



Department of Justice

STATEMENT

OF

**ERIC H. HOLDER, JR.
ATTORNEY GENERAL**

BEFORE THE

**COMMITTEE ON THE JUDICIARY
U.S. HOUSE OF REPRESENTATIVES**

ENTITLED

“OVERSIGHT OF THE U.S. DEPARTMENT OF JUSTICE”

PRESENTED

MAY 14, 2009

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Good morning Chairman Conyers, Ranking Member Smith, and Members of the Committee. Thank you for the opportunity to appear before you today to highlight the work and priorities of the U.S. Department of Justice. I would also like to thank you for your support of the Department. I look forward to your continued support and appreciate your recognition of the Department's mission and the important work that we do.

The Department is responsible for ensuring public safety against threats both foreign and domestic; ensuring fair and impartial administration of justice for all Americans; assisting our state and local partners; and defending the interests of the United States according to the law.

As I testified during my confirmation hearings earlier this year, we will pursue a very specific set of goals:

First, we will work to strengthen the activities of the federal government that protect the American people from terrorism, and will do so within the letter and spirit of the Constitution. Let me be clear: we need not sacrifice our core values in order to ensure our security. Adherence to the rule of law strengthens security by depriving terrorist organizations of their prime recruiting tools. America must be a beacon to the world. We will lead by strength, we will lead by wisdom, and we will lead by example.

Second, we will work to restore the credibility of a Department badly shaken by allegations of improper political interference. Law enforcement decisions and personnel actions must be untainted by partisanship. Under my stewardship, the Department of Justice will serve the cause of justice, not the fleeting interests of politics.

Third, we will work to reinvigorate the traditional missions of the Department. Without ever relaxing our guard in the fight against global terrorism, the Department must also embrace its historic role in fighting crime, protecting civil rights, preserving the environment, and ensuring fairness in the market place.

In addressing these priorities over the next several years, I look to the continued support of this Committee and the Congress, as a whole, to ensure a systematic approach is implemented to target each one of the priorities outlined.

National Security: Counter-Terrorism Efforts Since 9/11

The highest priority of the Department is to protect America against acts of terrorism. The Department has improved significantly its ability to identify, penetrate, and dismantle terrorist plots as a result of a series of structural reforms, the development of new intelligence and law enforcement tools, and a new mindset that values information sharing, communication and prevention.

I am committed to continuing to build our capacity to deter, detect and disrupt terrorist plots and to identify terrorist cells that would seek to do us harm. And I am committed to doing so consistent with the rule of law and American values. We will continue to develop intelligence, identify new and emerging threats and use the full range of tools and capabilities the Department possesses in its intelligence and law enforcement components.

The threats that confront us know no boundaries. So while our focus is on protecting the security of Americans here at home, now more than ever, there is a critical link between our national security and the creation of sustainable justice sector institutions in emerging, failing, or failed states and in post conflict environments. Our counter-terrorism efforts are aided by fostering international justice sector cooperation, maximizing U.S. influence regarding the development of foreign legal policies and procedures, and establishing direct ties and personal relationships so that our and our counterparts' law enforcement agencies may use them whenever necessary.

Working with our federal, state, and local partners, as well as international counterparts, the Department has, and will continue to, work tirelessly to safeguard America.

Over the past several years, the FBI has transformed its operations to better detect and dismantle terrorist enterprises – part of the FBI's larger emphasis on threat-driven intelligence. As part of this strategic shift, the FBI has overhauled its counterterrorism operations, expanded intelligence capabilities, modernized business practices and technology, and improved coordination with its partners. From the Joint Terrorism Task Forces, where agents work side by side with their state and local counterparts to make sure no terrorism threat goes unaddressed, to growing a professional analytic cadre to identify emerging threats, I am committed to ensuring that the FBI continues to build its capabilities as a national security organization.

The Department's National Security Division ensures that the prosecutorial and the intelligence elements within Main Justice are centrally managed. Since January 20, the National Security Division has marked several key achievements in prosecuting terrorism and terror-related cases, including:

- In the first use of U.S. criminal courts to prosecute an individual for terror offenses against Americans in Iraq, Wesam al-Delaema pleaded guilty to planting roadside bombs targeting Americans in Fallujah, Iraq.

