

IDENT/IAFIS: The Batres Case and the Status of the Integration Project



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I. INTRODUCTION

In January 2002, Border Patrol agents in the Immigration and Naturalization Service (INS) apprehended Mexican citizen Victor Manuel Batres (Batres) twice within two days as he crossed the border from Mexico into the United States. Only during his second apprehension did the agents learn, through a check of INS databases, that a warrant had been issued for Batres' arrest in Oregon for possession of dangerous drugs. When contacted by the Border Patrol, the Oregon authorities declined to seek Batres' extradition to Oregon on the warrant.

As a result, the Border Patrol returned Batres to Mexico. Yet, during both apprehensions Border Patrol agents never queried Federal Bureau of Investigation (FBI) databases for criminal information on Batres. Had they done so, the databases would have showed that Batres had a significant criminal history in the United States, including several aggravated felony convictions and at least one prior deportation from the United States. If the agents had learned of this criminal history and prior deportation, under Border Patrol policies they should have detained Batres for prosecution for the felony offense of Reentry After Deportation. This felony offense is easily proven and generally carries a substantial prison term for individuals such as Batres with prior aggravated felonies and deportations. Consequently, Batres likely would have been incarcerated rather than being voluntarily returned to Mexico.

Instead, after his voluntary return to Mexico, Batres illegally reentered the United States and traveled to Oregon September 2002 where he brutally raped two Catholic nuns, resulting in the death of one of the nuns. Batres was arrested, pled guilty to murder and rape, and was sentenced to life in prison without the possibility of parole.

The Batres case was reminiscent of a 1999 case in which the Border Patrol voluntarily returned Rafael Resendez-Ramirez to Mexico, unaware that the FBI and local authorities had outstanding arrest warrants for him for murder and that he had a significant criminal history. Shortly after Resendez's voluntary return to Mexico, he illegally reentered the United States and committed four more murders before he surrendered to law enforcement

authorities.¹ In the Resendez case, we found that INS employees had not been trained adequately on IDENT, the INS's automated fingerprint system, and had failed to put in IDENT a lookout for Resendez when the FBI and local authorities informed them about his outstanding warrant. Because IDENT and IAFIS, the FBI's separate automated fingerprint identification system, were not linked, the Border Patrol officers who detained Resendez did not know he was wanted for murder and released him, which allowed Resendez to commit several more murders.²

The INS's database, called IDENT, began operating in 1994.³ The FBI's database, known as IAFIS, began operating in 1999. In several reports over the past few years, however, the Office of the Inspector General (OIG) has reported extensively on the efforts to integrate these databases and found that integration has been moving slowly and still may take years to fully accomplish.⁴

The Batres and Resendez cases both demonstrated the urgent need to integrate the separate FBI and INS automated fingerprint identification databases. In these two cases, had the immigration agents been made aware of the information in the FBI databases, both Batres and Resendez would have been detained and likely incarcerated instead of being voluntarily returned to

¹ The facts of the Resendez case are detailed in a March 2000 OIG report entitled "The Rafael Resendez-Ramirez Case: A Review of the INS's Actions and the Operation of Its IDENT Automated Fingerprint Identification System."

² The full name of IAFIS is the "Integrated Automated Fingerprint Identification System." IAFIS is an automated ten-fingerprint matching system run by the FBI that contains in its Criminal Master File over 43 million ten-print fingerprint records. IAFIS records can be electronically compared against submitted fingerprints.

³ The full name of IDENT is the "Automated Biometrics Identification System." To enroll an alien in IDENT, an immigration employee places the alien's right and left index fingers on the IDENT fingerprint scanner, takes the alien's photograph with the IDENT camera, and enters certain biographical information into the computer. IDENT then electronically compares the alien's fingerprints to fingerprints in two IDENT databases: 1) a "lookout" database that contains fingerprints and photographs of approximately 1 million aliens who have been previously deported or who have a significant criminal history; and 2) a "recidivist" database that contains fingerprints and photographs of approximately 6 million illegal aliens who have been apprehended by the INS and enrolled in IDENT since it was deployed.

⁴ These OIG reports include a March 1998 report entitled "Review of the Immigration and Naturalization Service's Automated Biometric Identification System"; a March 2000 report entitled "The Rafael Resendez-Ramirez Case: A Review of the INS's Actions and the Operation of Its IDENT Automated Fingerprint Identification System"; a follow-up inspection report issued in December 2001 entitled "Status of IDENT/IAFIS Integration"; and another follow-up inspection report issued in June 2003 entitled "Status of IDENT/IAFIS Integration."

Mexico, where they subsequently were able to return to the United States and commit additional crimes.

The OIG began its investigation of the INS's handling of the Batres case when the INS was still part of the Department of Justice (DOJ). This report summarizes the results of the OIG's investigation as well as the status of the DOJ's and the Department of Homeland Security's (DHS) efforts to integrate IDENT and IAFIS. As the Batres case tragically demonstrated again, an urgent need continues to exist to integrate the IDENT and IAFIS databases as expeditiously as possible.

Yet, the DOJ Justice Management Division's (JMD) September 2003 response to the OIG's latest recommendations for integration raises continued concerns about the pace of integration. The response indicates that the March 1, 2003, transfer of the INS from the DOJ to DHS, the reassignment of key INS employees who were involved in the integration effort, and continued budgetary hurdles could result in additional delay in the integration efforts.

In this report, we summarize the history of IDENT and IAFIS, discuss how each system operates, describe early efforts to merge the systems, and examine the reasons for the delay of those efforts. The report then summarizes the Resendez case in 1999 and how that case generated a greater impetus to merge the two systems. The report also summarizes several OIG reviews that emphasized the need for integration of the two databases.

Next, the report details the handling of the Batres case by immigration authorities. We discuss the history of Batres' entries into the United States in January 2002, his criminal and deportation history, and his outstanding arrest warrant in Oregon for possession of dangerous drugs which resulted in a lookout for him being placed in IDENT. We then examine why the Border Patrol failed to discover Batres' criminal or deportation history during either of his apprehensions in January 2002. Finally, the report describes the current status of the efforts to integrate IDENT and IAFIS.

II. BACKGROUND ON FBI AND INS AUTOMATED FINGERPRINT IDENTIFICATION DATABASES

United States immigration authorities have long recognized the need for an automated fingerprint identification system to quickly determine the immigration and criminal histories of aliens apprehended at or near the border. More than one million aliens are apprehended each year attempting to enter the United States illegally. Many of these aliens are apprehended in large groups, and the Border Patrol lacks the resources to detain all of them for extended periods of time. Consequently, the vast majority are voluntarily returned to their country of origin, mostly to Mexico, without any criminal charges being filed.

At the same time, immigration authorities need to be able to quickly determine which of these aliens should be detained for prosecution based on multiple illegal entries, reentering the U.S. after a prior deportation, alien smuggling, a current arrest warrant, or an aggravated criminal record. Historically, in order to identify which individuals to detain for possible prosecution or deportation, the INS had to rely on the names provided by the apprehended aliens and check them against its databases or other paper records. This method was ineffective because aliens often use false or different names. Also, many aliens have similar names, and spelling errors result in problems identifying individuals accurately.

Therefore, in 1989 Congress provided the initial funding for the INS to develop an automated fingerprint identification system that eventually became known as IDENT. While one of the main purposes of IDENT was to identify and prosecute repeat immigration offenders, another significant purpose was to identify criminal aliens who should be detained. The 1989 conference report described Congress's rationale for funding the project:

Illegal immigration continues at alarming rates, and criminal alien statistics provided by the INS indicate that a growing proportion of aliens are drug smugglers, known criminals, and suspected terrorists. Emerging technology in the area of automated fingerprint identification systems has the potential for providing empirical data to clearly define the problem of recidivism as well as immediately identify those criminal aliens who should remain in the custody of the INS (emphasis added).⁵

At about the same time, the FBI began to overhaul its paper-based fingerprint card system, which it had maintained since the 1920s, to create a new automated fingerprint identification system that would allow electronic searches for fingerprint matches. Since the 1920s the FBI's Identification Division has maintained a central repository of ten-prints of criminal offenders' fingerprints. In 1967, the FBI created the National Crime Information Center (NCIC) to provide a national database of information on wanted individuals and stolen articles, vehicles, guns, and license plates. Fingerprint information is submitted by participating federal, state, and local law enforcement agencies. The Interstate Identification Index (III), which contains criminal history information on arrests and dispositions, was added to NCIC in 1983.

⁵ See H.R. Conf. Rep. No. 100-979 at 30, accompanying H.R. 4728, 100th CONG., 2d SESS. (1988).

In February 1990, the NCIC Advisory Policy Board recommended that the FBI update its paper-based fingerprint identification system and create a new automated system, which eventually became known as the FBI's Integrated Automatic Fingerprint Identification System (IAFIS). During 1990 and 1991, the INS and FBI met to discuss possible coordination of their planned automated fingerprint identification systems. Memoranda summarizing some of these meetings stated that the INS and FBI were coordinating the development of an integrated automated fingerprint identification system to determine if the integrated system could satisfy the INS's needs. The memoranda also included preliminary diagrams and narratives of how the FBI's IAFIS and the INS's proposed system could be linked in an overall automated fingerprint identification system network. There also was discussion of how to ensure common high-quality fingerprint image and electronic transmission standards for fingerprints and identification data so that they could be transmitted among different fingerprint identification systems.

From the start, the INS and the FBI recognized that integration of their separate automated fingerprint identification systems would benefit both agencies. An integrated system would reduce the likelihood that INS would release an alien who had a serious criminal record and prior deportations. It also would enable federal, state, and local law enforcement authorities to search fingerprints from a crime scene against an immigration database of illegal border crossers, especially if ten prints are taken.

III. IMPLEMENTATION OF SEPARATE FBI AND INS DATABASES

During the early planning meetings, the INS and FBI discussed whether the FBI would be willing to store fingerprint records of criminal and non-criminal aliens or whether the INS should establish a separate system if the FBI system could not support all of the INS's requirements. In the discussions, both the INS and the FBI believed that the INS would not need to check all apprehended aliens against the FBI's databases. Rather, they believed that the INS would check only those aliens the INS identified as potential criminals. They assumed that the FBI's IAFIS could handle only a small volume of INS requests within a quick response time. The INS emphasized that a fast response time was critical because the INS could not detain large numbers of apprehended aliens for long periods of time while waiting for responses to criminal checks.

An early difference of opinion between the INS and the FBI was whether the INS should take two fingerprints or ten fingerprints from the aliens it apprehended. The FBI, along with state and local law enforcement agencies, believed that the INS should take ten fingerprints so that they could be matched against ten-fingerprint records in the law enforcement databases or any latent fingerprints obtained at crime scenes. Because fingerprints at crime

scenes may be from any finger, the long-established law enforcement standard requires that officers take prints from all ten fingers. But the INS believed that taking ten fingerprints of all apprehended aliens would take too long and adversely affect its ability to carry out its mission, because large numbers of aliens would have to be detained for increased lengths of time while waiting for fingerprint checks.

