



**FOLLOW-UP AUDIT OF THE  
DEPARTMENT OF JUSTICE'S  
INTERNAL CONTROLS OVER REPORTING  
OF TERRORISM-RELATED STATISTICS:  
THE EXECUTIVE OFFICE FOR  
UNITED STATES ATTORNEYS**

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

Audit Report 13-34  
September 2013

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**EXECUTIVE SUMMARY**

In February 2007, the Office of the Inspector General (OIG) completed an audit of the Department's internal controls over reporting terrorism-related statistics. This audit reviewed terrorism-related statistics reported by the Department and three Department components – the Federal Bureau of Investigation (FBI), Executive Office for United States Attorneys (EOUSA), and Criminal Division – and it found that the Department components and the Department as a whole did not accurately report terrorism-related statistics.<sup>1</sup> The 3 components did not accurately report 24 of the 26 statistics reviewed, with some statistics significantly overstated or understated, and others overstated or understated by minor amounts.<sup>2</sup> In September 2007, following the release of our audit report, EOUSA revised its internal control procedures for gathering, verifying, and reporting terrorism-related statistics.

The OIG initiated this follow-up audit to determine if: (1) the Department components took appropriate actions to implement the recommendations from our 2007 audit; and (2) the corrective actions implemented improved the components' ability to gather, track, classify, verify, and report accurate terrorism-related statistics. This report provides our results pertaining only to EOUSA. The OIG issued a similar report on the corrective actions taken by the National Security Division in September 2012.<sup>3</sup> In this audit, the OIG identified 39 unique terrorism-related statistics reported by EOUSA in its budget submissions or annual statistical reports for

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<sup>1</sup> U.S. Department of Justice Office of the Inspector General, *The Department of Justice's Internal Controls over Terrorism Reporting*, Audit Report 07-20 (February 2007).

<sup>2</sup> For purposes of this audit, we considered the misreporting of a statistic as significant if the statistic was either overstated or understated by 10 percent or more.

<sup>3</sup> After our 2007 audit, the National Security Division took over responsibility for the corrective actions on the recommendations we made to the Criminal Division. Our follow-up report on the National Security Division is the U.S. Department of Justice Office of the Inspector General, *Follow-up Audit of the Department of Justice's Internal Controls over Reporting of Terrorism-Related Statistics: The National Security Division*, Audit Report 12-37 (September 2012).

fiscal years 2009 through 2012, and the auditors selected 11 of the 39 statistics to test for accuracy. Included in our review were statistics that reflected on the performance of EOUSA's terrorism-related efforts, such as statistics relating to the number of terrorism-related cases filed, the number of defendants convicted at trial or by guilty plea, and the number of defendants sentenced to prison.

We found that although EOUSA revised its procedures for gathering, classifying, and reporting terrorism-related statistics based on the recommendations from our 2007 audit, EOUSA's implementation of the revised procedures was not effective to ensure that terrorism-related statistics were reported accurately. Specifically, we found that EOUSA inaccurately reported all 11 statistics we reviewed during this follow-up audit. Most of these 11 statistics were inaccurately reported by significant margins. For example, we found that EOUSA overstated one statistic showing the number of terrorism-related defendants within our sample who had been judged guilty in FY 2009 by 13 percent, and then overstated the same statistic for the defendants within our FY 2010 sample by 26 percent. The inaccuracies we found also included a statistic showing the number of terrorism-related defendants within our sample who had been sentenced to prison in FY 2010, which EOUSA overstated by 19 percent. In response to these findings, EOUSA officials told us that to the extent cases are overstated in one year due to untimely data entry, these cases are correspondingly understated in previous years in which the cases should have been reported.

The continued inaccurate reporting by significant margins indicates that EOUSA needs to strengthen its implementation of controls for gathering, verifying, and reporting terrorism-related statistics. Specifically, we found that statistics were inaccurately reported because: (1) EOUSA based statistics on the system disposition date, which is the date the U.S. Attorneys' Offices (USAO) entered the reported case information into the Legal Information Office Network System (LIONS), instead of the actual date the reported transaction occurred; (2) EOUSA did not allow for a lag time at the end of the fiscal year to give the USAOs an opportunity to enter case data that was backlogged at the end of the fiscal year or that related to events occurring at the end of the fiscal year; (3) EOUSA had not established clear definitions for some statistics or rules for how they should be reported; (4) EOUSA did not keep its reporting log up-to-date with all the statistics reported and the methodologies for how those statistics were developed; and (5) the USAOs devoted their resources to work they deemed to be of a higher priority, causing delays in entering case data into LIONS.

This audit report makes eight recommendations to help EOUSA and the USAOs improve the accuracy and documentary support for the terrorism-related statistics reported. Accurate statistics are important as the data is used by Department management and Congress to make budgetary and operational decisions.

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## INTRODUCTION

After the terrorist attacks of September 11, 2001, the Department of Justice (Department) made the prevention of terrorism and promotion of America's security its primary strategic goal.<sup>1</sup> Department resources devoted to preventing terrorism and promoting the nation's security have increased from approximately \$737 million in fiscal year (FY) 2001 to approximately \$5.26 billion in FY 2012, an increase of 614 percent. In its FY 2003 – 2008 strategic plan, the Department established the following three objectives to accomplish its terrorism strategic goal:

- Prevent, disrupt, and defeat terrorist operations before they occur.
- Investigate and prosecute those who have committed, or intend to commit, terrorist acts in the United States.
- Combat espionage against the United States by strengthening counterintelligence capabilities.<sup>2</sup>

To show how the Department has performed against these objectives, the Department and its component agencies gather, classify, and report a wide range of terrorism-related statistics. For example, some of the terrorism-related statistics reported by the Department's Executive Office for United States Attorneys (EOUSA) were the:

- number of criminal appeals filed,
- number of criminal cases in U.S. District Court terminated,<sup>3</sup>
- number of criminal cases in U.S. District Court pending,
- number of defendants in U.S. District Court in criminal cases filed,
- number of defendants in U.S. District Court in criminal cases terminated,

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<sup>1</sup> U.S. Department of Justice, Strategic Plan, Fiscal Years 2012 – 2016.

<sup>2</sup> The Department subsequently made minor revisions to the objectives for accomplishing its terrorism strategic goal as noted in the Department's Strategic Plan.

<sup>3</sup> EOUSA defines a criminal case as terminated when the case no longer has any pending charges against any defendants at the end of the reporting period.

- number of dispositions in U.S. District Court guilty, and
- number of defendants sentenced to prison.

The Department and its components regularly report such statistics in budgets, annual financial statements and statistical reports, the Office of Management and Budget's Performance Assessment Rating Tool, performance plans, congressional testimony, speeches, press releases, publications, and websites.<sup>4</sup>

### **Audit Purpose and Scope**

The purpose of our follow-up audit was to determine what actions EOUSA took in response to our 2007 audit and whether those actions improved EOUSA's ability to gather, track, classify, verify, and report accurate terrorism-related statistics. The Department relies on EOUSA and other components to implement its counterterrorism strategies. EOUSA collects a variety of terrorism-related statistics measuring these counterterrorism efforts.

We identified the terrorism-related statistics reported by EOUSA by:

- interviewing officials from EOUSA, and
- analyzing budget submissions and annual statistical reports.

We identified 39 unique terrorism-related statistics that EOUSA reported 72 times in budget submissions or in its Annual Statistical Report for FYs 2009 through 2012. The 39 statistics are listed in Appendix I.

We interviewed EOUSA officials and reviewed documents showing the actions EOUSA took in response to our prior audit. To assess whether EOUSA's actions in response to the 2007 audit improved its ability to gather, track, classify, verify, and report accurate terrorism-related statistics, we selected the first 11 statistics shown in Appendix I to test whether the statistics were accurate. We selected these 11 statistics based on: (1) our assessment of the significance of the statistic to the Department's counterterrorism efforts; (2) risk factors such as the number of times the statistic was reported, the extent to which internal controls were established and documented, and the extent we found inconsistencies in the statistics

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<sup>4</sup> The Performance Assessment Rating Tool is used to identify the strengths and weaknesses of federal programs and to develop funding and management decisions aimed at making the programs more effective.



reported; and (3) whether the statistic was reviewed in the prior audit. We found that EOUSA reported the 11 statistics a total of 21 times.

We analyzed documentation and conducted interviews with EOUSA officials to determine if the information reported for each statistic was accurate. In some cases we reviewed documentation for each item counted in the statistic reported. In other cases we reviewed documentation for a sample of the items counted.<sup>5</sup>

More details about our methodology for selecting and evaluating the accuracy of the terrorism-related statistics reported by EOUSA are contained in Appendix I. The results of our audit work and testing are reported in the Finding and Recommendations section of the report.

### **Prior OIG Audit**

In February 2007, the OIG issued an audit report on the Department's internal controls over reporting terrorism-related statistics.<sup>6</sup> The audit found that the Department components did not accurately report terrorism-related statistics. The Department components lacked adequate internal controls for gathering, verifying, and reporting terrorism-related statistics. Regarding EOUSA, our 2007 audit found that EOUSA inaccurately reported the 11 statistics we tested. We determined that EOUSA should improve its procedures for gathering and reporting statistics. For the 11 statistics we tested, we found that:

- six statistics were significantly overstated,
- two statistics were significantly understated,
- one statistic was overstated by a minor amount,
- one statistic was understated by a minor amount, and
- one statistic that was reported three times was significantly overstated twice and significantly understated the third time it was reported.

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<sup>5</sup> For those statistics where we reviewed a sample of items counted, the number of incorrectly reported transactions could have been higher if we had conducted a 100 percent review of items reported.

<sup>6</sup> U.S. Department of Justice Office of the Inspector General, *The Department of Justice's Internal Controls over Terrorism Reporting*, Audit Report 07-20 (February 2007).

Our 2007 audit found that the statistics were inaccurately reported primarily because: (1) EOUSA and the U.S. Attorneys' Offices (USAO) lacked strong internal controls for verifying the accuracy of the LIONS data, (2) the USAOs could not provide support to show subjects were linked to terrorism, (3) the cases were not filed in the year reported or the USAOs could not provide documentation to show the cases were filed in the year reported, and (4) the USAOs had not finished coding their cases in LIONS prior to the close of the fiscal year.

We made six recommendations to strengthen EOUSA's and the USAO's internal controls for accurate collection and reporting of terrorism-related statistics. We recommended that EOUSA:

- (1) establish and document internal control procedures for gathering, verifying, and reporting terrorism-related statistics;
- (2) maintain documentation to identify the source of all terrorism-related statistics reported in official operational documents such as budget requests, performance plans, statistical reports, and others;
- (3) maintain documentation of the procedures and systems used to gather or track the statistics reported;
- (4) maintain documentation of the methodologies and procedures used to verify the accuracy of the statistics reported; and
- (5) ensure that terrorism-related statistics are not reported unless evidence is maintained to support the statistics.

We also recommended that EOUSA and the USAOs:

- (6) establish and implement procedures to recode transactions in LIONS when investigations that began as terrorism-related investigations do not link the case defendants to terrorist activity.

This current audit is a follow-up audit to our 2007 audit. In the Finding and Recommendations section of this report, we discuss in detail the corrective actions that EOUSA took in response to our prior recommendations, as well as the results of our testing to determine whether those actions improved EOUSA's ability to gather, track, classify, verify, and report accurate terrorism-related statistics.

Appendix II discusses other previous audits and inspections completed by the OIG and Government Accountability Office (GAO) prior to our 2007 audit that reviewed or touched upon the accuracy of terrorism-related statistics reported by the Department.

## **FINDING AND RECOMMENDATIONS**

### **ACTIONS TAKEN TO IMPLEMENT THE RECOMMENDATIONS FROM OUR 2007 AUDIT WERE NOT EFFECTIVE AT ENSURING EOUSA ACCURATELY REPORTED TERRORISM-RELATED STATISTICS**

Although EOUSA revised its procedures for gathering, classifying, and reporting terrorism-related statistics based on the recommendations from our 2007 audit, EOUSA's implementation of the revised procedures was not effective at ensuring that terrorism-related statistics were reported accurately. EOUSA corrected the issue noted in our 2007 audit report related to reporting statistics as terrorism-related that were not terrorism-related. However, EOUSA inaccurately reported all 11 statistics we tested during this follow-up, most by significant margins.<sup>7</sup> The inaccuracies indicate a need for EOUSA to further strengthen implementation of controls for gathering, verifying, and reporting terrorism-related statistics. Accurate statistics are important as the data is used by Department management and Congress to make budgetary and operational decisions.

#### **EOUSA's Implementation of Controls Developed in Response to Our 2007 Audit Recommendations**

In response to the recommendations in our 2007 audit report, in January 2007 EOUSA informed us that it would rename its anti-terrorism program category code and would modify and clarify its definition to eliminate any misunderstanding regarding its meaning. In addition, EOUSA stated it would review its internal controls to determine what improvements could be made. As a result, effective October 1, 2007, EOUSA replaced its anti-terrorism codes with a new code titled National Security/Critical Infrastructure Protection. The new code is defined as any matter or case that is brought to protect against vulnerabilities to, or restore the integrity of, public or non-public infrastructure that is critical to our national security. EOUSA officials explained to us that, in renaming and modifying its anti-terrorism code, EOUSA did not plan to create a program code solely for

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<sup>7</sup> For the purposes of this audit, we considered the misreporting of a statistic as significant if the statistic was either overstated or understated by 10 percent or more.

those defendants who have links to terrorist activity. Rather, EOUSA intended to include those who are investigated or charged with non-terrorism charges among the other matters coded with the new National Security/Critical Infrastructure Protection code. EOUSA incorporated the new code into release number 5.3 of the Legal Information Office Network System (LIONS) Manual published in November 2010. The newly established code and definition mostly corrected the issue noted in our 2007 audit report related to reporting statistics as terrorism-related that were not terrorism-related.<sup>8</sup>

EOUSA also implemented two new internal control procedures for coding and reporting terrorism-related statistics, and for collecting or disseminating terrorism, anti-terrorism, or national security-related statistics. However, as discussed in the following subsections, EOUSA's implementation of these new controls was not fully effective.

