

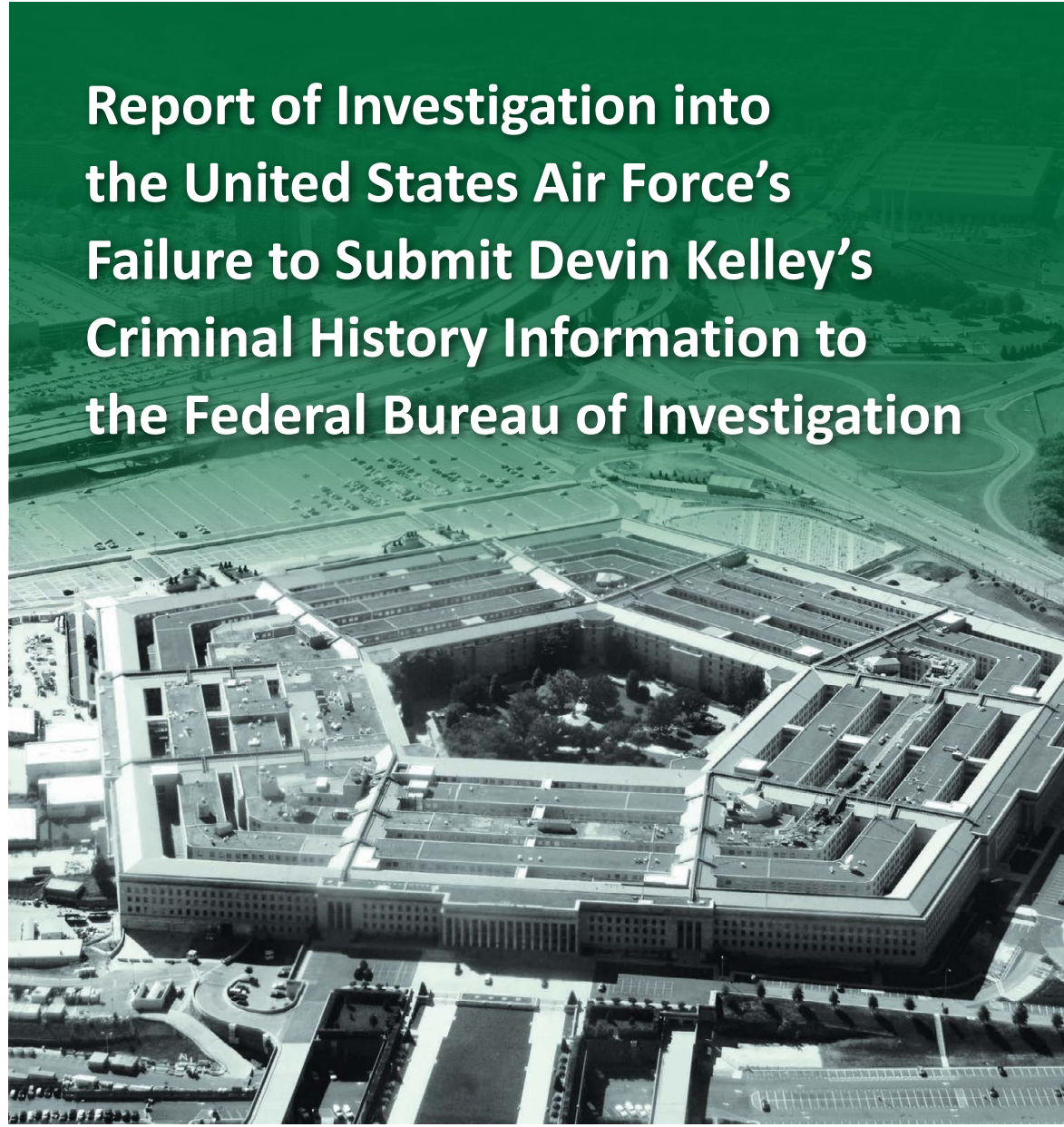
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INSPECTOR GENERAL

U.S. Department of Defense

DECEMBER 6, 2018



Report of Investigation into the United States Air Force's Failure to Submit Devin Kelley's Criminal History Information to the Federal Bureau of Investigation

INTEGRITY ★ INDEPENDENCE ★ EXCELLENCE

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Table of Contents

I.	Introduction.....	1
	DoD OIG Investigation.....	2
II.	Factual Background.....	5
	A. Kelley’s Background.....	5
	B. USAF Delayed Enlistment.....	5
	C. USAF Initial Assignments.....	6
	D. Domestic Violence Incidents.....	8
	E. Initiation of the AFOSI Criminal Investigation.....	9
	F. Initiation of 49th Security Forces Squadron Criminal Investigation.....	12
	G. Kelley’s Mental Health Treatment.....	13
	H. Kelley Threatens Tessa Kelley.....	15
	I. Kelley Confesses to Abusing his Stepson.....	15
	J. AFOSI Interviews Witnesses in the Kelley Investigation.....	19
	K. Interviews of Kelley’s Former Girlfriends.....	21
	L. Pretrial Confinement, Court-Martial, and Confinement.....	23
	M. Kelley’s Release from Confinement.....	27
	N. Post-Confinement.....	28
	O. Kelley’s Firearms Purchases.....	30
	P. Sutherland Springs Church Shooting.....	32
III.	Chronology of Significant Events.....	33
IV.	Federal Law, DoD Fingerprint Policy, and Previous DoD OIG Reports.....	46
	A. Federal Law and Policy Requirements.....	46
	B. Previous DoD OIG Reports.....	55
	C. Other DoD OIG Reports.....	59

V.	Analysis of Missed Opportunities to Submit Kelley’s Fingerprints and Final Disposition Report to the FBI.....	61
A.	The USAF’s Missed Opportunities to Submit Kelley’s Fingerprints and Final Disposition Report to the FBI, as Required by DoD and USAF Policy.....	61
B.	AFOSI Supervisory Reviews of Kelley’s Investigative Case File.....	87
C.	Work Environment and USAF Fingerprint Training.....	90
D.	Kelley’s Mental Health and His Right to Legally Purchase Firearms.....	101
E.	Kelley’s No Contact Order and Military Protective Order.....	104
F.	Post-Trial Events.....	106
VI.	Overall Conclusions.....	107
VII.	Recommendations.....	113
A.	USAF Recruiting Process Background Checks.....	113
B.	USAF Security Forces File Retention.....	114
C.	USAF Training Program Revisions.....	115
D.	No Contact Orders.....	116
E.	Performance of USAF Personnel.....	116
F.	Management Comments and Our Response.....	117
VIII.	Appendix A.....	119
A.	Prior OIG Reports.....	119
B.	Other DoD OIG Reports.....	124
IX.	Appendix B.....	130
	Acronyms and Abbreviations.....	130

Report of Investigation into the United States Air Force's Failure to Submit Devin Kelley's Criminal History Information to the Federal Bureau of Investigation

I. Introduction

The DoD Office of Inspector General (OIG) investigated the circumstances surrounding the United States Air Force's (USAF) failure to submit Devin Patrick Kelley's criminal history information to the Federal Bureau of Investigation (FBI) for inclusion in its databases.¹ In November 2017, Kelley shot and killed 26 people in the First Baptist Church of Sutherland Springs, Sutherland Springs, Texas, with weapons he purchased from licensed firearms dealers.

As described in detail in this report, in November 2012, while in the USAF, Kelley was the subject of two law enforcement investigations, one led by the 49th Security Forces at Holloman Air Force Base (HAFB), the other led by the Air Force Office of Special Investigations (AFOSI) Detachment 225. As a result of the investigations, Kelley was convicted by General Court-Martial of an assault on both his wife and stepson, which is reportable to the FBI in accordance with DoD policy. This conviction should have prevented Kelley from purchasing a firearm from a licensed firearms dealer.

USAF Law Enforcement organizations at HAFB are composed of the 49th Security Forces Squadron and the AFOSI Detachment 225. The USAF Security Forces and AFOSI perform different missions within the USAF. The USAF Security Forces perform a security and law enforcement function on USAF installations. The AFOSI performs major criminal and counterintelligence investigations for the USAF.

DoD policy required the submission of Kelley's fingerprints to the FBI at several points. The first time that the USAF should have submitted his fingerprint cards to the FBI Criminal Justice Information Services (CJIS) Division was after probable cause was determined in an investigation by the AFOSI Detachment 225 that Kelley assaulted his stepson and Tessa Kelley.² Additionally, a final disposition report should have been submitted to the FBI at the conclusion of Kelley's court-martial. The USAF was also required to submit to the FBI Kelley's fingerprints at other times, including when Kelley entered post-trial confinement following his court-martial.

¹ Hereafter referred to as "Kelley."

² Tessa Kelley is also known as Tessa Brennaman and Tessa Loge. However, for the purposes of this report, Tessa Kelley will hereafter be referred to as "Tessa Kelley."

However, the USAF did not submit Kelley's fingerprints and final disposition report to the FBI at any time. If Kelley's fingerprints were submitted to the FBI, he would have been prohibited from purchasing a firearm from a licensed firearms dealer. Because his fingerprints were not submitted to the FBI CJIS Division, Kelley was able to purchase firearms, which he used to kill 26 people at the First Baptist Church of Sutherland Springs on November 5, 2017.

Our report describes in detail Kelley's actions while in the USAF and afterwards, including his criminal convictions by court-martial for assaulting his wife and stepson, his confinement and discharge from the USAF, his purchase of weapons from licensed firearms dealers, and his killing of 26 individuals at the First Baptist Church of Sutherland Springs on November 5, 2017.

DoD OIG Investigation

In the hours following the shooting, law enforcement officials discovered that the USAF had not submitted Kelley's fingerprints and final disposition report to the FBI for entry into the appropriate FBI criminal history databases.

On November 6, 2017, the Secretary of Defense asked the DoD Inspector General to investigate "whether the appropriate information regarding Kelley should have been transmitted to the FBI CJIS Division for inclusion in its databases and whether or not the USAF transmitted the information." On November 9, 2017, the DoD OIG announced that it was opening this investigation.

To conduct this investigation, we assembled a multi-disciplinary team of special agents, investigative specialists, and attorneys and subpoenaed Kelley's criminal history and mental health records. The team conducted 41 witness interviews, including interviews of Kelley's ex-wife, his second wife, and his father.³ We also constructed a detailed chronology of the events related to Kelley and the USAF law enforcement at HAFB, which is included in this report.

We reviewed the Gun Control Act of 1968, the Brady Act, and the Lautenberg Amendment. Furthermore, we reviewed DoD, USAF, and AFOSI policies concerning the collection and submission of fingerprints to the FBI.

³ AFOSI IG investigators also interviewed many witnesses shortly after the shooting and provided us copies of the recordings and transcripts of these interviews. We reviewed those transcripts and incorporated the information in our investigation, where appropriate.

We also obtained, reviewed, and analyzed numerous documents relevant to this investigation, including investigative case files, court-martial records, and mental health and medical records. In addition, we consulted with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), the FBI CJIS Division, and the Texas Department of Public Safety (the Texas Rangers).

This 131-page report provides the results of our investigation and is divided into nine parts.

This section, Part I, contains the introduction to this report.

Part II describes Kelley's personal history before he enlisted in the USAF, as well as his performance and behavioral problems in the USAF. It also discusses the USAF law enforcement interactions with Kelley and its failure to submit Kelley's fingerprints and final disposition report to the FBI CJIS Division on several occasions.

Part III contains a chronology of the significant events related to this investigation, to place those events in context.

Part IV contains our analysis of the Federal law, DoD, USAF, and AFOSI policy that was applicable to the specific issues that we investigated. Additionally, we summarize previous DoD OIG reports that relate to the submission of fingerprints and final disposition report to the FBI CJIS Division.

Part V is the main part of this report. It describes the USAF's missed opportunities to collect and submit Kelley's fingerprints and his final disposition report to the FBI CJIS Division. First, we discuss each of the interactions with the USAF law enforcement and the missed opportunities it had to collect and submit Kelley's fingerprints and final disposition report to the FBI CJIS Division in detail. Second, we detail the AFOSI monthly supervisory reviews of the investigative case file and the policy that requires the reviews be documented in Investigative Information Management System (I2MS). Third, we examined AFOSI Detachment 225's personnel assignment history, its leadership gaps, and its investigative caseload to determine whether these factors may have contributed to the failure to submit Kelley's fingerprints to the FBI CJIS Division for inclusion in its database. Fourth, we describe Kelley's mental health history to determine if his mental health status should have been reported to the FBI CJIS Division for inclusion in its databases. Fifth, we analyzed whether the no contact order or the Military Protective Order, issued to Kelley in 2012, should have been entered into the National Crime Information Center (NCIC) database

and prohibited him from purchasing a firearm. Finally, we describe the events that occurred after Kelley's court-martial, and whether the USAF complied with the policy requirements for processing Kelley's fingerprints and forms.

Part VI contains our overall conclusions.

Part VII provides eight recommendations to the DoD and the USAF based on the findings of this investigation.⁴

Part VIII is Appendix A, which provides details of our prior evaluations on the collection and submission of fingerprints and final disposition reports to the FBI CJIS Division throughout the DoD.

Part IX is Appendix B, which contains the acronyms and abbreviations used within our report.

⁴ We provided a draft of this report to the Office of the Under Secretary of Defense for Personnel and Readiness and to the USAF. We considered management comments when preparing the final report.

II. Factual Background

This section of the report provides detailed background on the facts and circumstances that led to the events on November 5, 2017, when former United States Air Force (USAF) member Devin P. Kelley shot and killed 26 people and wounded 22 others at the First Baptist Church of Sutherland Springs, Sutherland Springs, Texas. It discusses Kelley's personal history before he enlisted in the USAF, as well as his performance and behavioral problems in the USAF. It also discusses the USAF law enforcement interactions with Kelley and its failure to submit Kelley's fingerprints and final disposition report to the FBI Criminal Justice Information Services (CJIS) Division on several occasions.

A. Kelley's Background

Kelley was born on February 12, 1991, in San Marcos, Texas. He attended and graduated from New Braunfels High School in New Braunfels, Texas.

On November 29, 2006, the New Braunfels Police Department (NBPD) arrested Kelley for possession of marijuana, a class B misdemeanor. The NBPD referred the incident to the New Braunfels Juvenile Probation Office. Kelley received 6 months of probation and 60 hours of community service. The New Braunfels Juvenile Probation Office dismissed the matter on April 10, 2007.

Kelley was expelled from New Braunfels High School from December 2006 until February 2007. During this time, Kelley enrolled in an unnamed alternative school. However, Kelley graduated from New Braunfels High School in May 2009.

B. USAF Delayed Enlistment

On June 12, 2009, Kelley entered the USAF Delayed Enlistment Program through the San Antonio Military Entrance Processing Station.⁵ As part of his enlistment paperwork package, he completed the "USAF Drug and Alcohol Abuse Certificate." On this document, under Section II, "Certification at Time of Application," he answered "No" in response to the questions, "Have you ever used or experimented with Marijuana" and "Have you ever experimented with, used, or possessed any illegal drug or narcotic." Kelley later recertified this information as accurate on January 5, 2010, the day he entered active military service.

⁵ The Delayed Entrance Program is a program for recruits who enlist in the Ready Reserve and agree to subsequent enlistment in an Active Component of the Military Services.

(FOUO) On January 3, 2010, the (b) (6) received a complaint from a (b) (6) who had told a (b) (6) that Kelley had (b) (6) approximately one week earlier. The (b) (6), who then contacted (b) (6). An (b) (6) patrol officer interviewed (b) (6).
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. The (b) (6) provided Kelley's telephone number, work address, and vehicle description to the (b) (6) police.

On January 5, 2010, Kelley entered active military service in the USAF. He attended Basic Military Training at Joint Base San Antonio-Lackland, Texas.

(FOUO) On February 3, 2010, (b) (6) detectives interviewed the (b) (6) again. (b) (6).
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

(FOUO) On March 1, 2010, the (b) (6) notified the (b) (6) that the (b) (6) did not wish to participate further in the investigation. The (b) (6) detectives terminated the investigation without interviewing Kelley.

C. USAF Initial Assignments

On March 5, 2010, Kelley graduated from Basic Military Training. He received permanent change of station (PCS) orders to the 316th Training Squadron, Goodfellow Air Force Base (AFB), Texas, and on April 14, 2010, began training to be a Network Intelligence Analyst. This USAF training course consisted of two main blocks or periods of instruction: the "Network Intelligence Analysis Fundamentals" course, and the "Network Intelligence Analysis Apprentice" course. Kelley successfully completed the first block of instruction on May 6, 2010. A Military Training Assessment at this time stated that Kelley was an "Excellent Airman; he had no derogatory paperwork."

However, Kelley had academic issues with the second block of instruction. Kelley's Student Training Report for this course indicated that he had failed four tests, even after receiving one-on-one training sessions with course staff. In a report on Kelley, Military Training Leaders recommended Kelley for elimination from the course because he did not meet the academic standards. The report also noted that Kelley "had several minor disciplinary infractions," but did not specify the infractions.

On December 16, 2010, Kelley was reassigned to the Traffic Management career field.

On January 11, 2011, Kelley received PCS orders from Goodfellow AFB to the 49th Logistics Readiness Squadron, Holloman AFB (HAFB), New Mexico. Kelley's PCS orders included a stop in Fort Lee, Virginia, to complete his Traffic Management Apprentice technical training from January to March 2011.