Between 1991 and 1993, the INS operated a pilot Automated Fingerprint Identification System (AFIS) project in the San Diego Border Patrol Sector, and in 1994 Congress allocated funding for the INS's automated system. During an April 1994 meeting regarding the deployment of IDENT, the FBI told the INS that without additional development time and money, which the FBI did not have, the FBI's planned IAFIS system could not meet the INS's need to handle a high volume of fingerprints (for more than one million aliens apprehended annually), and the INS needed a quick response time (two minutes or less) for each encounter. Further, the FBI said that the alternative of searching and matching the two fingerprints captured by IDENT against the FBI's planned IAFIS ten-fingerprint database would require much more computer power than the FBI had in order to provide the response time that the INS needed.

Therefore, in 1994 the INS decided to move forward with implementation of its separate IDENT system, independent from the FBI's IAFIS system. In order to meet its own needs, the FBI decided that its automated fingerprint system, IAFIS, would contain all ten fingerprints and provide a response in two hours for high priority electronic requests and a longer time for lower priority and non-electronic requests.

IDENT was first deployed in 1994. As noted above, IDENT matches the fingerprints of the detained individual against the corresponding fingerprints of all individuals in two central IDENT databases: the recidivist database (now referred to as the apprehension database) and the lookout database. The apprehension database documents the apprehensions of illegal border crossers, reflecting the time, date, and circumstances of each recorded apprehension. As of January 2004, approximately 6 million different aliens were enrolled in the IDENT apprehension database.

A primary purpose of the IDENT database is to advise the processing agent as to the number of times that an alien has been apprehended for illegal entry. Because of resource limitations, including detention space and prosecutorial resources, Border Patrol sectors or stations, in conjunction with the local United States Attorney's Office (USAO), set a "threshold" number of apprehensions for illegal entry that would be required before detained aliens are prosecuted for Entry Without Inspection (8 USC § 1325). Generally, unless that threshold is reached, or there are aggravating factors associated with the aliens' apprehensions (such as persistent false statements, combativeness, indications that the alien has been previously incarcerated, or indications that

the alien is a smuggler), Border Patrol agents voluntarily return aliens to their country without further inquiries of other immigration or criminal databases.

The second IDENT database, called the lookout database, contains information on deported and criminal aliens. Alien ten-print fingerprint records are entered into the lookout database at a central location in Washington, D.C., from ten-print cards sent by INS offices from around the country. Ten-print cards are generally prepared whenever immigration personnel process aliens for deportation or prosecution. Index fingerprints, photographs, and basic text information are scanned and retyped from the fingerprint cards to create individual lookout records in the IDENT database.

The INS's IDENT system was designed to automatically alert personnel at the Western Identification Network Automated Fingerprint Identification Center (WIN/AFIS) whenever IDENT returned a lookout hit indicating an outstanding warrant for an apprehended alien.⁶ INS procedures required WIN/AFIS personnel to contact promptly by telephone the apprehending Border Patrol personnel to confirm the lookout match and to inform the Border Patrol agents of the nature of the warrant and the contact numbers for the appropriate law enforcement officials regarding the warrant. This contact generally occurs within one hour. A Border Patrol supervisor then should make the appropriate contact with the law enforcement officials who issued the warrant to determine whether they want to transport the alien to their jurisdiction for prosecution. The burden and expense for such transportation falls on the requesting agency.

Typically, if the issuing authorities do not want the alien transported, and there is not any other reason to detain the alien, the Border Patrol voluntarily returns the alien across the border. However, some circumstances warrant further detention and investigation. For example, if a processing agent learns – usually from the alien himself, or through prior IDENT entries from previous apprehensions – that the alien has a prior criminal history, the Border Patrol may seek the prosecution of the alien for the offense of Entry Without

⁶ Formed in 1989, WIN/AFIS contains information from state and federal criminal justice agencies in seven Western states. Its database contains about 2.5 million arrest records from those member states and from the INS. Its fingerprint search capabilities are provided by a large-scale AFIS installation in Sacramento, California. An additional unit called the INS WIN/AFIS Service Center provided technical support to INS facilities performing criminal searches on WIN and handled WIN registrations. During the time period under review in this report, the INS WIN/AFIS Service Center operated 7 days per week, 24 hours per day, and was staffed by contract employees who were qualified fingerprint examiners and who could make fingerprint matches.

Inspection.⁷ Also, if the agent learns that the alien has a prior deportation, the law requires reinstatement of the prior order of deportation, and the alien is not eligible for voluntary return to Mexico. See 8 USC § 1231(a)(5). Upon learning of the prior deportation, the processing agent should confirm the alien's prior criminal history. Moreover, an alien likely will be prosecuted for the felony charge of Reentry After Deportation if the alien has a record of a prior felony or aggravated felony. A conviction for Reentry After Deportation carries a potential sentence of up to 10 years' imprisonment for an alien with a prior criminal record of a felony or three misdemeanors, or a sentence of up to 20 years' imprisonment for an alien with a prior "aggravated felony" conviction pursuant to § 1326(b).

However, Border Patrol agents in the El Paso Sector's Deming and Santa Teresa Stations did not have direct access to the FBI's records or databases to determine the alien's criminal history, and the FBI's criminal records are not linked to IDENT.⁸ Rather, in order to conduct criminal record checks on apprehended aliens, Border Patrol agents in these stations had to telephone the Border Patrol sector's communications office, commonly known as the "radio room," which has direct links to various criminal and immigration databases. These databases include the FBI's NCIC, which contains criminal history information and outstanding warrants submitted by participating federal, state, and local law enforcement agencies on millions of individuals;⁹ immigration databases containing records of prior immigration contacts with the alien, such as deportations; and a United States Customs Service (Customs) database, the Treasury Enforcement Communications System/Interagency Border Inspection System (TECS/IBIS), that is typically used by inspectors at ports of entry to check incoming travelers.

The Border Patrol lacks the manpower to conduct separate criminal and immigration history checks for every apprehended alien. Accordingly, these additional database checks are requested for only the small fraction of the apprehended aliens whose behavior, appearances, outstanding warrants, or

⁷ While the Border Patrol technically could bring this charge for every illegal entry, it is not feasible to bring charges on each apprehended alien because of the effect on prosecutorial, judicial, and detention resources.

⁸ The Deming and Santa Teresa stations did not have IDENT/IAFIS workstations at the time of Batres' apprehensions in January 2002. IDENT/IAFIS workstations were deployed to Deming in August 2003, although not yet to Santa Teresa.

⁹ NCIC contains information on active wants and warrants. Criminal history information is maintained in the Interstate Identification Index (III). Fingerprint information is maintained in IAFIS. Information in III can be accessed by name or FBI number through an NCIC terminal. The same III information also can be accessed via a fingerprint submission to IAFIS.

other information in IDENT raises concerns with the Border Patrol agents processing the aliens.

Thus, while the IDENT database is a useful tool for identifying recidivist aliens who continue to enter the United States illegally, its lack of integration with the FBI's IAFIS database results in significant problems. First, IDENT contains only a fraction of the Criminal Master File fingerprint records in the FBI IAFIS database – limited to the “wants and warrants” that the FBI and United States Marshals Service (USMS) have entered into IDENT since August 2001 and the criminal history fingerprint records of aliens from certain countries believed to pose a security risk to the United States. Second, because IDENT is not integrated with IAFIS criminal history files, it does not apprise Border Patrol agents of aliens with serious criminal records which, in combination with prior deportations, would warrant prosecution of the alien for Reentry After Deportation or on other grounds. Further, Border Patrol agents may fail to take the extra steps needed to query the alien's criminal history information, particularly when the alien has a limited number of apprehensions. Fourth, even when criminal history checks are initiated by Border Patrol agents, the results may not be communicated to the processing agent (either by WIN/AFIS, the radio room, or assisting agents) in an accurate or timely manner. Finally, federal, state, and local law enforcement agencies have a limited ability to access IDENT fingerprint records through their systems in order to make use of the information in their investigations.

The selected input of FBI criminal records into the IDENT database over the past few years has illustrated the large number of criminal aliens who are regularly apprehended by the Border Patrol. The USMS “wants and warrants” were added to IDENT in August 2001. From December 2001 to April 2003, 152,000 FBI “wants and warrants” fingerprint records were entered into IDENT. From January 2002 to April 2003, immigration authorities apprehended 4,820 aliens who were wanted for criminal offenses based on these records. Fifty of these aliens were wanted in connection with murder. During the same period, an additional 179,500 IAFIS criminal history fingerprint records of aliens from countries believed to be a threat to the United States were entered into IDENT and immigration personnel have matched these criminal records to 3,440 apprehended aliens.

Beginning in the mid-1990s, several significant events illustrated the problems resulting from separate INS and FBI databases. First, controversy arose regarding the way fingerprint checks were conducted for aliens applying for citizenship under the INS's “Citizenship U.S.A.” (CUSA) program. This program was designed to reduce substantially the backlog of citizenship applications by expediting the processing of citizenship applications, including the processing of fingerprints. Under CUSA, the INS sent ten-fingerprint cards of citizenship applicants to the FBI to be checked for evidence of criminal histories in the FBI's files. If the INS did not receive a response from the FBI

after 60 days, the INS assumed that the alien had no criminal record. This practice led to many instances in which the INS did not receive timely notice from the FBI that aliens had a disqualifying criminal record and nevertheless granted the alien citizenship.

As a result, the Attorney General established a Fingerprint Coordination Working Group, which included representatives from the INS and the FBI, to address problems in fingerprint procedures. As part of this effort, the DOJ Justice Management Division (JMD) reviewed issues of integration of the INS and FBI automated fingerprint identification systems and attempted to coordinate the integration of their separate systems.

Subsequently, in March 1998 the OIG issued a report evaluating the INS's implementation of IDENT.¹⁰ The OIG found that the INS was enrolling less than two-thirds of the aliens apprehended along the U.S.-Mexico border into the IDENT system. In addition, the INS was entering into the IDENT lookout database the fingerprints of only 41 percent of the aliens deported and excluded in Fiscal Year (FY) 1996. Of these aliens, only 24 percent had accompanying photographs entered into IDENT, even though the INS relied on photographs as an important method of confirming identification. The OIG found virtually no controls in place to ensure the quality of data entered into the IDENT lookout database, which resulted in duplicate records and invalid data. The OIG report also raised concerns that the INS had not provided sufficient training to its employees on the use of IDENT, and that these failures hampered the INS's ability to make consistent and effective use of IDENT.

Two months later, in May 1998, in response to a letter from Congressman Alan Mollohan urging that consideration be given to integrating the IDENT and IAFIS systems, JMD issued a report recommending that the INS retain IDENT to meet INS internal requirements, but that the INS adopt ten-fingerprinting as a long-term policy goal. The JMD report concluded that properly funded, this option would permit the Border Patrol to maintain processing times while providing other law enforcement agencies with a fingerprint database that could be searched. The report also recommended a 12-month pilot study, to begin in the fall of 1999, of a ten-fingerprint system in selected Border Patrol stations.

IV. THE RESENDEZ CASE

In 1999, the consequences of INS's inability to identify criminal aliens without integrated IAFIS and IDENT databases were illustrated tragically by the case of Rafael Resendez-Ramirez (Resendez). In 1998, Resendez, a Mexican

¹⁰ See "Review of the Immigration and Naturalization Service's Automated Biometric Identification System," March 1998.

citizen with an extensive criminal record, was apprehended by the Border Patrol in Texas and New Mexico seven times while crossing the border illegally. Each time he was voluntarily returned to Mexico.

