI) funding awarded by the Office of Justice Programs (OJP) to Kleberg County, Texas. From fiscal years (FYs) 2007 through 2011, Kleberg County received SWBPI funding totaling \$1,072,870 on a pro-rata basis.

Many drug and other criminal cases occurring along the southwest border are initiated by a federal law enforcement agency or federal multi-jurisdictional task forces, e.g., High Intensity Drug Trafficking Areas and Organized Crime Drug Enforcement Task Forces. Many U.S. Attorneys have developed prosecution guidelines that govern the most common violations of federal law. These prosecution guidelines are used by law enforcement agencies to determine whether to file a case in federal, state, or county court. As a result, many federally initiated cases occurring near the southwest border are referred to the state or county for prosecution.

The SWBPI was established in FY 2002, when Congress began appropriating funds to reimburse state, county, parish, tribal, and municipal governments for costs associated with the prosecution of criminal cases declined by local U.S. Attorneys' offices. The SWBPI reimburses the eligible applicants for costs incurred during prosecution for three major categories based on the types of services provided: (1) prosecution only, (2) pre-trial detention only, and (3) both prosecution and pre-trial detention. Reimbursements received from SWBPI funding may be used by applicant jurisdictions for any purpose not otherwise prohibited by federal law. For FY 2012, Congress appropriated \$10 million for Border Prosecution Initiatives to reimburse state, county, parish, tribal, or municipal governments for costs associated with the prosecution of criminal cases declined by local U.S. Attorneys' offices.

The objective of our audit was to determine if the SWBPI reimbursements received by Kleberg County were allowable, supported, and in accordance with applicable laws, regulations, guidelines, and terms and conditions of the SWBPI.

We found that Kleberg County claimed and was reimbursed for some cases that were ineligible under the SWBPI guidelines resulting in questioned costs totaling \$2,900 for 24 cases. These cases were submitted under both the prosecution and pre-trial detention category, but did not meet the requirements for pre-trial detention.

These issues are discussed in detail in the Findings and Recommendations section of the report. Our audit Objectives, Scope, and Methodology appear in Appendix I.

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# **AUDIT OF OFFICE OF JUSTICE PROGRAMS SOUTHWEST BORDER PROSECUTION INITIATIVE FUNDING RECEIVED BY KLEBERG COUNTY, TEXAS**

## **INTRODUCTION**

The Office of the Inspector General, Audit Division, has completed an audit and issued a report on the Southwest Border Prosecution Initiative (SWBPI) funding awarded by the U.S. Department of Justice, Office of Justice Programs (OJP) to Kleberg County, Texas. The objective of the audit was to determine whether the SWBPI reimbursements received by Kleberg County were allowable, supported, and in accordance with applicable laws, regulations, guidelines, and terms and conditions of the SWBPI guidelines.

### **Background**

Prior to 1994, most southwest border counties in the states of Arizona, California, New Mexico, and Texas did not prosecute drug cases resulting from the illegal importation of controlled substances at U.S. borders. Typically, these cases were prosecuted exclusively by U.S. Attorneys in federal courts. However, in late 1994, U.S. Attorneys, and state and local prosecutors established partnerships through which the state and local governments began prosecuting federally referred criminal cases. These partnerships allowed the U.S. Attorneys to focus on addressing major drug trafficking organizations and prosecuting deported criminal aliens who returned to the U.S. illegally. As state and local governments began to prosecute a growing number of federally referred criminal cases, the partnerships led to an increased financial and resource burden. Congress recognized this problem and began appropriating funds under the SWBPI in fiscal year (FY) 2002 to support state and local prosecutions along the southwest border.

For FY 2012, Congress appropriated \$10 million in funding for the border prosecutor initiative to reimburse state, county, parish, tribal, or municipal governments for costs associated with the prosecution of criminal cases declined by local U.S. Attorneys' offices. Reimbursements received from the SWBPI funding may be used by applicant jurisdictions for any purpose not otherwise prohibited by federal law; however, the direct support and enhancement of jurisdictions' prosecutorial and detention services are encouraged.