#### *Control Procedure for Coding and Reporting Terrorism-related Statistics*

EOUSA's new control procedure for coding and reporting terrorism-related statistics provided that a log of all requests for data based on terrorism or national security criminal program codes would be maintained within the office of the Counsel to the Director's Staff. EOUSA required the log to show: (1) the date of the data request, (2) who made the data request, (3) the data being requested, (4) the source of the data, (5) when and to whom the data was sent, and (6) the method used to gather the data. In addition to maintaining the log, the Counsel to the Director's Staff was required to keep an electronic or hard copy of both the request and the actual responsive data. However, we found that the log, data requests, and responsive data were not maintained in FYs 2010 and 2011 as required by the internal control. We found that:

- the Counsel to the Director's Staff allowed an official of the Data Analysis Staff to retain and maintain the log,
- methodologies for gathering statistics were not retained for 5 of the 11 statistics we tested,
- the FY 2010 log showed an entry for the FY 2009 U.S. Attorneys' Annual Statistical Report, but no documentation was included with

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<sup>8</sup> For 7 of the 11 statistics we tested during the follow-up audit, we found that EOUSA included transactions that were improperly coded as terrorism-related or national security-related by the applicable United States Attorneys' Office. However, as discussed later in the report, the number of miscoded transactions we identified was small.

the log to support the statistics contained in the statistical report, and

- the FY 2011 log did not provide an entry for the FY 2010 U.S. Attorneys' Annual Statistical Report and did not include documentation to support the statistics reported in the FY 2010 annual report.<sup>9</sup>

An official of the Counsel to the Director's Staff told us that the Counsel to the Director's Staff did not continue to maintain the log because the number of requests for EOUSA data dropped significantly after FY 2009. Consequently, the Counsel allowed an official of the Data Analysis Staff to retain and maintain the log because most of the remaining requests came from that section.

However, an official of the Data Analysis Staff told us that the log had not been officially assigned to be retained and maintained by the Data Analysis Staff. The official said that the log had been maintained by various staffs within EOUSA over the last few years even though the established procedure required that it be maintained by the Counsel to the Director's Staff. The official said that this situation may explain why the log had not been kept up-to-date with a complete list of statistics requested, the responsive data, and methodologies for collecting those statistics. During our audit, the Data Analysis Staff took formal responsibility for retaining and maintaining EOUSA's log.

Because the log and corresponding support were not previously maintained as required, EOUSA had difficulty providing us accurate lists for 5 of the 11 statistics selected for testing. An official of the Data Analysis Staff told us that, as the result of an oversight, the FY 2010 U.S. Attorneys' Annual Statistical Report was not recorded in the FY 2011 log. The official subsequently showed us that this oversight was corrected by updating the FY 2011 log to reflect the FY 2010 U.S. Attorneys' Annual Statistical Report. The official believed that the schedules listed in the annual report were the support for the reported statistics. However, the schedules in the annual reports only show the numbers reported for each statistic, but do not show necessary supporting details such as case numbers, defendant names, and disposition dates.

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<sup>9</sup> EOUSA's Data Analysis Staff serves in an assistance, advisory, and resource capacity for components of EOUSA. The staff works to assist managers in all aspects of data analysis, ensure quality control in the use of data, and conduct data analysis for and on behalf of Department of Justice officials and the USAOs.

*Control Procedure for Collecting or Disseminating Terrorism, Anti-terrorism, or National Security-related Statistics*

In response to our 2007 audit, EOUSA also established a control procedure to ensure that all terrorism, anti-terrorism, national security-related, and export enforcement matters and cases were promptly entered into LIONS. The USAOs were instructed to treat coding cases as a priority and attempt to enter case data into LIONS as quickly as possible after the USAO receives the data. However, EOUSA did not establish a specific deadline for entering case data into LIONS at the end of each fiscal year. As a result, we found that case data was not always entered into LIONS promptly enough to allow for accurate reporting of data for a prior year. This problem occurred at all eight USAOs we reviewed.<sup>10</sup> USAO officials told us that this problem had occurred because they placed a higher priority on opening and prosecuting cases, had limited staff, were under tight time constraints, and did not provide case files to staff for docketing in a timely manner.<sup>11</sup> They also said that some of their legal assistants lacked an adequate understanding of LIONS.

In summary, we found that although EOUSA has developed an internal control structure to improve its reporting of statistics, it has not effectively implemented the control procedures to ensure accurate reporting of terrorism-related statistics.

**Accuracy of EOUSA Terrorism-related Statistics Reported Subsequent to Our 2007 Audit**

For this follow-up audit, we identified 39 unique terrorism-related statistics that were reported a total of 72 times by EOUSA in annual statistical reports and budget submission documents for FY 2009 through FY 2012. Appendix I contains a listing of the 39 statistics.

We selected 11 of the 39 statistics for detailed testing. We then selected transactions reported for each of the 11 statistics and we reviewed documentation in the Public Access to Court Electronic Records (PACER) system to verify the date of each matter or case that EOUSA reported as

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<sup>10</sup> We performed on-site reviews at the U.S. Attorney's Offices in the Northern District of California, Central District of California, Western District of Texas, District of Arizona, Southern District of Florida, Southern District of New York, Eastern District of Michigan, and the District of Columbia.

<sup>11</sup> Docketing is the process of recording a formal abridged record of the court proceedings in a legal action.

having occurred in FYs 2009 and 2010.<sup>12</sup> If the documentation in the PACER system did not corroborate EOUSA’s reported data, or if the data we sought was not available in the PACER system, we asked EOUSA officials to provide documentation to support its reported statistic.

As shown in the following table, we found that EOUSA did not accurately report the 11 statistics we tested. Eight of the 11 statistics were inaccurately reported by significant margins. The inaccurate reporting indicates a need for EOUSA to strengthen further the application of controls for gathering, verifying, and reporting its terrorism-related statistics.

Description of EOUSA Statistic Reported	Results of OIG Analysis and Sample Testing
1.a. Number of criminal appeals filed in program category Terrorism/National Security Critical Infrastructure in FY 2009 <sup>13</sup>	In the FY 2009 U.S. Attorneys’ Annual Statistical Report, EOUSA reported that 45 criminal appeals were filed in FY 2009. We excluded from our review one appeal because the appeal was filed by a juvenile whose case was sealed. <sup>14</sup> We tested the remaining 44 appealed cases and found that 9 of the 44 cases (20 percent) had first appeals filed prior to FY 2009 and therefore should not have been counted in FY 2009.

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<sup>12</sup> PACER is an internet-accessible electronic public access service that allows users to obtain case information from federal appellate, district, and bankruptcy courts.

<sup>13</sup> According to an EOUSA official, the FY 2009 U.S. Attorneys’ Annual Statistical Report mistakenly indicated that this statistic was for the previous program category Terrorism/Anti-Terrorism instead of the replacement program category Terrorism/National Security Critical Infrastructure. EOUSA’s methodology for counting appeals in a fiscal year is to count all criminal cases for which the first defendant appeal associated with the case is received within the fiscal year reporting period.

<sup>14</sup> Federal case records may be sealed by statute, rule, or court order to prevent the records from being publicly available. Statutes provide for sealing documents in specific proceedings, such as juvenile or grand jury proceedings. A federal rule of civil procedure may require the sealing of documents to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. Courts sometimes seal documents that contain sensitive information, such as classified information affecting national security.



Description of EOUSA Statistic Reported	Results of OIG Analysis and Sample Testing
1.b. Number of criminal appeals filed in program category Terrorism/National Security Critical Infrastructure in FY 2010	In the FY 2010 U.S. Attorneys' Annual Statistical Report, EOUSA reported that 43 criminal appeals were filed in FY 2010. We tested all 43 appealed cases and found that 5 of the 43 appeals (12 percent) were incorrectly counted in FY 2010. Three of the five appeals had first appeals filed prior to FY 2010 and therefore should not have been counted in FY 2010. (The first appeals in these three instances were all filed before FY 2009, so those appeals had no effect on the appeals reported for FY 2009 that are discussed above.) In addition, two of the five appeals were incorrectly coded as Terrorism/National Security Critical Infrastructure cases and therefore should not have been included in this statistic.
2. Number of criminal cases in U.S. District Court – all occurrences – terminated in program category Terrorism/National Security Critical Infrastructure during FY 2010 <sup>15</sup>	In the FY 2010 U.S. Attorneys' Annual Statistical Report, EOUSA reported 258 cases of all occurrences that were terminated. We found that the cases for 32 of the 258 occurrences (12 percent) were terminated prior to FY 2010 and should not have been counted for FY 2010.

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<sup>15</sup> EOUSA's methodology for counting terminated cases is to count all criminal cases for which no charged defendants are still pending at the end of the fiscal year reporting period. An EOUSA official explained that a statistic shown as "all occurrences" counts all program category codes assigned to a defendant's case, whereas a statistic that does not show "all occurrences" only counts the primary program category code assigned to the case.

Description of EOUSA Statistic Reported	Results of OIG Analysis and Sample Testing
3. Number of criminal cases in U.S. District Court pending in program category Terrorism/National Security Critical Infrastructure in FY 2009 <sup>16</sup>	In the FY 2009 U.S. Attorneys' Annual Statistical Report, EOUSA reported 620 cases pending. We selected a sample of 207 of the 620 pending cases for testing. We excluded from testing 9 of the 207 sampled cases because the cases were sealed. For the remaining 198 cases, we found that 3 of the cases had been terminated before the end of FY 2009 and should not have been counted for FY 2009. In addition, we found one case that was incorrectly coded as a Terrorism/National Security Critical Infrastructure case and therefore should not have been included in this statistic.
4.a. Number of criminal cases in U.S. District Court terminated in program category Terrorism/National Security Critical Infrastructure in FY 2009	In the FY 2009 U.S. Attorneys' Annual Statistical Report, EOUSA reported that 234 criminal cases were terminated. We found that 30 of the 234 reported cases (13 percent) were terminated prior to FY 2009 and should not have been counted for FY 2009. <sup>17</sup>
4.b. Number of criminal cases in U.S. District Court terminated in program category Terrorism/National Security Critical Infrastructure in FY 2010	In the FY 2010 U.S. Attorneys' Annual Statistical Report, EOUSA reported that 220 criminal cases were terminated. We found that 25 of the 220 reported cases (11 percent) were not terminated in FY 2010 and should not have been counted for FY 2010. These 25 cases were terminated in FY 2009 and should have been reported as such, as discussed above.

<sup>16</sup> According to an EOUSA official, the FY 2009 U.S. Attorneys' Annual Statistical Report mistakenly indicated that this statistic was for the previous program category Terrorism/Anti-Terrorism instead of the replacement program category Terrorism/National Security Critical Infrastructure. EOUSA's methodology for reporting pending cases is to count cases for which all criminal defendants associated exclusively with the cases have not yet been disposed of before the end of the fiscal year reporting period.

<sup>17</sup> In addition, as discussed below, we found 25 cases reported as terminated in FY 2010 that were terminated in FY 2009. These 25 cases should have been counted in FY 2009 but were not. On balance, these errors resulted in EOUSA overstating the number of terminated cases for FY 2009 by 5.

Description of EOUSA Statistic Reported	Results of OIG Analysis and Sample Testing
5. Number of defendants in U.S. District Court – all occurrences – in criminal cases filed in program category Terrorism/National Security Critical Infrastructure in FY 2010 <sup>18</sup>	In the FY 2010 U.S. Attorneys' Annual Statistical Report, EOUSA reported 439 defendants in criminal cases filed with all occurrences. We tested a sample of 147 of the 439 defendants in filed cases with all occurrences and found that 7 of the 147 defendants reported were for cases not filed in FY 2010 and should not have been counted in FY 2010. In addition, we found two cases that were incorrectly coded as a Terrorism/National Security Critical Infrastructure case and therefore should not have been included in this statistic.
6. Number of defendants in U.S. District Court – all occurrences – in criminal cases terminated in program category Terrorism/National Security Critical Infrastructure during FY 2010	In the FY 2010 U.S. Attorneys' Annual Statistical Report, EOUSA reported 406 defendants in cases terminated with all occurrences. We found that the cases for 55 of the 406 defendants (14 percent) were actually terminated prior to FY 2010 and should not have been counted for FY 2010.

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<sup>18</sup> EOUSA's methodology for reporting the number of defendants in cases filed is to count all criminal defendants who have been newly associated with a court record pertaining to a criminal case within the fiscal year reporting period. The associated filing date and the associated instrument is one of the following: information, indictment, superseding information, superseding indictment or Rule 20. Rule 20 of the Federal Rules of Criminal Procedure allows a defendant who is arrested, held, or present in a district other than that in which an indictment, information or complaint is pending, to state in writing a wish to plead guilty or nolo contendere. The defendant also waives trial in the district in which the prosecution was initiated and consents to disposition of the action in the district in which he was arrested, held, or present, subject to the approval of the United States Attorney for each district.

Description of EOUSA Statistic Reported	Results of OIG Analysis and Sample Testing
<p>7.a. Number of defendants in U.S. District Court in criminal cases filed in program category Terrorism/National Security Critical Infrastructure in FY 2009<sup>19</sup></p>	<p>In the FY 2009 U.S. Attorneys' Annual Statistical Report and the U.S. Attorneys' FY 2011 Performance Budget Congressional Submission, EOUSA reported 311 defendants in cases filed. We selected a sample of 104 of the 311 defendants and excluded 1 defendant whose case was sealed. We found that 6 of the remaining 103 defendants reported were for cases filed prior to FY 2009 and should not have been counted for FY 2009.<sup>20</sup> In addition, we found that the cases for two defendants were incorrectly coded as a Terrorism/National Security Critical Infrastructure case and therefore should not have been included in this statistic.</p>
<p>7.b. Number of defendants in U.S. District Court in criminal cases filed in program category Terrorism/National Security Critical Infrastructure in FY 2010</p>	<p>In the FY 2010 U.S. Attorneys' Annual Statistical Report and the U.S. Attorneys' FY 2012 Performance Budget Congressional Submission, EOUSA reported 385 defendants in cases filed. We selected a sample of 129 of the 385 defendants and excluded 1 defendant whose case was sealed. We found that 9 of the remaining 128 defendants reported were for cases not filed in FY 2010 and therefore should not have been counted for FY 2010. Six of the nine defendants were for cases that were filed in FY 2009 but not counted as such. In addition, we found that the case for one defendant was incorrectly coded as a Terrorism/National Security Critical Infrastructure case and therefore should not have been included in this statistic.</p>

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<sup>19</sup> According to an EOUSA official, the U.S. Attorneys' FY 2011 and FY 2012 Performance Budget Congressional Submissions mistakenly indicated that statistic 7 for both years was for the program category Terrorism/Terrorist-related instead of the current program category Terrorism/National Security Critical Infrastructure.