Unbeknownst to the agents who apprehended and voluntarily returned Resendez in accord with normal Border Patrol policy, Resendez had an extensive criminal history in the United States. He had been convicted previously on at least eight separate occasions for crimes such as: (1) destroying private property and leaving the scene of a crime; (2) burglary, aggravated battery, and grand theft auto; (3) making a false representation of U.S. citizenship; (4) making false statements to federal officials, falsely representing to be a U.S. citizen, being a convicted felon in possession of a firearm, and Reentry After Deportation; (5) burglary; (6) evading arrest; (7) trespassing, carrying a loaded firearm, and receiving stolen property; and (8) a separate conviction for trespass. Resendez also had been previously deported to Mexico at least three times and voluntarily returned to Mexico by the INS at least four times.

During each of the seven apprehensions in 1998, the Border Patrol agents who processed Resendez through IDENT did not learn of his criminal record or past deportations. Because IDENT was not integrated with IAFIS, and because IDENT only included information about apprehended aliens on a day-forward basis, IDENT did not contain any information about Resendez's past convictions and deportations. Also, because Resendez had been apprehended less than the threshold number of times for prosecution for Entry Without Inspection, the Border Patrol agents simply enrolled Resendez in IDENT on each of these encounters and voluntarily returned him to Mexico. They were not required to check, and did not check, FBI databases for criminal history information and outstanding warrants on him.

In early 1999, evidence linked Resendez to several brutal murders in Texas and Kentucky, and warrants were issued for his arrest. At least four times, other federal and local law enforcement authorities contacted INS personnel to discuss the warrants and the evidence against Resendez, and to ensure that the INS placed a lookout for Resendez in the event that he was apprehended again while illegally entering the country. Yet, none of the INS investigators who were contacted by the law enforcement officers thought to have a lookout placed for Resendez in IDENT based on the warrants, either because the INS investigators were unfamiliar with IDENT or because they thought it was the job of others to enter the warrants. Two INS investigators even referred the law enforcement officers to Customs Service employees to place a lookout for Resendez in the Customs Service's TECS database, which is typically used by inspectors to check incoming travelers at ports of entry. While TECS was useful for aliens attempting to enter the United States at a port of entry, it was not useful for lookouts on aliens like Resendez who had a pattern of crossing the border illegally in remote areas between ports of entry.

On June 1, 1999 – at the same time that state and federal warrants for Resendez were outstanding and law enforcement officers were searching for Resendez in connection with several murders – Border Patrol agents in Santa Teresa, New Mexico, apprehended Resendez again crossing the border illegally. They processed him in IDENT according to their standard practice. IDENT identified Resendez as a recidivist border crosser, but nothing in IDENT alerted the Border Patrol agents that he was wanted for murder by the FBI and local law enforcement authorities. Nor did IDENT disclose Resendez’s extensive criminal history. Therefore, the Border Patrol did not detain Resendez and, following its standard policy, voluntarily returned him to Mexico. Within days, Resendez illegally returned to the United States and committed four more murders.

In mid-June 1999, a Border Patrol Intelligence Officer in Texas enrolled Resendez into the IDENT lookout database to ensure that he would be detained if encountered again by the INS. At that time, the Border Patrol discovered that its agents had recently released Resendez despite the outstanding warrant for his arrest for murder.

Finally, On July 13, 1999, Resendez surrendered to U.S. law enforcement authorities. On May 18, 2000, he was convicted of capital murder and sentenced to death. The verdict was affirmed by a state appellate court on May 21, 2003.

V. RENEWED EMPHASIS ON INTEGRATION OF IDENT AND IAFIS

In July 1999, a House Committee on Appropriations report, with the Resendez incident clearly in mind, stated:

[T]he Committee continues to be concerned about the inadequacies of this system [IDENT], specifically with regard to its ability to identify wanted criminals who may be apprehended by INS Border Patrol agents and inspectors along the border...the Committee repeatedly raised concerns that the IDENT database was not integrated with FBI’s IAFIS database.

The House Report expressed the belief that federal, state, and local law enforcement should have access to INS fingerprint information and that the INS should have the full benefit of FBI criminal history records. The House report directed the INS to suspend further deployment of IDENT until DOJ submitted to the House Appropriations committee a plan for integration of IDENT and IAFIS. The Conference Report for the DOJ FY 2000 appropriations included this provision.

In response to the Congressional directive, DOJ assigned JMD to coordinate the efforts to develop an integration plan. On August 12, 1999, JMD convened a “Fingerprint Summit” meeting, attended by representatives of the FBI and INS, to discuss a plan for integrating IDENT and IAFIS. The conceptual model agreed to at that meeting required that federal, state, and local law enforcement agencies be able to access the INS’s fingerprint records through IAFIS, and that the INS be able to check fingerprints of apprehended aliens against all fingerprint records in IAFIS.

On March 1, 2000, JMD’s Management Planning Staff issued a report entitled “Implementation Plan for Integrating the INS’ IDENT and the FBI’s IAFIS Fingerprint Data.” The report stated that “The INS and FBI have acknowledged that integrating IDENT with IAFIS would greatly benefit both agencies, as well as federal, state, and local law enforcement.” The report further stated that such integration:

has the potential to: reduce the likelihood that a wanted individual would be released from the INS’ custody; provide federal, state, and local law enforcement an integrated picture of the criminal activity known by agencies in DOJ, including the INS histories of illegal border crossers; and enable federal, state, and local law enforcement to search latent prints against additional illegal border crossers, especially if ten-prints are taken.

The report discussed various options for integration, but directed that before any recommendation would be finalized, the INS, FBI, and JMD would conduct three studies:

- (1) a criminality study that would estimate the percentage of apprehended illegal aliens who had been charged with more serious crimes;
- (2) an engineering study that would produce a cost analysis for the integration, including alternative query response times; and
- (3) an operational impact study that would assess the effect that such changes as taking ten prints would have on operations and procedures at the border.

Also in March 2000, the OIG issued its report on the Resendez case.¹¹ The OIG report noted that integration of IDENT and IAFIS would provide what

¹¹ “The Rafael Resendez-Ramirez Case: A Review of the INS’s Actions and the Operation of Its IDENT Automated Fingerprint Identification System.”

the IDENT lookout database did not – a check of all apprehended aliens to determine whether they have serious criminal records, prior orders of deportation, or any outstanding arrest warrants. The report recommended that DOJ and its components should aggressively and expeditiously link the FBI and INS automated fingerprint systems.

From June 2000 through July 2001, DOJ conducted the three studies in support of the integration project. First, the Operational Impact Study concluded that it might be feasible for the INS to take 10 fingerprints in many locations and check them against the FBI's IAFIS files if the INS could receive a response from the FBI within 10 minutes, except for high volume workload periods. Second, the Engineering/System Development Study concluded that IAFIS could not be searched using the IDENT two-fingerprint system in the volume and within the response time that the INS required. This study proposed an alternative approach requiring the INS to collect 10 fingerprints (in addition to continuing to separately take 2 fingerprints for IDENT). Third, the Criminality Study projected that a total of 136,000 (8.5 percent) of the approximately 1.6 million aliens apprehended each year by the Border Patrol and allowed instead to voluntarily depart would be detained if their fingerprints were matched against IAFIS and their criminal histories were checked.

In January 2001, JMD issued its FY 2002 budget request which stated that incremental versions of the IDENT/IAFIS database would be deployed in FY 2001, with a fully integrated version deployed in FYs 2006-7. The JMD plan called for deployment during FY 2001 of Version 1, a single ten-fingerprint workstation capable of querying IDENT using index fingerprints and IAFIS using ten fingerprints. The electronic IAFIS response would indicate a match or no match. When there was a match, IAFIS would electronically transmit the criminal history Record of Arrests and Prosecutions (RAP) sheet to the workstation from which the query was made.

However, in August 2001 JMD revised its plan to slow the pace of the integration project because of concerns about operational issues relating to DOJ's ability to handle the additional workload and the costs of detaining criminal aliens as projected by the criminality study. JMD also sought the delay to further study the additional workload and costs and to monitor developing biometric technologies to ensure that DOJ did not commit large sums of money to an integration plan that would not take advantage of future technological advances. As a result of this revised plan, JMD reduced its original FY 2002 budget request for the integration project from \$38 million to \$9 million.¹² Also, the anticipated time frame for completing the first integrated version was delayed one year – from December 2001 until December 2002.

¹² The \$38 million included \$10 million for IDENT system operation and maintenance costs, but no funds for increased operational costs for the INS.

In October 2001, in the wake of the September 11 terrorist attacks on the United States, Congress enacted the USA PATRIOT Act of 2001, Public Law 107-56 (the Patriot Act). The Patriot Act directed the expedited implementation of an integrated exit and entry data system, including the use of biometric technology. The Patriot Act also required that the FBI share with the INS wanted-persons information in IAFIS to determine whether an applicant for admission at a port of entry has a criminal record. Finally, the Patriot Act required that the Department report to Congress on enhancing IAFIS and other identification systems to better identify aliens who may be wanted before their entry to or exit from the United States.¹³ Subsequent DOJ responses to Congress regarding the Patriot Act indicated that an integrated IDENT/IAFIS was an integral tool to identify terrorist or criminal aliens attempting to enter the United States.

In December 2001, the OIG issued another follow-up report examining the status of the continuing efforts to integrate IDENT and IAFIS.¹⁴ The report concluded that DOJ had moved slowly toward integrating the two fingerprint systems. As of December 2001, JMD's plans for the deployment of the final version of the integrated database had been delayed another year (for a total of 2 years). The OIG report recommended that DOJ continue to seek expeditious linkage of the FBI and INS automated fingerprint systems, and to continue to use IDENT while the integration was proceeding. The OIG report also supported the interim measure of immediately adding to the IDENT lookout database IAFIS fingerprint records for aliens with outstanding "wants and warrants," as well as adding fingerprint records for known or suspected terrorists.

VI. THE BATRES CASE

In 2002, another high-profile case demonstrated the urgent need for integration of IDENT and IAFIS. In this section of the report, we describe the Border Patrol's handling of two apprehensions of Victor Manuel Batres in January 2002. Like the earlier Resendez case, this case tragically illustrated the danger of requiring immigration agents at individual Border Patrol stations to decide when they should research an apprehended alien's criminal history rather than relying on an integrated database that matches an alien's fingerprints and automatically transmits a criminal history RAP sheet to the Border Patrol station within 10 minutes.

¹³ As of January 2004, the FBI's Criminal Justice Information Services Division had not completed the Attorney General's report.

¹⁴ See OIG report entitled "Status of IDENT/IAFIS Integration," December 2001.

A. Batres' Criminal and Immigration History

Batres was born in Mexico on September 17, 1969, and before he was 20 years old had developed an extensive criminal record in the United States. According to NCIC, Batres was charged and convicted of numerous crimes in the United States under a variety of aliases. NCIC's III reflects convictions in:

- September 1987 in Wenatchee, Washington for theft;
- November 1987 in California for selling marijuana and/or hashish (an aggravated felony under 8 USC § 1101(a)(43)(B));
- June 1988 in California for sale of controlled substances (an aggravated felony under 8 USC § 1101(a)(43)(B));
- December 1988 in California for kidnapping and Second Degree robbery (for which he served 4 years' imprisonment and was deported) (an aggravated felony under 8 USC § 1101(a)(43)(F)).