- Four defendants pleaded guilty in connection with their efforts to acquire surface-to-air missiles and other weapons for the Liberation Tigers of Tamil Eelam, a terrorist organization in Sri Lanka.
- An associate of international arms dealer Monzer al-Kassar was found guilty of terror violations in connection with his efforts to sell surface-to-air missiles and other weapons to terrorists in Colombia.
- An Ohio man and al-Qaeda member was sentenced to 20 years in prison for conspiring to bomb targets in Europe and the United States.

Implementing the President's Executive Orders to Close Guantanamo

Consistent with our commitment to national security as the Department's number one priority, the Justice Department is leading the work set out by the President to close Guantanamo and to ensure that policies going forward for detention, interrogation and transfer live up to our nation's values.

On January 22nd, President Obama issued three Executive Orders and a Presidential Memorandum that gave significant responsibility to the Department. The Department is leading an interagency effort to conduct the hard work of implementing these important Presidential initiatives. We have been called upon to:

- Review and effect the appropriate disposition of individuals currently detained at the Guantanamo Bay Naval Base;
- Develop policies for the detention, trial, transfer, release, or other disposition of individuals captured or apprehended in connection with armed conflicts and counterterrorism operations;
- Study and evaluate current interrogation practices and techniques and, if warranted, recommend additional or different guidance; and,
- Review the detention of Ali Saleh Kahlah al-Marri.

The Department is implementing these Orders; and with the indictment and guilty plea of Mr. al-Marri last month, we have brought about a just resolution of that case.

With regard to the President's Executive Orders, I have appointed an Executive Director to lead the Task Force on Review of Guantanamo Bay Detainees. I have also named two officials to lead the Task Force Reviews on Interrogation and Detention Policies.

The Guantanamo Detainee Task Force is responsible for assembling and examining relevant information and making recommendations regarding the proper disposition of each individual currently detained at Guantanamo Bay. The Task Force is considering whether it is possible to transfer or release detained individuals consistent with the national security and foreign policy interests of the United States; evaluating whether the government should seek to prosecute detained individuals for crimes they may have committed; and, if none of these options

is possible, the Task Force will recommend other lawful means for disposition of the detained individuals.

The Special Task Force on Interrogation and Transfer Policies is charged with conducting a review to determine whether the Army Field Manual interrogation guidelines, when employed by departments or agencies outside the military, provide an appropriate means of acquiring the intelligence to protect the nation, and whether different or additional interrogation guidance is necessary. This task force is also responsible for examining the transfer of individuals to other nations to ensure that such practices comply with all domestic and international legal obligations and are sufficient to ensure that such individuals do not face torture or inhumane treatment.

The Special Task Force on Detention Policy is charged with conducting a review of the lawful options available to the federal government for the apprehension, detention, trial, transfer, release or other disposition of individuals captured or apprehended in connection with armed conflicts and counterterrorism operations.

These Presidential Orders require me to coordinate or co-chair each of these interagency activities. These task forces also involve other Departments and agencies, including the Secretaries of Defense, State, Homeland Security, the Director of National Intelligence, the Director of the Central Intelligence Agency, the Chairman of the Joint Chiefs of Staff and other officials.

While implementing these Orders, the Department will take necessary precautions to ensure decisions regarding Guantanamo detainees account for safety concerns of all Americans. Our paramount concern is the safety and security of the American people. The Guantanamo Review Task Force is making individualized determinations about the disposition of each detainee. Those decisions are dictated by what is in the interest of national security, the foreign policy interests of the United States and the interests of justice.

With respect to the review of the detention of Ali Saleh Kahlal al-Marri, I am pleased to report to you that on April 30, al-Marri pleaded guilty to conspiracy to provide material support to the al-Qaeda terrorist network. By entering into that agreement, al-Marri admitted that he worked for and provided material support to al-Qaeda with the intent to further its terrorism objectives and activities here in the United States. The resolution of this matter in the criminal justice system is a result of the dedicated work of career prosecutors and investigators at the Justice Department and in other agencies. As a result, the Department has shown that our criminal justice system can and will hold terrorists accountable for their actions, protecting the American people in a manner consistent with our values and prosecuting alleged terrorists to the full extent of the law.