Shortly after Kelley's arrival at HAFB in late April 2011, he began receiving disciplinary actions. Between June 19, 2011, and March 20, 2012, he accumulated four memorandums for record (MFRs), four Letters of Counseling (LOCs), and five Letters of Reprimand (LORs).⁶ The details regarding these administrative punishments were:

- July 22, 2011 – LOC for using his personal cellular telephone while in the unit warehouse, against local regulations;⁷
- July 26, 2011 – LOC for using his personal cellular telephone to text others during the Hazardous Materials Course, and failing six course progress checks and subsequently failing the course;
- August 31, 2011 – MFR for not counting the quantity of received property during the course of his duties;
- September 1, 2011 – MFR for processing equipment through the logistics system that was unserviceable;
- September 6, 2011 – LOC for missing a scheduled medical appointment;⁸
- September 9, 2011 – MFR for wearing headphones while in uniform;

⁶ According to Air Force Instruction 36-2907, "Unfavorable Information File," November 26, 2014, MFRs, LOCs, and LORs are administrative disciplinary measures available to USAF commanders and supervisors under USAF Instructions. These administrative disciplinary measures can be written or verbal, with LORs being more severe than LOCs, and LOCs more severe than MFRs. These actions are intended to improve, correct, and instruct subordinates who depart from standards of performance, military bearing, or integrity, for conduct either on duty or off duty, and whose actions degrade the individual and unit mission.

⁷ In the USAF, a military organization above a squadron level (group, wing, air division, numbered Air Force, air component command, Major Command) is an establishment, while a squadron and lower (squadron, flight, or detachment) is a unit.

⁸ According to Kelley's Family Advocacy Records, on this date he missed an appointment with that office. The Family Advocacy Records stated that Kelley "did not keep an appointment with Family Advocacy nor called to cancel/reschedule." The records did not indicate what the appointment was for; however, there is a note that reads, "1800-1830: No one home for scheduled HV [Home Visit]."

- September 9, 2011 – MFR for not logging off his computer;
- September 12, 2011 – LOR for shutting down a computer another person had been using with the intent to log that person off;
- September 29, 2011 – LOC for not completing an assigned task;
- February 16, 2012 – LOR for lying to his supervisor. Kelley called his supervisor a disparaging word. When confronted by his supervisor as to what he called her, Kelley lied, telling her that he had not said anything negative about her;
- March 19, 2012 – LOR for failing to properly process supply items in the warehouse where he worked;
- March 19, 2012 – LOR for losing his military identification card for a second time, resulting in a coworker having to report to base and cover duties assigned to Kelley because he could not access the base without a military ID card; and
- March 20, 2012 – LOR for failing to report to his duty section after being ordered to do so.

D. Domestic Violence Incidents

Kelley met his first wife, Tessa Kelley, sometime during 2007 or 2008, when both lived in New Braunfels. In February 2011, Kelley began dating Tessa Kelley, who had a son from a previous relationship. Kelley and Tessa Kelley were married on April 12, 2011.

~~(FOUO)~~ On June 2, 2011, Tessa Kelley took her son, who was approximately 11 months old, to the William Beaumont Army Medical Center, Fort Bliss, El Paso, Texas, for treatment for a (b) (6). A nursing note for this period indicated concern for child abuse or neglect.⁹ Due to the son's condition, he was transferred and admitted to Providence Hospital, El Paso, Texas, for treatment in the children's Intensive Care Unit. A bone survey and chest x-rays conducted at Providence Memorial Hospital revealed that the son had suffered a (b) (6). The hospital released the son on June 4, 2011. On June 6, 2011, a pediatrician at the 49th Medical Operations Squadron, HAFB, conducted a post-hospitalization follow-up examination on the son. A medical record review noted that the son's (b) (6) had resolved and he "was doing well."

⁹ During the course of the AFOSI investigation, a USAF Child Abuse Pediatrician reviewed the injuries noted in Kelley's stepson's medical records. She noted that during patient triage, while questioning Tessa Kelley about her son's injuries, Tessa stated Kelley "kicked her" in the leg. Triage nurses noted that, "she [Tessa Kelley] did not explain [the circumstances] further."

On June 8, 2011, Kelley and Tessa Kelley took the son to the Gerald Champion Regional Medical Center Emergency Room, Alamogordo, New Mexico, because the son was vomiting and “falling over.” Medical Center staff called the pediatrician at HAFB, who went to the hospital and conducted an examination on the son. During the examination, the pediatrician noted bruising on the son’s left cheek that was not on his face during the June 6, 2011 examination. The bruising “appeared to be fresh and a little purple,” and “appeared to be a hand print.”

(FOUO) On June 9, 2011, the pediatrician from HAFB requested that the son be admitted to the Medical Center. The pediatrician was concerned that the injury was from a slap. The son was admitted to the hospital after a Computerized Tomography scan showed (b) (6). The pediatrician notified the Children, Youth and Families Department (CYFD), Alamogordo, New Mexico, who, in turn, notified the Air Force Office of Special Investigations (AFOSI) Detachment 225 at HAFB of the possible child abuse.¹⁰

E. Initiation of the AFOSI Criminal Investigation

On June 9, 2011, AFOSI Detachment 225 at HAFB, opened an investigation for assault on a child, listing Kelley as a subject, based upon information from a social worker at the CYFD.¹¹ The same day, the AFOSI conducted a subject interview of Kelley and collected his fingerprints.

After receiving Article 31 rights advisement for assault, Kelley waived his rights and agreed to speak to the Special Agents.¹² Kelley denied striking his stepson and denied having any knowledge of Tessa Kelley striking the son. Kelley stated that he did not spend very much time with his stepson, and that he and Tessa Kelley were the only ones with direct access to his stepson. Kelley claimed he did not know how his stepson received the injury to his head, saying that Tessa Kelley first observed the injuries to his stepson’s face June 8, 2011, while driving with Kelley to the Gerald Champion Regional Medical Center. Kelley suggested that his stepson received the injury from falling on the floor while crawling or playing in his crib. At the end of

¹⁰ An AFOSI Detachment is a geographically separated field office under the operational control of a regional headquarters. In the case of AFOSI Detachment 225, the regional headquarters was the 2nd Field Investigations Region, located at Langley AFB, Virginia.

¹¹ (FOUO) Due to the nature of Kelley’s stepson’s injuries and circumstances surrounding the matter, AFOSI listed (b) (6) Kelley (b) (6) (b) (6) for the assault investigation. For more information about the AFOSI Case No. 225-C-128-G-323291/1651413, see Part V of this report.

¹² In accordance with 10 U.S.C., Section 831 and Article 31(b), any person subject to the Uniform Code of Military Justice must be advised of their rights prior to interrogation or any request for a statement. Article 31(b) states, “No person subject to this chapter may interrogate, or request any statement from, an accused or a person suspected of an offense without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offense of which he is accused or suspected and that any statement made by him may be used as evidence against him in a trial by court-martial.”

his interview with the AFOSI Detachment 225 Special Agents, Kelley's fingerprints and a deoxyribonucleic acid (DNA) sample were collected, and he was released to his unit representatives.¹³

This was the first opportunity for the USAF to submit Kelley's fingerprints. Submission of Kelley's fingerprints should have occurred if the Detachment received a probable cause determination from the Staff Judge Advocate or other legal advisor that Kelley committed the crimes he was accused of, as required by DoD Instruction (DoDI) 5505.11, "Fingerprint Card and Final Disposition Report Submission Requirements." We reviewed AFOSI's investigative documentation and did not find any evidence indicating that a probable cause determination to submit Kelley's fingerprints to the FBI CJIS Division had occurred.

~~(FOUO)~~ On June 12, 2011, a Registered Nurse at Providence Hospital told AFOSI Detachment 225 Special Agents that a bone survey conducted on June 10, 2011, showed a (b) (6).

On June 24, 2011, Kelley's stepson was placed in foster care because of the unexplained injuries and the suspicions of child abuse.

~~(FOUO)~~ On June 24, 2011, Tessa Kelley told her (b) (6) that Kelley had physically assaulted her by grabbing her around the throat, choking her, and throwing her against a wall. Tessa Kelley's (b) (6), a USAF Reservist, reported the assault to her USAF Reserve leadership, who reported it to the 49th Security Forces Squadron, HAFB. The 49th Security Forces Squadron patrol went to the Kelley's residence. Its report of the incident stated that the investigation "determined no crime had been committed and there was no evidence of any injuries to either party."

However, due to the AFOSI's ongoing investigation involving Kelley and Tessa Kelley, the 49th Security Forces Squadron contacted AFOSI Detachment 225 Special Agents. The AFOSI Detachment 225 Special Agents and USAF representatives decided to take Tessa Kelley to an off-base restaurant to eat, then to a local park to talk. Tessa Kelley told them that the incident was the result of "stress due to [her] son being taken by CYFD." Tessa Kelley stated that she and her husband were "fighting," but that they were planning to participate in marital counseling. Tessa Kelley stated that her "main goal was to get the son back." Tessa Kelley did not answer most of the AFOSI Special Agent's questions and did not provide any further information about the alleged assault.

¹³ The AFOSI Detachment 225 Special Agents mailed the DNA kit to U.S. Army Criminal Investigation Laboratory. The Chief of the Combined DNA Index System Branch verified that the U.S. Army Criminal Investigation Laboratory received Kelley's DNA from the AFOSI Detachment 225 on July 5, 2011. The AFOSI Detachment 225 Special Agents could not explain why the DNA kit was mailed but Kelley's fingerprint cards were not.

In July 2011, the AFOSI case agent took leave before deploying to Afghanistan.¹⁴ The case agent deployed from August 2011 through February 2012.¹⁵ According to a Special Agent from AFOSI Detachment 225, due to staffing challenges, very little investigative activity occurred on the Kelley assault investigation while the case agent was deployed.

On September 7, 2011, Kelley voluntarily went to the HAFB Mental Health Clinic as a walk-in patient and stated that he was unable to cope with the stress he was under at work. He stated that Child Protective Services was removing his stepson from the house due to an allegation of abuse caused his stress. Kelley also stated that his supervisor was constantly “yelling at work.” A staff psychologist, wrote in Kelley’s mental health record that treatment would concentrate on his “anxiety/attention/occupational; continue to develop relational and mood management coping skills.” The psychologist also wrote that Kelley would be seen weekly. Between September 7, 2011, and February 22, 2012, Kelley was treated 17 times at the HAFB Mental Health Clinic. During this time, Kelley was prescribed Atomoxetine, Ibuprofen, Albuterol, Fluticasone, and Omeprazole.¹⁶

In a report on Kelley’s October 11, 2011, visit, a psychologist wrote that Kelley had difficulty interacting with authority figures and that he perceived that they were criticizing him. The psychologist indicated that Kelley was not in “acute mental status” and that there was no safety concern noted at that time.

On January 10, 2012, the psychologist examined Kelley again and reported that Kelley was “able to attend to and focus on pertinent material at home and work.” The psychologist also wrote that Kelley was able to “control and direct his energy appropriately” and that there were “no significant changes in [his] symptoms.”

On February 17, 2012, Kelley told a 49th Logistics Readiness Squadron Senior Non-commissioned Officer (SNCO) in his chain-of-command that Tessa Kelley had left a note at their house and he could not find her. This SNCO informed the 49th Logistics Readiness Squadron First Sergeant, who in turn informed the 49th Security Forces Squadron Base Defense Operations Center (BDOC). According to the First Sergeant, the BDOC issued an alert to all 49th Security Forces Squadron patrols for them to “be

¹⁴ A case agent is the AFOSI Special Agent that is primarily responsible for advising the AFOSI Detachment leadership on the status when requested. AFOSI Detachment leadership is ultimately responsible for the AFOSI investigations within their Detachments.

¹⁵ The case agent later permanently left AFOSI Detachment 225 in October 2012.

¹⁶ According to the WebMD website, Atomoxetine is prescribed to treat attention deficit hyperactivity disorder. Ibuprofen is prescribed to relieve pain. Albuterol is prescribed to treat wheezing and shortness of breath caused by breathing problems (such as asthma, chronic obstructive pulmonary disease). Fluticasone is prescribed reduce swelling in the nose. Omeprazole is prescribed to treat stomach and esophagus problems (such as acid reflux or ulcers). www.webmd.com.

on the lookout” for Tessa Kelley. Shortly thereafter, a guard at the HAFB front gate notified the BDOC that a woman matching Tessa Kelley’s description had walked out through the gate with a suitcase in her hand.

~~(FOUO)~~ Later that day, Tessa Kelley called the 49th Security Forces Squadron to report that Kelley had abused her and that she was staying with her (b) (6) in El Paso. The BDOC contacted the First Sergeant, who called Tessa Kelley’s (b) (6) and asked her to bring Tessa Kelley to the 49th Security Forces Squadron to make a statement about the assault. Tessa Kelley got on the telephone and told the First Sergeant that Kelley’s actions caused her to fear for her life. In response, the First Sergeant told her that the 49th Logistics Readiness Squadron Commander would issue Kelley a no contact order.¹⁷

~~(FOUO)~~ The SNCO brought Kelley to the 49th Security Forces Squadron office so the First Sergeant could speak to him regarding the alleged assault. Before the First Sergeant could read Kelley his rights, Kelley made a spontaneous statement that he had heard (b) (6)

[REDACTED]

[REDACTED]

F. Initiation of 49th Security Forces Squadron Criminal Investigation

AFOSI’s investigative case file on Kelley reported that on February 17, 2012, Tessa Kelley returned to HAFB and told 49th Security Forces Squadron personnel about domestic abuse by Kelley. Tessa Kelley told the 49th Security Forces Squadron investigators that the reason she left Kelley was to get away from him “and the abuse,” that Kelley had been physically abusing her since July 2011 and that Kelley had choked her on multiple occasions. She stated that in one instance on December 24, 2011, Kelley pushed her against a wall and choked her because she had told him that she did not want to visit his family and stated, “You better pack your bags or I’ll choke you to the ceiling and pass you out.” Tessa Kelley also said that on another occasion, she and Kelley argued over her wanting to go for a walk at night. This argument resulted in Kelley choking her, kicking her in the stomach, and then dragging her by her hair into the bathroom. She said that Kelley told her “I’m going to water-board you” and stuck her head directly under the showerhead.

¹⁷ Tessa Kelley told 49th Security Forces Squadron investigators about how Kelley abused her, which is detailed in 49th Security Forces Squadron SFMIS Case No. I20120200128.

Tessa Kelley also told the investigators that Kelley emotionally and physically abused her throughout their marriage. Tessa Kelley provided other examples of abuse, stating that Kelley would threaten to choke her if she did not do as he said, and would slap her, kick her, pull her hair, drag her through their house, and control her. She stated that Kelley told her if she “said anything to anybody he would bury her in the desert somewhere.” Tessa Kelley stated that the reason she had not reported the abuse sooner was due to fear for both her life and the life of her son.

On February 17, 2012, the 49th Security Forces Squadron investigators tried to conduct a subject interview of Kelley in their office regarding the assault. However, Kelley requested legal counsel and did not make a statement.

At this time, the 49th Security Forces Squadron did not collect his fingerprints. DoD and USAF policies required the submission of a fingerprint card (Federal Document 249 [FD-249], “Arrest and Institution Fingerprint Card”) to the FBI CJIS Division when a law enforcement official determined, after coordination with the servicing Staff Judge Advocate or legal advisor, that probable cause existed to believe that the person committed an offense listed in DoDI 5505.11, Enclosure 2. Although the 49th Security Forces Squadron incident report states that the Staff Judge Advocate was briefed on the investigation, there is no indication that there was a probable cause determination made by either the Staff Judge Advocate or anyone in the 49th Security Forces Squadron. This was the second opportunity for the USAF to submit Kelley’s fingerprints to the FBI CJIS Division.

According to Kelley’s personnel information file, on February 17, 2012, Kelley’s Commander issued Kelley a “no contact order” because of Tessa Kelley’s complaint. The no contact order directed Kelley to have no contact with Tessa Kelley, prohibiting him from initiating any contact or communication with Tessa Kelley.¹⁸

G. Kelley’s Mental Health Treatment

Kelley’s mental health records showed that on February 21, 2012, he voluntarily went to the HAFB Mental Health Clinic as a walk-in patient. He told the staff psychologist that he was upset because his wife left him and because he believed that she told the 49th Security Forces Squadron that he assaulted her.

¹⁸ According to DoDI 6400.06, “Domestic Abuse Involving DoD Military and Certain Affiliated Personnel,” August 21, 2007, Incorporating Change 4, May 26, 2017, a Military Protective Order can be issued by a commander when necessary to safeguard a victim, quell a disturbance, and maintain good order and discipline. The Military Protective Order is similar to a no contact order. However, only Military Protective orders may be entered into NCIC.

According to Kelley's mental health records, on February 22, 2012, Kelley returned to the HAFB Mental Health Clinic because he was still upset that his wife left him. A HAFB Mental Health Clinic licensed clinical social worker stated that Kelley told her "he would like to go to the psychiatric hospital for help because he did not believe he could help himself on an outpatient status."