NCIC also showed that Batres was arrested in the United States for additional offenses. Some of these charges were dismissed, some may not have been pursued in lieu of more serious offenses in other jurisdictions, and the outcome of other charges could not be determined. Among the additional arrests were:

- May 1987 for unauthorized use of a motor vehicle;
- February 1988 for purchasing cocaine;
- March 1988 for robbery and possession of narcotics;
- April 1988 for possession of controlled substances;
- August 1988 for grand theft from a person;
- August 1988 for robbery.¹⁵

¹⁵ Mexican law enforcement records show that Batres was convicted and jailed in Mexico for additional crimes, although the records of these convictions would not have been available to the Border Patrol or contained in the FBI's criminal databases. Batres was arrested and incarcerated in Mexico in 1993 for the crime of theft of a vehicle and damages, and in September 1995 for the crime of theft of an automobile. Batres also acknowledged in an interview with the OIG being convicted in 1997 in Mexico for the attempted rape of his stepdaughter, and a 1999 or 2000 conviction for the attempted rape of a family friend in Mexico. A 2002 arrest warrant also was on file in Mexico for Batres for the crimes of rape and bodily injuries.

In January 1993, a warrant was issued in Multnomah County, Oregon, for Batres' arrest for possession of dangerous drugs, and this information was entered into the FBI NCIC Wants and Warrants database and IAFIS. A lookout for Victor Batres-Martinez Batres was electronically downloaded into IDENT by NCIC on December 28, 2001, as part of a download of all outstanding state and federal warrants from the WIN network into the IDENT database. This was the second time that criminal warrants had been added to IDENT.¹⁶ The IDENT entry stated that Batres may have an outstanding warrant and provided an FBI number to be queried in III.

The Interstate Identification Index and immigration records also reflect that prior to January 2002 the INS had deported Batres at least once – on January 31, 1992, following the completion of his incarceration for robbery and kidnapping. In addition, INS A-File records indicate that following Batres' apprehension by El Paso Border Patrol Sector agents in June 1992, the INS processed Batres again for "Formal Deportation," although the disposition of that case was not included in the A-File or in other INS databases.

B. El Paso Border Patrol Records Check Policy

On August 16, 2001, the El Paso Sector Border Patrol sent via e-mail to all sector employees a policy memorandum regarding updates to the IDENT lookout database. The memorandum stated that the USMS had entered into the IDENT lookout database approximately 7,600 sets of fingerprints of alien fugitives with outstanding warrants it had taken from its Warrant Information Network (USMS-WIN) database. The memorandum stated that all of these warrants were for serious felonies listed in NCIC.

The memorandum provided instructions to Border Patrol agents who encountered in IDENT a "lookout" message stating, "Subject may be a United States Marshals Service (USMS) Fugitive. Check FBI number in NCIC for current warrants." The Border Patrol memorandum instructed agents that if they encountered such a lookout they should: (1) confirm the individual's identity by immediately submitting all of the alien's ten fingerprints to the INS WIN/AFIS Center; (2) once WIN/AFIS verified the lookout hit, use the individual's FBI number to query NCIC for "wants and warrants" for the alien;¹⁷ (3) notify the USMS of the apprehension and warrant number via telephone or

¹⁶ The first download of criminal warrants occurred in August 2001, with the transfer from IAFIS of records for federal fugitives being sought by the USMS.

¹⁷ The NCIC "wants and warrants" database is different from the NCIC Criminal History Check. The wants and warrant database does not necessarily chronicle the offenses for which an individual has been convicted.

through NLETS;¹⁸ (4) document appropriately the transfer of the alien to the USMS; and (5) follow the Border Patrol procedures relating to the creation of A-Files and the retention or forwarding of all documentation relating to these cases.

On December 14, 2001, the El Paso Sector Chief Patrol Agent issued another memorandum entitled “Alien Fugitives in IDENT” to all Sector Border Patrol Agents in Charge and Unit Supervisors. This memorandum stated:

If an agent processes an individual through IDENT and gets a “lookout” candidate from any of the law enforcement agencies registered with WIN AFIS, the Agent will receive a call from WIN AFIS. At the time of notification, the “hit” will be brought to the attention of a supervisor. The supervisor will make the appropriate contact with the agency requesting the detention for resolution and/or disposition of the suspect being detained.

A supervisory Border Patrol agent at the Santa Teresa, New Mexico Border Patrol office told the OIG that the December 14, 2001, memorandum from the El Paso Chief Patrol Agent was placed on the “muster board” in that station and was still there at the time of Batres’ apprehensions in January 2002. A Patrol Agent in Charge stated that the memorandum had been discussed at shift briefings. We found no evidence that the memorandum was distributed individually to agents.

C. First Apprehension of Batres – January 18, 2002

At approximately 4:30 a.m. on January 18, 2002, a Border Patrol agent apprehended a group of four illegal aliens near Santa Teresa, New Mexico. The agent transported the aliens to the Santa Teresa Border Patrol Station for processing. At the station, the agent entered each of the aliens into IDENT. At approximately 5:00 a.m., when the agent processed the fingerprints of an alien who identified himself as Maximiliano Silerio-Esparza, the IDENT apprehension database did not indicate any prior illegal entries for the alien, but the IDENT lookout database provided a “red-line” hit for a wanted alien named Victor M. Batres-Martinez.¹⁹

¹⁸ The National Law Enforcement Telecommunications System is an international, computer-based message system that links state, local, and federal law enforcement agencies and allows them to exchange data.

¹⁹ A “red-line” hit referred to a lookout in IDENT.

The agent told the OIG that he had not received the memoranda described above detailing the process for handling IDENT lookouts for wanted aliens. He said, however, that he handled this situation based on his knowledge of the El Paso Sector Border Patrol policy, which he said had been explained to him in an oral briefing by a Border Patrol shift supervisor in December 2001. The agent said that, based on this briefing, his understanding was that when he received a lookout for an alien in IDENT, WIN/AFIS personnel would compare the fingerprints of the detainee against those of the wanted fugitive, and the agent was supposed to await a telephone call from WIN/AFIS for confirmation of the match.

WIN/AFIS personnel confirmed the agent's understanding of this policy. They explained that in the case of a lookout entered from NCIC, the WIN/AFIS Center is notified of the hit automatically (at the time that the alien is being processed in IDENT) via a digital pager. WIN/AFIS personnel then were required to confirm or deny the match and to contact the Border Patrol station where the alien's fingerprints were entered into IDENT to advise of the confirmation or denial of the match and provide information about the match. This contact is expected to occur within an hour of the hit. As a courtesy, WIN/AFIS personnel also routinely send the processing Border Patrol station a facsimile that includes the alien's NCIC criminal history printout, warrant information, and a WIN/AFIS worksheet.

The agent who processed Batres and received the lookout hit in IDENT said that, when he received the hit, the IDENT "fingerprint score" (which rates the strength of a fingerprint match) that appeared on the IDENT screen was insignificant to him. He said he had not yet received any training as to the meaning of this score.²⁰ Further, there was no available photograph in IDENT to compare the lookout to Batres. The agent said he manually compared Batres' fingerprints to the fingerprints provided with the lookout. The agent conducted his comparison on a 17-inch computer monitor, which showed the two sets of prints side by side, one from the lookout and one from Batres, whose prints he had just entered into IDENT. The agent explained that he counted the lines from the delta to the center of the left index finger on both sets of prints. He conducted this count twice and both times found a difference of one line between the prints. He therefore thought that it was not a match, and at approximately 5:10 a.m. he rejected the match in IDENT.

The agent said that because he was not completely comfortable with rejecting the lookout hit based on his fingerprint comparison alone, he took the additional step of interviewing Batres. The agent stated that during the interview, Batres was cooperative and exhibited no signs of deception. Batres did not acknowledge being the person wanted in Oregon, although the agent

²⁰ The fingerprint score was a high one, indicating a likely match.

said he did not press him on this issue. The agent told the OIG that based on the totality of the circumstances – the absence of a return call from WIN/AFIS, the agent's personal comparison of the fingerprints, and Batres' cooperative demeanor during questioning – he did not believe that Batres was the person in the lookout, and he therefore processed Batres for a voluntary return to Mexico.²¹

The agent finished processing the entire group of aliens at about 5:30 a.m. and locked them in the holding cell at the Santa Teresa Border Patrol Station. The agent said that at approximately 6:30 a.m., he encountered a supervisory Border Patrol agent who was beginning his shift. The agent explained to the supervisor that Batres had a lookout hit, but that there was no positive identification from WIN/AFIS, and the agent therefore did not think that Batres was the person in the lookout. The agent said that the supervisory agent did not question this conclusion.

The supervisory Border Patrol agent acknowledged having a conversation in which the agent told him that he had apprehended four aliens and that two had returned red-line hits in IDENT. He said that the agent informed him that one of the hits had a low matching fingerprint score and no picture, the other hit had high scores and no picture, and that the prints did not appear to match in either case. The supervisor said that this information was insufficient to lead him to believe that “either of these aliens would fall under the directive concerning WIN/AFIS aliens.” He stated that he believed that there was “no problem,” and that another supervisor who was working with the agent during his shift would have “taken care of anything that might have turned up in accordance with the procedures.” In fact, this was the only supervisor whom the agent informed of the hit regarding Batres.

²¹ We asked the agent to reconcile how he could have been confident that WIN/AFIS was not going to report a match within the 10-minute time frame, according to IDENT records, from 5:00 a.m. when the agent entered Batres' fingerprints in IDENT, until 5:10 a.m. when he rejected the match in IDENT. The agent could not readily explain this time frame, and said that he remembered interviewing Batres at length, and waiting a longer period of time before denying the hit. The agent said it is possible, however, that he may have interviewed Batres to some degree prior to processing him in IDENT, although he had not initially remembered it that way. Regardless of the precise timing, as discussed below and in Section VI(F)(2)(A), below, we do not believe that the agent contravened established Border Patrol policies in voluntarily returning Batres to Mexico since he informed a supervisor of the lookout and of his proposed actions before Batres was returned. Moreover, WIN/AFIS did not contact the Border Patrol until after Batres had been released.

At approximately 8:00 a.m., an INS Detention Officer picked up the group of aliens, including Batres, and transported them to the Paso del Norte processing station, where they were voluntarily returned to Mexico.

We determined, however, that WIN/AFIS had confirmed the lookout for Batres and had attempted to contact the Border Patrol to advise it of the match. But WIN/AFIS did not have a current telephone number for the Santa Teresa Border Patrol Station because the station had recently moved from a temporary location to a new, permanent location, and the Border Patrol had failed to provide the updated telephone numbers to WIN/AFIS. Consequently, WIN/AFIS did not make contact with the agent to inform him of the match, and Batres was voluntarily returned to Mexico without his true identity being discovered and confirmed.