The Mexican Cartels and Southwest Border Security

The Department has undertaken significant work recently to confront the threat posed by the Mexican cartels and to ensure the security of our southwest border. The Department's strategy for confronting the threat posed by the Mexican cartels is being coordinated by Deputy Attorney General David Ogden. This strategy uses federal prosecutor-led task forces that bring

together federal, state and local law enforcement agencies to identify, disrupt and dismantle the Mexican drug cartels through investigation, prosecution, and extradition of their key leaders and facilitators, and seizure and forfeiture of their assets. The Department is increasing its focus on investigations and prosecutions of the southbound smuggling of guns and cash that fuel the violence and corruption, as well as attacking the cartels in Mexico itself, in partnership with the Mexican Attorney General's Office and the Secretariat of Public Security. As part of that effort, I have convened a working group within the Justice Department that is working closely with their Mexican counterparts to improve coordination among law enforcement on illegal firearms trafficking investigations, including looking at our Integrated Ballistic Identification Systems (IBIS) to make sure that we can share useful leads in criminal investigations.

Confronting the Mexican cartels, in partnership with the Mexican government, is a paramount concern for the United States and the Department. Illegal immigration and border security likewise continue to be paramount concerns. The southwest border in particular is a vulnerable area for illegal immigration, drug trafficking, and the smuggling of illegal firearms. Implementing a comprehensive strategy for confronting the cartels and security at the border involves collaboration and coordination at various levels of the government.

Addressing southwest border security has two basic elements: policing the actual border to interdict and deter the illegal crossing of undocumented persons or contraband goods, and confronting the large and sophisticated criminal organizations operating simultaneously on both sides of the border. To that end, the Justice Department is targeting the Mexican cartels as it did La Cosa Nostra or any other large organized crime organization. These efforts – which rely upon the combined efforts of the Justice Department law enforcement components (DEA, FBI, ATF, U.S. Marshals Service (USMS), the U.S. Attorneys, the Criminal Division and the Organized Crime Drug Enforcement Task Force (OCDETF)) together with the Department of Homeland Security and other federal agencies – have already achieved important results.

In February, I announced the arrest of more than 750 individuals on narcotics-related charges and the seizure of more than 23 tons of narcotics under Operation Xcellerator, a multi-agency, multi-national effort that targeted the Mexican drug trafficking organization known as the Sinaloa Cartel. The Sinaloa Cartel is also believed to be responsible for laundering millions of dollars in criminal proceeds from illegal drug trafficking activities. This Cartel is responsible for bringing tons of cocaine into the United States through an extensive network of distribution cells in the United States and Canada. Through Operation Xcellerator, federal law enforcement agencies—along with law enforcement officials from the governments of Mexico and Canada and state and local authorities in the United States—delivered a significant blow to the Sinaloa Cartel. In addition to the arrests, authorities seized over \$59 million in U.S. Currency, more than 12,000 kilograms of cocaine, more than 1,200 pounds of methamphetamine, approximately 1.3 million Ecstasy pills, and other illegal drugs. Also significant was the seizure of 169 weapons, 3 aircraft, and 3 maritime vessels.

But there is much more to do as we combat the threat presented by these criminal cartels. In March, the Department announced increased efforts to be used in the fight against Mexican Drug Cartels. The Administration will invest \$700 million this year to enhance Mexican law enforcement and judicial capacity, and the Department and the Department of Homeland

Security (DHS) are working closely in support of the Department of State on efforts against the cartels in Mexico through the Merida Initiative. The Department, through the efforts of the FBI, DEA, ATF, USMS, OCADETF, and the Criminal Division, will also work to investigate and prosecute cartel members for their illegal activities in the United States and coordinate with law enforcement colleagues to disrupt the illegal flow of weapons and bulk cash to Mexico.