On February 23, 2012, Kelley voluntarily entered in-patient care at the Peak Behavioral Health Services (PBHS), where he remained until March 8, 2012.¹⁹ During Kelley's intake evaluation, PBHS staff diagnosed him as having "an adjustment disorder with depressed mood." The PBHS staff wrote, "The patient reported feeling suicidal with a plan to shoot himself with a gun after his wife informed him that she was filing assault charges for an altercation that occurred three weeks prior to admission." Kelley told the PBHS personnel that he had frequent mood swings. Kelley also reported that he had severe anxiety. Kelley told a PBHS Clinical Nurse Specialist that he was diagnosed with Attention Deficit Hyperactivity Disorder while he was in the fourth grade. He also told the PBHS staff that the HAFB Mental Health Clinic had counseled him to help him cope with his Child Protective Services case, his marital problems, and his alleged emotional abuse from a female supervisor at work. During Kelley's in-patient treatment, he was prescribed Strattera for Attention Deficit Hyperactivity Disorder, Wellbutrin for depression, Clonazepam for anxiety, and Ambien for insomnia.

The Licensed Mental Health Counselor wrote an undated memorandum in Kelley's PBHS mental health file, stating that Kelley had learned to manage his anger and reduce his stress. She also wrote that Kelley appeared to be motivated during his psychoeducational therapy groups and wanted to make changes so he could have a healthier lifestyle and work on improving his marriage.²⁰

On March 8, 2012, the PBHS discharged Kelley and told him to follow up with the HAFB Mental Health Clinic. Between March 14, 2012, and April 26, 2012, Kelley was seen at the HAFB Mental Health Clinic seven times. The last visit was April 26, 2012, during which Kelley told HAFB Mental Health Clinic personnel that he was experiencing more difficulty than ever before because the final hearing for the adoption of his stepson was one hearing away from resolution.

¹⁹ According to its website, PBHS is an in-patient mental health facility located at 5060 McNutt Road, Santa Teresa, New Mexico. <http://peakbehavioral.com/>. Strategic Behavioral Health, LLC purchased the PBHS facility on May 20, 2013, from Universal Health Services, Inc. and became custodian of Kelley's medical record.

²⁰ According to the medical dictionary website, psychoeducational therapy is a health program that addresses stress management and health education. <https://medical-dictionary.thefreedictionary.com/psychoeducational>.

H. Kelley Threatens Tessa Kelley

According to Kelley's pretrial confinement appeal package, in approximately mid-March 2012, while at their residence, Tessa Kelley watched as Kelley put one bullet in a .38 Special revolver.²¹ Tessa Kelley stated that, Kelley then pointed the gun at his own head and pulled the trigger three times. Kelley then pointed the gun at Tessa Kelley and "threatened" her.²²

(FOUO) In addition, according to Tessa Kelley, on approximately April 23, 2012, while Tessa Kelley and Kelley were driving to El Paso to pick up Tessa Kelley's (b) (6) (who was flying in to visit them) from the airport, Tessa Kelley asked Kelley to slow down. She said Kelley replied, "Shut the F*** up, don't tell me how to drive."²³ The police later pulled Kelley over and cited him for speeding. After receiving the ticket and continuing to drive, Kelley blamed the ticket on Tessa Kelley and pulled the car over again. She stated that Kelley then pulled out a gun and placed the muzzle of the weapon against her temple, stating, "Do you want to die?" Tessa Kelley pushed the gun away and began to cry. Kelley then put the gun in his mouth and asked her why she wanted to be with him. Kelley stated she was stupid for being with him and that she should know the reason why. Kelley then told her that he had slapped her son on June 8, 2011, the day her son was taken to the hospital. Kelley additionally stated that he had struck his stepson on multiple occasions, the first time being in March 2011, in New Braunfels.

I. Kelley Confesses to Abusing his Stepson

According to Tessa Kelley's AFOSI testimony, in February 2012, Kelley had locked himself in an El Paso hotel room's bathroom. Tessa Kelley said that while Kelley was locked in the bathroom she heard him crying and repeating the words, "I'm so sorry [stepson], I'm sorry I did this to you," approximately ten times. Tessa Kelley also stated that she tried to confront Kelley about his statement, but he did not reply.

On April 23, 2012, Kelley again told Tessa Kelley that he was the one who injured her son the day they took him to the hospital in June of 2011. Kelley also told Tessa Kelley that he had admitted to the base Chaplain that he had hurt her son. Tessa Kelley told Kelley that "God would want him to do the right thing and tell the truth about what he had done," to which he agreed.

²¹ (FOUO) As noted above, Kelley's Commander issued him a no contact order on February 17, 2012, that had an expiration date of May 17, 2012. In her April 10, 2018, interview with DoD OIG Investigators, Tessa Kelley stated that she was never told about the no contact order. After reporting the incident to the 49th Security Forces Squadron, Tessa Kelley moved into her (b) (6) residence in El Paso and stayed there for approximately one to four months. She did not specify to the 49th Security Forces Squadron investigators what the frequency of her contact with Kelley was during that time.

²² The description of this incident is taken from Tessa Kelley's summarized deposition presented at Kelley's Article 32 hearing.

²³ The description of these events is based on the May 3, 2012, AFOSI interview of Tessa Kelley.

~~(FOUO)~~ On April 27, 2012, based on guidance from her (b) (6), Tessa Kelley asked Kelley to make a “confession recording.” Tessa Kelley’s (b) (6) had encouraged her to have Kelley record a confession documenting that he had injured his stepson. Tessa Kelley’s (b) (6) told her to pretend that she would still love Kelley and would stay with him if he told the truth regarding his stepson’s injuries.

~~(FOUO)~~ Tessa Kelley stated she talked him “into making a full confession video” on April 27. In the video, he admitted to hitting her son multiple times in frustration. Kelley stated that this frustration would lead him to push, strike, and slap his stepson. Kelley also acknowledged that he caused the bruising on his stepson’s face on June 8, 2011. Kelley further admitted that he caused his stepson’s “(b) (6) injuries.” He stated that he had pushed his stepson down multiple times and shook him on at least two occasions. Kelley stated that, on one occasion, he shook his stepson so hard that his (b) (6). On April 27, 2012, after completing the recording, Kelley gave it to Tessa Kelley.

On April 28, 2012, Kelley visited his parents in San Antonio. According to a PBHS physician, he told the physician that he had thoughts about shooting himself with his gun. On April 29, 2012, after speaking with the chaplain, Kelley’s father escorted Kelley back to HAFB.

On April 29, 2012, Tessa Kelley provided the recording of Kelley’s confession to his First Sergeant. The First Sergeant provided the recording to AFOSI Detachment 225.

On April 29, 2012, Kelley’s chain-of-command arranged to have him admitted back into the PBHS.

On April 30, 2012, Kelley voluntarily entered the PBHS for the second time. Kelley denied his wife’s report that he was going to kill his sergeant. Kelley stated that he was going to shoot himself and PBHS staff put a high-risk notification alert on his chart due to his homicidal and suicidal indicators.

On May 3, 2012, AFOSI agents reinterviewed Tessa Kelley. She stated that she thought Kelley might have hurt her son, but she had not seen him do anything to hurt her son. She stated that she began suspecting him of “injuring” her son when Kelley started physically, verbally, and mentally abusing her. Tessa Kelley stated that Kelley had struck, kicked, choked, and pulled her hair out on multiple occasions. She stated that Kelley threatened to kill her if she ever reported the abuse to police, or any other party. Additionally, Kelley had stated to her, “If the cops show up at my door, I will shoot them.” She also said that he had told her, “My work is so lucky I do not have a shotgun because I would go in there and shoot everyone.”

Tessa Kelley said that on one occasion while driving, Kelley struck her in the stomach in front of two friends, threatening to beat her if she continued speaking. During the AFOSI investigation, the two “friends” in question were identified and one of them was interviewed. The other friend did not want to speak to law enforcement. However, the AFOSI summary of those interviews did not cover this incident; therefore, AFOSI could not corroborate Tessa Kelley’s allegation that her husband, Kelley, struck her while they were driving with those friends.

(FOUO) In the AFOSI summary of a separate interview, the (b) (6) of Tessa Kelley’s (b) (6) said that Tessa Kelley’s (b) (6) had told him that Kelley choked her with his hands. Tessa Kelley’s (b) (6) told AFOSI Special Agents that she had witnessed Kelley verbally abuse Tessa Kelley on multiple occasions. She also told the Special Agents that she was “aware” of Kelley physically abusing Tessa Kelley but did not see any bruising or missing hair. In an interview of Tessa Kelley’s childhood friend, he stated that Tessa Kelley told him about “all of the times” Kelley abused her. Tessa Kelley included the details of how Kelley would “hit her in the stomach and pull her hair out” and how he attempted to “water board” her. Tessa Kelley told her childhood friend that water boarding consisted of Kelley pushing her head under the shower faucet and turning on the water.

On June 6, 2012, a PBHS staff member reported that he saw Kelley looking at an internet website “related to guns.” According to the PBHS records, it was not clear what Kelley was looking for or whether he was trying to purchase or had already purchased a weapon at that time. A PBHS Clinical Nurse Specialist wrote in Kelley’s mental health record:

[T]he patient has been confronted about his behavior of looking at websites related to guns when he is under legal and occupational scrutiny related to his comments and his involvement, but again his insight and judgment are so impaired that he does not make the connection about how that does not look good on him.

On June 7, 2012, Kelley left the PBHS facility in Santa Teresa, New Mexico, without permission from the staff and without notifying anyone.

On June 8, 2012, a PBHS Director located Kelley at a Greyhound bus station in El Paso. A Greyhound security officer and an El Paso police officer handcuffed him, and police officers from the Sunland Police Department transported him back to PBHS.²⁴

²⁴ The Greyhound Bus station in El Paso is approximately 12 miles from the PBHS facility, Santa Teresa, New Mexico.

On the same day, Kelley's Commander prepared a pretrial confinement package. The package included a memorandum stating that Kelley's Commander was "convinced" that Kelley was "dangerous and likely to harm someone if released." Kelley's Commander also cited Kelley's Internet search for body armor and firearms as further justification for the pretrial confinement. The Commander concluded that Kelley was a flight risk and ordered him into pretrial confinement.

The 49th Security Forces Squadron picked up Kelley from the PBHS and transported him to the 49th Security Forces Squadron Confinement Facility.

Because Kelley was ordered into pretrial confinement, USAF Corrections System policy required the confinement facility personnel to fingerprint Kelley during the in-processing into the confinement facility and to submit those records to the FBI after sentencing.²⁵ We could not determine if his fingerprints were taken at this point. When we checked for the 49th Security Forces Squadron Confinement Facility records on July 2, 2018, the USAF informed us that it was unable to locate any of the 49th Security Forces Squadron Confinement Facility records. The USAF also informed us that the facility closed on May 25, 2016, and that the records were likely destroyed in accordance with USAF records disposition policy.²⁶

We contacted an FBI CJIS Criminal History Information and Policy Unit program analyst who informed us in an e-mail that:

We did a check of anything coming in to the NGI [Next Generation Identification] utilizing the subject's name. That would show us if anything was submitted (including fingerprint rejections). We do not show that a criminal submission ever came in with that name (from any agency).

Therefore, we could not determine if the 49th Security Forces Squadron collected Kelley's fingerprints on the fingerprint card. However, we do know that Kelley's fingerprints were not submitted after his sentencing, as required.

²⁵ AFI 31-205, "The Air Force Corrections System," April 7, 2004, Incorporating Change 1, July 6, 2007, Certified Current on April 28, 2011, required USAF confinement facility personnel to complete two FDs-249 on all inmates. It directed that confinement facility personnel were to collect the inmate's fingerprints during their in-processing into the facility. However, the fingerprints were not submitted to the FBI CJIS Division until the sentence was adjudged.

²⁶ Inmate confinement facility records for inmates that were released from local confinement could have been destroyed 4 years after the inmate's release from confinement, in accordance with Air Force Manual 37-139, Table 31-2, Rule 1. The USAF was unable to provide documentation showing when or where the records were destroyed, but the records would have been eligible for destruction in December 2016.

~~(FOUO)~~ On June 8, 2012, AFOSI Detachment 225 Special Agents interviewed Kelley regarding Tessa Kelley's assault allegation and his Absent without Leave status when he left the PBHS facility. After the agents advised him of his rights, Kelley told the agents that he wanted to talk about things but could not due to his legal counsel request. However, according to the AFOSI report, Kelley told them that "something tragic had happened and he wanted to kill himself." Kelley also told the agents that he "escaped" from the PBHS facility because he was planning to go to New Braunfels, to plan his suicide. Kelley told agents that he made a confession video "on his own free will." He stated that Tessa Kelley had told him that (b) (6), but she was upset and wanted to get a divorce. Kelley also stated that Tessa Kelley had told him that she went to El Paso, (b) (6) but Kelley did not provide any more details.

Because AFOSI Detachment 225 Special Agents were in possession of Kelley's confession, conducted a subject interview, and Kelley was ordered into pretrial confinement, DoD policy required the Special Agents to collect and submit Kelley's fingerprints to the FBI CJIS Division.²⁷ This was the third opportunity for the USAF to collect and submit Kelley's fingerprints to FBI CJIS Division.

On June 25, 2012, Kelley's Commander issued him a Military Protection Order to prevent Kelley from abusing Tessa Kelley and her son any further. The Military Protection Order required that any communication between Tessa Kelley and Kelley be through his First Sergeant, until further notice.²⁸

J. AFOSI Interviews Witnesses in the Kelley Investigation

From May 1, 2012 through September 28, 2012, AFOSI Detachment 225 Special Agents conducted interviews of witnesses, such as friends and family of Kelley and Tessa Kelley, to identify the facts and circumstances surrounding their relationship and verify any instances of abuse. AFOSI interviewed three witnesses who said they had knowledge of verbal abuse, domestic assault, and sexual abuse by Kelley.

²⁷ Kelley's Commander ordered Kelley into pretrial confinement on June 8, 2012, stating that he had "reasonable grounds to believe" Kelley assaulted Tessa and her son. In a memorandum dated June 10, 2012, the Pretrial Confinement Review Officer found that "adequate probable cause" existed to believe Kelley had assaulted Tessa and her son.

²⁸ According to DoDI 6400.06, a commander can issue a Military Protective Order when necessary to safeguard a victim, quell a disturbance, and maintain good order and discipline while a victim has time to pursue a protection order through a civilian court, or to support an existing Civilian Protection Order. A commander can use DD Form 2873, "Military Protective Order," to issue the Military Protective Order.

1. Witness Interview 1

An acquaintance of Tessa Kelley stated that he believed that the Kelleys did not have “a good relationship.” The acquaintance opined that Kelley “controlled” Tessa Kelley so she would not be able to tell people about the ongoing abuse she received from Kelley. The acquaintance stated that Tessa Kelley was scared of her husband but that she kept going back to him because she felt she would lose her child. Tessa Kelley told the acquaintance about one occasion when Kelley grabbed and yanked Tessa Kelley’s hair, and repeatedly struck her in the stomach and kicked her. Additionally, Tessa Kelley told the acquaintance that Kelley attempted to “water board” her on at least one occasion. Tessa Kelley told the acquaintance that water boarding consisted of Kelley pushing her head under the shower faucet and turning on the water. The acquaintance believed the relationship became abusive in approximately January 2012, when he observed bruises on Tessa Kelley.

2. Witness Interview 2

~~(FOUO)~~ The second witness, Tessa Kelley’s (b) (6), described Kelley as “possessive and controlling” of Tessa Kelley. The (b) (6) said Kelley followed Tessa Kelley “everywhere,” including the bathroom. The (b) (6) stated he would not allow Tessa Kelley to see her friends. The (b) (6) also witnessed Kelley verbally abuse Tessa Kelley on multiple occasions. The (b) (6) stated that she was also aware through Tessa Kelley that Kelley pulled a gun on Tessa Kelley, and was aware that he physically abused Tessa Kelley. The (b) (6) stated that Kelley “played mind games” with Tessa Kelley and in one instance asked Tessa Kelley, “What if I was the one that hurt [your son]?”

3. Witness Interview 3

~~(FOUO)~~ Tessa Kelley’s (b) (6) stated that in January 2012, while Kelley and Tessa Kelley were home visiting family, Kelley spent the night at the home of Tessa Kelley’s (b) (6). Also present was the (b) (6) girlfriend. The (b) (6) stated that the following day, his girlfriend told him that Kelley had sexually assaulted her. The girlfriend told Tessa Kelley’s (b) (6) that at approximately 3:00 a.m., Kelley attempted to put his hands down her pants. The girlfriend told Tessa Kelley’s (b) (6) that she asked Kelley to stop, pushing his hands away, but Kelley persisted and then ultimately pulled his penis out and masturbated in front of her. Later, after she went to sleep, she felt Kelley grabbing her inner thigh, and stopped him once again.

(FOUO) Tessa Kelley's (b) (6) confronted Kelley, but Kelley denied everything and called the girlfriend a "crazy b****." Tessa Kelley's (b) (6) stated that Kelley later admitted the events to Tessa Kelley but told her he would kill Tessa Kelley if she told anybody. The (b) (6) stated that Tessa Kelley told him she "was beat" by Kelley. Tessa Kelley's (b) (6) stated that Tessa Kelley confided this information after Kelley confessed that he tried to "hook up" with the girlfriend of Tessa Kelley's (b) (6) ²⁹

K. Interviews of Kelley's Former Girlfriends

(FOUO) From June 18, 2012, to October 1, 2012, AFOSI Detachment 225 Special Agents also identified and interviewed four of Kelley's former girlfriends. They described instances of (b) (6) by him. There is no evidence that the former girlfriends ever reported the alleged abuse to any law enforcement agency before their interview with the AFOSI Detachment 225 Special Agents. The following sections describe the interviews with the four former girlfriends.