The SWBPI reimburses the eligible applicants for costs incurred during prosecution for three major categories based on the types of services provided: (1) prosecution only, (2) pre-trial detention only, and (3) both prosecution and pre-trial detention. For cases disposed of between FY 2002 and the second quarter of FY 2008, each eligible case submitted for prosecution or pre-trial detention services only received the following maximum reimbursement, based upon the length of disposition and the availability of funds:

- \$1,250 for each case of 1 to 15 days,
- \$2,500 for each case of 16 to 30 days,
- \$3,750 for each case of 31 to 90 days, and
- \$5,000 for each case over 90 days.

For cases disposed of between FY 2002 and the second quarter of FY 2008, each eligible case submitted for both prosecution and pre-trial detention services submitted for reimbursement, received the following maximum reimbursement based upon the length of disposition and the availability of funds:

- \$2,500 for each case of 1 to 15 days,
- \$5,000 for each case of 16 to 30 days,
- \$7,500 for each case of 31 to 90 days, and
- \$10,000 for each case over 90 days.

For cases disposed between FY 2002 and the second quarter of FY 2008, the disposition period of a case with both prosecution and pre-trial detention services was calculated using the prosecution disposition period. For cases disposed from FYs 2002 through 2006, to meet the pre-trial detention services requirement, the defendant was required to be detained overnight, i.e., from one calendar day to the next. For cases disposed after FY 2006, to meet the pre-trial detention services requirement, the defendant must be detained for at least 24 hours.

For cases disposed between the third and fourth quarter of FY 2008, jurisdictions may only receive reimbursements for the actual number of prosecutor hours charged to the case and the number of days the defendant was detained prior to the disposition of the case. Prosecutors' salaries charged to the case were based on the average hourly rate for the county's prosecutors and cannot include fringe benefits. Detention reimbursements were based on the number of days the defendant was detained prior to the disposition and are calculated using the published federal detention per diem rate for the jurisdiction.

For cases disposed after FY 2008, jurisdictions may receive reimbursements based on the personnel costs associated with prosecuting a case, including the personnel costs for prosecutors, paralegals, judges, judicial staff, public defenders, clerical staff and indigent screening personnel. The allowable costs are then allocated to each case based on the percentage of eligible SWBPI cases prosecuted by the jurisdiction out of the total number of cases prosecuted during the period. This percentage is calculated separately for misdemeanor cases and felony cases, and then is multiplied by the total allowable misdemeanor and felony costs to arrive at total allowable prosecution costs per case. Detention reimbursements are still based on the number of days the defendant was detained prior to the disposition and are calculated using the published federal detention per diem rate for the jurisdiction.

Pursuant to the SWBPI guidelines, when reimbursement requests exceed available funding, applicants receive funds on a uniform, pro-rata basis. The pro-rata reimbursement percentages for Kleberg County are shown in Exhibit 1.

**EXHIBIT 1: PRO-RATA REIMBURSEMENT BASIS TO KLEBERG COUNTY**

REPORTING PERIOD	START DATE	END DATE	PERCENTAGE REIMBURSED
FY07, 1 <sup>st</sup> Quarter	10/01/06	12/31/06	52.34%
FY07, 2 <sup>nd</sup> Quarter	01/01/07	03/31/07	52.45%
FY07, 3 <sup>rd</sup> Quarter	04/01/07	06/30/07	49.03%
FY07, 4 <sup>th</sup> Quarter	07/01/07	09/30/07	57.26%
FY08, 1 <sup>st</sup> Quarter	10/01/07	12/31/07	86.97%
FY08, 2 <sup>nd</sup> Quarter	01/01/08	03/31/08	71.63%
FY08, 3 <sup>rd</sup> Quarter	04/01/08	06/30/08	111.05%
FY08, 4 <sup>th</sup> Quarter	07/01/08	09/30/08	109.15%
FY09, All Quarters	10/01/08	09/30/09	100.00%
FY10, All Quarters	10/01/09	09/30/10	100.00%

Source: Office of Justice Programs

Kleberg County received reimbursements from SWBPI funds totaling \$1,072,870 from FYs 2007 through 2011, as shown in Exhibit 2.