Over the last eight months, the USMS has deployed an additional 94 Deputy U.S. Marshals to district offices and will be sending four additional deputies to assist the Mexico City Field Office in order to step-up efforts along the Southwest Border. In addition, within the last three months, four new Criminal Investigators have been placed in the asset forfeiture field units along the Southwest Border. These new positions will support U.S. Attorneys' Offices and investigative agencies in the investigation of cartels and other large-scale investigations.

The Department's efforts to target the Mexican cartels will allow it to commit 100 ATF personnel to the U.S. Southwest border to supplement our ongoing Project Gunrunner. DEA will add 16 new positions on the border, as well as four newly reconstituted Mobile Enforcement Teams, and the FBI is creating a new intelligence group that will focus on gang/drug criminal enterprises, public corruption, kidnapping, extortion and other investigative matters related to the Southwest Border. DHS is making similar commitments regarding southwest border resources. In addition, I have had a series of meetings with Secretary Napolitano to discuss increased coordination on various matters between the Department of Justice and DHS.

Last month, I, along with other U.S. government officials, attended the Mexico/United States Arms Trafficking Conference in Cuernavaca, Mexico. This was my first foreign trip as Attorney General. My attendance at this conference reflects my commitment to continuing this fight against the drug cartels. The United States shares the responsibility to find solutions to this problem and we will join our Mexican counterparts in every step of this fight.

Federal and State Partnerships Targeting Financial and Mortgage Fraud

As it has reinvigorated its traditional law enforcement mission, the Department has placed a distinct focus on financial crimes.

As many Americans face a devastating economy and an unstable housing market, the Administration announced a new effort coordinated across federal and state governments and the private sector to target mortgage loan modification fraud and foreclosure rescue scams. These fraudulent activities threaten American homeowners and can prevent them from getting the help they need during these challenging times. The new effort aligns responses from federal law enforcement agencies, state investigators and prosecutors, civil enforcement authorities, and the private sector to protect homeowners seeking assistance under the Administration's Making Home Affordable Program from criminals with predatory schemes.

The Department, in partnership with the U.S. Department of the Treasury, the Department of Housing and Urban Development (HUD), the Federal Trade Commission (FTC) and the Attorney General of Illinois, will coordinate information and resources across agencies to maximize targeting and efficiency in fraud investigations, alert financial institutions to emerging

schemes, and step up enforcement actions. As part of this multi-agency effort, the Department has outlined ways to crack down on mortgage fraud schemes. The FBI is investigating more than 2,300 mortgage fraud cases, nearly triple in the last three years. The Bureau has more than doubled the number of agents investigating mortgage scams, created a National Mortgage Fraud Team at Headquarters, and is working hand-in-hand with other partnering agencies.

I appreciate the Committee's work with us on S. 386, the "Fraud Enforcement and Recovery Act", to enhance the Department's criminal and civil tools and resources to combat mortgage fraud, securities and commodities fraud, money laundering, and to protect taxpayer money that has been expended on recent economic stimulus and rescue packages. The legislation would reverse unfortunate court decisions that have hindered the ability to prosecute money laundering by allowing the Department to obtain all the proceeds of unlawful activity. With the tools that the bill provides, the Department of Justice and others would be better equipped to address the challenges that face this Nation in difficult economic times and to do their part to help the Nation respond to this challenge. Further, the bill would amend the False Claims Act in several important respects to ensure that that legislation remains a potent and useful weapon against the misuse of taxpayer funds.

In addition to focusing on fraudulent scams, I am committed to ensuring that homeowners who may be having difficulty making their mortgage payments do not experience discrimination and can benefit in equal measure from legitimate loan modification programs and other federal programs to provide mortgage assistance and stabilize home prices. Lending discrimination prevents its victims from enjoying the benefits of access to credit, including reasonable mortgage payments, so they can stay in their homes and provide much needed stability for their neighborhoods.

Discrimination in lending on the basis of race, national origin, or other prohibited factors is destructive, morally repugnant, and against the law. We will use the full range of our enforcement authority to investigate and prosecute this type of unacceptable lending discrimination.