<sup>20</sup> In addition, as noted below, six defendants counted in FY 2010 should have been counted in FY 2009 but were not. Because these two errors offset each other, EOUSA's reported number was ultimately accurate.

Description of EOUSA Statistic Reported	Results of OIG Analysis and Sample Testing
<p>8.a. Number of defendants in U.S. District Court in criminal cases terminated in program category Terrorism/National Security Critical Infrastructure during FY 2009</p> <p>8.b. Number of defendants in U.S. District Court in criminal cases terminated in program category Terrorism/National Security Critical Infrastructure during FY 2010</p>	<p>In the FY 2009 U.S. Attorneys' Annual Statistical Report, EOUSA reported 367 defendants were in terminated cases. We found that 53 of the 367 defendants (14 percent) were associated with cases terminated prior to FY 2009 and therefore should not have been counted.<sup>21</sup> In addition, we found that the case for 1 of the 53 defendants was incorrectly coded as a Terrorism/National Security Critical Infrastructure case.</p> <p>In the FY 2010 U.S. Attorneys' Annual Statistical Report, EOUSA reported 347 defendants in cases terminated. We found that the cases for 45 of the 347 defendants (13 percent) were terminated in FY 2009 and therefore should not have been counted for FY 2010. Further, while 30 of these 45 defendants were not reported as terminated in FY 2009, the remaining 15 defendants were, resulting in double counting.</p>
<p>9. Number of dispositions in U.S. District Court – all occurrences – guilty in program category Terrorism/National Security Critical Infrastructure during FY 2010<sup>22</sup></p>	<p>In the FY 2010 U.S. Attorneys' Annual Statistical Report, EOUSA reported 341 dispositions adjudged guilty. We tested a sample of 114 defendants and found that 21 of the 114 defendants (18 percent) were found guilty prior to FY 2010 and should not have been counted for FY 2010. In addition, we found that the cases for four defendants were incorrectly coded as Terrorism/National Security Critical Infrastructure cases. One of these 4 defendants was included in the 21 defendants with untimely guilty dispositions.</p>

<sup>21</sup> In addition, as discussed below, we found that the cases for 30 defendants reported as terminated in FY 2010 were terminated in FY 2009 but not reported in FY 2009. On balance, these two errors resulted in EOUSA overstating the number of defendants in FY 2009 by 23.

<sup>22</sup> EOUSA's methodology for counting the number of guilty dispositions is to count defendants who pled guilty and those who were found guilty by a trial verdict. Guilty pleas included all criminal defendants whose most favorable charge disposition, from the government's perspective, is guilty, adjudged juvenile delinquent, or nolo contendere. The guilty trial verdict included all criminal defendants for which the most favorable charge disposition is guilty or adjudged juvenile delinquent by reason of Bench Trial Verdict (District Court), Bench Trial Verdict (Magistrate Court), Jury Trial Verdict (District Court), or Jury Trial Verdict (Magistrate Court).

Description of EOUSA Statistic Reported	Results of OIG Analysis and Sample Testing
10.a. Number of dispositions in U.S. District Court guilty in program category Terrorism/National Security Critical Infrastructure during FY 2009 <sup>23</sup>	In the FY 2009 U.S. Attorneys' Annual Statistical Report and the U.S. Attorneys' FY 2011 Performance Budget Congressional Submission, EOUSA reported 307 dispositions adjudged guilty. We tested a sample of 103 defendants and found that 11 of the 103 defendants (11 percent) were not adjudged guilty in FY 2009 and should not have been counted for FY 2009. <sup>24</sup> In addition, we found that the case for one defendant was incorrectly coded as a Terrorism/National Security Critical Infrastructure case and therefore should not have been included in this statistic.
10.b. Number of dispositions in U.S. District Court guilty in program category Terrorism/National Security Critical Infrastructure during FY 2010	In the FY 2010 U.S. Attorneys' Annual Statistical Report and the U.S. Attorneys' FY 2012 Performance Budget Congressional Submission, EOUSA reported 292 dispositions adjudged guilty. We tested a sample of 98 defendants and found that 20 of the 98 defendants (20 percent) were not adjudged guilty in FY 2010 and should not have been counted for FY 2010. Of these 20 defendants, 14 were found guilty in FY 2009 but not reported as guilty until FY 2010. Three of the 20 defendants were found guilty in FY 2009 but reported as guilty in both FY 2009 and FY 2010, resulting in double counting. The remaining three defendants were found guilty prior to FY 2009 but were not reported as guilty until FY 2010.

<sup>23</sup> According to an EOUSA official, the U.S. Attorneys' FY 2011 and FY 2012 Performance Budget Congressional Submissions mistakenly indicated that statistic 10 for both FY 2009 and FY 2010 was for the program category Terrorism/Terrorist-related instead of the current program category Terrorism/National Security Critical Infrastructure.

<sup>24</sup> In addition, as discussed below, we found 14 defendants reported as guilty in FY 2010 that should have been reported in FY 2009 instead. On balance, these two errors resulted in EOUSA understating the defendants we tested for FY 2009 by 3.

Description of EOUSA Statistic Reported	Results of OIG Analysis and Sample Testing
11.a. Number of Terrorism/National Security Critical Infrastructure defendants sentenced to prison in FY 2009 <sup>25</sup>	In the FY 2011 Performance Budget Congressional Submission, EOUSA reported 171 defendants sentenced to prison. We tested a sample of 57 defendants and found that 2 of the 57 defendants were sentenced in FY 2008 and should not have been counted for FY 2009. <sup>26</sup>
11.b. Number of Terrorism/National Security Critical Infrastructure defendants sentenced to prison in FY 2010	In the FY 2012 Performance Budget Congressional Submission, EOUSA reported 168 defendants sentenced to prison. We tested a sample of 56 of the 168 defendants and found that 9 of the 56 defendants (16 percent) were sentenced prior to FY 2010 and should not have been counted for FY 2010. One defendant was sentenced in FY 2007 and eight defendants were sentenced in FY 2009.

**Source:** OIG analysis of EOUSA documentation for the statistics tested

Based on our discussions with EOUSA and USAO officials, as well as the results of our testing, we determined that the statistics reported by EOUSA were inaccurate for the following reasons.

- EOUSA uses the National LIONS (NLIONS) system for accumulating, tracking, and reporting nationwide statistical data. NLIONS is populated with data from LIONS in which court matters and cases are entered by personnel at the USAOs. EOUSA's guidance specifies that the coding of terrorism, anti-terrorism, and national security-related matters is a priority and the guidance requires USAOs to promptly or as quickly as possible enter associated matters and cases into LIONS to ensure the highest possible level of factual accuracy. EOUSA officials explained to us that they report statistics using the system disposition date, which is the date USAO personnel enter the data into LIONS. According to EOUSA officials, for any fiscal year LIONS can only retrieve data that was

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<sup>25</sup> According to an EOUSA official, the U.S. Attorneys' FY 2011 and FY 2012 Performance Budget Congressional Submissions mistakenly indicated that statistic 11 for both years was for the program category Terrorism/Terrorist-related instead of the current program category Terrorism/National Security Critical Infrastructure. EOUSA's methodology for reporting the number of defendants sentenced to prison is to count all criminal defendants sentenced to prison within the fiscal year reporting period.

<sup>26</sup> In addition, as discussed below, we found eight defendants who were reported as sentenced in FY 2010 but should have been reported in FY 2009. On balance, these two errors resulted in EOUSA understating the number of defendants we tested by 6 in FY 2009.

entered into LIONS during the same fiscal year, and consequently, using the system disposition date should not affect the accuracy of statistics so long as matters and cases are entered into LIONS prior to the end of the fiscal year. However, EOUSA's guidance did not define prompt data entry as occurring prior to the end of the relevant fiscal year, and as a result, USAO personnel did not always enter case data into LIONS prior to the end of the fiscal year. This caused inaccurate reporting of statistics.

- EOUSA did not define, or fully define, in its NLIONS business rules the methodology for some statistics reported.<sup>27</sup> Specifically, the rules did not contain: (1) a definition of the statistic on the number of defendants sentenced to prison, or (2) an explanation of what is meant for statistics labeled as "all occurrences." In addition, changes to the methodology for the statistic on criminal appeals filed, which EOUSA officials made during the review period, were not included in the business rules. As a result, EOUSA had not clearly defined how these statistics were intended to be calculated.
- USAOs used resources to support other work that they deemed to be a higher priority. In addition, the USAOs provided other reasons for the exceptions we found, including: (1) limited staff; (2) docketing staff did not consider data entry or updating of cases a priority at the time; (3) time constraints due to on-going trials; (4) Assistant U.S. Attorneys not returning the case files to the paralegals when major events occur in cases; (5) paralegals waiting until the end of the bi-annual period to make entries into LIONS; (6) staff not having an in-depth knowledge of LIONS; (7) Assistant U.S. Attorneys are not appropriately invested in ensuring that LIONS is accurate because they can obtain updated and accurate case data through PACER, and because the statistics and tracking information in LIONS does not support the prosecution of specific cases; and (8) the perception among some USAO employees that LIONS experiences frequent technical problems during which it is inaccessible.
- EOUSA's Counsel to the Director's Staff did not always maintain the statistics reporting log, and did not include in the log all statistics reported, the methodologies for how the statistics were developed, and the responsive data to support the statistics reported. As a result, EOUSA had not clearly defined how some statistics were

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<sup>27</sup> The NLIONS business rules are a collection of the rules used to generate EOUSA statistical reports and are contained in the *NLIONS Business Rules Requirement Document*.



intended to be calculated and whether the reported statistics were supported at the time reported.

Our detailed testing results for the 11 statistics are discussed in the following sections.

## **1. Number of criminal appeals filed in program category Terrorism/National Security Critical Infrastructure<sup>28</sup>**

*Fiscal Year 2009 U.S. Attorneys' Annual Statistical Report*

In the FY 2009 U.S. Attorneys' Annual Statistical Report, EOUSA reported that 45 criminal appeals were filed in the program category of Terrorism/National Security Critical Infrastructure during FY 2009. EOUSA uses NLIONS to capture data for reporting in the annual statistical reports and budget submissions. According to an EOUSA official, the methodology for counting data to report most statistics is defined in EOUSA's NLIONS business rules. For this statistic, the NLIONS business rules provide that the appeal is counted if the appeal: (1) is the first defendant appeal associated with the case, (2) is received within the fiscal year reporting period, and (3) has a primary program category code of Terrorism/National Security Critical Infrastructure. Subsequent appeals filed in the case are not counted for this statistic.

We requested that EOUSA staff provide us with a listing of the 45 criminal appeals reported as filed during FY 2009. EOUSA provided a listing containing 210 appeals filed in FY 2009. On this listing, an EOUSA official highlighted the 45 appeals for FY 2009 that the official said were counted to report the statistic on appeals filed. One of the 45 appeals was for a juvenile and the case was sealed. We excluded this appeal from our testing.

For the remaining 44 appeals, we reviewed documentation in the PACER system to verify that the defendant highlighted by the official was the first appeal filed in the case. If the documentation in the PACER system showed that the first appeal filed was filed prior to FY 2009, we asked EOUSA officials to provide additional information to show why the appeal was counted for FY 2009. We found that 9 of the 44 highlighted appeals were not the first appeals filed in the cases. For these nine cases, either the defendant or a co-defendant had filed an appeal prior to FY 2009.

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<sup>28</sup> According to an EOUSA official, the FY 2009 U.S. Attorneys' Annual Statistical Report mistakenly indicated that this statistic was for the previous program category Terrorism/Anti-Terrorism instead of the replacement program category Terrorism/National Security Critical Infrastructure.

We inquired about these nine cases. For one of these cases, an EOUSA official told us that while the defendant filed an appeal on June 23, 2007, the appeal was not entered into LIONS by the applicable USAO until January 22, 2009, and therefore the appeal was counted as filed in FY 2009. For the other eight cases, the official explained that these were the first appeals filed in FY 2009 for these cases. When asked how this explanation was consistent with the NLIONS business rules, which state that an appeal should only be counted if it is the first appeal filed in the case, the official told us that a new methodology was used to count the appeals by which EOUSA had selected the defendant with the best disposition, first filing date, latest close date, and the highest participant identification or defendant number. However, we noted that in a case with multiple defendants there is no guarantee that these criteria will be sufficient for EOUSA to identify a single defendant – for example, the defendant with the “best disposition” may not have the “first filing date.” Therefore, this methodology appears likely to produce arbitrary results and therefore does not appear sufficient to us. Moreover, the official had no documented procedures to show the methodology had been changed from that described in the NLIONS business rules. We therefore concluded that the nine appeals were not properly counted in accordance with EOUSA’s established rules, and that if the methodology EOUSA used to count the appeals had changed, that new methodology was not properly documented.

In summary, we found that EOUSA should have reported 35 of the 44 tested appeals in FY 2009 and consequently overstated the reported number of appeals filed in FY 2009 by 9 appeals, or 26 percent. We consider this amount of deviation to be significant.

#### *Fiscal Year 2010 U.S. Attorneys’ Annual Statistical Report*

In the FY 2010 U.S. Attorneys’ Annual Statistical Report, EOUSA reported that 43 criminal appeals were filed in the program category of Terrorism/National Security Critical Infrastructure in FY 2010.

We requested that EOUSA provide us with a listing of the 43 criminal appeals reported as filed in FY 2010. EOUSA provided a listing containing 182 appeals filed in FY 2010. On this listing, an EOUSA official highlighted the 43 appeals for FY 2010 that the official said were counted to report the statistic on appeals filed.

We reviewed the PACER data for the 43 reported appeals and found that 5 of the appeals should not have been counted in FY 2010 based on the NLIONS business rules methodology for this statistic. For 3 of the 5 cases, the first appeal filed in the case was filed in a year prior to FY 2010. For

these 3 cases, the first appeal was filed in the case on January 18, 2000; February 20, 2001; and May 23, 2007, respectively. For the other two cases, the conviction did not match the program category code Terrorism/National Security Critical Infrastructure that was assigned by the applicable USAOs. In one case, the defendant was convicted of animal fighting, but the USAO coded the case as Domestic Terrorism. In the second case, the defendant was convicted of bank robbery by force or violence, but the USAO coded the case as Terrorism Related Hoaxes.

While these two cases were initially investigated as terrorism cases, the resulting indictments did not result in terrorism charges. According to EOUSA policy, because of the charges that resulted from the investigations, the USAOs should have revised the coding of each case to reflect the actual indictments and should not have included the cases as part of appeals filed in program category Terrorism/National Security Critical Infrastructure in FY 2010.