1. Former Girlfriend 1

(FOUO) (b) (6) [REDACTED]

2. Former Girlfriend 2

(FOUO) (b) (6) [REDACTED]

²⁹ (FOUO) AFOSI did not interview the potential victim or Kelley, or conduct an investigation into this allegation. In response to our inquiry into the details of the incident, AFOSI referred the allegation to the Comal County Sheriff's Office, but was unable to explain why it did not report or refer the incident when Tessa Kelley's (b) (6) brought it to AFOSI's attention originally.

(FOUO) (b) (6) [Redacted text block]

3. Former Girlfriend 3

(FOUO) (b) (6) [Redacted text block]

4. Former Girlfriend 4

(FOUO) (b) (6) [Redacted text block]

³⁰ (FOUO) (b) (6) [Redacted footnote text]

We did not find any documentation that the AFOSI Detachment 225 Special Agents referred the alleged abuse to any law enforcement agency.

L. Pretrial Confinement, Court-Martial, and Confinement

On June 8, 2012, after Kelley was discharged from the PBHS facility, 49th Security Forces Squadron personnel escorted him back to HAFB. Kelley was ordered into Pretrial Confinement (PTC), which consisted of him being placed in the Confinement Facility. A PTC hearing later the same day determined that probable cause existed for Kelley to remain in PTC.

The PTC Memorandum, dated June 8, 2012, stated that Kelley was suspected of committing four violations of the Uniform Code of Military Justice (UCMJ), specifically:

- Article 86, Date of Offense, June 7, 2012, Description of Offense, Absence without leave;
- Article 128, Date of Offense June 9, 2011, Description of Offense, Assault on a Child;
- Article 134, Date of Offense, April 23, 2012, Description of Offense, Communication of a Threat; and
- Article 134, Date of Offense, April 23, 2012, Description of Offense, Assault.³¹

On July 26, 2012, Kelley was charged with suspected violations of UCMJ Article 128 (Assault), against Tessa Kelley and her son.

On August 2, 2012, an Article 32 hearing was conducted.³² The hearing presented evidence that Kelley had abused Tessa Kelley from June 2011 through April 2012. The medical evidence presented during the hearing indicated her son suffered severe injuries inflicted by Kelley. The Article 32 Investigating Officer found reasonable grounds existed to believe that Kelley committed the offenses alleged.

On August 15, 2012, Kelley was also charged with a suspected violation of UCMJ Article 128 (Assault) for threatening Tessa Kelley with a firearm.

On August 27, 2012, charges were referred to court-martial. Kelley remained in confinement until the court-martial trial on November 6, 2012.

³¹ In the 7-day PTC Review memorandum, Kelley was listed as having violated UCMJ Articles 86 (Absence without leave), Article 128 (Assault on a child), Article 128 (Aggravated Assault), and Article 134 (Communicating threats). The 7-day PTC memo amended the incorrect documentation in the 48-hour PTC hearing, which was dated June 8, 2012, listing violation D, Article 134 as "assault."

³² An Article 32 hearing is a preliminary hearing that determines whether there is probable cause to believe an offense has been committed and the accused committed the offense; determines if the convening authority has court-martial jurisdiction; considers the form of charges; and recommends the disposition of the case.

On October 5, 2012, the AFOSI Detachment 225 Special Agent-in-Charge (SAIC) closed the investigation because he determined that all of the logical investigative steps had been conducted. He subsequently forwarded the report of investigation to the 49th Logistics Readiness Commander for command action.³³ The 49th Wing Commander, the 49th Mission Support Group Commander, and the Staff Judge Advocate received a copy for informational purposes.

On November 3, 2012, trial counsel offered, and the Staff Judge Advocate presented, Kelley and his defense counsel with an Offer for Pretrial Agreement (PTA).³⁴ The PTA specified that, in return for Kelley's plea of guilty to the charges of assault against his wife and stepson, the firearm charge would be dismissed and his confinement would not exceed 3 years.

On November 4, 2012, Kelley and his defense counsel agreed to the terms of the PTA.

On November 6, 2012, in accordance with the pretrial agreement, Kelley pleaded guilty in the General Court-Martial proceedings to assault on his wife and stepson. On November 7, 2012, the Court-Martial panel sentenced Kelley to a reduction in rank to Airman Basic, confinement for 12 months, and a Bad Conduct Discharge.

On November 7, 2012, after his conviction, Kelley returned to the Confinement Facility at HAFB. Because his conviction changed his status from pretrial confinement detainee to post trial inmate, Air Force Corrections System policy required the confinement facility personnel to collect and submit Kelley's fingerprints during his in-processing into the confinement facility.³⁵ This was the fourth opportunity for the USAF to submit Kelley's fingerprints and the first missed opportunity to submit Kelley's final disposition report to the FBI CJIS Division.

³³ Command action is the final administrative, judicial, or nonjudicial punishment decision that a commander takes against a military member to resolve disciplinary problems. In this case, command action would be the result of the court-martial.

³⁴ Air Force Policy Directive 51-1, "The Judge Advocate General's Department," November 19, 1993, states that the Staff Judge Advocate is the senior judge advocate on the installation and is responsible for providing legal services to the commander, the commander's staff, and others as appropriate.

³⁵ AFI 31-205, "The Air Force Corrections System," April 7, 2004, Incorporating Change 1, July 6, 2007, Certified Current on April 28, 2011, required USAF confinement facility personnel to complete two FDs-249, on all post-trial inmates. It directed one to be mailed to the FBI, CJIS Division, and the second was maintained in the correctional treatment file.

When we contacted the FBI in our investigation, a CJIS Criminal History Information and Policy Unit program analyst searched the Next Generation Identification system for Kelley's fingerprints and informed us that the FBI CJIS Division did not receive Kelley's fingerprint card from the 49th Security Forces Squadron. Therefore, we could not determine whether the 49th Security Forces Squadron had collected Kelley's post-trial confinement inmate fingerprints.

According to AFOSI policy, AFOSI Detachment 225 also should have submitted the final disposition report following the court-martial on the fingerprint card or the FBI-Department of Justice Form R-84, "Final Disposition Report," to the FBI within 15 days of Kelley's sentencing.³⁶

On December 14, 2012, the AFOSI Detachment 225 received the AF Form 1359, "Report of Result of Trial." This was the second opportunity for the USAF to submit the final disposition report for Kelley's criminal history to the FBI. We determined that this final disposition report was not submitted to the FBI.

On December 18, 2012, Kelley was transferred to and incarcerated at the Naval Consolidated Brig, Miramar, California, until his release on March 31, 2013. Secretary of the Navy Instruction 1640.9C, "Department of the Navy Corrections Manual" January 3, 2006, requires its confinement facilities to collect and maintain prisoner fingerprints for inclusion in the prisoner's confinement records, but prohibits the submission of the fingerprints to the FBI.³⁷ We determined that Kelley's fingerprint cards were in his confinement records at the Naval Consolidated Brig, as required.

During his intake evaluation, Naval Consolidated Brig personnel placed Kelley in separate sleeping quarters from the general population while conducting medical and psychological assessments of him. Because of the evaluation, Kelley was classified as a "suicide risk in gown" as well as an "Assault risk – escape risk." These classifications required Kelley to be observed for 48 hours, from December 18 through December 20, for any signs of injurious behavior. The Initial Custody Classification Worksheet also indicated Kelley was taking three medications at the time: "Klarnapin (sic) – anxiety; Celexa – depression; and Ambien – sleep."

³⁶ AFOSI Manual 71-121, "Processing and Reporting Investigative Matter Certified Current on October 12, 2012," requires AFOSI Special Agents to submit a completed hard-copy final disposition report on military members to the FBI within 15 days of sentencing.

³⁷ Secretary of the Navy Instruction 1640.9C, "Department of the Navy Corrections Manual," January 3, 2006, deleted the requirement for the confinement facilities to submit fingerprints to the FBI. It now requires that confinement facilities collect and maintain fingerprints on all prisoners upon arrival for inclusion into the prisoner's confinement record. It also states that the fingerprints "shall" not be submitted to the FBI.

Following the observation period, Kelley was reassessed and moved into general population until his release. While incarcerated at the Naval Consolidated Brig, Kelley received seven “Inmate Observation Reports,” documenting multiple violations of the Naval Consolidated Brig, Miramar, “Rules and Regulations and Standard Operating Procedures.” The following violations of rules 410.A, 404.C and Standard Operating Procedures 1000.3, paragraph 8a(c)z were documented in the reports:

- Inmate Observation Report January 27, 2013 Failed to show for med call;
- Inmate Observation Report January 28, 2013 Untidy/unsanitary cell;
- Inmate Observation Report February 8, 2013 Failed to show for med call;
- Inmate Observation Report February 11, 2013 Failed to show for med call;
- Inmate Observation Report February 14, 2013 Failed to show for med call;
- Inmate Observation Report February 19, 2013 Unsatisfactory cell;
- Inmate Disciplinary report February 19, 2013 Failed to show for med call on three or more dates; and
- Prisoner Observation Report March 23, 2013 Talking in med line.³⁸

While in confinement, Kelley attended and completed various treatment classes, including Dialectical Behavioral Therapy, Victim Impact, Substance Abuse Education, Substance Abuse Training Program, Anger Management, and Crossroads. Because Kelley’s confinement at the Naval Consolidated Brig was not long, he did not have enough time to enter into Violent Offender Treatment.³⁹

The Naval Consolidated Brig documented several items relating to Kelley’s mental health. Upon initial intake, Kelley completed an intake questionnaire assessing mental and psychological stability. Kelley indicated on the questionnaire that he had previously contemplated committing suicide. Kelley was listed as a suicide risk as well as a flight risk. Because Kelley indicated that he had suicidal tendencies while under initial observation, for the first few days of confinement he was placed in a special gown designed to inhibit the ability to commit suicide. After the initial observation period between December 18, 2012, and December 20, 2012, Kelley was reassessed and cleared for general population.

³⁸ The Naval Consolidated Brig policies state that prisoners shall inspect the cell area for any obvious discrepancies, including damages or prohibited property, and document this on a cell inspection form. Upon moving out of a cell for any reason, staff will inspect the cell and the prisoner will be held responsible for discrepancies. Any prisoner not where the prisoner is supposed to be is a violation of movement regulation and subject to disciplinary action. When a prisoner is prescribed a medication, a corpsman will determine what appointment times the prisoner should attend in order to properly take the medication. Failure to report to take the medication as prescribed is a violation of the policy.

³⁹ On November 20, 2017, the Naval Consolidated Brig, Miramar, Commanding Officer told us that an inmate who does not have enough time at the confinement center to complete a specific treatment class will not be admitted into the class, even for a portion of it, as attending only a part of it may be harmful to the inmate.

On December 14, 2012, the AFOSI Detachment 225 received the Report of Result of Trial, which documented the result of Kelley's trial.

On the same day, the AFOSI Detachment 225 SAIC certified in the Investigation and Information Management System (I2MS) case management system checklist that Kelley's fingerprints were submitted to the FBI CJIS Division.⁴⁰ This permitted the SAIC to close the investigation.⁴¹

In fact, the fingerprints and final disposition report were never submitted to the FBI.

We discuss below, in Part V, our investigation into why the USAF did not submit Kelley's fingerprints and final disposition report to the FBI CJIS Division.

M. Kelley's Release from Confinement

The Naval Consolidated Brig calculated Kelley's latest release date as April 8, 2013. The calculation incorporated Kelley's sentencing date (November 7, 2012), the sentence of 12 months, and credit for his time served in pretrial confinement (5 months and 2 days). Kelley received 5 days subtracted from his sentence release date for positive work he completed while incarcerated and good behavior.

On March 31, 2013, Kelley was released from the Naval Consolidated Brig, upon completion of his sentence.⁴² Kelley returned to HAFB under escort of the Security Forces Squadron personnel.

Between March 31, 2013, and April 2, 2013, Kelley completed USAF out-processing paperwork and was ordered "not to enter or reenter or be found within the limits of the United States military installation of HAFB, New Mexico, for an indefinite period."

⁴⁰ This SAIC assumed command of the AFOSI Detachment 225 in December 2011 and he was not the SAIC that was in command when the AFOSI Detachment 225 opened the Kelley assault investigation. The military judicial, nonjudicial, or administrative results that are documented on the AF Form 1359 are used to populate the final disposition report. AFI 51-201, "Administration of Military Justice," June 6, 2013, states that the AF Form 1359, "Report of Result of Trial," will be automated and printed from the Automated Military Justice Analysis and Management System. After final adjournment of the court-martial in every case, the trial counsel will promptly sign and publish the result of the trial using the Report of Result of Trial memorandum. The Report of Result of Trial is distributed to the accused's immediate commander, the court-martial convening authorities and the Staff Judge Advocates, the commander of the local Security Forces Squadron, and AFOSI detachment, and, if the accused is in confinement, to the commanding officer responsible for the confinement facility and the confinement officer.

⁴¹ I2MS is a web-based computer application that allows AFOSI Special Agents to document case information and allows AFOSI leaders to manage investigations. AFOSI Special Agents use I2MS "activities" to document actions taken during an investigation. Specifically, the fingerprint activity is used to document the collection of fingerprints and their submission to the FBI CJIS Division for criminal history checks and for inclusion in the FBI's databases. AFOSI Manual 71-121 requires that the legal coordination be documented in I2MS.

⁴² Kelley received credit for time served during the 152 days that he was in PTC.

Upon completion of his out-processing, Kelley was placed on excess leave status and reassigned to the Headquarters Air Force Security Forces Center, Corrections Division, Joint Base San Antonio-Lackland, for administrative purposes while he awaited the review of his appeal of his conviction.⁴³

During this time, Kelley resided in an apartment in a barn located on his parent's property in New Braunfels, which is approximately 50 miles from Joint Base San Antonio-Lackland.

N. Post-Confinement

On June 17, 2013, a 20-year-old woman reported to Comal County Sheriff's Office (CCSO) deputies, New Braunfels, that Kelley had sexually assaulted her. The woman stated that on June 15, 2013, she went to Kelley's residence to "hang out." She and Kelley went into Kelley's bedroom where he had her sit on the bed next to him and then he pushed her down onto her back. Once in this position, Kelley climbed on top of her chest, and pinned her arms underneath his legs. She stated Kelley then pulled out his penis and tried to have her perform oral sex on him. She said that Kelley told her that if she did not open her mouth, that he would choke her. Using his hands, Kelley then began to choke her until she opened her mouth, at which point he "shoved" his penis into her mouth. The victim stated she bit down on his penis to try to get him to stop, resulting in Kelley slapping her across the face and telling her that "he would hurt me if I didn't do what he said." Afterwards, he let the woman off the bed and she left Kelley's residence.

The CCSO report stated that the woman added that "a few weeks" before Kelley forced her to have oral sex, she had gone to Kelley's residence and Kelley tried to kiss her but she resisted. He also tried to penetrate her with his finger. She stated that when Kelley pinned her down, he "ripped my shorts off," and penetrated her with his penis.

⁴³ A convicted military member's rights of appeal hinge on the specific terms of his sentence. When the service member receives confinement in excess of 180 days or the member receives a punitive discharge (Bad Conduct Discharge or Dishonorable Discharge for enlisted / Dismissal for Officers), the service member is entitled to an automatic appeal through the military appellate courts. Kelley met this standard both in terms of length of his sentence and the punitive discharge he received. Excess leave status, also known as Appellate Review Leave, is when the service member does not have to actively report for duty, but is still considered covered by the USAF administratively until all judicial appeals have been reviewed and completed. The Air Force Security Forces Center is responsible for training, equipping, and organizing all Security Forces for the USAF. The Corrections Division Center is responsible for USAF members in an excess leave status.

The CCSO report stated the woman told her close friend Tessa Kelley about the alleged rape.⁴⁴ The CCSO deputy interviewed Tessa Kelley, who stated that the woman had told her that Kelley had forced the woman to have oral sex with him. Tessa Kelley also told the CCSO deputy that during their marriage, Kelley had choked her, slapped her, kicked her, water-boarded her, and held a gun to her head. Tessa Kelley's recounting of Kelley's abuse was consistent with her statements to AFOSI and the USAF Security Forces investigators during the investigations of Kelley in 2012, which are described above.

On June 27, 2013, the woman's report of the sexual assault and Tessa Kelley's statements were referred to CCSO detectives for further investigation. On July 18, July 25, and September 18, 2013, CCSO detectives tried to call the woman but were unsuccessful. On October 7, 2013, the CCSO lead detective mailed the woman a letter asking that she contact the detective to discuss the case. In this letter, the detective wrote, "Failure to contact me within a reasonable amount of time will result in this case being inactivated for lack of cooperation."⁴⁵

On October 14, 2013, after receiving no response from the woman, the CCSO lead detective noted that the case would be "inactivated" pending contact from the victim. The CCSO detectives subsequently "inactivated" the case without interviewing Kelley.

On December 3, 2013, the USAF Court of Criminal Appeals affirmed the findings and sentencing in Kelley's court-martial.

~~(FOUO)~~ On February 1, 2014, the CCSO received a "911" call from an individual who reported that the caller had received a text message from a woman who was Kelley's (b) (6) at the time. The caller stated that in the text message, Kelley's (b) (6) claimed Kelley was abusing her. The caller reported that Kelley's (b) (6) also indicated in the text message that her "arms were red," and she provided the location where Kelley was temporarily living.