At approximately 8:55 a.m., four hours after the agent had received the IDENT hit for Batres, and after Batres already had been returned to Mexico, WIN/AFIS personnel paged a supervisory Border Patrol agent who works on an IDENT user group and was detailed to Washington, D.C., at the time. WIN/AFIS informed this supervisory Border Patrol agent that around 5:00 a.m. WIN/AFIS had received automatic IDENT notification that the agent in Santa Teresa had entered an alien into IDENT and received a red-line alert. The WIN/AFIS personnel told the supervisory Border Patrol agent that their fingerprint comparison confirmed that Batres was the person wanted in Oregon on an outstanding warrant. The WIN/AFIS personnel explained that they had been attempting to call the processing agent since 5:00 a.m. to inform him of the confirmation, but they had been unable to reach him. The supervisory Border Patrol agent provided WIN/AFIS with the new telephone number of the Santa Teresa Station.

The supervisory Border Patrol agent said he immediately telephoned the supervisory agent in Santa Teresa whom the apprehending agent had informed of the red-line hit, and informed him of the situation. The supervisor in Santa Teresa attempted to contact the apprehending agent by radio, but another Border Patrol officer reported that Batres already had been turned over to Mexican immigration officials and released.²²

In addition to confirming the lookout match, WIN/AFIS ran a criminal history check on Batres on January 18, which included a “wants and warrants” check. At the request of El Paso Sector Border Patrol officials,

²² That same day, the processing agent, the supervisory Border Patrol agent whom he had informed of the hit prior to Batres’ release, and the Santa Teresa Patrol Agent in Charge all were required to write memoranda documenting their actions with respect to Batres and explain why he had been returned voluntarily to Mexico.

WIN/AFIS personnel faxed all of this information concerning Batres to the EL Paso Sector Intelligence Unit. Acting Deputy Chief Danois Montoya assigned the new El Paso Sector Intelligence Officer, Stuart Gary, to review the materials, as well as any other relevant information that he could gather through INS databases, to determine the extent of Batres' criminal and deportation record and to assess the significance of the mistake that had been made in releasing him. Montoya stated that while Gary had just recently transferred to the El Paso Sector Intelligence Unit, he was selected for this assignment based on his reputation as an agent with the INS Office of Internal Audit (OIA).

After reviewing the information, Gary informed Montoya that Batres did in fact have a significant criminal record as well as a prior deportation, and that the release of such an individual – who also had an outstanding arrest warrant – was a significant error by the Border Patrol. Montoya stated that he believed that the arresting agent was at fault for failing to bring the red-line hit to the attention of his immediate shift supervisor, and that based on that he believed that disciplinary action should be initiated against the arresting agent.

Montoya next relayed the information about Batres' record and his release to the El Paso Sector Chief Patrol Agent and the Patrol Agent in Charge (PAIC) of the Santa Teresa Station, James Gonzales. Following standard Border Patrol protocol, Gonzales directed the Border Patrol personnel involved in the incident to write official memoranda to the Chief Patrol Agent documenting their actions regarding the apprehension and release of Batres. This included the arresting agent, the Assistant PAIC for the Santa Teresa office, and the supervisory Border Patrol agent whom the arresting agent had informed of the hit prior to Batres' release. Montoya said that given the scope of the mistake that had been made, the Border Patrol immediately forwarded all of the relevant information to the Border Patrol's Labor Management Relations personnel to review for appropriate disciplinary action against the arresting agent. Montoya stated that he did not request any further investigation by the INS OIA because he felt that his office had gathered all of the relevant information in connection with the incident.²³

²³ Four months later, on April 25, 2002, the INS suspended the agent who had detained and processed Batres. The INS charged him with failing to follow El Paso Sector Border Patrol instructions, policy, and procedures by not bringing the possible lookout match to the attention of a supervisor. The agent contested the charges, asserting that: (1) he did not receive Chief Barker's December 14, 2001, memorandum; (2) even if he had received the memorandum, it does not require an agent to affirmatively pursue an answer from WIN/AFIS as to the identification of the detainee; (3) the agent had informed a supervisor of the IDENT lookout and the supervisor had nevertheless approved the release of Batres; and (4) the El Paso Sector did not require that NCIC criminal history checks be conducted on all aliens. We discuss these issues later in the report.

Unfortunately, despite clearly recognizing the significant mistake that had been made in releasing Batres and discussing the simple steps which could have avoided further mistakes with respect to Batres, Border Patrol officials did not take these steps. Montoya said that on January 18, 2002, he specifically discussed with PAIC Gonzales and perhaps other officials the possibility of posting in IDENT and elsewhere a warning about Batres, reflecting his aggravated criminal record, prior deportations, current arrest warrant, and the fact that he had been improperly released before this information was discovered. In fact, it was possible to enter such a warning into Batres' ENFORCE/IDENT records, and such a warning would have alerted any agent who apprehended Batres about his extensive criminal record and therefore would have resulted in his detention for prosecution.

However, for reasons that he could not fully explain, Montoya never assigned anyone to post such a warning about Batres. Montoya explained that Border Patrol officials were focused on addressing the issue in a broader context by disciplining individuals who made mistakes and planning a policy that would require the posting of an IDENT warning for all aliens who are improperly released, not just Batres. Unfortunately, Batres was erroneously released again the very next day. Remarkably, Montoya acknowledged that as of early February 2004 this policy of posting warnings in IDENT for improperly released aliens has been communicated only orally and has not been documented in writing.

D. Second Apprehension of Batres – January 19, 2002

The next evening, on January 19, 2002, another Border Patrol agent encountered Batres several miles west of the Columbus, New Mexico, port of entry, as Batres again was attempting to illegally enter the United States. The agent apprehended Batres without incident. Batres once again provided his name as Maximiliano Silerio-Esparza. The agent took Batres to the Columbus Border Patrol Processing Center, where the agent was assisted by a second Border Patrol agent in processing him.

When the second agent entered Batres into IDENT, a lookout hit appeared for Batres. Unlike the previous day, WIN/AFIS contacted the arresting agent a short time later and advised her that there was an open arrest warrant for Batres in Oregon. The agent then contacted the Multnomah County Sheriff's Department in Oregon, where the warrant had been issued. Because of the nature of the offense underlying the warrant – possession of dangerous drugs – the judge issuing the warrant had only authorized extradition within a limited “shuttle range” due to the expense of transporting and detaining arrestees. At the time of the Batres case, the “shuttle range”

area included Oregon, Washington, western Idaho, and western Montana.²⁴ As a result, the Sheriff's Department advised the Border Patrol agent that it would not extradite Batres.

The arresting agent then advised the acting supervisory Border Patrol agent of the situation. The supervisor authorized the voluntary return of Batres to Mexico, and instructed the agent to create a brief summary on Batres' I-213 Form (Record of Deportable/Inadmissible Alien), noting the reason for the return of Batres. The agents then voluntarily returned Batres to Mexico.

The narrative on the I-213 Form, written by an agent who assisted in processing Batres on January 19, stated that the Oregon authorities declined extradition and that the Border Patrol supervisor approved Batres' voluntary return to Mexico. Under the section of the I-213 for Batres' Criminal Record, "none known" was filled in. Although the arresting agent completed the information blocks on the I-213 Form, she noted that she did not actually enter the words "none known" in the box for Criminal Record; rather, the system automatically enters this phrase in the absence of an entry from the agent.

In a memorandum to Border Patrol Headquarters following Batres' attack on the two nuns in Oregon, Chief Patrol Agent Barker stated that the standard operating policy for the El Paso Sector was to thoroughly check the background of any subject who returns a lookout in the IDENT system. This was not a written policy, at least at the time that Batres was arrested. However, the Border Patrol agents involved in processing Batres on January 19 said that in the case of a confirmed lookout hit they would have either conducted the criminal history checks themselves or ensured that they were conducted. Yet, none of these agents had any memory of doing a check or ensuring that it was done in the Batres case, and all said they had no knowledge that Batres had a criminal record.

The supervisory Border Patrol agent who approved Batres' voluntary return stated that in Batres' case, where the lookout resulted in a confirmation from WIN/AFIS and a valid FBI number, it was his responsibility to "ensure

²⁴ In Multnomah County, judges set the terms of extradition at the time they issue a warrant. There is no standard formula for this decision. Rather, the decision is based on the judge's discretion, taking into account the seriousness of the offense at issue and any recommendation made by the prosecutor in the particular case. The three possible terms for extradition within Multnomah County included: (1) extradition within Oregon only; (2) extradition within a standard "shuttle range" of several states (the option selected in this case); and (3) nationwide or unlimited extradition. Once the warrant is issued, the terms for extradition do not change absent a motion from a prosecutor or another party of interest. The record did not indicate that prosecutors made any recommendations regarding the extradition range in Batres' case.

that a further records check for any additional criminal history on [Batres] were conducted.” He said that both he and the apprehending agent “knew from experience that an individual with a “Red-line Alert” requires a lot more investigation into his background and criminal history before making a decision to allow that individual a voluntary return.”

The arresting agent stated that she was unsure whether Chief Barker’s December 14, 2001, memorandum was posted at the time that Batres was apprehended, but she acknowledged understanding that criminal history checks should be made when a red-line hit was confirmed. However, she could not recall specifically querying NCIC herself or requesting another agent to make the query. She said that she believed that the criminal history checks were done and that the results were negative, based on the fact that the I-213 contained the entry “none known” in the Criminal Record block.

The Border Patrol agent who assisted the arresting agent in processing Batres stated that she was aware of Chief Barker’s December 14, 2001, policy statement and that she believed that she complied with it. While she could not specifically recall querying Batres’ FBI number for criminal history or asking anyone to do so, she stated that it was her practice to routinely conduct criminal history inquiries based on confirmed WIN/AFIS lookouts. She also said that she would not have processed Batres for a voluntary return if she had information about his prior deportation or criminal convictions.

Yet, the evidence we found shows that no criminal checks were done. A search of the NCIC and TCIC databases did not identify any queries by the Border Patrol on January 18 or 19, 2002, for the name Batres, his known aliases, or the FBI number provided by IDENT.²⁵ A review of the Sector radio logs also shows no indication that a criminal history check was requested or conducted. Further, the I-213 Form does not address in any detail what steps, if any, were taken with regard to determining Batres’ criminal history. Finally, neither the arresting agent, the processing agent, nor anyone else in the office had any recollection of either checking Batres’ criminal history record or of asking anyone else to do it.

E. Batres’ Attack on the Two Nuns

In an interview with the OIG after his conviction for murder, Batres said that after being returned to Mexico on January 19, 2002, he went to Chihuahua City and illegally returned to the United States in August 2002. He said he entered the United States with several other aliens near Polomas,

²⁵ TCIC is the Texas Criminal Information Center. It is a database managed by the State of Texas that contains criminal history information and outstanding warrants for those individuals arrested and wanted in Texas.

Mexico. Batres said he hid in the desert area near Columbus, New Mexico, for one day and then returned to Mexico because he was unable to find a means to travel into the interior of the United States.

Batres said that a few days later, he and two other Mexicans illegally entered the United States near Polomas, New Mexico. He was able to reach Deming, New Mexico, where he sneaked on a freight train traveling west through Deming. Batres rode the train to San Bernardino, California. From there, Batres went onto another train going to Los Angeles. After about three days, he went on a freight train traveling north and onto several other trains, finally arriving in Klamath Falls, Oregon.