The issue of recoding investigations also arose in our 2007 audit, and we recommended that EOUSA and the USAOs establish and implement procedures to recode transactions in LIONS when investigations that began as terrorism-related investigations do not link the case defendants to terrorist activity. EOUSA agreed with our recommendation and implemented a system which requires the USAOs to periodically review cases in LIONS and ensure that the correct criminal program category code has been applied. We believe the correct criminal program category code was not applied in these two cases or should have been changed as recommended and agreed to in our 2007 audit. Accordingly, we conclude that these two cases should not be included in the results for the number of appeals filed in the Terrorism/National Security Critical Infrastructure program category statistic for FY 2010. Also, EOUSA should remind the USAOs to recode transactions in LIONS when investigations that began as terrorism-related investigations do not link the case defendants to terrorist activity.

In summary, EOUSA overstated the number of appeals filed in FY 2010 by 5 appeals, or 13 percent. We consider this amount of deviation to be significant.

## **2. Number of criminal cases in U.S. District Court – all occurrences – terminated in program category Terrorism/National Security Critical Infrastructure<sup>29</sup>**

In the FY 2010 U.S. Attorneys' Annual Statistical Report, EOUSA reported 258 criminal cases, based on all occurrences, that were terminated in the program category of Terrorism/National Security Critical Infrastructure during FY 2010.

EOUSA staff provided a listing of the 258 terminated criminal cases of all occurrences that it reported. According to EOUSA's NLIONS business rules, EOUSA reports the number of criminal cases terminated in program category Terrorism/National Security Critical Infrastructure by counting all levels of terrorism or national security critical infrastructure program category codes in criminal cases for which no charged defendants are still pending at the end of the fiscal year reporting period. EOUSA's NLIONS business rules did not define "all occurrences," but an EOUSA official explained to us that "all occurrences" includes all levels of program category codes and the primary, secondary, and tertiary codes. The primary code is the main violation charged against a defendant. The secondary and tertiary codes are the lesser charges against the defendant.

We initially reviewed PACER data for a sample of 86 of the 258 terminated cases and found that 15 of the 86 cases were not terminated in FY 2010. Thirteen of the 15 cases were terminated in a fiscal year prior to FY 2010 and the two remaining cases were still pending at the end of FY 2010.

We discussed these discrepancies with an EOUSA official who said that EOUSA's terminated statistics are based on the date that USAO personnel enter the disposition into LIONS instead of the date when the case was actually terminated. The official told us that the system disposition date is used for reporting purposes because this date cannot be changed, whereas the actual termination date can be changed in the system, and therefore using the system disposition date improves the accuracy of the reported statistic. However, we found that the time lag between the date the 13 cases were actually terminated and the date the terminations were entered into the system by the USAOs ranged from 10 to 483 days, and averaged 266 days with a median of 314 days, indicating that the use of the system

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<sup>29</sup> An EOUSA official explained to us that a statistic shown as "all occurrences" counts all program category codes assigned to a defendant's case, whereas a statistic that does not show "all occurrences" only counts the primary program category code assigned to the case.

disposition date was not effective in improving the accuracy of the reported statistic.

Based on these results, we subsequently used data provided by EOUSA to expand our review to all 258 reported cases and found that 32 of the 258 cases were terminated in a fiscal year prior to FY 2010.<sup>30</sup>

As a result, we concluded that EOUSA overstated by 32, or 14 percent, the reported number of cases actually terminated during FY 2010. We consider this amount of deviation to be significant. The time lag between the date these 32 cases were actually terminated and the date the cases were entered into the system by the USAOs ranged from 1 to 706 days, and averaged 201 days with a median of 176 days.

### **3. Number of criminal cases in U.S. District Court pending in program category Terrorism/National Security Critical Infrastructure<sup>31</sup>**

In the FY 2009 U.S. Attorneys' Annual Statistical Report, EOUSA reported that 620 criminal cases were pending in U.S. District Court in the program category of Terrorism/National Security Critical Infrastructure during FY 2009.

EOUSA staff provided a listing of the 620 pending criminal cases. According to EOUSA's NLIONS business rules, EOUSA reports cases as pending if any criminal defendants associated exclusively with the criminal case have not had a case disposition before the end of the fiscal year.

We selected a sample of 207 of the 620 pending cases for testing. Nine of the 207 sampled cases were sealed and we excluded these cases from testing. We reviewed PACER data and found that 3 of the remaining 198 cases were terminated prior to the end of FY 2009 and should not have been counted in the FY 2009 statistic. The details of these three cases are as follows:

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<sup>30</sup> For all statistics related to terminations, we expanded the samples to include all transactions reported using actual case termination dates provided by EOUSA. We did not attempt to confirm the actual case termination dates provided by EOUSA to the case termination dates in PACER.

<sup>31</sup> According to an EOUSA official, the FY 2009 U.S. Attorneys' Annual Statistical Report mistakenly indicated that this statistic was for the previous program category Terrorism/Anti-Terrorism instead of the replacement program category Terrorism/National Security Critical Infrastructure.

- PACER showed that one case was disposed of on June 25, 2008, but the USAO did not enter the disposition into LIONS until May 2, 2011, which was 1,041 days after the district court terminated the case.
- PACER showed that one case was disposed of on December 19, 2007, but the USAO did not enter the disposition into LIONS until February 11, 2011, which was 1,150 days after the district court terminated the case.
- PACER showed one case involving six defendants was disposed of on August 6, 2007, but as of February 1, 2013, the USAO had not entered a disposition for any of the six defendants into LIONS, and therefore the case was still shown as pending in LIONS.

We discussed these discrepancies with an EOUSA official who told us that because the USAOs did not timely enter the dispositions into LIONS, the cases were reported as pending in FY 2009. In addition to the untimely entry of dispositions, we found one other case that was improperly coded as a Terrorism/National Security Critical Infrastructure case. For this case, the USAO initially perceived that money derived from criminal trafficking of cigarettes was being used to support suspected terrorist organizations, but an USAO official told us that a link or connection was never established. Consequently, for the cases we reviewed, EOUSA overstated the number of pending cases by four, or about 2 percent. We consider this amount of deviation to be insignificant.

#### **4. Number of criminal cases in U.S. District Court terminated in program category Terrorism/National Security Critical Infrastructure**

*FY 2009 U.S. Attorneys' Annual Statistical Report*

In the FY 2009 U.S. Attorneys' Annual Statistical Report, EOUSA reported that 234 criminal cases were terminated in the program category of Terrorism/National Security Critical Infrastructure during FY 2009.

EOUSA staff provided a listing of the 234 terminated criminal cases. According to EOUSA's NLIONS business rules, EOUSA reports the number of criminal cases terminated by counting criminal cases for which no charged defendants are still pending at the end of the fiscal year. However, as previously discussed for statistic 2, EOUSA counts the cases terminated based on the date that USAO personnel enter the disposition into LIONS, instead of the date when the case was actually terminated.

We initially reviewed PACER data for a sample of 78 of the 234 terminated cases and found that 10 cases were terminated in a fiscal year prior to FY 2009. For the 10 cases, we found that the number of days that elapsed between the date the cases were terminated and the date the terminations were entered into LIONS ranged from 21 to 513 days and averaged 306 days. The median was 378 days for the 10 cases.

Based on these results, we used data provided by EOUSA to expand our review to all 234 reported cases and found that 30 of the 234 cases were terminated in a fiscal year prior to FY 2009.<sup>32</sup> For the 30 cases, data entry delays ranged from 10 to 650 days and averaged 259 days with a median of 270 days.

In addition, as discussed in the section below for terminated cases in FY 2010, we also found 25 cases that were reported in FY 2010 that were terminated in FY 2009 and should have been reported in FY 2009. The net effect is that EOUSA reported 5 (30 minus 25) cases as terminated in FY 2009 that should not have been reported. Consequently, EOUSA ultimately overstated by 2 percent the number of cases terminated in FY 2009, which we consider to be an insignificant amount of deviation, even though we found a total of 55 cases relating to this FY 2009 statistic that had been miscounted.

#### *FY 2010 U.S. Attorneys' Annual Statistical Report*

In the FY 2010 U.S. Attorneys' Annual Statistical Report, EOUSA reported that 220 criminal cases were terminated in the program category of Terrorism/National Security Critical Infrastructure during FY 2010.

EOUSA staff provided a listing of the 220 terminated criminal cases. We reviewed PACER data for a sample of 74 of the 220 terminated cases and found that 14 cases were not terminated in FY 2010. The details of these cases are as follows:

- For 13 cases, the termination dates were in FY 2009 but the USAOs did not enter the termination dates into LIONS until FY 2010, and thus the cases were reported in FY 2010 based on the system disposition date. For these cases, we found that the data entry delays between the termination dates in PACER and entry into

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<sup>32</sup> We did not attempt to confirm the actual case termination dates provided by EOUSA to the case termination dates in PACER.

LIONS by the USAOs ranged from 39 to 504 days and averaged 201 days with a median of 137 days.

- For one case, on October 3, 2011, the USAO entered into LIONS that one defendant pled guilty on September 15, 2011. An EOUSA official confirmed that the case should not have been reported in FY 2010 based on the fact that this defendant pled guilty in FY 2011.<sup>33</sup>

Based on these results, we used data provided by EOUSA to expand our review to all 220 reported cases and found that 25 of the 220 cases were terminated in FY 2009 and should not have been counted in FY 2010.<sup>34</sup> For these 25 cases, the data entry delays ranged from 1 to 504 days and averaged 191 days with a median of 170 days.

In summary, we found that EOUSA overstated its number of terminated cases in FY 2010 by 13 percent. We consider this amount of deviation to be significant.

## **5. Number of defendants in U.S. District Court – all occurrences – in criminal cases filed in program category Terrorism/National Security Critical Infrastructure**

In the FY 2010 U.S. Attorneys' Annual Statistical Report, EOUSA reported 439 defendants in criminal cases filed, based on all occurrences, in the program category of Terrorism/National Security Critical Infrastructure during FY 2010.

EOUSA staff provided a listing of the 439 defendants in the cases filed during FY 2010. According to EOUSA's NLIONS business rules, EOUSA reports all criminal defendants with a newly associated court record in the reporting fiscal year with a program category code of Terrorism/National Security Critical Infrastructure. EOUSA's NLIONS business rules did not define "all occurrences," but an EOUSA official explained to us that "all occurrences" includes all levels of program category codes.

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<sup>33</sup> In addition, we note that this case should not have been reported in FY 2010 even using the problematic methodology discussed above of using the system disposition date as a proxy for the termination date, as the guilty plea was not entered into LIONS until FY 2012.

<sup>34</sup> We did not attempt to confirm the actual case termination dates provided by EOUSA to the case termination dates in PACER.



We reviewed PACER data for a sample of 147 of the 439 defendants and found that 7 of the defendants were associated with cases not filed in FY 2010. For one defendant, the case was filed in FY 2006 but USAO personnel entered the filing into LIONS in August 2010. For six other defendants, the cases were filed in FY 2009 but USAO personnel entered the filings into LIONS during FY 2010. Data entry delays for these 7 cases ranged from 14 to 1,573 days and averaged 447 days with a median of 352 days. In addition to the untimely entries, we found two other cases that were improperly coded as terrorism-related cases. In one case, the defendant was charged with conspiracy and intent to distribute over 50 kilograms of marijuana and was involved in the importation and delivery of approximately 200 pounds of marijuana. According to an USAO official, this case should have been coded as an Organized Crime Drug Enforcement Task Force case instead of an Export Enforcement Terrorism-Related case. In the other case, the defendant was convicted of possession with intent to distribute 500 grams or more of a mixture and substance containing a detectable amount of cocaine. This case was reported as an International Terrorism Incident Which Impacts U.S. case, but an USAO official told us this case was an Organized Crime Drug Enforcement Task Force case.

We therefore found that, for the defendants we tested, EOUSA overstated by 7 percent the actual number of defendants in criminal cases filed in FY 2010. We consider this amount of deviation to be insignificant.

#### **6. Number of defendants in U.S. District Court – all occurrences – in criminal cases terminated in program category Terrorism/ National Security Critical Infrastructure**

In the FY 2010 U.S. Attorneys' Annual Statistical Report, EOUSA reported 406 defendants in criminal cases that were terminated, based on all occurrences, in the program category of Terrorism/National Security Critical Infrastructure during FY 2010.

EOUSA staff provided a listing of the 406 defendants in criminal cases that were terminated during FY 2010. According to EOUSA's NLIONS business rules, EOUSA reports the number of defendants in terminated criminal cases in program category Terrorism/National Security Critical Infrastructure by counting the number of defendants in criminal cases for which no charged defendants remain pending at the end of the fiscal year reporting period. EOUSA's NLIONS business rules did not define "all occurrences," but an EOUSA official explained to us that "all occurrences" includes all levels of program category codes.

We initially reviewed the PACER data for a sample of 136 of the 406 defendants and found that 25 of the defendants were not associated with cases terminated in FY 2010. For 23 defendants, the cases were terminated prior to FY 2010 but the USAO entered the termination into LIONS during FY 2010. Data entry delays for these defendants ranged from 29 to 743 days and averaged 376 days with a median of 393 days. For the remaining two cases, an USAO official told us that the case was still pending after FY 2010 but was mistakenly recorded in LIONS as terminated in FY 2010.

Based on these results, we used data provided by EOUSA to expand our review to all 406 defendants and found that the cases for 55 of the 406 defendants actually terminated prior to FY 2010 and should not have been counted for FY 2010.<sup>35</sup> For the 55 cases, data entry delays ranged from 1 to 706 days and averaged 241 days with a median of 210 days.

We therefore found that EOUSA overstated by 55, or 16 percent, the reported number of defendants in terminated cases based on all occurrences during FY 2010. We consider this amount of deviation to be significant.

## **7. Number of defendants in U.S. District Court in criminal cases filed in program category Terrorism/National Security Critical Infrastructure<sup>36</sup>**

*FY 2009 U.S. Attorneys' Annual Statistical Report and the U.S. Attorneys' FY 2011 Performance Budget Congressional Submission*

In the FY 2009 U.S. Attorneys' Annual Statistical Report and the U.S. Attorneys' FY 2011 Performance Budget Congressional Submission, EOUSA reported 311 defendants in criminal cases filed in the program category Terrorism/National Security Critical Infrastructure during FY 2009.