A CCSO Deputy went to Kelley's residence. According to the CCSO report, when the CCSO Deputy arrived at the residence, an unidentified witness characterized the incident as a "misunderstanding and teenage drama." The CCSO Deputy left the residence with no additional action being taken.⁴⁶

⁴⁴ Tessa Kelley was identified as Tessa Brennaman in the CCSO report 13-06-3030, as she was divorced from Kelley at the time.

⁴⁵ When an investigation becomes "inactive," the investigative efforts are suspended pending the identification of credible leads. Placing an investigation in inactive status may occur when victims or witnesses become uncooperative, or other efforts have failed to progress the investigation.

⁴⁶ The report that CCSO provided to the DoD OIG did not identify who had reported the incident to CCSO, who the CCSO who spoke to, who the CCSO contacted on scene, or any injuries suffered.

On April 4, 2014, Kelley and his second wife were married in Comal County, Texas, and moved to Colorado Springs, Colorado, later that year. They lived in Colorado until their first child was born in 2015, and then decided to return to New Braunfels to have the support of Kelley's family while raising their son. In 2017, Kelley's second wife gave birth to their second child.

On May 9, 2014, after the automatic appeals courts upheld Kelley's conviction and sentence, he was officially separated from the USAF with a Bad Conduct Discharge.

On August 1, 2014, the El Paso County Sheriff's Office cited and released Kelley for animal cruelty. A neighbor reported to the Sheriff's Office that Kelley threw his dog to the ground, punched it, and dragged it to his residence by the neck. Sheriff's officers contacted Kelley, who denied abusing the dog. The Sheriff's Office charged Kelley, and after a hearing, he received a deferred sentence for 18 months, pending completion of an animal cruelty course (which he completed), was fined \$168, and was ordered to pay restitution of \$368 for the kenneling and vaccinating the dog.

On September 30, 2016, Kelley's former 49th Logistics Readiness Squadron supervisor received a threatening message from Kelley on Facebook. The message stated, "Hey you stupid b****. You should have been put in the ground a long time ago. Better hope I don't ever see you. You can't face facts, you fat piece of s***." Kelley's former supervisor said that she had not attempted to contact Kelley before receiving the message, and that it was unexpected. She stated that she saved Kelley's Facebook message as a screenshot and forwarded it to her former USAF supervisor on October 1, 2017. Kelley's former supervisor also stated that she had considered reporting this incident to law enforcement and obtaining a restraining order against Kelley, but decided against it because she felt that he would find out where she lived.

O. Kelley's Firearms Purchases

We determined when and where Kelley purchased firearms during his USAF service and after his discharge. On six occasions, he purchased firearms from stores that were Federal Firearms Licensed (FFL) dealers.⁴⁷ On each occasion, he completed the ATF Form 4473, Firearms Transaction Record, and the FFL submitted Kelley's information to the National Instant Criminal Background Check System (NICS) for a check of disqualifying information.

⁴⁷ An FFL is an individual or a company engaged in the manufacture or importation of firearms and ammunition, or the interstate and intrastate sale of firearms. The ATF issues the license.

On each occasion, because no prohibiting information was in any of the three systems searched by NICS, to include the submission of fingerprints to the FBI, the FFL was notified that the sale could proceed.⁴⁸

First, on February 12, 2012, Kelley purchased a European American Armory Windicator .38 Special revolver from the HAFB Base Exchange. He completed the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) Forms 4473, "Firearms Transaction Record."⁴⁹ The HAFB Base Exchange completed the required NICS check on the same day. The response provided was that the FFL could proceed with the sale.

Second, on April 12, 2012, Kelley purchased a Sig Sauer P250, a 9-millimeter, semi-automatic handgun, from the HAFB Base Exchange. Kelley completed the ATF Forms 4473. The HAFB Base Exchange completed the required NICS check on the same day. The response provided from NICS personnel was that the FFL could proceed with the sale.

Third, on December 22, 2014, Kelley purchased a Glock Model 19, a 9-millimeter, semi-automatic handgun, from Specialty Sports and Supply, in Colorado Springs, Colorado. He completed the ATF Forms 4473 and the store completed the required NICS check on the same day. The response provided was that the FFL could proceed with the sale.

Fourth, on June 26, 2015, Kelley purchased a Ruger GP100, a .357 Magnum, revolver handgun, again from Specialty Sports and Supply in Colorado Springs. He completed the ATF Form 4473 and the store completed the required NICS check on the same day. The response provided was that the FFL could proceed with the sale.

Fifth, on April 7, 2016, Kelley purchased a Ruger AR-556, a 5.56-millimeter, semi-automatic rifle, from Academy Sports and Outdoors (Store No. 41), in San Antonio, Texas. He completed the ATF Form 4473, and the store completed the required NICS check on the same day. The response provided was that the FFL could proceed with the sale.

Sixth, on October 18, 2017, Kelley purchased a Ruger SR22, a .22 caliber, semi-automatic handgun, from Academy Sports and Outdoors (Store No. 46), in Selma, Texas. He completed the ATF Form 4473 and the store completed the required NICS check on the same day. The response provided was that the FFL could proceed with the sale.

⁴⁸ According to the FBI, NICS Audit Log records relating to allowed transactions (other than the NICS Transaction Number and the date the NICS Transaction Number was assigned) are destroyed within 24 hours of informing the FFL the transaction may proceed.

⁴⁹ The purchaser or transferee is required to complete the ATF Form 4473 before receiving a firearm from an FFL. The FFL uses the information provided on the form to determine if the person is prohibited from receiving a firearm. The ATF Form 4473 is not provided to the NICS. Only the identifying information contained on the form is provided for purposes of conducting the NICS checks. The ATF Form 4473 is retained by the FFL.

On four ATF Forms 4473 that Kelley filled out to purchase the firearms after his conviction, he certified that he had never been convicted of any crime for which the judge could sentence him for more than 1 year in confinement.⁵⁰ This was not true, because Kelley's maximum sentence for the assaults on his wife and stepson crime included potential confinement for 5 years and 6 months. Kelley had signed a pretrial agreement that stated his sentence to confinement would not exceed 3 years. His General Court-Martial resulted in an actual sentence of one year.

P. Sutherland Springs Church Shooting

On November 5, 2017, Kelley entered the First Baptist Church of Sutherland Springs, Sutherland Springs, Texas, and opened fire with three of the four firearms he had purchased. He killed 26 people, and wounded 22 others. After being shot by armed citizens who responded to the shooting, Kelley fled from the church in his automobile. Kelley later died from a self-inflicted gunshot wound.

⁵⁰ One of the questions on ATF Form 4473 asks, "Have you ever been convicted in any court of a felony, or any other crime, for which the judge could have imprisoned you for more than one year, even if you received a shorter sentence including probation." Kelley should have answered "yes" to this question.

III. Chronology of Significant Events

The following table provides a chronology of significant events related to this matter.

Chronology of Significant Events

Date	Events
February 12, 1991	Kelley is born in San Marcos, Texas.
2005	(FOUO) (b) (6)
November 29, 2006	The New Braunfels Police Department arrests Kelley for possession of marijuana, a class B misdemeanor. The New Braunfels Police Department refers the incident to the New Braunfels Juvenile Probation Office. Kelley receives 6 months of probation and 60 hours of community service.
December 2006 – February 2007	New Braunfels High School expels Kelley from school due to the marijuana arrest. Kelley enrolls and attends an unnamed alternative school in New Braunfels, Texas.
April 10, 2007	New Braunfels Juvenile Probation Office dismisses the matter relating to Kelley’s possession of marijuana.
2008	(FOUO) (b) (6)
2008	(FOUO) (b) (6)
May 28, 2009	Kelley graduates from New Braunfels High School.
June 12, 2009	Kelley enters the United States Air Force (USAF) Delayed Enlistment Program through the San Antonio Military Entrance Processing Station.
January 3, 2010	(FOUO) (b) (6) receives a complaint that Kelley (who is 18 years old) forced a (b) (6).
January 5, 2010	Kelley enters USAF active duty as an E-1 (Airman Basic).
February 3, 2010	(FOUO) (b) (6) detectives interview the (b) (6), who describes the (b) (6) in more detail.
March 1, 2010	(FOUO) The (b) (6) closes its investigation of Kelley because the victim does not provide any more information.
March 5, 2010	Kelley graduates from Basic Military Training at Joint Base San Antonio-Lackland. He receives orders to the 316th Training Squadron, Goodfellow Air Force Base (AFB), Texas, to attend USAF Technical Training School to become a Network Intelligence Analyst.

Chronology of Significant Events (cont'd)

Date	Events
March 22, 2010	During Kelley's Office of Personnel Management background investigation, Kelley admits to pre-military use of marijuana approximately 5 times in 2007. Kelley's Office of Personnel Management investigation file states that he "failed to list drug use on SF86 [Federal Standard Form 86, "Questionnaire for National Security Positions,"] because he was advised by his recruiter to do so, however subject [Kelley] fully disclosed drug use to his SSO [Special Security Officer] during SCI [Sensitive Compartmented Information] pre-screening interview."
May 5, 2010	Kelley's Commander verbally counsels him for failing to list his drug use on the Questionnaire for National Security Positions. However, Kelley's Commander recommends Kelley continue to maintain his Sensitive Compartmented Information clearance.
May 7, 2010	The USAF Consolidated Adjudications Facility deems Kelley eligible for a Sensitive Compartmentalized Information clearance.
November 8, 2010	Kelley is eliminated from Network Intelligence Analyst training because he failed four tests and did not meet the academic standards.
January 11, 2011	Kelley receives Permanent Change of Station orders from Goodfellow AFB to Fort Lee, Virginia, for his technical training as a Traffic Management Apprentice.
February 2011	Kelley begins dating T. Brennaman, whom he knows from 2007-2008 when he lived in New Braunfels. She has a son who was born in July 2010, before her relationship with Kelley.
March 2011	Kelley strikes his stepson for the first time.
April 12, 2011	Kelley and T. Brennaman marry. Tessa uses the name Tessa Kelley after the marriage.
April 2011	Kelley is assigned to the 49th Logistics Readiness Squadron, Holloman AFB (HAFB), New Mexico.
May 30, 2011	(FOUO) Kelley's stepson is treated at the Gerald Champion Regional Medical Center Emergency Room, Alamogordo, New Mexico, after he has a (b) (6).
June 2, 2011	(FOUO) Kelley's stepson is taken to William Beaumont Army Medical Center, El Paso, Texas, for (b) (6). The stepson is transported to Providence Hospital, El Paso and admitted for (b) (6). A bone survey and chest x-ray identifies a (b) (6).
June 4, 2011	Kelley's stepson is released from the Providence Hospital.
June 6, 2011	A pediatrician at the 49th Medical Operations Squadron, HAFB, treats Kelley's stepson for vomiting.
June 8, 2011	The Gerald Champion Regional Medical Center Emergency Room, Alamogordo, New Mexico, calls the pediatrician to examine Kelley's stepson.
June 9, 2011	(FOUO) The pediatrician examines Kelley's stepson and reviews his Computerized Tomography scan, which identifies (b) (6).
June 9, 2011	(FOUO) The Children, Youth and Families Department, Alamogordo, New Mexico notifies Air Force Office of Special Investigations (AFOSI) of possible child abuse and Kelley's stepson is admitted to the hospital with a (b) (6) injury.

Chronology of Significant Events (cont'd)

Date	Events
June 9, 2011	<p>AFOSI initiates an investigation and conducts the first subject interview of Kelley. AFOSI collects fingerprints and a deoxyribonucleic acid (DNA) sample from Kelley after the subject interview.</p> <p>This is the first opportunity to collect Kelley’s fingerprints. AFOSI Detachment 225 leadership did not create a note in the investigative case file stating that the fingerprint card had been reviewed in accordance with AFOSI Handbook 71-105.</p>
June 11, 2011	<p>(FOUO) An abdominal ultrasound and skeletal survey of Kelley’s stepson identifies a (b) (6).</p>
June 15, 2011	<p>The AFOSI Detachment 225 notifies the 49th Logistics Readiness Squadron that it initiated an investigation involving Kelley for alleged assault.</p>
June 24, 2011	<p>(FOUO) Kelley grabs Tessa Kelley around the throat, chokes her, and throws her against the wall. Tessa Kelley tells her (b) (6), who is in the USAF Reserves, about the abuse. Tessa Kelley’s (b) (6) alerts her USAF Reserve leadership of the abuse. The leadership alerts USAF Reserve Security Forces in San Antonio, who notifies the 49th Security Forces at HAFB. The 49th Security Forces Squadron goes to Kelley’s on base home to investigate the incident. Tessa Kelley declines to file a report and does not state she has been abused. The 49th Security Forces Squadron notifies AFOSI that patrols were dispatched to the home.</p>
June 24, 2011	<p>Kelley’s stepson is placed in the custody of New Mexico’s Children, Youth, and Families Department.</p>
June 29, 2011	<p>The AFOSI Detachment 225 Superintendent reviews the investigative case file in accordance with AFOSI Manual 71-121, “Processing and Reporting Investigative Manners,” January 13, 2009. The review note does not specify any required corrective action or recommendations, nor does it specify if the physical case file or the electronic case file was reviewed.</p> <p>This was an opportunity to identify the status of Kelley’s fingerprint submittal to the FBI.</p>
July 22, 2011	<p>Kelley’s supervisor issues him a Letter of Counseling (LOC) for the third instance of unauthorized use of his cellular telephone in his duty section. The violation is listed as a Failure to Obey an Order (Article 92, UCMJ).</p>
July 26, 2011	<p>Kelley’s Flight Commander issues him a LOC for failing a required training course. The violation is listed as Dereliction of Duty (Article 92, UCMJ). She cites Kelley’s cellular telephone use and missed classes as the reason for his failing the training.</p>
July 31, 2011	<p>The AFOSI Detachment 225 Acting Detachment Commander reviews Kelley’s investigative case file, in accordance with AFOSI Manual 71-121. The review note does not specify any required corrective action or recommendations, nor does it specify if the physical case file or the electronic case file was reviewed.</p>
August 8, 2011	<p>A 2nd Field Investigations Region Action Officer, Langley AFB, Virginia, reviews the investigative case file. The review note does not specify any required corrective action or recommendations.</p>
August 26, 2011	<p>The 49th Mission Support Group Central Registry Board meets to review the alleged child physical maltreatment incident involving Kelley. The Board is a group of installation representatives that reviews all reported domestic abuse and child maltreatment incidents that meet criteria for maltreatment at the installation. The Board defers its decision pending more information.</p>

Chronology of Significant Events (cont'd)

Date	Events
August 31, 2011	The Acting Detachment Commander reviews the investigative case file, in accordance with AFOSI Manual 71-121. He notes the corrective actions identified during the case review on August 8, 2011. The review note does not specify any required corrective action or recommendations, nor does it specify if the physical case file or the electronic case file was reviewed.
September 6, 2011	Kelley's Section Chief issues him an LOC for missing a medical appointment. The violation is listed as a Failure to Go (violation of Article 86, UCMJ).
September 7, 2011 – June 8, 2012	Kelley's HAFB Mental Health records state that Kelley received outpatient mental health treatment during this entire period. His mental health history includes treatment for Attention Deficit Hyperactivity Disorder, Generalized Anxiety Disorder, Depression, Antisocial Personality Disorder, agitation, and difficulty sleeping. His provider prescribes several medications over the course of treatment, including Ambien, Klonopin, and Celexa.
September 10, 2011	The AFOSI Detachment 225 Superintendent reviews the AFOSI investigative case file in accordance with AFOSI Manual 71-121. The review note does not specify any required corrective action or recommendations, nor does it specify if the physical case file or the electronic case file was reviewed.
September 12, 2011	Kelley's Section Chief issues him a Letter of Reprimand (LOR) for turning off a computer while someone else was using it. The violation is listed as a Failure to Obey an Order (Article 92, UCMJ).
September 29, 2011	Kelley's supervisor issues him an LOC for leaving an assigned duty location and being disrespectful to a supervisor. The violation is listed as a Failure to Obey an Order (Article 92, UCMJ).
October 21, 2011	The HAFB Central Registry Board meets to review again the alleged child physical maltreatment incident involving Kelley. The Board agrees that the details of the incident meet the criteria for child physical maltreatment and entry into the DoD Central Registry database. The Central Registry database is a data repository managed by DoD that tracks child and spousal abuse incidents.
October 23, 2011	The Acting Detachment Commander reviews the investigative case file in accordance with AFOSI Manual 71-121. The review note does not specify any required corrective action or recommendations, nor does it specify if the physical case file or the electronic case file was reviewed.
December 15, 2011	The Detachment Special Agent-in-Charge (SAIC) reviews the investigative case file in accordance with AFOSI Manual 71-121. The review note does not specify any required corrective action or recommendations, nor does it specify if the physical case file or the electronic case file was reviewed.
December 24, 2011	According to a later report made by Tessa Kelley to USAF Security Forces on February 17, 2017, Kelley pushes Tessa Kelley, chokes her, threatens her, and drags her by her hair into the bathroom.
January 2012	An acquaintance of Tessa Kelley observes bruises on Tessa Kelley, causing the acquaintance to suspect she is being abused by Kelley.
January 2012	(FOUO) While home in New Braunfels visiting his family, Kelley spends the night at the home of Tessa Kelley's (b) (6). Kelley attempts to sexually assault the (b) (6) girlfriend. The following morning, Tessa Kelley's (b) (6) confronts Kelley who denies anything happened. Later, Kelley admits the events to Tessa Kelley, but tells her he will kill her if she ever tells anyone.