Batres said that he intended to travel on trains to Portland, Oregon, but was impeded due to a large number of law enforcement officers working in the train yard. Batres therefore decided to stay in Klamath Falls for a time and look for work until he could make it to Portland. On September 1, 2002, Batres encountered two Catholic nuns as he was walking through a local park. Batres raped and assaulted both of the nuns, killing one of them. Batres was quickly identified by the local Sheriff's Department and arrested for the crimes. Upon his arrest, he confessed to the rapes and murder. Batres subsequently pled guilty to the murder and rape of one of the nuns and was sentenced to life imprisonment without the possibility of parole.

F. OIG Analysis of the Batres Case

Based on Border Patrol practice and policies, Batres' criminal record, if known to the agents, should have resulted in his detention and prosecution. Such prosecution likely would have caused Batres to be incarcerated for a significant period of time, rather than being voluntarily returned to Mexico, where he returned to the United States to commit his rapes and murder.

Although our investigation found that some of the agents and supervisors who handled Batres did not follow Border Patrol policies, we believe that blaming them for this tragedy would not address the underlying problems revealed by this case. Unless their technological support is improved, it is inevitable that individual Border Patrol agents, who often are overwhelmed by large numbers of aliens and cumbersome procedures, will not be able to consistently determine the full criminal history and prior deportations of all of the aliens they apprehend. Therefore, as we describe below, we continue to believe the integration of immigration and FBI databases is urgently needed to eliminate the potential for the breakdowns and problems that this and other cases reveal.

1. Batres' record warranted his detention for prosecution

As noted above, the FBI's database showed that Batres was convicted of the aggravated felony of selling controlled dangerous substances in 1987 and 1988, and a third aggravated felony of kidnapping and second-degree robbery in 1988. After serving the majority of his six-year sentence for the latter crime, he was deported from the United States in 1992.

An integrated IDENT and IAFIS database would have revealed these convictions and Batres' extensive criminal history, as well as his prior deportation, when he was arrested by the Border Patrol agents in January 2002. However, while the IDENT lookout database provided these agents with a lookout hit that enabled them to learn of Batres' outstanding warrant in Oregon, it did not contain any information about Batres' criminal history or prior deportation. The criminal conviction records contained in IDENT are limited to immigration records that contain certain categories of convictions, the automatic "wants and warrants" updates, the criminal history fingerprint records of aliens from certain countries believed to be a threat to the United States, records received and uploaded manually from other law enforcement agencies, and the limited comments that Border Patrol agents have added to IDENT based on their review of the alien's NCIC records during prior apprehensions. In order to access Batres' criminal history records at the time of his apprehensions, Border Patrol agents would have had to seek his criminal records by asking for a check of the FBI's III or IAFIS database.

If the agents who processed Batres had learned of his record – his three aggravated felonies and his prior deportation – under Border Patrol policies, they should have detained him and sought his prosecution for Reentry After Deportation (8 U.S.C. § 1326(b)).²⁶ This statute provides felony penalties for aliens who have been deported or removed from the United States and thereafter reentered the country illegally, which applied to Batres. This statute provides for harsh punishment – up to 20 years' imprisonment – for aliens such as Batres "whose removal was subsequent to a conviction for commission

²⁶ Batres also could have been prosecuted for Entry Without Inspection, pursuant to 8 U.S.C. § 1325. The Border Patrol charges aliens with the misdemeanor offense of "Entry Without Inspection" (EWI), pursuant to 8 USC § 1325, when (1) the alien is apprehended for illegal entry a certain number of times (While EWI charges can be brought based on just one entry, each jurisdiction sets its own "threshold" guidance as to when to bring these charges.); (2) the alien has been previously deported; or (3) the alien has an aggravated criminal record, such as a prior felony. The latter two conditions were both present in the Batres case. Moreover, the charge of EWI is easy to prove. It only requires presentation of the I-213 Form and evidence that the alien at the hearing is in fact the same person listed in the I-213.

of an aggravated felony.” (8 U.S.C. § 1326(b)(2)). Batres’ prior deportation was subsequent to convictions of at least three aggravated felony convictions.

According to the prosecutors from New Mexico and Texas who we interviewed in the Resendez case, aliens with a prior aggravated felony record typically received at least a 3-year prison sentence upon conviction for Reentry After Deportation. Moreover, the crime of Reentry After Deportation is easy to prove. It simply requires proof of a prior order of deportation (in which a Detention and Deportation employee certifies that the alien exited the country on a particular date), and evidence that the alien is the same individual who previously was deported.

2. Actions of agents who processed Batres

a. January 18 apprehension

On January 18, 2002, the arresting agent learned of the lookout hit for Batres but did not receive confirmation from WIN/AFIS that Batres was the person in the lookout. The agent therefore did no records check on Batres and voluntarily returned him to Mexico. The Border Patrol disciplined the agent for allegedly failing to follow procedures. However, it is not clear that he contravened established and communicated Border Patrol policies, and we believe solely blaming the agent in this case misses the larger point.

The Border Patrol alleged that the agent “failed to follow proper procedures in processing a possible fugitive and/or Want and Warrant Hit.” The Border Patrol stated that he failed to notify a supervisor of the “lookout hits” and voluntary return of Batres to Mexico. Yet, the agent did not violate the December 14 policy memorandum, which states in pertinent part:

If an agent processes an individual through IDENT and gets a “lookout” candidate from any of the law enforcement agencies registered with WIN AFIS, the agent will receive a call from WIN AFIS. At the time of notification, the “hit” will be brought to the attention of the supervisor. The supervisor will make the appropriate contact with the agency requesting the detention for resolution and/or disposition of the suspect being detained. [Emphasis added.]

The agent did, in fact, bring the hit to the attention of a supervisor. He informed a supervisory Border Patrol agent who was entering the next shift that Batres had a red-line lookout hit, but that there was no positive identification received from WIN/AFIS. The supervisor acknowledged that the agent told him that Batres and another alien had returned lookout alerts in IDENT, that the agent had reviewed the fingerprints but did not think they matched the fingerprints associated with the lookouts, and that the agent

processed the aliens for voluntary return. The supervisor said he did not intervene or suggest any further action because he believed that if there had been any problem, a supervisor from the prior shift would have taken care of it in accordance with procedures.

Moreover, the December 14 policy statement does not even appear to require agents to contact supervisors about all lookout hits, only those in which WIN/AFIS confirms the lookout match. In this case, WIN/AFIS did not call the agent back to confirm the lookout, because it did not have the current telephone number for the station.

Finally, we question the actions of the Border Patrol supervisors after they were informed by WIN/AFIS that Batres was the person in the lookout. While Batres had already been released, we believe they should have at least noted in IDENT that Batres had been released before the criminal history check had been received, and that the check showed that he had an aggravated criminal record and a prior deportation. This would have been important information to alert any other Border Patrol agent who apprehended Batres that he should be detained rather than mistakenly released, which happened again the very next day. Although the Border Patrol asked the agents involved to write memoranda that same day on what had happened, no one took the initiative to have the information about Batres entered into IDENT. They explained this deficiency by stating that they were focused on discipline for the arresting agent, as well as considering a policy requiring the posting of an IDENT warning for all aliens who are improperly released, not just Batres. Yet, this does not explain why they did not also take the simple step of posting an alert on Batres in IDENT. This was a significant and unjustified failure. And, as noted above, the Border Patrol still has not issued any written policy addressing this issue as of early February 2004.

b. January 19 apprehension

During the second apprehension of Batres, on January 19, 2002, the Border Patrol agents received confirmation that Batres was the person wanted in the IDENT lookout. The agents appropriately followed Border Patrol procedures and contacted the Oregon authorities. The Sheriff's Department in Oregon advised that they did not want Batres extradited to Oregon, and the Border Patrol therefore voluntarily returned Batres to Mexico.

But the evidence shows that the Border Patrol agents failed to check Batres' criminal history before returning him to Mexico. The agents acknowledged understanding that they should ensure that criminal history checks are performed for any alien, such as Batres, with an outstanding warrant. Both of the agents involved in processing Batres asserted that they believed that the check was done, although they could not say who did it. Despite the notation on Batres' I-213 Form of no known criminal history, a

review of Sector radio logs, and NCIC and TCIC search results, showed no indication that there was a call to perform a criminal history check on Batres on January 18 or 19, 2002.

While we cannot know with certainty why the Border Patrol did not conduct criminal history checks in connection with the second arrest, it is likely that the check slipped through the cracks, perhaps after the Oregon authorities declined to extradite Batres. While not excusing this failure, we believe that such omissions are inevitable, given the large volume of aliens apprehended, the time pressure on individual agents to process many aliens, the imprecise and changing Border Patrol procedures, the lack of comprehensive training for agents on these procedures, the multitude of information and forms that have to be completed for each alien, and the cumbersome procedures required to complete criminal history checks. In our view, without integrated databases, problems like the Batres and Resendez cases will recur.

We cannot determine with certainty how many dangerous aliens with serious criminal records the Border Patrol continues to voluntarily return because it does not learn of their criminal records from information in FBI databases. However, the experience with the downloads of FBI criminal records into immigration databases suggests the number is large. Since August 2001, 152,000 IAFIS “wants and warrants” fingerprint records have been added into IDENT, and from January 2002 to April 2003, immigration employees have matched to these records and apprehended 4,820 aliens who were wanted for criminal offenses, including many for drug trafficking and violent crimes. Fifty of these aliens were wanted in connection with murder. Since entering into IDENT during the same period an additional 179,500 IAFIS criminal history fingerprint records of aliens from certain countries believed to pose a security risk to the United States, immigration personnel have matched criminal records to 3,440 apprehended aliens. But these are incomplete downloads of criminal information, and many aliens who have criminal records are detained and released without any check of their records.

The security concerns raised by these numbers are clear. Inputting fingerprint records into IDENT has demonstrated the potential value of a fully integrated system, but it falls well short of the capability offered by full access to all IAFIS fingerprint records. Until the integration is complete and immigration authorities, the FBI, and other law enforcement agencies can simultaneously query both immigration and FBI fingerprint records, we believe dangerous aliens who should be detained may not be.

VII. STATUS OF IDENT/IAFIS INTEGRATION

Since the OIG’s June 2003 report on the status of the IDENT/IAFIS integration, the integration project has made some progress but it continues to

move slowly. As of January 2004, all aliens apprehended by the Border Patrol still are not checked against FBI criminal fingerprint records and the FBI and other law enforcement agencies using the FBI's fingerprint records still cannot access the DHS's criminal alien fingerprint records. Further, the transfer of the INS to the DHS has created additional issues relating to the management of the integration project. This section of the report summarizes the current status of the IDENT/IAFIS integration project.

A. June 2003 OIG Report

In June 2003, we reported that the IDENT/IAFIS integration project had fallen at least 2 years behind schedule.²⁷ At that time, the next major project milestone was deployment of the initial integrated version of IDENT/IAFIS, Version 1.2. Originally scheduled for December 2001, that deployment experienced a series of delays while JMD studied the operational costs of the integration (called the Metric Study) and while the INS focused on developing the National Security Entry/Exit Registration System (NSEERS).²⁸

We also reported that the integration project was at risk of further delays because JMD had not developed a transition plan for continued management of the project after the INS transferred to the DHS in March 2003. Moreover, JMD had not prepared a revised schedule for completing the full integration of IDENT and IAFIS. We found that the lack of planning resulted in confusion over whether JMD or the DHS would manage the development and deployment of the integration project. We also noted the potential loss of expertise as the DHS reassigned individuals experienced in IDENT away from the stalled integration project.