EOUSA staff provided a listing of the 311 defendants in the cases filed during FY 2009. According to the NLIONS business rules, EOUSA reports the number of defendants in filed cases in program category Terrorism/National Security Critical Infrastructure by counting all criminal defendants with a newly associated court record in the reporting year and with a primary program category code of Terrorism/National Security Critical Infrastructure.

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<sup>35</sup> We did not attempt to confirm the actual case termination dates provided by EOUSA to the case termination dates in PACER.

<sup>36</sup> According to an EOUSA official, the U.S. Attorneys' FY 2011 and FY 2012 Performance Budget Congressional Submissions mistakenly indicated that this statistic was for the program category Terrorism/Terrorist-related instead of the current program category Terrorism/National Security Critical Infrastructure.

We selected a sample of 104 of the 311 defendants for testing. One defendant's case was sealed and we excluded it from our testing. We reviewed the PACER data and found that 6 of the remaining 103 defendants were associated with cases not filed in FY 2009. Three defendants' cases were filed in FY 2008, 1 case was filed in FY 2001, and 2 cases were filed in FY 2000. For each of these cases, USAO personnel entered case data into LIONS during FY 2009. Data entry delays ranged from 323 to 3,391 days and averaged 1,848 days with a median of 1,743 days. In addition to the untimely entries, we found two other cases that were improperly coded as terrorism or national security cases. In one case, the defendant was convicted of being an illegal alien in possession of a firearm. This case was reported as a Domestic Terrorism case but an USAO official told us that this case should have been recoded as an Immigration case. In the other case, the defendant was convicted of using an access device with intent to defraud. This case was reported as a Terrorism/National Security Critical Infrastructure case, but an USAO official told us that this case should have been coded as a White Collar Crime/Fraud case. We therefore found that, for the defendants we tested, EOUSA overstated by 8 percent the actual number of defendants in criminal cases filed in FY 2009. We consider this amount of deviation to be insignificant.

In addition, as discussed in the section below for defendants in cases filed during FY 2010, we also used a sampling methodology and found 6 defendants reported for cases filed in FY 2010 whose cases were in fact filed in FY 2009. These six cases offset those discussed in the prior paragraph, although we emphasize that we may have discovered other miscounted cases had we expanded our reviews beyond our samples.

*FY 2010 U.S. Attorneys' Annual Statistical Report and the U.S. Attorneys' FY 2012 Performance Budget Congressional Submission*

In the FY 2010 U.S. Attorneys' Annual Statistical Report and the U.S. Attorneys' FY 2012 Performance Budget Congressional Submission, EOUSA reported 385 defendants in criminal cases filed in the program category of Terrorism/National Security Critical Infrastructure during FY 2010.

EOUSA staff provided a listing of the 385 defendants in the cases filed during FY 2010. We selected a sample of 129 of the 385 defendants. One defendant's case was sealed and we excluded it from our testing. We reviewed the PACER data and found that 9 of the remaining 128 defendants were associated with cases not filed in FY 2010. Six defendants' cases were filed in FY 2009, 2 cases were filed in FY 2006, and 1 case was filed in

FY 2005. For each of these cases, USAO personnel entered data into LIONS during FY 2010. Data entry delays ranged from 35 to 1,658 days and averaged 676 days with a median of 519 days. In addition to the untimely entries, we found one other case that was improperly coded as an Export Enforcement Terrorism-Related case. In this case, the defendant was charged with conspiracy and intent to distribute over 50 kilograms of marijuana and was involved in the importation and delivery of approximately 200 pounds of marijuana. According to an USAO official, this case should have been coded as an Organized Crime Drug Enforcement Task Force case instead of an Export Enforcement Terrorism-Related case.

We therefore found that, for the defendants we tested, EOUSA overstated by 8 percent the actual number of defendants in criminal cases filed in FY 2010. We consider this amount of deviation to be insignificant.

#### **8. Number of defendants in U.S. District Court in criminal cases terminated in program category Terrorism/National Security Critical Infrastructure**

*FY 2009 U.S. Attorneys' Annual Statistical Report*

In the FY 2009 U.S. Attorneys' Annual Statistical Report, EOUSA reported 367 defendants in criminal cases that were terminated in the program category of Terrorism/National Security Critical Infrastructure in FY 2009.

EOUSA staff provided a listing of the 367 defendants in terminated criminal cases in program category Terrorism/National Security Critical Infrastructure. According to the NLIONS business rules, EOUSA reports the number of defendants in terminated criminal cases in program category Terrorism/National Security Critical Infrastructure by counting the number of defendants in criminal cases for which no charged defendants are still pending at the end of the fiscal year reporting period and with a primary program category code of Terrorism/National Security Critical Infrastructure.

We initially reviewed PACER data for a sample of 123 of the 367 defendants and found that the cases for 9 of the defendants were terminated prior to FY 2009, but that USAO staff entered the case data into LIONS during FY 2009. Data entry delays ranged from 126 to 2,060 days and averaged 905 days with a median of 415 days.

Based on these results, we used data provided by EOUSA to expand our review to all 367 defendants reported and found that cases for 53 of the

367 defendants were terminated prior to FY 2009.<sup>37</sup> Data entry delays for the 53 cases ranged from 10 to 650 days and averaged 225 days with a median of 226 days. For the defendant in 1 of the 53 cases, we also found that the case was improperly coded as a Terrorist Financing case. In this case, the defendant was convicted of redemption of illegally received food stamps and an USAO official told us the case was miscoded.

In addition, as discussed in the section below for defendants in cases terminated in FY 2010, we also found 30 defendants were reported for cases terminated in FY 2010 whose cases were in fact terminated in FY 2009. These cases offset against those discussed in the prior paragraph, EOUSA reported 23 (53 minus 30) defendants in cases terminated in FY 2009 that should not have been reported. As a consequence of these errors, EOUSA ultimately overstated by 7 percent the actual number of defendants in cases terminated in FY 2009, which we consider to be an insignificant amount of deviation, even though we found a total of 83 cases relating to this FY 2009 statistic that had been miscounted.

#### *FY 2010 U.S. Attorneys' Annual Statistical Report*

In the FY 2010 U.S. Attorneys' Annual Statistical Report, EOUSA reported 347 defendants in criminal cases that were terminated in the program category of Terrorism/National Security Critical Infrastructure in FY 2010.

EOUSA staff provided a listing of the 347 defendants in terminated criminal cases in program category Terrorism/National Security Critical Infrastructure during FY 2010. We reviewed PACER data for a sample of 116 of the 347 defendants and found that the cases for 22 defendants should not have been reported for FY 2010. The cases for 20 defendants were terminated prior to FY 2010; 10 of these defendants were also reported as terminated in FY 2009.<sup>38</sup> The cases for the remaining two defendants were still pending at the end of FY 2010; one of these two cases was also inappropriately reported as terminated in FY 2009.

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<sup>37</sup> We did not attempt to confirm the actual case termination dates provided by EOUSA to the case termination dates in PACER.

<sup>38</sup> According to a USAO official at a district that accounted for 5 of the 10 defendants counted in both FY 2009 and FY 2010, this double-reporting occurred because a new paralegal mistakenly reopened previously closed cases and then closed the cases again in the subsequent fiscal year.

Based on these results, we obtained termination data from EOUSA for all 347 defendants reported as terminated during FY 2010.<sup>39</sup> Using the data provided by EOUSA, we found that the cases for a total of 45 defendants were terminated in FY 2009 and should not have been reported for FY 2010. The delay in entering the terminations in LIONS for these 45 defendants ranged from 1 to 561 days and averaged 218 days with a median of 183 days.

We therefore concluded that EOUSA overstated by 45, or 15 percent, the reported number of defendants in terminated cases in program category Terrorism/National Security Critical Infrastructure during FY 2010. We consider this amount of deviation to be significant.

Of the 45 defendants, the cases for 15 defendants were reported as terminated both in FY 2009 and FY 2010.<sup>40</sup> EOUSA personnel told us that the defendants reported in both FY 2009 and FY 2010 were reported twice as a result of the method used by USAO personnel when reopening the cases in LIONS to post updates to a case. An EOUSA official said that LIONS allows USAO staff to enter or revise system data, but that when cases are re-opened or data is changed, specific procedures for reopening the cases must be followed to prevent the double counting of case data. The official said that EOUSA is working to develop a new case management system that will address the issue of re-opened cases to avoid double counting in statistical reports. The official also told us that EOUSA plans to draft new requirements and business rules this fiscal year that will address the issue of reopened cases to avoid double counting in statistical reports.

## **9. Number of dispositions in U.S. District Court – all occurrences – guilty in program category Terrorism/National Security Critical Infrastructure**

In the FY 2010 U.S. Attorneys' Annual Statistical Report, EOUSA reported 341 dispositions in U.S. District Court as guilty in all occurrences of program category of Terrorism/National Security Critical Infrastructure during FY 2010.

EOUSA staff provided a listing of the 341 guilty dispositions in all occurrences of program category Terrorism/National Security Critical

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<sup>39</sup> We did not attempt to confirm the actual case termination dates provided by EOUSA to the case termination dates in PACER.

<sup>40</sup> The cases for the remaining 30 defendants were reported as terminated in FY 2010 only. These 30 defendants are also discussed in the FY 2009 section for this statistic.

Infrastructure during FY 2010. According to the NLIONS business rules, EOUSA reports the number of dispositions guilty in program category Terrorism/National Security Critical Infrastructure by counting the number of defendants who pled guilty and the number of defendants found guilty by trial verdict during the reporting year. EOUSA's NLIONS business rules did not define "all occurrences," but an EOUSA official explained to us that "all occurrences" includes all levels of program category codes.

We reviewed PACER data for a sample of 114 of the 341 defendants and found that 21 defendants were adjudged guilty in a fiscal year prior to FY 2010, but that USAO staff entered the case data into LIONS during FY 2010. An EOUSA official confirmed that the defendants were reported for FY 2010 because the USAOs entered the defendants' disposition in LIONS during FY 2010. Data entry delays ranged from 63 to 1,803 days and averaged 483 days with a median of 314 days. In addition, we found that for four other defendants, the cases were improperly coded as terrorism or national security cases. In one case, the defendant was convicted of immigration and passport fraud and reported as a Terrorism/National Security Critical Infrastructure case, but an USAO official told us the case was miscoded. In the second case, the defendant was convicted of conspiracy to distribute 1,000 kilograms or more of marijuana and reported as a Terrorism/National Security Critical Infrastructure case, but an USAO official told us the case was not a terrorism case. In the third case, the defendant was convicted of conspiracy to introduce into interstate commerce counterfeit and misbranded pharmaceutical products. The case was reported as an Export Enforcement Terrorism-Related case, but an USAO official told us the case was miscoded and has been recoded to an Export Enforcement Non-Terrorism case. In the fourth case, the defendant's case was related to transactional money laundering but was misreported as an International Terrorism Incidents Which Impact U.S. case. For this latter case, this defendant was 1 of the 21 defendants whose guilty adjudications were not entered timely as discussed above.

We therefore concluded that, for the defendants we tested, EOUSA overstated by 24, or 27 percent, the number of tested dispositions reported as guilty based on all occurrences in FY 2010. We consider this amount of deviation to be significant.

## **10. Number of dispositions in U.S. District Court guilty in program category Terrorism/National Security Critical Infrastructure<sup>41</sup>**

*FY 2009 U.S. Attorneys' Annual Statistical Report and the U.S. Attorneys' FY 2011 Performance Budget Congressional Submission*

In the FY 2009 U.S. Attorneys' Annual Statistical Report and the U.S. Attorneys' FY 2011 Performance Budget Congressional Submission, EOUSA reported 307 dispositions in U.S. District Court guilty in program category Terrorism/National Security Critical Infrastructure during FY 2009.

EOUSA staff provided a listing of the 307 defendants adjudged guilty in program category Terrorism/National Security Critical Infrastructure. According to the NLIONS business rules, EOUSA reports the number of dispositions guilty in program category Terrorism/National Security Critical Infrastructure by counting the number of defendants who pled guilty and the number of defendants found guilty by trial verdict during the reporting year.

We reviewed PACER data for a sample of 103 of the 307 defendants and found that 11 of the defendants were reported as guilty for FY 2009 but should not have been. Nine of the 11 defendants were found guilty in FY 2008, but according to an EOUSA official, USAO personnel did not enter the guilty dispositions into LIONS until FY 2009. Data entry delays ranged from 105 to 453 days and averaged 312 days with a median of 335 days. For the remaining two defendants, the charges against the defendants were dismissed. An EOUSA official told us that the guilty report for these defendants resulted from a docketing error at the USAO offices. In addition to the untimely entries, we found one other case that was improperly coded as a Terrorism/National Security Critical Infrastructure case. In this case, the defendant was convicted of conspiracy to distribute and possession with intent to distribute 1,000 kilograms or more of marijuana, and with conspiracy to commit money laundering. An USAO official told us the case was miscoded and should have been coded as an Organized Crime Drug Enforcement Task Force narcotics case. We consider this amount of deviation (12 of 103 defendants tested, or 12 percent) to be significant.

In addition, as discussed in the section below for guilty dispositions in FY 2010, we also used a sampling methodology and found 17 defendants adjudged guilty in FY 2009 who were reported in FY 2010. Three of these 17 defendants were also reported in FY 2009, but the other 14 defendants were

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<sup>41</sup> According to an EOUSA official, the U.S. Attorneys' FY 2011 and FY 2012 Performance Budget Congressional Submissions mistakenly indicated that this statistic was for the program category Terrorism/Terrorist-related instead of the current program category Terrorism/National Security Critical Infrastructure.



reported as adjudged guilty only in FY 2010. These 14 defendants should have been reported in FY 2009 instead. These defendants offset the 12 miscounted defendants we identified in the prior paragraph, although we emphasize that we may have discovered other miscounted cases had we expanded our reviews beyond our samples.

*FY 2010 U.S. Attorneys' Annual Statistical Report and the U.S. Attorneys' FY 2012 Performance Budget Congressional Submission*

In the FY 2010 U.S. Attorneys' Annual Statistical Report and the U.S. Attorneys' FY 2012 Performance Budget Congressional Submission, EOUSA reported 292 dispositions in U.S. District Court guilty in program category Terrorism/National Security Critical Infrastructure during FY 2010.