Chronology of Significant Events (cont'd)

Date	Events
January 10, 2012	The Detachment SAIC reviews the investigative case file in accordance with AFOSI Manual 71-121. The review note does not specify any required corrective action or recommendations, nor does it specify if the physical case file or the electronic case file was reviewed.
February 2012	Kelley and Tessa Kelley stay overnight in El Paso. Kelley locks himself in their hotel room's bathroom. Tessa Kelley hears him crying and repeating the words, "I'm so sorry...[name removed for privacy], I'm sorry I did this to you," approximately 10 times. Tessa Kelley confronts Kelley about the statement, but Kelley does not reply.
February 12, 2012	Kelley purchases a European American Armory Windicator .38 Special revolver, Serial No. 1557099, from the HAFB Base Exchange. Kelley completes an ATF Form 4473, "Firearms Transaction Record," and certifies on the form by checking "No," that he has not been convicted of a felony or any other crime, for which the judge could have imprisoned him for more than one year. The HAFB Base Exchange completes the required NICS check on the same day. The response provided was that the FFL could proceed with the sale.
February 12, 2012	According to Tessa Kelley's later report to USAF Security Forces on February 17, 2012, Kelley slaps Tessa Kelley in the stomach and pulls her hair out.
February 15, 2012	The Detachment SAIC reviews the investigative case file in accordance with AFOSI Manual 71-121. The review note does not specify any required corrective action or recommendations, nor does it specify if the physical case file or the electronic case file was reviewed.
February 16, 2012	Kelley's Officer-in-Charge issues Kelley an LOR for false official statement (Article 107, UCMJ) and for being disrespectful to his supervisor (Article 134, UCMJ). This LOR stems from a supervisor counseling session Kelley was receiving. At the end of the session, Kelley left his supervisor's office and disrespectfully stated, "I know, you told me three times already!" After leaving the office, he declared "She's a f***** b****," referring to his supervisor. When challenged by his supervisor as to what he had said about her, Kelley lied and replied he had not said anything negative about her.
February 17, 2012	<p>The 49th Security Forces Squadron Office of Investigations investigators conduct a subject interview of Kelley for Article 128, UCMJ, related to his alleged assault of his wife, Tessa Kelley. Kelley requests legal counsel. The 49th Security Forces Squadron writes a report. The report states that the investigator told Kelley that he had to give his handgun to his acting First Sergeant. The First Sergeant turns the gun into the 49th Security Forces Squadron armory.</p> <p>This is the second opportunity to collect Kelley's fingerprints.</p>
February 17, 2012	Kelley's Commander issues him a no contact order, restraining him from initiating any contact or communication with Tessa Kelley due to a physical altercation between Kelley and Tessa Kelley that took place on February 12, 2012. Kelley's Commander directs that any communication between Kelley and Tessa Kelley be conducted through the First Sergeant or Commander. The no contact order lasts until May 17, 2012.
February 23, 2012	Kelley voluntarily enters in-patient mental health treatment at the Peak Behavioral Health Services (PBHS), Santa Teresa, New Mexico. He is diagnosed as having an adjustment disorder with depressed mood and Attention Deficit Hyperactivity Disorder.

Chronology of Significant Events (cont'd)

Date	Events
March 5, 2012	The Detachment SAIC reviews the investigative case file in accordance with AFOSI Manual 71-121. He identifies that the required monthly review for November 2011, did not occur while an interim SAIC was assigned. The review note does not specify any required corrective action or recommendations, nor does it specify if the physical case file or the electronic case file was reviewed.
March 8, 2012	PBHS discharges Kelley.
Mid-March 2012	According to Tessa Kelley, in their residence, Kelley loads a .38 special revolver with one bullet, points it at his head, and pulls the trigger three times. When it did not fire, he pointed the loaded weapon at her.
March 14 – April 26, 2012	Kelley is treated at the HAFB Mental Health Clinic eight times.
March 19, 2012	Kelley's Flight Commander issues him an LOR for failing to follow proper procedures when shipping expedited shipment items and for failing to ensure the shipments are properly addressed. The violation is listed as a Noncompliance with Procedural Rules (Article 98, UCMJ).
March 19, 2012	Kelley's Section Chief issues him an LOR for losing his identification card for a second time. The violation is listed as a Failure to Obey an Order (Article 92, UCMJ).
March 20, 2012	Kelley fails to report to work when directed to and tells the non-commissioned officer that he would prefer not to come to work on Sunday even though he was on call. Kelley's Commander issues him an LOR and places him on a control roster with an Unfavorable Information File for being insubordinate toward a non-commissioned officer (Article 91, UCMJ) and for Failure to Obey an Order (Article 92, UCMJ).
April 12, 2012	Kelley purchases a Sig Sauer P250, a 9-millimeter, semi-automatic handgun, and one box of ammunition from the HAFB Base Exchange. Kelley completes an ATF Form 4473 and certifies on the form by checking "No," that he has not been convicted of a felony or any other crime for which the judge could have imprisoned him for more than one year.
April 17, 2012	Kelley's Acting Commander issues him an LOR for physically assaulting Tessa Kelley on February 17, 2012. The violation is listed as an Assault (Article 128, UCMJ). Kelley submits a response stating that his voluntary entry in the PBHS program changed him and that he will have greater control over himself in the future.
April 23, 2012	While driving to El Paso to pick up a family member from the airport, Kelley allegedly pulls out a handgun from his holster, holds it against Tessa Kelley's temple, and states "do you want to die?" Tessa Kelley pushes the gun away and then Kelley places the gun in his mouth. Kelley threatens to kill her if she tells anyone about the incident.
April 23, 2012	Kelley tells Tessa Kelley she was stupid for being with him and that she should know the reason why. Kelley then tells Tessa Kelley that he slapped his stepson on June 8, 2011, the day his stepson was taken to the hospital. Kelley also tells Tessa Kelley that he struck his stepson on multiple occasions, the first time being in March 2011, in New Braunfels.

Chronology of Significant Events (cont'd)

Date	Events
April 24, 2012	Kelley repeats to Tessa Kelley that he injured his stepson the day Kelley and Tessa Kelley took him to the hospital in June 2011. Tessa Kelley tells Kelley that God would want him to do the right thing and tell the truth about what he had done. Kelley agrees.
April 24, 2012	Kelley tells Tessa Kelley he admitted to the base chaplain that he hurt her son.
April 23 – 27, 2012	(FOUO) Tessa Kelley's (b) encourages Tessa Kelley to have Kelley record a confession admitting that he injured his stepson.
April 26, 2012	Mental Health records state that Kelley told HAFB Mental Health Clinic personnel that he was "experiencing more difficulty than ever before because the final hearing for the adoption of his stepson was one hearing away from resolution."
April 27, 2012	(FOUO) Kelley makes a digital video recording in which he confesses to hurting his stepson, slapping him in the face multiple times, shaking him, and pushing his butt, which caused Kelley's stepson to fall on his shoulder (which Kelley thought might have caused the (b) (6)). Kelley makes the recording so Tessa Kelley can regain custody of her son. Kelley gives the recording to Tessa Kelley.
April 29, 2012	Tessa Kelley gives Kelley's digital video-recorded confession to the 49th Logistics Readiness Squadron First Sergeant.
April 29, 2012	The First Sergeant gives AFOSI Detachment 225 the external hard drive containing Kelley's digital video recorded confession.
April 30, 2012	Kelley is voluntarily re-admitted to the PBHS. Kelley denies Tessa Kelley's report that he is going to kill his sergeant. Kelley states that he is going to shoot himself. PBHS puts him on the high-risk notification alert list due to his homicidal and suicidal indicators.
May 3, 2012	Tessa Kelley was reinterviewed by AFOSI agents. Tessa Kelley stated that Kelley had struck, kicked, choked, and pulled her hair out on multiple occasions. She states that Kelley threatened to kill her if she ever reported the abuse to police, or any other party.
May 9, 2012	A 2nd Field Investigations Region Action Officer reviews the Kelley assault investigative case file as part of a random quality control process. This would be an electronic review only.
May 14, 2012	A HAFB High Risk for Violence Response Team meeting is held at the request of the HAFB Staff Judge Advocate and Kelley's command. The team decides that the Mental Health Clinic should keep Kelley at PBHS "if at all possible until such time he can be placed in pretrial confinement for charges of child abuse and spouse abuse. It is agreed that the service member is to be considered 'high risk' for SI [suicidal ideation] and HI [homicidal ideation] should he be released from the hospital."
May 15, 2012	A PBHS Counselor reads Kelley an e-mail that Kelley's command had forwarded to PBHS relating to a Facebook post that Kelley made stating that he is going to end it all. Kelley states that he did not write the Facebook post and that the PBHS staff could check his Facebook account and see that it is not there.

Chronology of Significant Events (cont'd)

Date	Events
May 15, 2012	The Detachment SAIC reviews the investigative case file in accordance with AFOSI Manual 71-121. The review note does not specify any required corrective action or recommendations, nor does it specify if the physical case file or the electronic case file was reviewed.
May 15, 2012	After the HAFB High Risk for Violence Response Team meeting, the Family Advocacy Record for Kelley states that “based on speculation that ADM [Kelley] might be discharged from the hospital this coming Thursday, FAO [Family Advocacy Officer] called another High Risk for Violence Response Team [meeting]. The Peak Hospital was contacted and it was agreed that [Kelley] will remain in the hospital for a while longer with the hopes of keeping him there until he can go to pretrial confinement.”
June 6, 2012	A PBHS Treatment Team note states that Kelley is seen looking at a website related to guns.
June 7, 2012	The HAFB Base Exchange notifies AFOSI Detachment 225 that Kelley had called and placed an order for a Diamondback DB9, a 9-millimeter, semi-automatic handgun. Kelley informs the Base Exchange employee he will pick the weapon up on June 14, 2012.
June 7, 2012	Kelley leaves the PBHS facility without permission from the staff and without notifying anyone. Kelley is found at the El Paso Greyhound bus station, which is approximately 12 miles from the PBHS. A PBHS Director finds and initially restrained Kelley. A Greyhound security officer and an El Paso police officer handcuff him. The Sunland Police Department takes Kelley back to the PBHS.
June 8, 2012	<p>PBHS discharges Kelley and documents its discharge diagnosis for Kelley as “Major depressive disorder, recurrent, severe, without psychotic features, panic disorder with agoraphobia, attention-deficit disorder, antisocial traits, seasonal allergies, severe problems with primary support system with pending divorce, problems related to social environment, economic problems, occupational problems, legal problems, other psychosocial and environmental stressors, and a Global Assessment of Functioning scale of 55.” (A Global Assessment of Functioning of 55 includes moderate symptoms or moderate difficulty in social, occupational, or school functioning in social, occupational, or school functioning.)</p> <p>Kelley’s PBHS aftercare plan states that he is discharged to the 49th Security Forces Squadron and that he would follow up with HAFB for any further psychiatric needs. On the PBHS discharge paperwork under the firearm safety plan section, Kelley checked the “No” box stating that he does not have any firearms in his home and that he does not have access to firearms.</p>
June 8, 2012	Kelley’s Commander prepares a pretrial confinement package. The package includes a memorandum stating that Kelley’s Commander convinced that Kelley is “dangerous and likely to harm someone if released.” Kelley’s Commander also cites Kelley’s Internet search for body armor and firearms as further justification for the pretrial confinement. He determines Kelley is a flight risk and orders him into pretrial confinement at the 49th Security Forces Squadron Confinement Facility. The Pretrial Confinement Review Officer does not recommend release. AFI 31-205 directs confinement facility personnel to complete two fingerprint cards during the in-processing of an inmate.

Chronology of Significant Events (cont'd)

Date	Events
June 8, 2012	<p>AFOSI conducts its second subject interview of Kelley. Kelley tells AFOSI Detachment 225 Special Agents he made the confession video “on his own free will.” The Interview Record completed by the interviewing AFOSI Detachment 225 Special Agents states that Kelley’s fingerprints are collected during this subject interview. However, there are no corresponding fingerprint cards in the investigative case file.</p> <p>AFOSI Detachment 225 leadership did not create a note in the investigative case file stating that the fingerprint card had been reviewed in accordance with AFOSI Handbook 71-105.</p> <p>This is the third opportunity to collect Kelley’s fingerprints.</p>
June 10, 2012	<p>The Pretrial Confinement Review Officer makes a probable cause determination that Kelley assaulted Tessa Kelley and her son. The Pretrial Confinement Review Officer documents that there is reasonable grounds to believe continued pretrial confinement is necessary.</p>
June 22, 2012	<p>The AFOSI Detachment 225 Superintendent reviews the AFOSI investigative case file in accordance with AFOSI Manual 71-121. The review note does not specify any required corrective action or recommendations, nor does it specify if the physical case file or the electronic case file was reviewed.</p>
June 25, 2012	<p>Kelley is issued a Military Protective Order, DD Form 2873, which orders him to have no communication with Tessa Kelley and directs all communication with Tessa Kelley be made through the First Sergeant.</p>
July 9, 2012	<p>The Detachment SAIC reviews the investigative case file in accordance with AFOSI Manual 71-121. The review note does not specify any required corrective action or recommendations, nor does it specify if the physical case file or the electronic case file was reviewed.</p>
August 1, 2012	<p>The Detachment SAIC reviews the investigative case file in accordance with AFOSI Manual 71-121. The review note does not specify any required corrective action or recommendations, nor does it specify if the physical case file or the electronic case file was reviewed.</p>
August 2, 2012	<p>An Article 32 hearing is held to determine if Kelley committed the assaults against Tessa Kelley and her son. The Investigating Officer determines there are reasonable grounds for the 49th Wing Commander to recommend a General Court-Martial, and the 49th Wing Commander recommends that the General Court-Martial Convening Authority proceed with a General Court-Martial. Kelley remains in pretrial confinement at HAFB.</p>
October 1, 2012	<p>The Detachment SAIC reviews the investigative case file in accordance with AFOSI Manual 71-121. He notes, “The file is sufficient and awaiting draft ROI [Report of Investigation] prior to signing.” The review note does not specify any required corrective action or recommendations, nor does it specify if the physical case file or the electronic case file was reviewed.</p>
October 5, 2012	<p>AFOSI closes its investigation and forwards the report of investigation to the 49th Wing Commander for command action. The 49th Mission Support Group Commander, and the 49th Logistics Readiness Squadron Commander, received a copy for informational purposes.</p>

Chronology of Significant Events (cont'd)

Date	Events
October 5, 2012	<p>The Detachment SAIC attaches the signed Report of Investigation and submits and approves the investigative case file for closure in the AFOSI's Investigation and Information Management System (I2MS).</p> <p>When approving and submitting the investigative case file for closure electronically in I2MS, the SAIC checks a box for a mandatory item on a checklist that certifies that fingerprints were submitted to the FBI.</p>
October 17, 2012	Kelley's and Tessa Kelley's divorce is finalized.
October 31, 2012	The Detachment SAIC reviews the investigative case file in accordance with AFOSI Manual 71-121. The review note does not specify any required corrective action or recommendations, nor does it specify if the physical case file or the electronic case file was reviewed.
November 6 - 7, 2012	Kelley's General Court-Martial is held.
November 7, 2012	Kelley is convicted of assaulting Tessa Kelley and her son, a violation of UCMJ, Article 128.
November 7, 2012	Kelley is reduced in rank to E-1 (Airman Basic), ordered into confinement for twelve months, and given a bad conduct discharge.
November 7 – December 18, 2012	Kelley is confined at the 49th Security Forces Squadron Confinement Facility pending his transfer to the Naval Consolidated Brig. The USAF Corrections System policy requires USAF confinement facility personnel to collect the fingerprints of all post-trial inmates during in-processing into the confinement facility and submit the fingerprints to the FBI. There is no record of the confinement facility personnel collecting or submitting Kelley's fingerprints. This was the fourth opportunity for the USAF to collect Kelley's fingerprints and first opportunity to submit final disposition report for Kelley's criminal history.
December 14, 2012	The AFOSI receives a copy of the AF Form 1359, "Report of Result of Trial," which states that Kelley's conviction is a crime of domestic violence and requires DNA processing. Receipt of the AF Form 1359 also requires AFOSI to submit Kelley's fingerprints and final disposition to the FBI CJIS Division, if not already submitted. This is the second opportunity for the USAF to submit the fingerprint cards with the disposition documented or the final disposition report with final disposition of the court findings (his conviction). The submission does not occur.
December 14, 2012	The AFOSI Detachment 225 SAIC certifies in the I2MS case management system checklist that Kelley's fingerprints were submitted to the FBI. In the process of submitting and approving the investigative case file for closure electronically in I2MS, the SAIC checks a mandatory box on a checklist that certifies fingerprints were submitted to the FBI. This permits the SAIC to close the investigation.
December 18, 2012	Kelley is in-processed at the Naval Consolidated Brig. During his in-processing interview, Kelley states he "feels bad" about being incarcerated there and he has thoughts about committing suicide. Kelley also reports that he has been hospitalized for mental health problems and that alcohol led to family problems. The Naval Consolidated Brig medical staff classifies Kelley as a suicide risk, with physical and mental health problems, and places him on suicide watch for 2 days.
January 7, 2013	Navy Consolidated Brig personnel write a Summary Data Report stating that Kelley has adjusted well to confinement, has good military bearing, a neat uniform, and an orderly cell. It also states that he complies with rules and has average work and training evaluations.