The delays and lack of planning we noted for the integration project were troubling because the interim enhancements made to IDENT had resulted in an impressive record of helping to identify wanted aliens. For example, from January 2002 to April 2003 the INS identified 4,820 apprehended aliens

²⁷ See the OIG report entitled "Status of IDENT/IAFIS Integration," June 2003.

²⁸ NSEERS is a national registry for nonimmigrant aliens arriving from certain countries to the United States, or aliens meeting intelligence-based criteria and identified as presenting an elevated security concern. NSEERS, which collected background, travel, and departure information and fingerprints, was the first step taken by DOJ and then DHS to comply with the congressionally mandated requirement for a comprehensive entry-exit program by 2005. However, NSEERS ended on December 1, 2003, and on January 5, 2004, was superseded by the United States Visitor and Immigrant Status Indicator Technology (US VISIT) program at 115 airports and 14 seaports. DHS officials plan to implement US VISIT at all ports of entry by December 31, 2005. US VISIT requires that most foreign visitors traveling to the United States on a visa have their two index fingers scanned and a digital photograph taken to verify their identity at the port of entry. US VISIT also will begin pilot testing departure confirmation systems at several locations.

wanted in connection with a variety of serious criminal offenses, including at least 50 aliens wanted in connection with murder, after 152,000 NCIC “wants and warrants fingerprint records were added to the IDENT lookout database.

Our June 2003 report recommended that JMD coordinate with the DHS to identify the management, deployment, and operational issues raised by the INS transfer to the DHS; prepare a revised project deployment plan; and report quarterly on the progress and interim results of the Metric Study.

B. Progress Since June 2003

In its response included in the OIG’s June 2003 report, JMD said that it initiated communication between the Chief Information Officers of DOJ and DHS to discuss project integration issues; prepared a revised deployment plan; briefed Congress and DOJ officials on the project status; and issued the first quarterly report from the Metric Study. However, in a September 17, 2003, follow-up response JMD identified several critical issues it said threatened the progress of the IDENT/IAFIS integration effort. We discuss these issues and the progress made by the DOJ and DHS in addressing the issues as of January 2004.

- Project Leadership and Responsibilities. DOJ and the DHS have assigned lead responsibility for the integration project to specific offices in each agency – for the DOJ, JMD’s Management Planning Staff and for the DHS, its ENFORCE/IDENT Program Office.²⁹ However, as of January 2004, the DOJ and DHS still had not developed an interagency memorandum of understanding to clarify the roles, responsibilities, and funding for the IDENT/IAFIS integration project.³⁰
- Funding. The DOJ’s FY 2004 appropriation, passed by Congress in January 2004, included \$5.1 million for the integration project, \$4 million dollars less than requested by the DOJ. The DHS received no direct funding for the integration project in its FY 2004 appropriation. JMD officials told the OIG that it believes this level of funding will slow down the deployment of Version 1.2 of IDENT/IAFIS, but at the time of this report JMD had not yet estimated the extent of the delay.

²⁹ ENFORCE is a case management system that documents and tracks the investigation, identification, apprehension, detention, and removal of immigration law violators. The ENFORCE/IDENT Program Office reports to the managers of US VISIT within the DHS.

³⁰ The Conference Report accompanying the FY 2004 omnibus appropriations legislation directed the DOJ to develop a memorandum of understanding with the DHS and other appropriate federal agencies regarding the continued integration of fingerprint systems.

In addition, the DOJ and the DHS disagree on whether any of the \$330 million Congress has provided for the DHS's US VISIT program in FY 2004 could be used appropriately to advance the IDENT/IAFIS integration project.

Finally, the President's FY 2005 budget request includes \$21.5 million for the IDENT/IAFIS project – \$5.1 million for JMD to continue development and \$16 million for IAFIS to support anticipated increased transactions from DHS sites. According to JMD officials, the DHS is responsible for the expense and scheduling of further development and deployment of Version 1.2.

- Interoperability. As of January 2004, issues related to the compatibility of the two-print US VISIT system with the ten-print records in the IAFIS database were unresolved, as was the issue of whether and how IAFIS would access the US VISIT fingerprint records. As of January 2004, it has not been determined yet how IDENT/IAFIS will interface with the structure of the new US VISIT biometric system implemented to track the arrival and departure of foreign visitors to the United States.

On January 26, 2004, the first meeting of the US VISIT Federal Stakeholders Advisory Board was held, chaired by the DHS Undersecretary for Border and Transportation Security, followed several days later by a meeting attended by many of the IDENT/IAFIS principals. At this second meeting, the DOJ and DHS officials agreed to formally present positions on providing the FBI access to US VISIT fingerprint records and on existing policies that would restrict the sharing of this information. DHS was tasked with researching the possibilities of sharing US VISIT data with DOJ and the FBI. Both groups are scheduled to meet again in March 2004.

- Development Schedules. We were informed by DOJ in September 2003 that DHS staff working on the IDENT/IAFIS integration have been redirected to the US VISIT program, which continues to be a DHS priority. Further, we were told that implementation of US VISIT required changes to IDENT, which resulted in delay of IDENT/IAFIS integration efforts until the US VISIT changes were completed and a “stable software baseline” (i.e., a version not undergoing revision) was established. The DHS staffing issues were resolved by October 2003 with implementation of the integrated BTS/US VISIT/ENFORCE IDENT Program Office and the hiring of additional DHS personnel whose work on US VISIT accelerated necessary modifications to IDENT/IAFIS. JMD officials told us that the stability of the IDENT/ENFORCE software baseline remains a potential concern for the duration of the development of US VISIT

through FY 2005. DOJ officials stated that they considered Version 1 (as represented by Version 1.2) to be completed. DHS officials stated that DOJ and DHS have not yet completed development of Version 1.2 as defined in its requirements document.

DOJ and DHS officials also noted the importance of a Fingerprint Vendor Technology Evaluation being conducted by the National Institute of Standards and Technology on behalf of JMD and in conjunction with the FBI. This evaluation is responsive to a requirement in the Department's FY 2003 appropriations bill directing that \$1 million be spent on a pilot program for software for IAFIS capable of expediting background checks using ten or less fingerprint comparisons.³¹

- Fingerprint Image Quality. According to DOJ and DHS officials, fingerprint image quality is currently the most important operational issue in the IDENT/IAFIS integration project. According to DHS officials, this issue has temporarily slowed further deployment of Version 1.1+. The recent image quality problems coincide with deployment of Version 1.1+ and its new fingerprint scanner.³² In late 2003, 20 to 30 percent of IDENT fingerprint quality indicator scores began falling into the unacceptable range. DHS staff suspect three possible overlapping causes: the new scanners; the cropping of the fingerprint images after the fingerprint has been scanned and before the image is searched against the IDENT database; and inadequate training. Since discovering the problems, DHS officials said that they are testing another scanner to see if it gets better results, adjusting the area of the fingerprint that is scanned and examining the effectiveness of their training.
- Data Completeness. According to JMD, as of September 2003 the DHS had identified discrepancies in the data that JMD was collecting from various sources to estimate "front line" and "downstream" costs of the

³¹ DOJ also issued a Request for Information for fingerprint technology that could capture the equivalent of 10 rolled fingerprints in less than one minute.

³² Version 1.1+ workstations can take 10 rolled fingerprints and simultaneously query the IDENT and IAFIS databases to provide a rapid response for potential matches from IAFIS in less than 10 minutes. Version 1.1+ also modified the IDENT photograph for the purposes of electronic booking. DHS officials stated that Version 1.2 also will automatically submit 10 fingerprints to the DHS Biometric Support Center (which maintains the lookout database) in order that the aliens' fingerprints be entered into the lookout database. Version 1.2 also would enable certain IAFIS data to be automatically entered in the associated ENFORCE record. The next version, Version 2, will create within IAFIS an Immigration Apprehension file, consisting of both flat and rolled IDENT fingerprints, which will allow other federal, state and local law enforcement agencies to submit ten-rolled prints for criminal checks against the IDENT fingerprint records.

integration project for the Metric Study.³³ As of January 2004, the DHS and JMD still were in the process of identifying and resolving these discrepancies.

We concluded that as of January 2004, some progress has been made in deploying the initial integrated versions of IDENT/IAFIS, but the integration process continues to proceed slowly. IDENT Version 1.1+ workstations have been deployed to approximately 56 DHS sites, including 25 ports of entry and 31 Border Patrol stations. That represents about 12 percent of all ports of entry, and about 20 percent of all Border Patrol sites.³⁴

The first Metric Study report sent to Congress on July 18, 2003, estimated that, as a result of improved IAFIS access, the Border Patrol was able to obtain additional criminal history information that it would not have known about for between 8.8 percent and 10.3 percent of the aliens it apprehended at the metric sites. Preliminary Metrics data from October through December 2003, with all sites deploying Version 1.1+, suggested that access to IAFIS provided criminal history information to the Border Patrol on between 8.5 and 11.8 percent of apprehended aliens that would not have been known by searching IDENT alone. From October 1, 2003, until January 31, 2004, the Border Patrol had 9,650 criminal hits from IAFIS that, including hits for aliens wanted in connection with 13 murders.

The FBI continues to electronically update every two weeks the “wants and warrants” file that goes into the IDENT lookout database. Every month, the FBI also provides to the lookout database an updated Terrorist file, which includes fingerprint records the FBI has acquired from various law enforcement and security sources. From October 2003 until January 31, 2004, the DHS has received 3,034 hits on apprehended aliens from the updated “wants and warrants” file, including 399 hits for aliens wanted for violent crimes.

Finally, JMD has revised the official project schedule to reflect the delays that had been incurred through September 2003. According to the revised schedule, IAFIS will be expanded to handle the additional workload generated by the nationwide deployment of Version 1.2 by September 30, 2005.

³³ The front line cost refers to the additional resource requirements for DHS that would result from the increased apprehension of identified criminal aliens. The downstream cost is the operational cost to other agencies that would be affected by the increased apprehension and processing of illegal aliens, such as the United States Marshals Service, Federal Bureau of Prisons, Executive Office for Immigration Review, and the United States Attorneys’ Offices.

³⁴ In addition, another 56 locations (ports of entry, Border Patrol stations, and District Offices) have received the unintegrated Version 1.1.1, which requires that aliens be processed twice in order to check both the IDENT lookout database and the IAFIS criminal history records.

According to JMD officials, DHS will determine the date by which Version 1.2 is deployed nationwide. The revised schedule indicates that the final version, Version 2 – which will provide the important capability for the FBI and local law enforcement agencies to access the DHS’s fingerprint and criminal history databases – will not be completed before August 2008. That is more than 5 years later than Version 2 originally was scheduled to be deployed, and almost 2 years behind the original scheduled completion date for the entire integration project. However, according to JMD officials, the scope and phasing of the entire project has undergone a thorough revision. Version 2 will incorporate what was referred to as Versions 2, 3, and 4 in the original project plan.