**EXHIBIT 2: REIMBURSEMENTS MADE TO KLEBERG COUNTY<sup>1</sup>**

REPORTING PERIOD	START DATE	END DATE	AMOUNT REQUESTED	AMOUNT REIMBURSED
FY07, 1 <sup>st</sup> Quarter	10/01/06	12/31/06	177,500	\$ 92,895
FY07, 2 <sup>nd</sup> Quarter	01/01/07	03/31/07	65,000	34,091
FY07, 3 <sup>rd</sup> Quarter	04/01/07	06/30/07	166,250	91,325
FY07, 4 <sup>th</sup> Quarter	07/01/07	09/30/07	236,250	135,287
FY08, 1 <sup>st</sup> Quarter	10/01/07	12/31/07	170,000	147,851
FY08, 2 <sup>nd</sup> Quarter	01/01/08	03/31/08	340,000	243,528
FY08, 3 <sup>rd</sup> Quarter	04/01/08	06/30/08	12,324	13,685
FY08, 4 <sup>th</sup> Quarter	07/01/08	09/30/08	10,841	11,832
FY09, All Quarters	10/01/08	09/30/09	132,313	132,313
FY10, All Quarters	10/01/09	09/30/10	170,063	170,063
<b>TOTAL</b>				<b>\$ 1,072,870</b>

Source: Office of Justice Programs

<sup>1</sup> Throughout the report, the differences in the total amounts are due to rounding, in that the sum of individual numbers prior to rounding reported may differ from the sum of the individual numbers rounded.



## **FINDINGS AND RECOMMENDATIONS**

We found that Kleberg County claimed and was reimbursed for cases that were ineligible under the SWBPI guidelines. Specifically, we found cases that were claimed under both prosecution and pre-trial detention category that did not meet the requirements for pre-trial detention. As a result, we identified questioned costs totaling \$2,900.

### **Case Eligibility**

Pursuant to the SWBPI guidelines, an eligible case is any federally initiated criminal case that the U.S. Attorney declined to prosecute and referred to the state or local government for prosecution, which was prosecuted by the state or local government and disposed of during an eligible reporting period. The SWBPI guidelines define federally initiated as a case resulting from a criminal investigation or an arrest involving federal law enforcement authorities for a potential violation of federal criminal law. This may include investigations resulting from multi-jurisdictional task forces, e.g., High Intensity Drug Trafficking Areas and Organized Crime Drug Enforcement Task Forces. The SWBPI guidelines further state that, "referred cases are eligible regardless of whether the case was formally declined and referred by a U.S. Attorney, or through a blanket federal declination-referral policy, an accepted federal law enforcement practice, or by federal prosecutorial discretion." Federally referred cases that are declined and not prosecuted by the state or local government are ineligible for reimbursement.

We analyzed the 488 cases submitted for reimbursement by Kleberg County to determine whether the cases were eligible for reimbursement under the requirements of the SWBPI guidelines. In addition, we reviewed all cases submitted to determine if: (1) reimbursements were submitted in the period the cases were disposed, (2) the cases met the pre-trial detention requirements, (3) there were duplicates or concurrently prosecuted cases, (4) cases were submitted in the correct disposition category, (5) the approved federal detention rate was used to calculate the detention reimbursement claimed, (6) cases had federal law enforcement involvement, and (7) the approved prosecution award was used to calculate the prosecution reimbursement claimed.

Based on our review, we found that Kleberg County received SWBPI funds totaling \$2,900 for 24 cases that were not eligible for reimbursement pursuant to the SWBPI guidelines. A detailed listing of the cases claimed by Kleberg County that were not eligible for reimbursement is provided in

Appendix III. Specifically, we found that Kleberg County received excess reimbursements totaling \$2,900 for 24 cases that were submitted under both the prosecution and pre-trial detention category that did not meet the requirements for pre-trial detention.