Chronology of Significant Events (cont'd)

Date	Events
January 14, 2013	The Court-Martial Convening Authority approves the finding and sentence as adjudged.
February 5, 2013	On Kelley's DD Form 2711-1, "Custody Reclassification," the rationale given for his initial prisoner classification decision is Kelley has a poor attitude and is not taking ownership of his offenses. Kelley is placed on the waitlist for Substance Abuse treatment.
March 8, 2013	The USAF Clemency and Parole Board denies Kelley's request for clemency, stating that there is a lack of mitigating circumstances to warrant overriding his sentence and that Kelley did nothing in confinement to warrant clemency.
March 22, 2013	In anticipation of Kelley's release from confinement, the 49th Logistics Readiness Squadron Commander requests that the 49th Wing Commander approve a conditional order to keep Kelley from entering HAFB. The conditional aspect would only allow him on HAFB, under escort, during out-processing from March 31 through April 5, 2013.
March 25, 2013	The 49th Wing Headquarters drafts a request for expulsion and order for Kelley not to reenter HAFB.
March 31, 2013	Kelley is released from the Naval Consolidated Brig and begins appellate leave. A unit member returns Kelley to HAFB.
April 1, 2013	Kelley acknowledges receipt of the expulsion order and is ordered "not to enter or reenter or be found within the limits of the United States military installation of HAFB, New Mexico, for an indefinite period." Kelley returns to New Braunfels to live in a renovated barn located on his parent's property.
April 8, 2013	The AFOSI Detachment 225 Superintendent submits the investigative case file to archive in I2MS. The AFOSI policy states that the investigative case file is to be mailed to Headquarters AFOSI's Archive at the same time.
Sometime Between May – June 14, 2013	Kelley allegedly sexually assaults an unidentified 20-year-old woman at his parents' residence in New Braunfels.
June 15, 2013	Kelley allegedly sexually assaults the same 20-year-old woman at his parents' residence in New Braunfels.
June 17, 2013	The woman tells Tessa Kelley that Kelley sexually assaulted her.
June 18, 2013	The woman reports the sexual assault to the Comal County Sheriff's Office.
June 27, 2013	The Comal County Sheriff's Office refers the alleged sexual assault to Comal County Sheriff's Office detectives for investigation.
July 18, 2013	The detectives attempt to call the victim of the alleged sexual assault but are unsuccessful.
July 25, 2013	The detectives attempt to call the victim of the alleged sexual assault a second time, but again are unsuccessful.
September 18, 2013	The detectives attempt to call the victim of the alleged sexual assault a third time, but again are unsuccessful.
October 7, 2013	The lead detective mails the woman a letter asking that she contact him so they could talk about the case. The letter reads, "Failure to contact me within a reasonable amount of time will result in this case being inactivated for lack of cooperation."

Chronology of Significant Events (cont'd)

Date	Events
October 14, 2013	The lead detective documents that the case will be “inactivated” because the victim did not contact the Comal County Sheriff’s Office.
December 3, 2013	The USAF Court of Criminal Appeals finds that the approved findings and sentence are correct in law and fact, and no error materially prejudicial to the substantial rights of the appellant occurred.
April 4, 2014	Kelley and his second wife are married in Comal County, Texas. They move to Colorado Springs, Colorado, soon after the wedding.
April 10, 2014	The USAF issues General Court-Martial Order No. 53 affirming the findings and sentence in the General Court-Martial of Kelley, allowing for execution of his Bad Conduct Discharge.
May 9, 2014	Kelley is officially separated from the USAF at Joint Base San Antonio-Lackland, with a Bad Conduct Discharge.
June 12, 2014	A notation is added to the DoD’s Defense Biometric Identification System (DBIDS) account for Kelley: “Received termination of CAC [Common Access Card] credential and terminated credential in DBIDS, reason code lost or Stolen.”
August 1, 2014	Kelley is charged with animal cruelty in Colorado Springs. He is subsequently given 18-months’ probation, and ordered to complete an animal cruelty course, pay a \$168 fine, and pay \$368 restitution for kenneling the dog.
December 22, 2014	Kelley purchases a Glock Model 19, a 9-millimeter, semi-automatic handgun, from Specialty Sports & Supplies in, Colorado Springs, listing his address as Colorado Springs. Kelley completes an ATF Form 4473 and certifies on the form by checking “NO,” that he has not been convicted of a felony or any other crime for which the judge could have imprisoned him for more than one year.
June 26, 2015	Kelley purchases a Ruger GP100, a .357 Magnum, revolver handgun, from Specialty Sports & Supplies, Colorado Springs, and lists his current address as Colorado Springs. Kelley completes an ATF Form 4473 and certifies on the form by checking “No,” that he has not been convicted of a felony or any other crime for which the judge could have imprisoned him for more than 1 year.
August 26, 2015	Kelley, or someone using his assigned ID credential, attempted to gain access to Joint Base San Antonio-Lackland at the Visitor Control Center and was subsequently denied due to the existing barment.
February 17, 2016	Kelley, or someone using his assigned ID credential, attempts to gain access to HAFB at the Visitor Control Center and is denied due to the existing barment.
April 7, 2016	Kelley purchases a Ruger AR-556, a 5.56-millimeter, semi-automatic rifle, from Academy Sports and Outdoors, Colorado Springs, and lists his current address as Colorado Springs. Kelley completes an ATF Form 4473 and certifies on the form by checking “No,” that he has not been convicted of a felony or any other crime, for which the judge could have imprisoned him for more than 1 year.
September 30, 2016	Kelley’s former 49th Logistics Readiness Squadron supervisor receives a threatening message from Kelley on Facebook. The message reads, “Hey you stupid b****. You should have been put in the ground a long time ago. Better hope I don’t ever see you. You can’t face facts, you fat piece of s***.” The former supervisor did not attempt to contact Kelley before receiving the message, and said that it was unexpected. She saves it as a screenshot, and forwards it to her former USAF supervisor on October 1, 2017.

Chronology of Significant Events (cont'd)

Date	Events
March 1, 2017	Kelley's former 49th Logistics Readiness Squadron supervisor receives a second threatening message from Kelley on Facebook. Kelley writes her that "the only regret" he had was "not ending her" when he had the opportunity and that the only thing she deserved was a "nice long dirt nap." She reports the message to Facebook. She does not take a screenshot picture of the message and Facebook deletes it from her account.
May 2017	Kelley's former supervisor obtains a photograph of him from his Facebook page and keeps a screenshot of the photograph. The photograph is of Kelley in a full mask, with the "Punisher" logo silk-screened on the front.
October 18, 2017	Kelley purchases a Ruger SR22, a .22 caliber, semi-automatic handgun, from Academy Sports and Outdoors (Store No. 46), in Selma, Texas, and lists his current address as New Braunfels. Kelley completes an ATF Form 4473 and certifies on the form by checking "No," that he has not been convicted of a felony or any other crime for which the judge could have imprisoned him for more than one year.
November 5, 2017	Kelley enters the First Baptist Church of Sutherland Springs, Sutherland Springs, Texas and opens fire, killing 26 and wounding 22 people. Kelley fled the scene after the shooting and later died of an apparent self-inflicted gunshot wound. Law enforcement officers recover: (1) a Ruger 5.56-millimeter, semi-automatic rifle, Model AR-556, Serial No. 852-06623; (2) Glock 9-millimeter, semi-automatic handgun, Model 19 Serial No. XEG050; and (3) a Ruger .22 caliber, semi-automatic handgun, Model SR22, Serial No.366-99791. As described earlier, Kelley purchased these firearms after his conviction and confinement for assault.
November 6, 2017	The USAF determines that Kelley's fingerprints and final disposition report documenting Kelley's USAF criminal history were not submitted to the FBI databases.
November 6, 2017	The Secretary of Defense asks the DoD OIG to investigate whether appropriate information regarding Kelley should have been transmitted to the FBI, whether the information was transmitted, and if it was not, why it was not. The DoD OIG begins this investigation.

IV. Federal Law, DoD Fingerprint Policy, and Previous DoD OIG Reports

In our investigation, we reviewed the applicable Federal laws, DoD policy, United States Air Force (USAF) policy, and Air Force Office of Special Investigations (AFOSI) policy that established the requirements for the collection and submission of fingerprints and the final disposition to the Federal Bureau of Investigation (FBI) Criminal Justice Information Services (CJIS) Division. We then determined the actions that the USAF was required to take, in accordance with these policies, to collect and submit Kelley's fingerprint cards and final disposition report.

A. Federal Law and Policy Requirements

In this section of the report, we discuss the applicable Federal laws that regulate the purchase of firearms. We also discuss the National Instant Criminal Background Check System (NICS) that is designed to determine if a prospective firearms buyer is disqualified from purchasing firearms. Additionally, we discuss the DoD and USAF policies that implement the Federal laws requiring the submission of offender information to the NICS.

1. Federal Law

a) Federal Firearms Legislation and NICS

Multiple Federal laws exist to regulate the purchase of a firearm. The Gun Control Act of 1968 regulated interstate and foreign commerce in firearms, imposed stricter licensing and regulation on the firearms industry, and prohibited the sale of firearms and ammunition to felons and certain prohibited person categories. The Brady Handgun Violence Prevention Act of 1993 is incorporated in the Gun Control Act. The Brady Act amended the Gun Control Act and established the NICS, which is required to be used by Federal Firearms Licensed (FFL) dealers to determine instantly if a prospective buyer is eligible to buy firearms. The NICS Improvement Amendments Act of 2008 enhanced the requirements for Federal agencies to provide relevant data to NICS and further incentivized the States to provide relevant data to the NICS.

(1) The Gun Control Act of 1968 as Amended

The Gun Control Act of 1968, as amended (Title 18, United States Code [U.S.C.], §§ 921 through 938), prohibits the interstate sale or transfer of firearms except for licensed firearms manufacturers, FFL dealers, and licensed firearms importers. The Act imposes strict regulations prohibiting the sale of firearms and ammunition to felons and certain other prohibited persons, including any person who:

- 922(g)(1): is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
- 922(g)(2): is a fugitive from justice;
- 922(g)(3): is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. § 802));
- 922(g)(4): has been adjudicated as a mental defective or has been committed to any mental institution;
- 922(g)(5): being an alien— (A) is illegally or unlawfully in the United States; or (B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act [8 U.S.C. §1101(a)(26)]);
- 922(g)(6): has been discharged from the Armed Forces under dishonorable conditions;
- 922(g)(7): having been a citizen of the United States, has renounced his citizenship;
- 922(g)(8): is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that— (A) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and (B)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury;
- 922(g)(9): has been convicted in any court of a misdemeanor crime of domestic violence; or

- 922(n): is under indictment for a crime punishable by imprisonment for a term exceeding one year to ship or transport in interstate or foreign commerce any firearm or ammunition or receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.⁵¹

2. The Brady Act

On November 30, 1993, the Brady Handgun Violence Prevention Act amended the Gun Control Act of 1968 to require mandatory background checks on individuals purchasing firearms from FFLs. The Brady Act also required the establishment of a system so that FFLs could determine whether a prospective firearm buyer is prohibited from receiving the firearm under the Gun Control Act of 1968, as amended, or applicable state law. To implement the Act, the Department of Justice established the NICS, which became operational on November 30, 1998. The Brady Act also established the NICS Indices, which contain information provided by local, state, tribal, and Federal agencies of persons prohibited from receiving firearms under Federal law.

3. NICS

The NICS, located at the FBI CJIS Division is a national computerized background check system designed to be used to determine if a prospective firearms transferee is disqualified from receiving firearms. The NICS responds instantly to background check inquiries from the FFLs. Once a prospective buyer completes the ATF Form 4473, Firearms Transaction Record, the FFL contacts NICS to request a background check to determine the prospective buyer's eligibility to purchase a firearm. When a NICS check is conducted, it queries three databases:

- the NICS Indices;
- the National Crime Information Center (NCIC); and
- the Interstate Identification Index (III).⁵²

⁵¹ Section 921, Title 18, U.S.C., contains the definitions used in the Gun Control Act. Section 922, Title 18, U.S.C., contains the prohibitions for the sale, transport, possession, and receipt of firearms.

⁵² The NICS Indices were created in response to the Brady Act. The NICS Indices contains information provided by local, state, tribal, and federal agencies concerning persons prohibited from receiving firearms under federal or state law. The NCIC is a computerized information system available to law enforcement and criminal justice agencies. The system includes records of wanted persons, missing persons, and persons who pose a threat to officer and public safety, as well as records for stolen property items. Records of persons are generally indexed and accessed using identifiers such as names and dates of birth, Social Security numbers, and vehicle operator's license numbers. The III is part of the FBI's Next Generation Identification and contains biometric criminal history anchored by a fingerprint submission. The III provides a means of conducting national criminal history record searches for criminal justice and other purposes as specified by existing federal laws and state laws. Submission into III is based on an individual being arrested or charged.

The NICS provides a response of “proceed,” “deny,” or “delay,” based on the outcome of the query of the three databases. All of Kelley’s firearm purchases were allowed to proceed because no prohibiting information existed in the any of the three databases.⁵³

4. The Lautenberg Amendment

On September 30, 1996, Public Law 104-208, “Domestic Violence Amendment to the Gun Control Act of 1968” (The Lautenberg Amendment) extended the prohibition of the Gun Control Act to anyone convicted in a federal, state or tribal court, of a disqualifying misdemeanor crime of domestic violence.⁵⁴ Additionally, the Lautenberg Amendment removed the exception that allowed police or military personnel to be armed, if they had a qualifying conviction under 18 U.S.C., § 922(g)(9).

5. DoD Policy

a) DoD Criminal History Data Submission Policy

The DoD also submits offender criminal history data to the FBI through the collection and submission of fingerprints and final disposition reports. The DoD and the Military Services have issued policy, discussed below, that requires the submission of fingerprint cards and final disposition reports to the FBI at certain times during the course of a criminal investigation. DoD and USAF policies, which are promulgated through DoDI 5505.11, “Fingerprint Card and Final Disposition Report Submission Requirements,” require all DoD law enforcement agencies to report criminal history data to the FBI. The following sections describe the evolution of DoD policy regarding the submission of fingerprints and criminal history information from DoD organizations to the FBI.

(1) The Historical Development of DoDI 5505.11

On March 25, 1987, the DoD OIG issued Criminal Investigations Policy Memorandum Number (CPM No. 10), “Criminal History Data Reporting Requirements.” The memorandum established policies and procedures for the Defense Criminal Investigative Organizations (DCIOs) to report offender criminal history data to the FBI.⁵⁵ The memorandum required the DCIOs to submit to the FBI offender

⁵³ Kelley’s criminal history shows the NBPD arrested him for possession of marijuana, a class B misdemeanor. The NBPD referred the incident to the New Braunfels Juvenile Probation Office.

⁵⁴ The United States Attorneys’ Manual, July 2013; <http://www.justice.gov/usam/criminal-resource-manual-1117-restrictions-possession-firearms-individuals-convicted>.

⁵⁵ The DCIOs are the U.S. Army Criminal Investigation Command, the Naval Criminal Investigative Service, the AFOSI, and the Defense Criminal Investigative Service. The Defense Criminal Investigative Service is the criminal investigative arm of the DoD Office of Inspector General.

criminal history data for all Military Service members they investigated for any qualifying offenses, and who were subjects of any resultant judicial or nonjudicial military proceeding.⁵⁶

(2) The Publication of DoDI 5505.11

On December 1, 1998, the DoD OIG published the first iteration of DoDI 5505.11, which required the DCIOs and all other DoD Law Enforcement Officers (LEOs) to submit to the FBI offender criminal history data for all Military Service members investigated for qualifying offenses listed within the Instruction. The Instruction also required the DCIOs and DoD LEOs to collect fingerprints and all additional case information from military suspects under investigation for qualifying offenses and annotate them on a fingerprint cards within 15 days of when a command initiated military judicial proceedings or command action was taken in nonjudicial proceedings.⁵⁷ In addition, the Instruction required the reporting of final disposition information on an FBI-Department of Justice Form R-84, “Final Disposition Report,” within 15 days after final disposition of judicial or nonjudicial proceedings.⁵⁸ DoDI 5505.11 required the submission of offender criminal history data to the FBI CJIS Division.⁵⁹

DoDI 5505.11 has undergone multiple revisions since 1998. However, certain key points have not changed such as the requirement to submit offender criminal history data for all Military Service members investigated for qualifying offenses to the FBI. In particular, the DoDI 5505.11 that was in effect during Kelley’s two USAF investigations required DCIOs and DoD LEOs to prepare and submit:

A[n] FD-249 and, when required, an R-84, or their electronic equivalents, to the CJIS Division. For military subjects, the FD-249 shall be submitted when an agent or law enforcement official determines, following coordination with the servicing SJA [Staff Judge Advocate] or legal advisor if necessary that probable cause exists to believe that the person committed an offense listed Enclosure 2.

⁵⁶ DoDI 5505.11 lists qualifying offenses within the instruction, which requires the submission of fingerprints to CJIS, such as murder, rape, larceny, and assault.

⁵⁷ DoDI 5505.11, Enclosure 2, lists the punitive articles of the UCMJ and requires DCIOs and other DoD LEOs to submit offender criminal history data to the FBI. This submission should take place after a legal advisor determines that there are reasonable grounds to believe that an offense has been committed and that the person to be identified as the offender committed it. This determination is known as probable cause. The fingerprint card documents fingerprints and biographical information about a subject. On June 24, 2011, the Assistant Director of the CJIS Division published a memorandum that stated the FBI would no longer accept hard-copy fingerprint cards beginning April 15, 2012. This change was codified in the July 21, 2014 release of DoDI 5505.11.