Thus, while there has been some progress at deploying an integrated version of IDENT/IAFIS, full integration of the two systems remains years away. The FBI, the DHS, and local law enforcement agencies still are far from a fully integrated system that will automatically check the fingerprints of apprehended aliens against all IDENT and IAFIS records. According to the latest schedule, the deployment of a fully integrated fingerprint system is at least 4 years away. We believe this continues the significant risk that aliens who should be detained, such as Resendez and Batres, instead will be released because Border Patrol agents will not learn of their significant criminal or deportation history.

VIII. RECOMMENDATIONS

1. The DOJ should develop and implement a memorandum of understanding (MOU) with the DHS to guide the integration of IDENT and IAFIS.

In its September 17, 2003, response to the OIG Report, JMD stated that it would develop an MOU between DHS and DOJ detailing the roles and responsibilities pertaining to the IDENT/IAFIS integration project. Since then, in the FY 2004 Omnibus Appropriations Act, Congress specifically directed DOJ to develop and implement such an MOU with DHS, including cost-sharing agreements, to ensure continued coordination on this and other initiatives.

As of January 2004, JMD managers told the OIG that they have made little progress on drafting such an MOU. They said that JMD is waiting for more information from DHS about how the entry-exit control requirements of US VISIT will be integrated with IAFIS. In addition, the FBI and DHS have not agreed on the extent of access that the FBI will have to fingerprints collected by US VISIT. DHS managers also told us that they have been preoccupied with deploying the first phase of US VISIT, although they indicated that an MOU does not have to hinge on whether the issues revolving around US VISIT have been resolved.

We believe that DOJ, in collaboration with DHS, should resolve these issues and ensure that an MOU detailing the duties and responsibilities for the IDENT/IAFIS project be completed soon.

2. The DOJ should assign responsibility for coordinating and overseeing the integration project to a senior DOJ official.

We believe that the participation of high-level officials – at both DOJ and DHS – is needed to resolve cross-agency issues so that this critical joint project can move forward in a timelier manner. At DOJ, we recommend that the Chief Information Officer (who is now meeting monthly with his DHS counterpart on the IDENT/IAFIS integration project) be assigned to lead this integration project on behalf of DOJ and to oversee the efforts of JMD’s IDENT/IAFIS Integration Project Office. JMD should retain the daily operational responsibility within DOJ for directing and assuring the successful integration of IDENT and IAFIS databases. In light of JMD’s history and experience in coordinating this initiative, as well as the working relationships it has developed with the critical offices and individuals within the DHS and the FBI, we believe that JMD remains the most capable and appropriate entity to oversee completion of the project. Nevertheless, we believe that one senior official assigned ultimately should be responsible for ensuring that the project moves forward and any difficulties are addressed timely.

3. The DOJ should pursue expeditiously the development of Version 2 of the IDENT/IAFIS Integration Project, which will provide the DHS apprehension and criminal history information to other federal, state, and local law enforcement agencies.

To date, the IDENT/IAFIS integration project has focused on providing FBI fingerprint and criminal history information to immigration agents at DHS to enable them to identify criminal aliens. Conversely, federal, state, and local law enforcement officials will benefit greatly from ready access to DHS fingerprint and criminal history information, including information on prior deportations.

According to officials at the DOJ and DHS, significant policy questions remain concerning how the FBI will access certain IDENT fingerprint records and how the records will be made available to other law enforcement agencies. These questions must be resolved before work on Version 2 of the Integration Project can proceed. We believe that these decisions should be made as soon as possible, because they will affect the ability of local, state, and other federal law enforcement agencies to receive information from IDENT records.

4. The DOJ should work with the DHS to update the FBI’s “wants and warrants” information with IDENT on a daily, rather than bi-weekly, basis until IDENT and IAFIS are fully integrated.

IDENT is currently updated with FBI “wants and warrants” information every two weeks. This creates the obvious risk that wanted aliens may be released inappropriately because a “want or a warrant” has not been placed in IDENT between the biweekly update. We believe the FBI should work with the DHS to ensure that its “wants and warrants” are transferred automatically to IDENT every day; that the IAFIS records in IDENT are timely, accurate and complete; and that records be modified or deleted when a change is made in III.

5. The DOJ should coordinate with the DHS to establish procedures to ensure that the criminal histories of all aliens who have a lookout or IAFIS hit are provided to and reviewed by the Border Patrol. In addition, we urge the DHS to make these criminal history records part of the official record of its encounter with the alien. Further, we encourage the Border Patrol to create a uniform policy for all Border Patrol sectors and stations that outlines appropriate procedures for handling lookout hits.

In response to lookout hits, WIN/AFIS currently faxes an alien’s criminal history RAP sheet to the Border Patrol station even though they are not required to do so. We believe this should become a formal procedure because the Batres case demonstrated the tragic consequences that can occur when unclear procedures result in a failure to review an alien’s criminal history record, even when that alien is the subject of a lookout hit. If the records are not reviewed, aliens with serious criminal histories may be voluntarily returned rather than being held for further law enforcement action. Moreover, we believe that the Border Patrol should develop clear and uniform policies that detail when a Border Patrol agent should obtain a full criminal history check on an alien and that when the RAP sheet check is done the response be placed in the alien’s file.³⁵

IX. CONCLUSION

The Batres case, like the Resendez case before it, demonstrated the critical need for rapid integration of immigration and criminal fingerprint identification databases. These cases illustrated that cumbersome and imperfect manual processes inevitably will permit the criminal and deportation record of dangerous criminal aliens, such as Batres and Resendez, to remain undetected. Immigration agents cannot perform such manual checks on all

³⁵ JMD’s response to these recommendations is included in the Appendix to this report.

apprehended aliens. Rather, an automated system to check such records through integrated databases must be implemented as expeditiously as possible.

Both the DOJ and DHS recognize this need. Yet, while the integration project has made progress, it continues to move slowly and still is years from completion. Recently, it has been slowed by the attention placed on other technology projects, such as US VISIT. In addition, the transfer of the INS to the DHS has caused delays in the integration project. Uncertainty also remains as to who will be responsible for the overall management of the integration project. Significantly, the DOJ and the DHS have yet to enter into a memorandum of understanding delineating the specific roles and responsibilities of each agency in the project.

We believe that the integration project should remain a critical priority and should receive close attention and adequate resources, notwithstanding other important tasks facing both agencies. We continue to believe that expeditious integration is essential to providing immigration and law enforcement agents adequate access to information about criminal aliens, which could help avoid recurrences of cases like Batres and Resendez. We therefore continue to recommend that the DOJ ensure that the IDENT/IAFIS integration project receives close attention and proceeds expeditiously.

Appendix

Department of Justice Response




Washington, D.C. 20530

FEB 24

MEMORANDUM FOR GLENN A. FINE

Inspector General
Office of Inspector General

FROM:

Paul R. Corts 
Assistant Attorney General
for Administration

SUBJECT:

Comments on OIG Draft Report: IDENT/IAFIS: The Batres Case and The Status of the Integration Effort

Thank you for the opportunity to comment on the Office of Inspector General's (OIG) draft report entitled, "IDENT/IAFIS: The Batres Case and The Status of the Integration Effort." As you requested, we have identified a number of factual inaccuracies that are present in the report, and they are noted in an attachment to this memorandum. Below are comments regarding the recommendations contained in the draft report.

- 1. The DOJ should develop and implement a memorandum of understanding (MOU) with the DHS to guide the integration of IDENT and IAFIS.**

We agree that a MOU with DHS is needed and, as you report, it has been our intention to develop such a document since last summer. However, that MOU must include a cost-sharing agreement that will require DHS to contribute funds to this effort if significant progress is to be accomplished in a timely manner. Since our Department's appropriation was just passed, it has been unclear until just recently as to how much direct funding would be available to the project. Furthermore, as you also report, a number of significant policy decisions must be made regarding the US VISIT system and its relationship to IAFIS. These decisions will directly affect the contents of an MOU and the associated cost sharing agreement. We are having ongoing discussions with DHS about all of these issues, and an MOU will be prepared as soon as possible.

- 2. The DOJ should assign responsibility for coordinating and overseeing the integration project to a senior DOJ official.**

We agree that the participation of high-level officials in both DOJ and DHS is needed to resolve a number of critical issues. I am satisfied, however, that the current assignment of responsibilities within JMD is sufficient to move this project forward; we just need to reach agreement within DHS on many of these issues and obtain the necessary funding. The personnel assigned to the IDENT/IAFIS Integration Project Office are working closely with the CIO on these matters, and I am being kept apprised of issues that need to be brought to the attention of senior Departmental officials. I have had conversation with Asa Hutchinson, Under Secretary for Border and Transportation Security (with responsibility for this project at DHS), and we will communicate on these issues when necessary or appropriate.

- 3. The DOJ should pursue expeditiously the development of Version 2 of the IDENT/IAFIS Integration Project, which will provide the DHS apprehension and criminal history information to other federal, state, and local law enforcement agencies.**

As mentioned previously, a number of critical issues are being discussed with DHS and US VISIT officials. We agree that these issues must be resolved before work on the next phase of the integration project can proceed. This will ensure that the greatest degrees of interoperability and effectiveness are achieved at the least cost and within the shortest possible timeframe.

- 4. The DOJ should work with the DHS to update the FBI's "wants and warrants" information with IDENT on a daily, rather than bi-weekly, basis until IDENT and IAFIS are fully integrated.**

Consistent with your recommendation, the FBI is already responding to a DHS request for daily updates of the "wants and warrants" extracts that are loaded into IDENT. We expect that to be achieved within three months.

- 5. The DOJ should coordinate with the DHS to establish procedures to ensure that the criminal histories of all aliens who have a lookout or IAFIS hit are provided to and reviewed by the Border Patrol. In addition, we urge the DHS to make these criminal history records part of the official record of its encounter with the alien. Further, we encourage the Border Patrol to create a uniform policy for all Border Patrol Sectors and stations that outlines appropriate procedures for handling lookout hits.**

Today, using the most current IDENT/IAFIS workstations, DHS can take 10 rolled prints and simultaneously submit searches to both IDENT and IAFIS. An IAFIS "hit" will automatically return a rap sheet to DHS in 10 minutes, often within 3-5 minutes. Future deployment of this workstation will be done by DHS, at its expense and according to its schedule because Congress deleted funding for this purpose from the DOJ budget.

When using IDENT only, DHS is able to detect “wanted” aliens if those records have been extracted from IAFIS and placed in IDENT. When there is an IDENT hit on these individuals, DHS is provided the relevant FBI record number. As your report states, a Border Patrol Agent can obtain the criminal history through a phone call to his or her radio room. This would have been an easier task to perform than was the 45-minute interview with Mr. Batres that was conducted by the agent who first apprehended him. The rap sheet that could have been obtained might have provided physical characteristics (e.g., scars, marks and tattoos) that would have helped to confirm Mr. Batres’ real identity.

Again, thank you for the opportunity to comment on this draft report. I share your view that this project offers significant law enforcement benefits and that it should proceed as expeditiously as possible. Please be assured that we are working with officials from DHS to ensure the integration/interoperability of IAFIS and IDENT/US VISIT in the most effective and efficient manner.

Attachment