The Department has been investigating and prosecuting financial crimes aggressively and has had tremendous success in identifying, investigating, and prosecuting massive financial fraud schemes, including securities and commodities market manipulation and Ponzi schemes. The Department has sought to ensure that significant sentences are meted out for the perpetrators. For example:

- On March 12, Bernard L. Madoff pleaded guilty to 11 felony counts related to a massive Ponzi scheme. The Justice Department alleged that Madoff perpetrated a scheme to defraud the clients by soliciting billions of dollars of funds under false pretenses, failing to invest investors' funds as promised, and misappropriating and converting investors' funds to Madoff's own benefit and the benefit of others without the knowledge or authorization of the investors. Madoff faces a statutory maximum sentence of 150 years' incarceration. He is also subject to mandatory restitution and faces fines up to twice the gross gain or loss derived from

the offenses. The Criminal Information also includes forfeiture allegations which would require Madoff to forfeit the proceeds of the charged crimes, as well as all property involved in the money laundering offenses and all property traceable to such property.

- On March 27, 2009, the Department secured 30-year and 25-year sentences, respectively, for two executives of National Century Financial Enterprises (NCFE) following their convictions on conspiracy, fraud and money-laundering charges related to a scheme to deceive investors about the financial health of the company, which may have cost investors as much as \$2 billion.
- The Department secured a four-year sentence for Christian M. Milton, a former vice president of American International Group (AIG), for his role in a scheme to manipulate the company's financial statements.

Reform

The Department is committed to an open, transparent, and accountable government. These values are central to our revitalization of the basic traditions of the Department, and are key features of our reform efforts. We issued new comprehensive Freedom of Information Act (FOIA) Guidelines that direct all executive branch departments and agencies to apply a presumption of openness when administering the FOIA. The new Guidelines, announced in a memo to heads of executive departments, build on principles of openness and rescind the guidelines issued by the previous administration.

In applying a presumption of openness and disclosure, the new Guidelines stress that agencies should not withhold records simply because they may do so legally; rather, agencies should consider whether any real harm may result from their disclosure. Furthermore, the Guidelines established a new standard for when the Department of Justice will defend an agency that denies a FOIA request. Under the new standard, the Department will defend the agency “only if (1) the agency reasonably foresees that disclosure would harm an interest protected by one of the statutory exemptions, or (2) disclosure is prohibited by law.” The new Guidelines also emphasize that open government is everyone's responsibility. Agencies must work cooperatively with FOIA requesters and should reply in a timely manner.

In addition to issuing these new FOIA Guidelines, the Department released several previously undisclosed Office of Legal Counsel (OLC) memoranda and opinions. On April 16, for example, the Department released to the public four previously undisclosed OLC opinions from 2002 and 2005 that addressed the use of various interrogation techniques. When releasing these opinions, I explained that the “President has halted the use of the interrogation techniques described in these opinions, and this administration has made clear from day one that it will not condone torture. We are disclosing these memos consistent with our commitment to the rule of law.” After reviewing these opinions, moreover, the Office of Legal Counsel withdrew them: they no longer represent the views of the Department. The release of these memos and opinions

followed the release of seven other previously undisclosed opinions and two previously undisclosed OLC memoranda.

Civil Rights

The Department is fully committed to defending the civil rights of every American. In the last eight years, vital federal laws designed to protect rights in the workplace, the housing market and the voting booth have languished. Moreover, improper political hiring undermined this important mission. This is now changing, and I have made this a priority as Attorney General. One important element of strengthening civil rights is to ensure fairness in the administration of the criminal laws.

The Justice Department firmly believes that our criminal and sentencing laws must be tough, predictable, fair, and free from unwarranted racial and ethnic disparities. Public trust and confidence are essential elements of an effective criminal justice system – our laws and their enforcement must not only be fair, but they must also be perceived as fair. The perception of unfairness undermines governmental authority in the criminal justice process. This Administration is committed to reviewing criminal justice issues to ensure that our law enforcement officers and prosecutors have the tools they need to combat crime and ensure public safety, while simultaneously working to root out any unwarranted and unintended disparities in the criminal justice process that may exist. The Justice Department has recently begun a comprehensive review of federal sentencing policy. I have asked the Deputy Attorney General to convene and chair a Department-wide Sentencing and Corrections Policy Working Group that will examine, among other issues, federal cocaine sentencing policy. Based on that review, we will determine what sentencing reforms are appropriate, including making recommendations to Congress on changes to crack and powder cocaine sentencing policy.