EOUSA staff provided a listing of the 292 defendants adjudged guilty in program category Terrorism/National Security Critical Infrastructure. We reviewed PACER data for a sample of 98 of the 292 defendants and found that 20 of the 98 defendants were adjudged guilty prior to FY 2010 and should not have been counted for FY 2010. Details of these 20 cases are as follows:

- Fourteen defendants were adjudged guilty in FY 2009 but not reported as guilty until FY 2010. An EOUSA official told us that the USAOs did not enter the dispositions for these defendants into LIONS until FY 2010.
- Three defendants reported guilty in FY 2010 had previously been reported guilty in FY 2009. An EOUSA official told us that the double reporting occurred because of the method used by USAO personnel when reopening cases in LIONS, which is discussed above in the discussion for statistic 8 for FY 2010. We noted two additional defendants that were reported incorrectly for this same reason. The first defendant received a guilty verdict in FY 2008, was entered into LIONS and inappropriately reported in FY 2009, and was reported guilty again in FY 2010. The second defendant received a guilty verdict in FY 2006 but was reported in FY 2010.
- One defendant pled guilty in FY 2005 but was reported in FY 2010. An EOUSA official told us that the defendant was not counted as guilty until FY 2010 because the defendant's sentencing was deferred until May 2010. The official cited guidance taken from the LIONS Manual which states, "If there is a Disposition of GT (Guilty) or NC (Nolo), a Sentence Date is required before the roll-up will be performed to close the Court/Participant record." Based on this

guidance, EOUSA does not count the guilty disposition until the case is closed. We question the propriety of reporting the guilty disposition in this manner, as the guilty plea occurred in FY 2005 irrespective of the fact that sentencing was deferred, and thus reporting the defendant in FY 2010 creates the false impression that the disposition occurred in FY 2010. Moreover, we note that EOUSA has reported a separate statistic for defendants who were sentenced to prison in FY 2010 (see statistic 11, below). We believe that statistic more appropriately captures the fact that this defendant was sentenced in FY 2010.

Data entry delays for the 20 erroneous guilty dispositions ranged from 39 to 1,803 days and averaged 460 days with a median of 352 days.

For the defendants we tested, EOUSA overstated by 20, or 26 percent, the number of dispositions guilty in FY 2010. We consider this amount of deviation to be significant.

#### **11. Number of Terrorism/National Security Critical Infrastructure defendants sentenced to prison<sup>42</sup>**

*U.S. Attorneys' FY 2011 Performance Budget Congressional Submission*

In the U.S. Attorneys' FY 2011 Performance Budget Congressional Submission, EOUSA reported that 171 defendants were sentenced to prison in program category Terrorism/National Security Critical Infrastructure during FY 2009.

EOUSA staff provided a listing of the 171 defendants sentenced to prison in program category Terrorism/National Security Critical Infrastructure. Because the NLIONS business rules did not provide a methodology for reporting the number of defendants sentenced to prison, we asked an EOUSA official how this statistic is determined. The official told us that this statistic is calculated by counting the defendants who were found guilty and who had a prison sentence length greater than zero months.

We reviewed PACER data for a sample of 57 of the 171 defendants and found that 2 of the 57 defendants reported as sentenced to prison during

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<sup>42</sup> According to an EOUSA official, the U.S. Attorneys' FY 2011 and FY 2012 Performance Budget Congressional Submissions mistakenly indicated that this statistic was for the program category Terrorism/Terrorist-related instead of the current program category Terrorism/National Security Critical Infrastructure.

FY 2009 were actually sentenced to prison during FY 2008 and should not have been counted for FY 2009. An EOUSA official told us that the two defendants were reported in FY 2009 because USAO personnel entered the sentencing dispositions into LIONS during FY 2009. The data entry delays were 349 days and 413 days, respectively. For the defendants we tested, we consider this amount of deviation (2 of 57 defendants tested, or 4 percent) to be insignificant.

In addition, as discussed in the section below on sentencing dispositions for FY 2010, we also used a sampling methodology and found that eight defendants reported as sentenced in FY 2010 were actually sentenced in FY 2009. These defendants offset the 2 miscounted defendants we identified in the prior paragraph, although we emphasize that we may have discovered other miscounted cases had we expanded our reviews beyond our samples.

#### *U.S. Attorneys' FY 2012 Performance Budget Congressional Submission*

In the U.S. Attorneys' FY 2012 Performance Budget Congressional Submission, EOUSA reported that 168 defendants were sentenced to prison in program category Terrorism/National Security Critical Infrastructure during FY 2010.

EOUSA staff provided a listing of the 168 defendants sentenced to prison in program category Terrorism/National Security Critical Infrastructure. We reviewed PACER data for a sample of 56 of the 168 defendants and found 9 defendants were sentenced prior to FY 2010. One defendant was sentenced in FY 2007 and eight defendants were sentenced in FY 2009. An EOUSA official told us that the USAOs did not enter the sentencing dispositions into LIONS for each defendant until FY 2010. Data entry delays for the 9 defendants ranged from 106 to 1,387 days and averaged 406 days with a median of 239 days.

We therefore concluded that, for the defendants tested, EOUSA overstated by 9, or 19 percent, the number of defendants sentenced to prison in FY 2010. We consider this deviation to be significant.

#### **OIG Conclusions**

We found that EOUSA had not significantly improved its reporting of terrorism-related statistics. EOUSA revised its procedures for gathering, verifying, classifying, and reporting its statistics based on the recommendations from our 2007 audit, but implementation of those procedures was not effective to ensure the accuracy of the statistics we

tested. During our 2007 audit, all 11 tested statistics reported by EOUSA were reported inaccurately, and 9 of those 11 statistics were either overstated or understated by significant margins. In this follow-up audit, again all 11 EOUSA statistics we tested were reported inaccurately, and 8 of the 11 statistics were either overstated or understated by significant margins. These inaccuracies are important because Department management and Congress need accurate terrorism-related statistics to make informed budgetary and operational decisions.

## **Recommendations**

We recommend that EOUSA:

1. Establish a system to annually remind AUSAs to promptly re-code any case or matter in LIONS that began as a terrorism or national security investigation but ultimately becomes a different type of case that requires a change in the original coding.
2. Update reporting practices to clearly define the methodology used to collect the data for each statistic, including an explanation for those statistics identified as "all occurrences."
3. Clarify reporting practices on the number of dispositions in U.S. District Court guilty in program category Terrorism/National Security Critical Infrastructure by footnoting that the dispositions could have resulted from guilty pleas or guilty verdicts that were obtained in a prior year.
4. Establish a specific timeframe for USAOs to enter case data into LIONS prior to the end of each fiscal year.
5. Monitor the USAOs compliance with the LIONS data-entry timeframe established and require corrective actions by the USAO when non-compliance is identified.
6. Ensure the statistical reporting log is maintained and captures requests for all terrorism and national security program category code statistics and contains the responsive data to support the statistics reported.

We recommend that the USAOs:

7. Establish and implement procedures to ensure that case data needed to produce statistical reports are entered into LIONS within the timeframes established by EOUSA.
8. Ensure that all staff responsible for entering data into LIONS are instructed on the proper procedures for updating data in LIONS for closed cases to ensure that cases are not inappropriately reopened and closed in a manner that results in inaccurate case statistics.

## STATEMENT ON INTERNAL CONTROLS

As required by the *Government Auditing Standards*, we tested, as appropriate, internal controls significant within the context of our audit objectives. A deficiency in an internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to timely prevent or detect: (1) impairments to the effectiveness and efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws and regulations. Our evaluation of EOUSA's internal controls were not made for the purpose of providing assurance on its internal control structure as a whole. EOUSA management is responsible for the establishment and maintenance of internal controls.

Through our audit testing, we did not identify deficiencies in the EOUSA's internal controls that were significant within the context of the audit objectives and that, based upon the audit work performed, we believe would adversely affect EOUSA's ability to effectively and efficiently operate, to correctly state financial information, and to ensure compliance with laws and regulations.

However, we did identify weaknesses regarding the EOUSA's controls over the reporting of terrorism-related statistics that have resulted in significant inaccuracies when reporting some of these statistics. EOUSA officials acknowledged these discrepancies and expressed interest in strengthening their processes.

Because we are not expressing an opinion on the EOUSA's internal control structure as a whole, this statement is intended solely for the information and use of the EOUSA. This restriction is not intended to limit the distribution of this report, which is a matter of public record.

## **STATEMENT ON COMPLIANCE WITH LAWS AND REGULATIONS**

As required by the *Government Auditing Standards*, we tested EOUSA's processes, controls, and records to obtain reasonable assurance that the Department complied with laws and regulations that, if not complied with, could have a material effect on EOUSA's ability to report terrorism-related statistics accurately. Compliance with laws and regulations applicable to EOUSA's reporting of such statistics is the responsibility of EOUSA management. An audit includes examining, on a test basis, evidence about compliance with laws and regulations. The specific laws and regulations we reviewed included the relevant portions of the Office of Management and Budget Circular A-123, Management's Responsibility for Internal Control.

Except for instances of non-compliance identified in the Finding and Recommendations section of this report, EOUSA complied with the laws and regulations cited above. With respect to those activities not tested, nothing came to our attention that caused us to believe that EOUSA was not in compliance with the laws and regulations cited above.

## APPENDIX I

### AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

Our objectives were to determine if: (1) EOUSA took appropriate actions to implement the recommendations from our 2007 audit; and (2) the corrective actions implemented improved EOUSA's ability to gather, track, classify, verify, and report accurate terrorism-related statistics. We conducted this performance 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. Our audit concentrated on, but was not limited to, the period subsequent to the issuance of our prior audit in February 2007 through January 17, 2013.

We performed the following work at EOUSA located in Washington, D.C.:

1. We identified 39 unique terrorism-related statistics reported by EOUSA 72 times in budget submissions, annual statistical reports, or other documents for FY 2009 through FY 2012 by:
  - interviewing key EOUSA personnel regarding internal and external documents in which terrorism-related statistics are reported; and
  - reviewing the documents identified through interviews and searches for terrorism-related statistics.

The 39 statistics and details about where each was reported is presented in the following table.



Statistic Description	Number Reported	Where Statistic was Reported
1. Number of criminal appeals filed in program category Terrorism/National Security Critical Infrastructure	45 FY 2009 43 FY 2010	U.S. Attorneys' Annual Statistical Report FY 2009 U.S. Attorneys' Annual Statistical Report FY 2010
2. Number of criminal cases in U.S. District Court – all occurrences – terminated in program category Terrorism/National Security Critical Infrastructure	258 FY 2010	U.S. Attorneys' Annual Statistical Report FY 2010
3. Number of criminal cases in U.S. District Court pending in program category Terrorism/National Security Critical Infrastructure	620 FY 2009	U.S. Attorneys' Annual Statistical Report FY 2009
4. Number of criminal cases in U.S. District Court that were terminated in program category Terrorism/National Security Critical Infrastructure	234 FY 2009 220 FY 2010	U.S. Attorneys' Annual Statistical Report FY 2009 U.S. Attorneys' Annual Statistical Report FY 2010
5. Number of defendants in U.S. District court – all occurrences – in criminal cases filed in program category Terrorism/National Security Critical Infrastructure	439 FY 2010	U.S. Attorneys' Annual Statistical Report FY 2010
6. Number of defendants in U.S. District Court – all occurrences – in criminal cases terminated in program category Terrorism/National Security Critical Infrastructure	406 FY 2010	U.S. Attorneys' Annual Statistical Report FY 2010
7. Number of defendants in U.S. District Court in criminal cases filed in program category Terrorism/National Security Critical Infrastructure	311 FY 2009 385 FY 2010	Performance Budget Congressional Submission FY 2011 U.S. Attorneys' Annual Statistical Report FY 2009 Performance Budget Congressional Submission FY 2012 U.S. Attorneys' Annual Statistical Report FY 2010

<b>Statistic Description</b>	<b>Number Reported</b>	<b>Where Statistic was Reported</b>
8. Number of defendants in U.S. District Court in criminal cases terminated in program category Terrorism/National Security Critical Infrastructure	367 FY 2009 347 FY 2010	U.S. Attorneys' Annual Statistical Report FY 2009 U.S. Attorneys' Annual Statistical Report FY 2010
9. Number of dispositions in U.S. District court – all occurrences – guilty in program category Terrorism/National Security Critical Infrastructure	341 FY 2010	U.S. Attorneys' Annual Statistical Report FY 2010
10. Number of dispositions in U.S. District Court guilty in program category Terrorism/National Security Critical Infrastructure	307 FY 2009 292 FY 2010	Performance Budget Congressional Submission FY 2011 U.S. Attorneys' Annual Statistical Report FY 2009 Performance Budget Congressional Submission FY 2012 U.S. Attorneys' Annual Statistical Report FY 2010
11. Number of Terrorism/National Security Critical Infrastructure defendants sentenced to prison	171 FY 2009 168 FY 2010	Performance Budget Congressional Submission FY 2011 Performance Budget Congressional Submission FY 2012
12. Number of criminal cases in U.S. District Court – all occurrences – filed in program category Terrorism/National Security Critical Infrastructure	266 FY 2010	U.S. Attorneys' Annual Statistical Report FY 2010
13. Number of criminal cases in U.S. District Court filed in program category Terrorism/National Security Critical Infrastructure	193 FY 2009 236 FY 2010	U.S. Attorneys' Annual Statistical Report FY 2009 U.S. Attorneys' Annual Statistical Report FY 2010
14. Number of dispositions in U.S. District court – all occurrences – dismissed in program category Terrorism/National Security Critical Infrastructure	45 FY 2010	U.S. Attorneys' Annual Statistical Report FY 2010