### **Accuracy of Reimbursements**

Kleberg County requests reimbursements from SWBPI funds through an on-line application available on the Bureau of Justice Assistance website. Pursuant to the SWBPI guidelines, for FYs 2002 through 2007 eligible cases were reimbursed using a uniform payment per case schedule based on the length of disposition, which is calculated from the date of the suspect's arrest through case resolution. Resolution of the case is defined as dismissal, conviction, or plea.

We reviewed the reimbursement requests submitted by Kleberg County for FY 2007 to determine if the number of cases claimed for each disposition category was supported by the detailed case listings obtained during fieldwork.<sup>2</sup> Based on our review, we determined that the reimbursement requests materially reconciled with the master case listing.

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<sup>2</sup> We did not reconcile cases submitted to OJP after FY 2007 because starting in the first quarter of FY 2008, SWBPI recipients were required to provide OJP a detailed listing of cases for which they were requesting reimbursement. Prior to FY 2008, SWBPI recipients were only required to provide OJP the number of cases for which they were requesting reimbursement for each disposition category.

## **Recommendations**

We recommend that OJP:

1. Remedy the \$2,900 in questioned costs received by Kleberg County for 24 cases that were submitted under both the prosecution and pre-trial detention category that did not meet the requirements for pre-trial detention.

## APPENDIX I

### OBJECTIVES, SCOPE, AND METHODOLOGY

The objective of the audit was to determine whether reimbursements claimed for costs under the SWBPI are allowable, supported, and in accordance with applicable laws, regulations, guidelines, and terms and conditions of the SWBPI guidelines.

We conducted this audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. The scope of our audit included reimbursements received by Kleberg County for FYs 2007 through 2011.

We tested compliance with what we consider to be the important conditions of the reimbursements under the SWBPI. Unless otherwise stated in our report, the criteria we audit against are contained in the SWBPI guidelines. We tested Kleberg County SWBPI activities in case eligibility and compliance with regulations.

In addition, our testing was conducted by judgmentally selecting a sample of cases submitted for reimbursement. Judgmental sampling design was applied to obtain broad exposure to numerous facets of the reimbursements reviewed. This non-statistical sample design does not allow projection of the test results to all reimbursements received.

We did not test internal controls for Kleberg County as a whole. The Single Audit Report for Kleberg County was prepared under the provisions of Office of Management and Budget Circular A-133 for the fiscal year ended September 30, 2010. We reviewed the independent auditor's assessment to identify internal control weaknesses and significant non-compliance issues related to Kleberg County or federal programs. The auditor's assessment disclosed no material control weaknesses or significant non-compliance issues related to the SWBPI. In addition, we performed testing of source documents to assess the accuracy of reimbursement requests; however, we did not test the reliability of the financial management system as a whole.

## APPENDIX II

### SCHEDULE OF DOLLAR-RELATED FINDINGS

<u>QUESTIONED COSTS</u>	<u>AMOUNT</u>	<u>PAGE</u>
<b>Unallowable Costs:</b>		
Excess reimbursements for cases that were erroneously claimed as both prosecution and pre-trial detention that did not meet the pre-trial detention requirement.	\$2,900	6
<b>Total Questioned Costs:</b> <sup>3</sup>	<b>\$2,900</b>	
<b>TOTAL DOLLAR-RELATED FINDINGS</b>	<b>\$2,900</b>	

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<sup>3</sup> **Questioned Costs** are expenditures that do not comply with legal, regulatory or contractual requirements, or are not supported by adequate documentation at the time of the audit, or are unnecessary or unreasonable. Questioned costs may be remedied by offset, waiver, recovery of funds, or the provision of supporting documentation.