Another civil rights issue that is a clear priority for the Department is enactment of effective hate crimes legislation. Hate crimes victimize not only individuals, but entire communities. Such bias-motivated violence simply cannot be tolerated, and we need the tools to address the worst cases at the federal level. Thank you, Mr. Chairman, for your leadership in this area.

Recovery Act

The American Recovery and Reinvestment Act of 2009 included \$4 billion in Department of Justice grant funding to enhance state, local, and tribal law enforcement efforts, including the hiring of new police officers, to combat violence against women, and to fight internet crimes against children. This funding will not only help jumpstart our economy and create or save millions of jobs, but it will also help reinvigorate the Department of Justice's traditional law enforcement mission, a key element of which is its partnerships with state, local, and tribal law enforcement agencies. I am personally committed to rebuilding the Department's traditional partnership with our law enforcement partners through both operational synergies and Federal assistance funding. This funding is vital to keeping our communities strong. As governors, mayors, and local law enforcement professionals struggle with the current economic

crisis, we cannot afford to decrease our commitment to fighting crime and keeping communities safe.

The Recovery Act provides \$4 billion in grant funding that will be distributed by the Justice Department's three major grant-making offices: The Office of Justice Programs (OJP), The Office on Violence Against Women (OVW), and the Community Oriented Policing Services (COPS). The Recovery Act's grant funding is primarily apportioned among these offices as follows:

- OJP is overseeing the distribution of nearly \$2.76 billion worth of grant money through the Bureau of Justice Assistance (BJA), the Office of Victims of Crimes (OVC) and the Office of Juvenile Justice and Delinquency Prevention (OJJDP). Nearly \$2 billion dollars of this funding is available through the Edward Byrne Memorial Justice Assistance Grant (JAG) Program, which allows state, local, and tribal governments to support a broad range of activities to prevent and control crime and improve the criminal justice system.
- OVW is responsible for granting \$225 million to fund programs through its Services Training Officers Prosecutors (STOP) Formula Grant Program, its Transitional Housing Assistance, grants to Tribal governments, and to State and Tribal Sexual Assault and Domestic Violence Coalitions.
- The COPS office, through its COPS Hiring Recovery Program (CHRP) will be distributing \$1 billion for large and small police departments and tribal law enforcement agencies to hire and rehire officers. The COPS CHRP program is estimated to create 5,500 positions in law enforcement around the country.

The program announcements soliciting applications under these Recovery Act grant programs have all been posted on the Department's Recovery Act website and the Grants.gov Fund Grant Opportunities webpage. Some deadlines have passed, and all applications for those programs are now being reviewed. To date, DOJ has awarded more than \$800 million in grants. State awards have been made under the Victims of Crime Act (VOCA) Victim Assistance Formula Grant Program and the VOCA State Crime Victim Compensation Program, as well as 20 grants under the State Byrne/JAG. Formula grants to states, localities, and tribal governments under the Byrne/JAG Program are being processed and will be awarded on a rolling basis. Competitive grant applications for other programs, including COPS, are being considered by staff and dozens of panels of peer reviewers. Nearly all of the grant funds should be awarded by the end of July 2009, and I understand that the COPS awards will be disbursed in September, 2009.

The Department also has worked to ensure that grants are being awarded within a framework of accountability and transparency and that the risk of waste, fraud, error, or abuse is mitigated. Representatives from the Department's granting components, including OJP, OVW,

and COPS, have attended specific grant fraud prevention and detection training. In addition, the granting components have created new Recovery Act webpages that will allow the public to readily access Recovery Act information. These Recovery Act webpages include detailed information on each of the grant programs and links to applications, FAQs, and other relevant materials. In this way, the Department hopes to ease the application process for Recovery Act grants, so that this important funding can be distributed promptly and efficiently.

Conclusion

Chairman Conyers, Ranking Member Smith, and Members of the Committee, I want to thank you for this opportunity to address my priorities for the Department. I am pleased to answer any questions you might have.