<b>Statistic Description</b>	<b>Number Reported</b>	<b>Where Statistic was Reported</b>
15. Number of dispositions in U.S. District Court – all occurrences – not guilty in program category Terrorism/National Security Critical Infrastructure	5 FY 2010	U.S. Attorneys' Annual Statistical Report FY 2010
16. Number of dispositions in U.S. District Court – all occurrences – other in program category Terrorism/National Security Critical Infrastructure	13 FY 2010	U.S. Attorneys' Annual Statistical Report FY 2010
17. Number of dispositions in U.S. District Court – all occurrences – Rule 20 in program category Terrorism/National Security Critical Infrastructure	2 FY 2010	U.S. Attorneys' Annual Statistical Report FY 2010
18. Number of dispositions in U.S. District Court dismissed in program category Terrorism/National Security Critical Infrastructure	38 FY 2009	U.S. Attorneys' Annual Statistical Report FY 2009
	44 FY 2010	U.S. Attorneys' Annual Statistical Report FY 2010
19. Number of dispositions in U.S. District Court not guilty in program category Terrorism/National Security Critical Infrastructure	6 FY 2009	U.S. Attorneys' Annual Statistical Report FY 2009
	4 FY 2010	U.S. Attorneys' Annual Statistical Report FY 2010
20. Number of dispositions in U.S. District Court other in program category Terrorism/National Security Critical Infrastructure	15 FY 2009	U.S. Attorneys' Annual Statistical Report FY 2009
	5 FY 2010	U.S. Attorneys' Annual Statistical Report FY 2010
21. Number of dispositions in U.S. District Court Rule 20 in program category Terrorism/National Security Critical Infrastructure	1 FY 2009	U.S. Attorneys' Annual Statistical Report FY 2009
	2 FY 2010	U.S. Attorneys' Annual Statistical Report FY 2010
22. Total number of Terrorism/National Security Critical Infrastructure criminal matters declined	832 FY 2009	U.S. Attorneys' Annual Statistical Report FY 2009
	969 FY 2010	U.S. Attorneys' Annual Statistical Report FY 2010
23. Number of Terrorism/National Security Critical Infrastructure criminal matters declined by reason of agency request	112 FY 2009	U.S. Attorneys' Annual Statistical Report FY 2009
	126 FY 2010	U.S. Attorneys' Annual Statistical Report FY 2010

<b>Statistic Description</b>	<b>Number Reported</b>	<b>Where Statistic was Reported</b>
24. Number of Terrorism/National Security Critical Infrastructure criminal matters declined by reason of DOJ/Court Policy	8 FY 2009	U.S. Attorneys' Annual Statistical Report FY 2009
	4 FY 2010	U.S. Attorneys' Annual Statistical Report FY 2010
25. Number of Terrorism/National Security Critical Infrastructure criminal matters declined by reason of jurisdiction, venue, or witness problems	15 FY 2009	U.S. Attorneys' Annual Statistical Report FY 2009
	102 FY 2010	U.S. Attorneys' Annual Statistical Report FY 2010
26. Number of Terrorism/National Security Critical Infrastructure criminal matters declined by reason of juvenile suspect	5 FY 2009	U.S. Attorneys' Annual Statistical Report FY 2009
	5 FY 2010	U.S. Attorneys' Annual Statistical Report FY 2010
27. Number of Terrorism/National Security Critical Infrastructure criminal matters declined by reason of lack of criminal intent	209 FY 2009	U.S. Attorneys' Annual Statistical Report FY 2009
	254 FY 2010	U.S. Attorneys' Annual Statistical Report FY 2010
28. Number of Terrorism/National Security Critical Infrastructure criminal matters declined by reason of lack of resources	20 FY 2009	U.S. Attorneys' Annual Statistical Report FY 2009
	30 FY 2010	U.S. Attorneys' Annual Statistical Report FY 2010
29. Number of Terrorism/National Security Critical Infrastructure criminal matters declined by reason of minimal federal interest	35 FY 2009	U.S. Attorneys' Annual Statistical Report FY 2009
	35 FY 2010	U.S. Attorneys' Annual Statistical Report FY 2010
30. Number of Terrorism/National Security Critical Infrastructure criminal matters declined by reason of no federal offense committed	70 FY 2009	U.S. Attorneys' Annual Statistical Report FY 2009
	84 FY 2010	U.S. Attorneys' Annual Statistical Report FY 2010
31. Number of Terrorism/National Security Critical Infrastructure criminal matters declined by reason of no known suspect	37 FY 2009	U.S. Attorneys' Annual Statistical Report FY 2009
	29 FY 2010	U.S. Attorneys' Annual Statistical Report FY 2010

Statistic Description	Number Reported	Where Statistic was Reported
32. Number of Terrorism/National Security Critical Infrastructure criminal matters declined by reason of office policy	24 FY 2009	U.S. Attorneys' Annual Statistical Report FY 2009
	5 FY 2010	U.S. Attorneys' Annual Statistical Report FY 2010
33. Number of Terrorism/National Security Critical Infrastructure criminal matters declined by reason of other disciplinary alternatives	19 FY 2009	U.S. Attorneys' Annual Statistical Report FY 2009
	22 FY 2010	U.S. Attorneys' Annual Statistical Report FY 2010
34. Number of Terrorism/National Security Critical Infrastructure criminal matters declined by reason of statute of limitations or staleness problems	12 FY 2009	U.S. Attorneys' Annual Statistical Report FY 2009
	10 FY 2010	U.S. Attorneys' Annual Statistical Report FY 2010
35. Number of Terrorism/National Security Critical Infrastructure criminal matters declined by reason of suspect is a fugitive, serving sentence, deceased or deported	0 FY 2009	U.S. Attorneys' Annual Statistical Report FY 2009
	8 FY 2010	U.S. Attorneys' Annual Statistical Report FY 2010
36. Number of Terrorism/National Security Critical Infrastructure criminal matters declined by reason of suspect cooperating or restitution being made	3 FY 2009	U.S. Attorneys' Annual Statistical Report FY 2009
	3 FY 2010	U.S. Attorneys' Annual Statistical Report FY 2010
37. Number of Terrorism/National Security Critical Infrastructure criminal matters declined by reason of suspect prosecuted by other authority or on other charge	61 FY 2009	U.S. Attorneys' Annual Statistical Report FY 2009
	52 FY 2010	U.S. Attorneys' Annual Statistical Report FY 2010
38. Number of Terrorism/National Security Critical Infrastructure criminal matters declined by reason of weak or insufficient evidence	190 FY 2009	U.S. Attorneys' Annual Statistical Report FY 2009
	193 FY 2010	U.S. Attorneys' Annual Statistical Report FY 2010
39. Number of Terrorism/National Security Critical Infrastructure criminal matters declined by reason of all other reasons	12 FY 2009	U.S. Attorneys' Annual Statistical Report FY 2009
	7 FY 2010	U.S. Attorneys' Annual Statistical Report FY 2010

**Source:** Documents identified in the "Where Statistic was Reported" column

2. For our initial testing during this audit, we interviewed EOUSA officials to determine whether internal controls were in place and

documented to ensure the 39 statistics were accurately gathered, categorized, and reported.<sup>43</sup>

3. We reviewed documentation and interviewed EOUSA officials to identify the following information for each of the 39 terrorism-related statistics reported:
  - the period covered by the statistic,
  - the key EOUSA personnel responsible for tracking and reporting the statistics and what mechanisms were used to track the statistics, and
  - the processes used to report the statistics and the internal controls established to ensure the accuracy of the reported statistics.
4. Of the 39 operational statistics, 6 were reported during the prior audit and were also reported subsequent to the prior audit with updated data.<sup>44</sup> During this follow-up audit, we selected those six statistics, which are described below, for follow-up testing. All six of these statistics are tracked in the Legal Information Office Network System (LIONS).
  - Number of criminal cases in U.S. District Court pending in program category Terrorism/National Security Critical Infrastructure
  - Number of criminal cases in U.S. District Court that were terminated in program category Terrorism/National Security Critical Infrastructure

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<sup>43</sup> According to Office of Management and Budget Circular A-123, *Management's Responsibility for Internal Control*, internal controls are the organization, policies, and procedures that help program and financial managers achieve results and safeguard the integrity of their programs. The Government Accountability Office's *Standards for Internal Control in the Federal Government* require that the controls and all transactions and other significant events be clearly documented, and that the documentation be readily available for examination. The documentation should appear in management directives, administrative policies, or operating manuals and may be in paper or electronic form. All documentation and records should be properly managed and maintained.

<sup>44</sup> The title used by EOUSA to describe these six statistics during the prior audit was different from the title used by EOUSA to describe these statistics during this follow-up audit. However, the definition used by EOUSA to calculate the statistics remained unchanged from the prior audit.

- Number of defendants in U.S. District Court in criminal cases filed in program category Terrorism/National Security Critical Infrastructure
  - Number of defendants in U.S. District Court in criminal cases terminated in program category Terrorism/National Security Critical Infrastructure
  - Number of dispositions in U.S. District Court guilty in program category Terrorism/National Security Critical Infrastructure
  - Number of Terrorism/National Security Critical Infrastructure defendants sentenced to prison.
5. For the remaining 33 operational statistics, we developed a risk assessment tool to assess both the risk that the statistic would be reported inaccurately, and used that tool to decide which statistics to test. Specifically, we developed the following six categories of risk and used a risk rating scale of one to three within each category, with one representing relatively low risk and three representing relatively high risk.

**OIG's Methodology for Measuring  
Risk of Terrorism-Related Statistics**

Risk Category/ Rating Elements	Risk Rating
<b>1. Frequency of use</b>	
Reported 1 to 3 times	1
Reported 4 to 10 times	2
Reported 11 to 35 times	3
<b>2. Internal controls</b>	
Established and documented	1
Established but not documented	2
Not established	3
<b>3. Magnitude of the statistic reported</b>	
From 0 to 100	1
From 101 to 1,000	2
Greater than 1,000, to include any dollar-related numbers, percentages, and hours	3
<b>4. Inconsistencies in statistics reported</b>	
No inconsistencies	1
One inconsistency	2
Multiple inconsistencies	3

<b>Risk Category/ Rating Elements</b>	<b>Risk Rating</b>
5. Reported in informational formats by others	
Reported by other than the Attorney General, Deputy Attorney General, or EOUSA	1
Reported by EOUSA	2
Reported by the Attorney General or Deputy Attorney General	3
6. Precision of the statistic reported	
No operational statistics in group are precisely stated	1
Some operational statistics in group are precisely stated	2
All operational statistics in group are precisely stated	3

We calculated an overall average risk score for each of the 33 operational statistics by adding the risk rating assigned for each of the six risk categories and then dividing this sum by six. We selected the following 5 of the 33 operational statistics for audit testing based on the risk rating we calculated and on our judgment of the significance of the statistic. All five of these statistics are tracked in LIONS.

- Number of criminal appeals filed in program category Terrorism/National Security Critical Infrastructure
  - Number of criminal cases in U.S. District Court – all occurrences – terminated in program category Terrorism/National Security Critical Infrastructure
  - Number of defendants in U.S. District court – all occurrences – in criminal cases filed in program category Terrorism/National Security Critical Infrastructure
  - Number of defendants in U.S. District Court – all occurrences – in criminal cases terminated in program category Terrorism/National Security Critical Infrastructure
  - Number of dispositions in U.S. District court – all occurrences – guilty in program category Terrorism/National Security Critical Infrastructure
6. We interviewed EOUSA officials and reviewed supporting documentation to determine whether the 11 operational statistics



selected for testing were accurately reported. As explained in the next section, for 10 of the 11 statistics we initially reviewed a sample of the transactions reported and, for 4 statistics where we noted a consistently high error rate among the sampled transactions, we expanded our review to include all reported transactions. For the other statistic, we reviewed all the reported transactions.

7. For instances where we found that the 11 statistics were not accurately reported, we interviewed EOUSA officials to obtain an explanation for why the inaccuracies occurred. We also visited the following eight USAOs where the highest number of exceptions occurred to obtain USAO officials' views on why the exceptions occurred.
  - District of Arizona
  - Central District of California
  - Eastern District of Michigan
  - Northern District of California
  - Southern District of Florida
  - Southern District of New York
  - District of Columbia
  - Western District of Texas

### **Methodology for Sampling EOUSA Statistics**

For 10 of the 11 EOUSA operational statistics that we selected for initial detailed testing, we selected samples for the 10 statistics by:

- obtaining the data (cases terminated, cases pending, defendants terminated, defendants filed, guilty pleas, or defendants sentenced to prison) reported for each statistic; and
- selecting one third of the data items to test.

The samples were not statistically designed to enable projection of the sample results to the entire population of data reported for each statistic.

For the remaining operational statistic, we obtained the appeals filed data reported for the statistic for both fiscal years and we selected all the data for testing because total data items reported was small. The following table shows the number of data items selected for each of the 11 statistics that were reported.

### Samples Selected for EOUSA Statistics Tested

Statistic Description	Data Items Reported	Data Items Provided by EOUSA During Audit	Initial Data Items Tested
1. Number of criminal appeals filed in program category Terrorism/National Security Critical Infrastructure	45 FY 2009	45	44 <sup>45</sup>
	43 FY 2010	43	43
2. Number of criminal cases in U.S. District Court – all occurrences – terminated in program category Terrorism/National Security Critical Infrastructure	258 FY 2010	258	86
3. Number of criminal cases in U.S. District Court pending in program category Terrorism/National Security Critical Infrastructure	620 FY 2009	620	198 <sup>46</sup>
4. Number of criminal cases in U.S. District Court that were terminated in program category Terrorism/National Security Critical Infrastructure	234 FY 2009	234	78
	220 FY 2010	220	74
5. Number of defendants in U.S. District Court – all occurrences – in criminal cases filed in program category Terrorism/National Security Critical Infrastructure	439 FY 2010	439	147
6. Number of defendants in U.S. District Court – all occurrences – in criminal cases terminated in program category Terrorism/National Security Critical Infrastructure	406 FY 2010	406	136

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<sup>45</sup> We selected all 45 appeals for testing. The case for 1 of the 45 appeals was sealed and we excluded this appeal from our testing.

<sup>46</sup> We selected a sample of 207 of the 620 cases for testing. Nine of the 207 cases were sealed and we excluded those cases from our testing.

Statistic Description	Data Items Reported	Data Items Provided by EOUSA During Audit	Initial Data Items Tested
7. Number of defendants in U.S. District Court in criminal cases filed in program category Terrorism/National Security Critical Infrastructure	311 FY 2009	311	103 <sup>47</sup>
	385 FY 2010	385	128 <sup>48</sup>
8. Number of defendants in U.S. District Court in criminal cases terminated in program category Terrorism/National Security Critical Infrastructure	367 FY 2009	367	123
	347 FY 2010	347	116
9. Number of dispositions in U.S. District Court – all occurrences – guilty in program category Terrorism/National Security Critical Infrastructure	341 FY 2010	341	114
10. Number of dispositions in U.S. District Court guilty in program category Terrorism/National Security Critical Infrastructure	307 FY 2009	307	103
	292 FY 2010	292	98
11. Number of Terrorism/National Security Critical Infrastructure defendants sentenced to prison	171 FY 2009	171	57
	168 FY 2010	168	56

**Source:** U.S. Attorneys' Annual Statistical Reports and EOUSA's Performance Budget Congressional Submissions

For statistics 2, 4, 6, and 8 dealing with cases terminated, we expanded our testing to include all transactions reported. We expanded the testing in this area because of the consistently high error rate we noted for these transactions.