**APPENDIX III**

**DETAILS OF QUESTIONED COSTS**

**CASES WITHOUT 24 HOURS OF DETENTION**

<b>CASE No.</b>	<b>JAIL BOOKING DATE</b>	<b>JAIL RELEASE DATE</b>	<b>DETENTION DAYS REPORTED TO OJP</b>	<b>ACTUAL DETENTION DAYS</b>	<b>AMOUNT QUESTIONED</b>
CR06-0598	04/07/2006	04/07/2006	N/A	0	\$ 1,839
CR07-04981	09/13/2007	09/13/2007	1	0	50
CR08-0016	01/12/2008	01/12/2008	1	0	50
CR08-0062	02/28/2008	02/28/2008	1	0	49
CR08-01091	04/03/2008	04/03/2008	1	0	49
CR08-01222	04/15/2008	04/15/2008	1	0	49
CR08-0165	05/17/2008	05/17/2008	1	0	49
CR08-0410	10/30/2008	10/30/2008	1	0	45
CR08-0416	11/08/2008	11/08/2008	1	0	45
CR09-0051	01/29/2009	01/29/2009	1	0	45
CR09-01331	02/26/2009	02/26/2009	1	0	45
CR09-01332	02/26/2009	02/26/2009	1	0	45
CR09-0316	06/15/2009	06/15/2009	1	0	45
CR09-0346	06/22/2009	06/22/2009	1	0	45
CR09-0347	06/22/2009	06/22/2009	1	0	45
CR09-03542	06/26/2009	06/26/2009	1	0	45
CR09-0510	09/14/2009	09/14/2009	1	0	45
CR09-0511	09/14/2009	09/14/2009	1	0	45
CR09-05771	10/22/2009	10/22/2009	1	0	45
CR09-05774	10/22/2009	10/22/2009	1	0	45
CR09-0641	11/29/2009	11/29/2009	1	0	45
CR09-0642	11/29/2009	11/29/2009	1	0	45
CR09-06662	12/12/2009	12/12/2009	1	0	45
CR09-0673	12/17/2009	12/17/2009	1	0	45
<b>TOTAL</b>					<b>\$ 2,900</b>

**KLEBERG COUNTY RESPONSE  
TO THE DRAFT REPORT**

**VERONICA HARE**  
INSURANCE COORDINATOR

(361) 593-1350  
(361) 593-1319 FAX



**KLEBERG COUNTY**

KLEBERG COUNTY COURTHOUSE  
700 E. KLEBERG  
P.O. BOX 72  
KINGSVILLE, TEXAS 78364

**COUNTY of KLEBERG**  
KINGSVILLE, TEXAS

June 21, 2012

David M. Sheeren  
Regional Audit Manager  
U.S. Department of Justice  
Office of Inspector General  
Denver Regional Audit Office  
1120 Lincoln, Suite 1500  
Denver, Colorado 80203

RE: Draft Audit Report

Dear Mr. Sheeren,

Attached for your review is Kleberg County's response to the Draft Audit Report, dated June 5, 2012, on the Southwest Border Prosecution Initiative (SWBPI) funds that were received from the Office of Justice Programs (OJP).

If you have any questions or require additional information, please contact me at 361-593-1350.

Sincerely,

A handwritten signature in cursive script that reads "Veronica Hare".

Veronica Hare  
Insurance Coordinator

**KLEBERG COUNTY RESPONSE TO DRAFT AUDIT REPORT**

- 1. Remedy the \$2,900 in questioned costs received by Kleberg County for 24 cases that were submitted under both the prosecution and pre-trial detention category that did not meet the requirements for pre-trial detention.**

Kleberg County concurs with recommendation: The County will verify the booking and disposed dates to insure the proper way of reporting the pre-trial detention services based on SWBPI guidelines.



**OFFICE OF JUSTICE PROGRAMS  
RESPONSE TO THE DRAFT REPORT**



U.S. Department of Justice

Office of Justice Programs

*Office of Audit, Assessment, and Management*

*Washington, D.C. 20531*

**U S JUL 2012**

MEMORANDUM TO: David M. Sheeren  
Regional Audit Manager  
Denver Regional Audit Office  
Office of the Inspector General

FROM: Maureen A. Henneberg  
Director *Maureen A. Henneberg*

SUBJECT: Response to the Draft Audit Report, *Audit of Office of Justice Programs Southwest Border Prosecution Initiative Funding Received by Kleberg County, Texas*

The Office of Justice Programs (OJP) appreciates the opportunity to review and comment on the Office of the Inspector General's (OIG's) draft report, entitled "Audit of Office of Justice Programs Southwest Border Prosecution Initiative Funding Received by Kleberg County, Texas," dated June 5, 2012. We consider the subject report resolved and request written acceptance of this action from your office.