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<sup>47</sup> We selected a sample of 104 of the 311 defendants for testing. The case for 1 of the 104 defendants was sealed and we excluded this defendant from our testing.

<sup>48</sup> We selected a sample of 129 of the 385 defendants for testing. The case for 1 of the 129 defendants was sealed and we excluded this defendant from our testing.

## APPENDIX II

### OTHER PRIOR AUDITS AND INSPECTIONS THAT REVIEWED OR TOUCHED UPON THE ACCURACY OF TERRORISM- RELATED STATISTICS REPORTED BY THE DEPARTMENT

In addition to our 2007 audit of the Department's internal controls over reporting terrorism-related statistics, we identified other previous audits and inspections by the Office of the Inspector General (OIG) and Government Accountability Office (GAO) that reviewed or touched upon the accuracy of terrorism-related statistics reported by the Department.

As noted in our 2007 audit report, the OIG previously reviewed 48 terrorism-related statistics or supporting systems and made recommendations to correct deficiencies identified. The results of these reviews were included in the following nine audit and inspections reports issued from September 2003 through September 2005.

Report Title	Report Number	Date Issued
Follow-up Audit of the Department of Justice Counterterrorism Fund	03-33	September 2003
Federal Bureau of Investigation Casework and Human Resource Allocation	03-37	September 2003
The Federal Bureau of Investigation's Foreign Language Program – Translation of Counterterrorism and Counterintelligence Foreign Language Material	04-25	July 2004
Internal Effects of the Federal Bureau of Investigation's Reprioritization	04-39	September 2004
The Federal Bureau of Investigation's Efforts to Hire, Train, and Retain Intelligence Analysts	05-20	May 2005
Review of the Terrorist Screening Center	05-27	June 2005
The Department of Justice's Terrorism Task Forces	I-2005-007	June 2005
The Federal Bureau of Investigation's Foreign Language Translation Program Follow-Up	05-33	July 2005
External Effects of the Federal Bureau of Investigation's Reprioritization Efforts	05-37	September 2005

**Source:** OIG audit, review, and inspections reports

In a January 2003 report, the GAO reported on the Department's need for better controls and oversight of terrorism-related statistics.<sup>49</sup> The GAO reported that in FY 2001, the Department switched from using the Federal Bureau of Investigation's (FBI) terrorism-related conviction statistics to using those of EOUSA for its annual report because of: (1) concerns raised by a newspaper article's allegation that the Department had inflated its terrorism numbers in its FY 2000 Performance Report, and (2) an effort to report conviction statistics that would be less likely to be misinterpreted.<sup>50</sup> Prior to FY 2002, the FBI and EOUSA used different criteria to classify cases and resulting convictions as terrorism-related, resulting in differences in how each entity ultimately classified a case. Consequently, the total number of convictions classified by the FBI and EOUSA as terrorism-related differed. Also, because EOUSA prosecutes federal cases, its classification system only included federal convictions, while the FBI's classification system also included convictions in state, local, and international courts obtained with the FBI's investigative assistance. The GAO reported that the Department did not have sufficient management oversight and internal controls in place to ensure the accuracy and reliability of terrorism-related conviction statistics included in its annual performance reports.

In a March 2004 report, the GAO reported on: (1) the guidance and procedures followed by federal law enforcement agencies regarding counting investigations and arrests, and (2) how investigations and arrests statistics are used.<sup>51</sup> The report also discussed whether multiple agencies were counting and reporting the same investigations and arrests. The GAO concluded that law enforcement agencies often counted the same investigations and arrests resulting from joint operations and presented these statistics in their public documents and budget justifications. The GAO also observed that: (1) none of the law enforcement agencies reviewed had a central repository of joint investigations and arrests, and (2) not all of the

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<sup>49</sup> U.S. General Accounting Office, *Justice Department: Better Management Oversight and Internal Controls Needed to Ensure Accuracy of Terrorism-Related Statistics*, GAO-03-266 (January 2003). On July 7, 2004, the GAO was renamed the Government Accountability Office.

<sup>50</sup> See Mark Fazlollah and Peter Nicholas, "U.S. Overstates Arrests in Terrorism," *The Philadelphia Inquirer*, December 16, 2001.

<sup>51</sup> U.S. General Accounting Office, *Federal Law Enforcement: Information on the Use of Investigation and Arrest Statistics*, GAO-04-411 (March 2004). The GAO reviewed six federal agencies: the Drug Enforcement Administration; FBI; United States Marshals Service; the former U.S. Customs Service; the former Immigration and Naturalization Service; and United States Postal Inspection Service. The U.S. Customs Service and the Immigration and Naturalization Service are now part of the Department of Homeland Security.

agencies distinguished between unilateral and joint arrests and investigations within their databases. The GAO concluded that making this distinction would help Congress when making budget decisions related to these agencies.

## APPENDIX III

# THE EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS' RESPONSE TO THE DRAFT AUDIT REPORT



U.S. Department of Justice

Executive Office for United States Attorneys

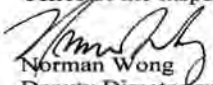
Office of the Director

RFK Main Justice Building, Room 2261  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

(202) 252-1000

DATE: September 9, 2013

TO: Ferris B. Polk  
Regional Audit Manager  
Atlanta Regional Audit Office  
Office of the Inspector General

FROM:   
Norman Wong  
Deputy Director and Counsel to the Director  
Executive Office for United States Attorneys

SUBJECT: Response to the Report entitled, "Follow-up Audit of the Department of Justice's Internal Controls Over Reporting of Terrorism-Related Statistics: The Executive Office for United States Attorneys."

The Executive Office for United States Attorneys (EOUSA) appreciates the audit undertaken by the Department of Justice, Office of the Inspector General (OIG) regarding the collecting and reporting of terrorism-related statistics by EOUSA and the U.S. Attorneys' offices (USAOs). The OIG reviewed a variety of terrorism-related statistics as reported by EOUSA through its LIONS case management system (LIONS). As part of its work, OIG inquired into the policies and practices concerning how case data was entered into the LIONS system by the USAOs, and how that data was collected and reported by EOUSA. The OIG report contains six recommendations for EOUSA and two for the USAOs. EOUSA agrees with these recommendations, although we note here several points that deserve further emphasis.

As an initial matter it is worth describing the salient features of EOUSA's LIONS case management system. The LIONS system is 16 years old and its usage and limitations help explain the context of the OIG's recommendations. Each of the 93 U.S. Attorneys' offices (USAOs) inputs case data into the LIONS system. EOUSA does not enter data into the system. Rather, EOUSA gathers the data inputted by each of the USAOs to create national or district specific reports. The LIONS system is geared toward generating reports on a fiscal year basis. Importantly, only data actually entered into the system by the close of the fiscal year is reported in that fiscal year. This methodology is based on the "system disposition date," which is tied to the date that USAO personnel enter data into LIONS, rather than the underlying date of a case event.

The LIONS system, by design, favors certainty over flexibility in reporting. That is, once the clock strikes midnight on October 1, a new set of data collection begins for a new fiscal year, and everything that is entered into LIONS thereafter during that fiscal year will be reported as part of that new fiscal year, even if it relates to an event that occurred during the past fiscal year. Everything that was entered prior to October 1 (during the prior fiscal year) will be counted toward that earlier fiscal year. By establishing a fiscal year cut-off, EOUSA does not have to constantly change its reported data based on events that may have occurred in a given fiscal year but which were not entered into the system until the following fiscal year.

EOUSA has created and disseminated uniform rules for inputting data into the LIONS system, including a user's manual, a "data dictionary," and case coding polices, as well as other materials. As noted in the OIG report, EOUSA has taken a variety of steps to require that individual USAOs promptly input terrorism data into LIONS. EOUSA also requires individual USAOs to certify, on a bi-annual basis, to the accuracy of the terrorism data inputted by each office.

Despite the previous efforts made by EOUSA to ensure timely and uniform data entry among the 93 districts, the OIG did find untimely data entry among the USAOs. The OIG found that the primary cause of inaccurate data in the LIONS system was delayed data entry, not factually inaccurate data. Indeed, the OIG reported no instance where it found that a particular fact, such as a defendant's name or the date of the case event, or the type of charges, etc., was erroneously entered. Rather, OIG's primary finding was that USAOs were slow to enter the LIONS data.<sup>1</sup>

EOUSA certainly agrees that delayed data entry may hinder accurate data reporting. But it is important to note that any data that is entered outside of the fiscal year in which it occurred will be reported in the following fiscal year. Although this constant roll-over from year to year does not lead to literally perfect data sets, there is no reason to assume, absent a full analysis, that the year-end totals are inflated. The OIG report Executive Summary at page ii notes our point that, "to the extent cases are overstated in one year due to untimely data entry, these cases are correspondingly understated in previous years."

In any event, the better course is to work towards timely data entry, and EOUSA understands OIG's recommendations to be directed to this laudable end. OIG has made six recommendations to EOUSA as follows:

1. Establish a system to annually remind AUSAs to promptly re-code any case or matter in LIONS that began as a terrorism or national security investigation but ultimately becomes a different type of case that requires a change in the original coding.

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<sup>1</sup> The OIG report did note a few instances where a case was labeled under one code but should have been changed to a different code based on later changes to the investigation.



2. Update reporting practices to clearly define the methodology used to collect the data for each statistic, including an explanation for those statistics identified as “all occurrences.”

3. Clarify reporting practices on the number of dispositions in U.S. District Court guilty in program category Terrorism/National Security Critical Infrastructure by footnoting that the dispositions could have resulted from guilty pleas or guilty verdicts that were obtained in a prior year.

4. Establish a specific timeframe for USAOs to enter case data into LIONS prior to the end of each fiscal year.

5. Monitor the USAOs compliance with the LIONS data-entry timeframe established and require corrective actions by the USAO when non-compliance is identified.

6. Ensure the statistical reporting log is maintained and captures requests for all terrorism and national security program category code statistics and contains the responsive data to support the statistics reported.

The report also made two recommendations to the USAOs, as follows:

7. Establish and implement procedures to ensure that case data needed to produce statistical reports are entered into LIONS within the timeframes established by EOUSA.

8. Ensure that all staff responsible for entering data into LIONS are instructed on the proper procedures for updating data in LIONS for closed cases to ensure that cases are not inappropriately reopened and closed in a manner that results in inaccurate case statistics.

EOUSA will undertake actions that meet these recommendations and will work with USAOs to help them respond to the recommendations as well.

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

The OIG provided a draft of this audit report to EOUSA. EOUSA's response is incorporated in Appendix III of this final report. The following provides the OIG analysis of the response and summary of actions necessary to close the report.

#### **Recommendation Number:**

1. **Resolved.** EOUSA concurred with our recommendation to establish a system to annually remind AUSAs to promptly re-code any case or matter in LIONS that began as a terrorism or national security investigation but ultimately becomes a different type of case that requires a change in the original coding. EOUSA stated in its response that it will undertake actions that will meet this recommendation. This recommendation can be closed when we receive documentation that EOUSA has established a system to annually remind AUSAs to promptly re-code any case or matter in LIONS that began as a terrorism or national security investigation but ultimately becomes a different type of case that requires a change in the original coding.
2. **Resolved.** EOUSA concurred with our recommendation to update reporting practices to clearly define the methodology used to collect the data for each statistic, including an explanation for those statistics identified as "all occurrences." EOUSA stated in its response that it will undertake actions that will meet this recommendation. This recommendation can be closed when we receive documentation that EOUSA has updated reporting practices to clearly define the methodology used to collect the data for each statistic, including an explanation for those statistics identified as "all occurrences."
3. **Resolved.** EOUSA concurred with our recommendation to clarify reporting practices on the number of dispositions in U.S. District Court guilty in program category Terrorism/National Security Critical Infrastructure by footnoting that the dispositions could have resulted from guilty pleas or guilty verdicts that were obtained in a prior year. EOUSA stated in its response that it will undertake actions that will meet this recommendation. This recommendation can be closed when we receive documentation that EOUSA has clarified reporting practices

on the number of dispositions in U.S. District Court guilty in program category Terrorism/National Security Critical Infrastructure by footnoting that the dispositions could have resulted from guilty pleas or guilty verdicts that were obtained in a prior year.

4. **Resolved.** EOUSA concurred with our recommendation to establish a specific timeframe for USAOs to enter case data into LIONS prior to the end of each fiscal year. EOUSA stated in its response that it will undertake actions that will meet this recommendation. This recommendation can be closed when we receive documentation that EOUSA has established a specific timeframe for USAOs to enter case data into LIONS prior to the end of each fiscal year.
5. **Resolved.** EOUSA concurred with our recommendation to monitor the USAOs compliance with the LIONS data-entry timeframe established and require corrective actions by the USAO when non-compliance is identified. EOUSA stated in its response that it will undertake actions that will meet this recommendation. This recommendation can be closed when we receive documentation that EOUSA has implemented a method to monitor the USAOs compliance with the LIONS data-entry timeframe established and require corrective actions by the USAO when non-compliance is identified.
6. **Resolved.** EOUSA concurred with our recommendation to ensure the statistical reporting log is maintained and captures requests for all terrorism and national security program category code statistics and contains the responsive data to support the statistics reported. EOUSA stated in its response that it will undertake actions that will meet this recommendation. This recommendation can be closed when we receive documentation that EOUSA has implemented a method to ensure the statistical reporting log is maintained and captures requests for all terrorism and national security program category code statistics and contains the responsive data to support the statistics reported.
7. **Resolved.** EOUSA concurred with our recommendation that USAOs establish and implement procedures to ensure that case data needed to produce statistical reports are entered into LIONS within the timeframes established by EOUSA. EOUSA stated in its response that it will work with the USAOs to help them respond to the recommendation. This recommendation can be closed when we receive documentation that USAOs have established and implemented procedures to ensure that case data needed to produce statistical reports are entered into LIONS within the timeframes established by EOUSA.

8. **Resolved.** EOUSA concurred with our recommendation that USAOs ensure that all staff responsible for entering data into LIONS are instructed on the proper procedures for updating data in LIONS for closed cases to ensure that cases are not inappropriately reopened and closed in a manner that results in inaccurate case statistics. EOUSA stated in its response that it will work with the USAOs to help them respond to the recommendation. This recommendation can be closed when we receive documentation that USAOs have ensured that all staff responsible for entering data into LIONS are instructed on the proper procedures for updating data in LIONS for closed cases to ensure that cases are not inappropriately reopened and closed in a manner that results in inaccurate case statistics.