As a result of the OIG's audit of the Southwest Border Prosecution Initiative (SWBPI) program in fiscal years (FYs) 2008 and 2010, and the Office of Audit, Assessment, and Management's (OAAM) review of this program in FY 2011, the Bureau of Justice Assistance (BJA) made the following enhancements: 1) modified the SWBPI application system to require that each prosecution case submitted by a jurisdiction for reimbursement contain the case/docket number, defendant's first and last name, referring federal agency, referred date, resolution type, and resolved date; 2) established new internal guidelines to ensure that SWBPI reimbursements are analyzed to identify anomalies that may indicate unallowable or unsupported payments to specific jurisdictions; and 3) implemented a process to identify overlapping requests for detention expenses between SWBPI and the State Criminal Alien Assistance Program.

BJA's enhanced monitoring process over SWBPI payments has resulted in increased scrutiny, and now includes a review of a minimum of 10% of the annual payments made under the program. However, Kleberg County was not included in BJA's sample of SWBPI case file review.

The report contains **one** recommendation and **\$2,900** in questioned costs. The following is OJP's analysis of the draft audit report recommendation. For ease of review, the recommendation is restated in bold and is followed by our response.

**We recommend that OJP remedy the \$2,900 in questioned costs received by Kleberg County for 24 cases that were submitted under both the prosecution and pre-trial detention category that did not meet the requirements for pre-trial detention.**

The Office of Justice Programs agrees with the recommendation. We will coordinate with Kleberg County to remedy the \$2,900 in questioned costs related to the 24 cases that were submitted under both the prosecution and pre-trial detention category that did not meet the requirements for pre-trial detention.

If you have any questions or require additional information, please contact Jeffery A. Haley, Deputy Director, Audit and Review Division, on (202) 616-2936.

cc: Jeffery A. Haley  
Deputy Director, Audit and Review Division  
Office of Audit, Assessment, and Management

Tracey Trautman  
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Justice Management Division

cc: OJP Executive Secretariat  
Control Number 20120833

**OFFICE OF THE INSPECTOR GENERAL  
ANALYSIS AND SUMMARY OF ACTIONS  
NECESSARY TO CLOSE REPORT**

The OIG provided a draft of this audit report to OJP and Kleberg County. In its response, which is included in Appendix V of this report, OJP states that it agrees with our recommendation and that it will coordinate with Kleberg County to remedy questioned costs. OJP also states that “BJA’s enhanced monitoring process over SWBPI payments has resulted in increased scrutiny, and now includes a review of a minimum of 10% of the annual payments made under the program. However, Kleberg County was not included in BJA’s sample of SWBPI case file review.” We recognize the changes that OJP made to the SWBPI program based on recommendations provided in prior OIG reports.<sup>4</sup> However, questioned costs related to the ineligible cases submitted must still be remedied. The following provides the OIG analysis of the response and summary of actions necessary to close the report.

- 1. Resolved.** OJP concurred with our recommendation to remedy the \$2,900 in questioned costs received by Kleberg County for 24 cases that were submitted under both the prosecution and pre-trial detention category that did not meet the requirements for pre-trial detention. OJP stated in its response that it will coordinate with the County to remedy the \$2,900 in questioned costs related to the 24 cases that were submitted under both the prosecution and pre-trial detention categories that did not meet the requirements for pre-trial detention.

This recommendation can be closed when we receive documentation that OJP remedied the \$2,900 in questioned costs received by Kleberg County for 24 cases that were submitted under both the prosecution and pre-trial detention category that did not meet the requirements for pre-trial detention.

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<sup>4</sup> U.S. Department of Justice Office of the Inspector General, *Southwest Border Prosecution Initiative Reimbursement Program*, Audit Report 08-22 (March 2008);

U.S. Department of Justice Office of the Inspector General, *Southwest Border Prosecution Initiative Reimbursements*, Audit Report 10-20 (March 2010).