⁵⁸ The Form R-84, Final Disposition Report, documents disposition data, including arrest charge or charges that have been modified or dropped. The final disposition report also reports the findings of a court.

⁵⁹ The CJIS Division is the central repository for FBI information and provides criminal justice information services.

In addition, it requires DCIOs and DoD LEOs to report final disposition of military judicial, nonjudicial, or administrative proceedings to the FBI on a final disposition report if it has not already been reported on a fingerprint card.

Probable cause, as defined by DoDI 5505.11, is facts and circumstances that are more than a mere suspicion but less than proof beyond a reasonable doubt that would lead a reasonable and prudent person to believe that a person committed or is about to commit a crime.

b) USAF Fingerprint and Final Disposition Policy

The USAF also provides additional written guidance, specific to the USAF, related to the processing, documenting, and reporting of investigative matters and criminal history data to the FBI.

(1) USAF Security Forces Policy

Air Force Instruction (AFI) 31-118, "Security Forces Standards and Procedures," March 5, 2014, Incorporating Change 1, December 2, 2015, states:

DoDI 5505.11, Fingerprint Card and Final Disposition Report Submission Requirements, requires an FD-249, Criminal Fingerprint Card, be submitted on all subjects under investigation by SF for offenses listed in Attachment 8 of the DoDI.

It further states:

Reports and analysis should be responsible for FBI fingerprint submission and follow-up. Security Forces Administration and Reports (S5R) receive final disposition information and maintain records.⁶⁰

AFI 31-206, "Security Forces Investigations Program," September 16, 2009, stated that:⁶¹

DoDI 5505.11 requires an FD-249, *Suspect Fingerprint Card*, be submitted on all suspects under investigation by SF for offenses listed in DoDI 5505.11, *Fingerprint Card and Final Disposition Report Submission Requirements*, **Enclosure 3**, only when such offenses are disposed of by court-martial or command action by an Article 15.

⁶⁰ Although AFI 31-118 was not in place during the Kelley investigation, we reviewed it because a 49th Security Forces Squadron member mentioned it. During that review, we identified that it was not consistent with DoDI 5505.11.

⁶¹ AFI 31-206 was superseded by AFI 31-115, "Security Forces Investigations Program," on November 10, 2014. AFI 31-115 refers the reader to AFI 31-118 for fingerprint collection and submission procedures. AFI 31-118's guidance for fingerprint collection and submission is consistent with DoDI 5505.11.

It further stated:

If final disposition of the proceedings is expected within 60 days, hold the FD-249, and submit it with the command action taken. If proceedings are expected to take longer than 60 days, submit the FD-249 without command action and follow it up with the FBI/DOJ Form R-84, Final Disposition Report, when action is taken. Do not delay filing the FD-249 past 60 days.⁶²

Additionally, USAF Security Forces units must obtain two complete sets of fingerprints on fingerprint cards and file the fingerprint cards and final disposition when fingerprints are taken and the investigation does not result in the referral of court-martial charges or command action on an Article 15.

(2) *USAF Corrections Policy*

AFI 31-205, "The Air Force Corrections System," April 7, 2004, Incorporating Change 1, July 6, 2007, Certified Current on April 28, 2011, required that all post-trial inmates be fingerprinted during in-processing into the confinement facility.⁶³

Confinement staff was required to:

Complete two originals of the FD-249, Arrest and Institution Card and attach the inmate's photograph to the form on all post-trial inmates. One is mailed to the FBI, CJIS Division, 1000 Custer Hollow Road, Clarksburg, WV 26306, and the second is maintained in the CTF [correctional treatment file]. . . . Upon receipt of the Convening Authority (CA) action in which the adjudged sentence is set aside, remitted or overturned, accomplish FBI Form R-84, Final Disposition Report. Mail one to the above address and maintain the second in the CTF.⁶⁴

AFI 31-205 also required the confinement officer to ensure that all staff members were proficient in in-processing inmates, including collecting and submitting fingerprint cards and final disposition reports to the FBI.⁶⁵ AFI 31-205 required that when an inmate transferred from one confinement facility to another, the inmate's CTF transferred with the inmate. The losing confinement facility was required to keep copies of the records in the CTF for 4 years after the release of the inmate from confinement.

⁶² Command action is the final administrative, judicial, or nonjudicial punishment decision that a commander takes against a military member to resolve disciplinary problems.

⁶³ AFI 31-105, "Air Force Corrections System," superseded AFI 31-205 on June 15, 2015. AFI 31-105 contains a requirement to collect and submit an inmate's fingerprints and final disposition to the FBI CJIS Division when the inmate is in-processed to the facility.

⁶⁴ The CTF is a file established for each inmate upon admission to the confinement facility.

⁶⁵ The installation Chief of Security Forces assigns a commissioned officer, in writing, as the confinement officer. The confinement NCOs are operationally responsible to the confinement officer.

After our review of the DoD and USAF policy requirements, we determined that:

- the 49th Security Forces Squadron were required collect and submit fingerprints on the fingerprint cards to the FBI after coordinating with the servicing Staff Judge Advocate or legal advisor that probable cause existed to believe that the person committed an offense listed Enclosure 2;
- when a person was ordered into pretrial confinement, the 49th Security Forces Squadron confinement facility personnel were required to collect fingerprints on fingerprint cards during in-processing into the confinement facility. However, the fingerprints would not be submitted to the FBI CJIS Division until the sentence was adjudged; and
- after a subject was convicted and returned to the confinement facility for post-trial confinement, the status changed from pretrial confinement detainee to post-trial inmate. Therefore, the 49th Security Forces Squadron confinement facility personnel were required to collect fingerprints during the in-processing into the confinement facility and submit the fingerprint cards or final disposition, to the FBI CJIS Division.

(3) AFOSI Fingerprint Policy

AFOSI has instructions, handbooks, and manuals that provide policy, guidance, and procedures for reporting criminal history data to the FBI, consistent with DoD and USAF policies.

AFOSI Handbook 71-105, "An Agent's Guide to Conducting and Documenting Investigations," March 9, 2009, states that the AFOSI case agent should collect the subject's fingerprints on the fingerprint card or the electronic equivalent once the subject interview is completed or terminated. It also states that Detachment leadership is to review the fingerprint cards and final disposition report for accuracy, to verify the fingerprints were acceptable, and then document the review. The Handbook does not discuss the submission of fingerprints to the FBI CJIS Division.

AFOSI Manual 71-118, Volume 4, "General Investigative Methods," Certified Current on April 5, 2012, requires that all subjects of AFOSI investigations be fingerprinted using the fingerprint card or the appropriate I2MS application. It further states that fingerprints are usually obtained after a subject interview if the subject was investigated for committing a certain offense as prescribed in DoDI 5505.11, and refers special agents to DoDI 5505.11 for the criteria of collecting and submitting fingerprints to the FBI CJIS Division.

AFOSI Manual 71-121, "Processing and Reporting Investigative Matters," Certified Current on October 12, 2012, requires AFOSI Special Agents to:

For military members, submit the electronic FD-249 through the Criminal Fingerprint activity to the FBI upon determination, following coordination with the servicing SJA [Staff Judge Advocate], and, as appropriate, civilian prosecutorial authority, that probable cause exists to believe the SUBJECT has committed an offense listed in attachment 8. The legal coordination will be documented in I2MS.⁶⁶

It also requires AFOSI Special Agents to submit a completed final disposition report on military members to the FBI within 15 days of sentencing. The disposition is annotated as listed on the AF Form 1359, "Report of Result of Trial," or AF Form 3070, "Record of Nonjudicial Punishment Proceedings." The duplicate final disposition report is maintained in the investigative case file. The date the final disposition report was sent to the FBI is recorded as a note in the investigative case file.

The Manual also requires Detachment leadership to review investigative case files monthly from the date the allegation is received until the case is closed. Specifically, Detachment leadership is instructed to "Review I2MS, reports and record copy investigative case files for sufficiency." This review extends to documentary items such as the FBI's final disposition report for updated charges, disposition and date, or final military judicial or nonjudicial punishment disposition documents.

After our review of the DoD and AFOSI policy requirements, we determined that:

- AFOSI Detachment 225 was required to collect and submit fingerprints on the fingerprint cards to the FBI following coordination with the servicing Staff Judge Advocate or legal advisor that probable cause exists to believe that the person committed an offense listed Enclosure 2, and
- AFOSI Detachment 225 was also required to submit final disposition information on the fingerprint card or the final disposition report to the FBI within 15 days of sentencing.

⁶⁶ AFOSI Special Agents use I2MS "activities" to document actions taken during an investigation. Specifically the fingerprint activity is used to document the collection of fingerprints and their submission to the FBI for criminal history checks and for inclusion in the FBI's databases.

B. Previous DoD OIG Reports

In the past, the DoD OIG conducted several evaluations that found deficiencies in submission of required fingerprints and final disposition reports to the FBI throughout the DoD.⁶⁷ This section of the report briefly summarizes those reviews.

Our first review was conducted in 1997, where we found significant deficiencies in the Military Services' compliance with the requirement to submit criminal history data to the FBI. In Report No. PO 97-003, "Criminal Investigations Policy Memorandum Number 10, Criminal History Data Reporting Requirements," January 28, 1997, we described the Military Services' compliance with the DoD requirements to submit fingerprints and final disposition reports to the FBI CJIS Division. This review found a high level of noncompliance by the DoD law enforcement organizations in submitting required fingerprint cards and final disposition reports to the FBI. Overall, we found that the Army failed to submit required fingerprint cards to the FBI in approximately 82 percent of its criminal cases, and did not submit final disposition reports in 79 percent of its criminal cases; the Navy failed to submit fingerprint cards in 83 percent of its criminal cases and did not submit final disposition reports in 94 percent of its criminal cases; and the USAF failed to submit fingerprint cards in 38 percent of its criminal cases and did not submit final disposition reports in 50 percent of its criminal cases.

We recommended that Military Departments and Defense agencies law enforcement organizations develop interim policies and implementing procedures for reporting to the FBI criminal history data files while awaiting a new DoD Instruction.

The Army agreed with our recommendation and stated that it would implement policy guidance to require the submission of reporting documents within 10 working days of a triggering event. The Army also stated that compliance with reporting requirements would be inspected during assistance visits to all field units.

The Navy disagreed with our finding, stating that statistical data was questionable because an FBI backlog in data entry existed and the requirements for the use of plain language on the fingerprint card may have resulted in the FBI not processing submissions. In addition, the Navy did not agree with our recommendation, stating that NCIS had policy and implementing procedures already in place.

⁶⁷ None of the periods covered by the DoD OIG evaluations included the AFOSI or USAF Security Forces investigations of Kelley.

The USAF agreed with our recommendation. The AFOSI issued a memorandum on December 9, 1996, which emphasized that reporting requirements are a mandatory inspection item for all AFOSI self-inspections and AFOSI Inspector General inspections.

In 2015, the DoD OIG issued another report evaluating the Military Services submission of fingerprints to the FBI as required by DoD policies. In this report, Report No. DoDIG-2015-081, "Evaluation of Department of Defense Compliance with Criminal History Data Reporting Requirements," February 12, 2015, we determined that the Military Services still did not consistently submit fingerprint cards and final disposition reports as required. Overall, we found that 304 of 1,102 (28 percent) fingerprint cards and 334 of 1,102 (30 percent) final disposition reports were not submitted to the FBI as required. The Navy failed to submit 68 of 317 (21 percent) required fingerprint cards and 80 of 317 (25 percent) required disposition reports. The USAF failed to submit 110 of 358 (31 percent) required fingerprint cards and 113 of 358 (32 percent) required disposition reports, and the Marine Corps failed to submit 126 of 427 (30 percent) required fingerprint cards and 141 of 427 (33 percent) required final disposition reports.

We recommended that the Secretaries of the Navy and Air Force take prompt action to submit missing fingerprints and final disposition reports to the FBI for inclusion into IAFIS. We also recommended that the Secretaries of the Navy and Air Force take prompt action to ensure fingerprints and final disposition reports for future arrestees and convicted offenders were submitted to the FBI.

The Navy and Air Force agreed with our recommendations, but expressed concern regarding their jurisdictional and legal authority to collect criminal history data from individuals no longer subject to the Uniform Code of Military Justice (UCMJ).

In November 2017, we were conducting a follow-up evaluation of the Military Services' compliance with DoD policies on submitting fingerprints to the FBI when Kelley killed 26 people at the church in Sutherland Springs. In our report, issued on December 5, 2017, Report No. DODIG-2018-035, "Evaluation of Fingerprint Card and Final Disposition Report Submissions by Military Service Law Enforcement Organizations," we again determined that the Military Services still did not consistently submit fingerprint cards and final disposition reports as required. Overall, of the 2,502 fingerprint cards, which required submission, 601 (24 percent), were not submitted. Of the 2,502 final

disposition reports, which required submission, 780 (31 percent) were not submitted. We found that the Army failed to submit 262 (28 percent) of the required fingerprint cards and 385 (41 percent) of the final disposition reports. The Navy failed to submit 197 (29 percent) of the required fingerprint cards and 243 (36 percent) of the final disposition reports. The USAF failed to submit 105 of 743 (14 percent) of the required fingerprint cards and 106 of 743 (14 percent) of the final disposition reports. The Marine Corps failed to submit 37 (29 percent) of the required fingerprint cards and 46 (36 percent) of the final disposition reports.

In our report, we recommended that the Secretaries of the Army, Navy, and Air Force ensure that all fingerprint cards and final disposition reports that we identified as not submitted during the period of our review, from 2015 through 2016, be promptly submitted to the FBI CJIS Division. We also recommended that the Secretaries of the Army, Navy, and Air Force; the Under Secretary of Defense for Intelligence; and the Deputy Chief Management Officer immediately perform a comprehensive review of their criminal investigative databases and files to ensure that all required fingerprint cards and final disposition reports for qualifying offenses at least to 1998 have been submitted to FBI CJIS Division in compliance with DoD and FBI requirements.

In addition, we recommended that the review extend back to at least 1998 because that is when DoD policy required the Military Services to submit such qualifying fingerprints and final disposition reports. We also recommended that the Secretaries of the Army, Navy, and Air Force; the Under Secretary of Defense for Intelligence; and the Deputy Chief Management Officer take prompt action to institute command, supervisory, and management oversight controls to verify compliance with fingerprint card and final disposition report submission requirements, in the past and in the future, and also ensure that such compliance is included as a special interest item in Service Inspector General inspections.

Finally, we recommended that the Secretaries of the Army, Navy, and Air Force; the Under Secretary of Defense for Intelligence; and the Deputy Chief Management Officer conduct a comprehensive review of their criminal history reporting programs. The review should ensure fingerprinting and final disposition report submission policy, training, and processes are consistent with DoDI 5505.11, the DoD policy covering the submission of fingerprints and final disposition reports, and are being implemented.

The Army agreed with our recommendations. In addition, the Army described steps it is taking to implement the recommendations. These steps include coordinating with officials at both the NCIC and the NICS to submit automated data regarding felony convictions and submitting final disposition reports.

The Navy agreed with our recommendations. The NCIS described steps it is taking to implement the recommendations, including developing a “Fingerprint Verification Plan” to correct previous fingerprint submission deficiencies and to prevent future submission failures.

The USAF agreed with our recommendations. AFOSI stated that it has already taken steps to identify and obtain missing fingerprint cards and disposition reports and will continue that effort.

The Marine Corps agreed with our recommendations. The Marine Corps described steps it is taking to implement the recommendations, such as tasking all installation Provost Marshal’s Offices and Marine Corps Criminal Investigation Division offices to review all incident reporting to determine if suspect fingerprint cards and final disposition reports were completed and submitted to the FBI.

On November 9, 2017, at the request of the Secretary of Defense, we initiated another follow-up evaluation, “Investigation and Review Regarding the DoD’s Submission of Information for Inclusion in the Federal Bureau of Investigation’s Databases,” to assess the policies, practices, and procedures to ensure that the DoD submits qualifying information to the FBI. In this evaluation, we will determine whether DoD Components collected and submitted criminal history data to the FBI for entry into applicable databases as required by Federal law and DoD guidance. This evaluation will focus on the submission of fingerprint cards and final disposition reports to the FBI CJIS Division, the submission of DNA to the U.S. Army Criminal Investigation Laboratory for submission to the Combined DNA Index System, the submission of criminal history data and mental health information for eight of the ten disqualifiers of the Brady Handgun Act for inclusion in the NICS; and the submission of sex offender registration information to the NCIC, in compliance with the Sex Offender Registration and Notification Act and DoD guidance. Additionally, we will assess the remedial measures proposed and taken in response to our recommendations made in the Report No. DODIG 2018-035. We will also seek to determine why, after DoD OIG’s repeated evaluations of the MCIOs and other DoD LEOs, criminal history data collections and submissions continued to be deficient.

C. Other DoD OIG Reports

In addition, other previous DoD OIG evaluations examined the handling of specific types of investigations by the Military Service law enforcement organizations, such as sexual assault investigations, or the handling of specific types of evidence, such as DNA. In these reports, we also determined that the Military Services were not consistently or uniformly submitting required data from criminal investigations for inclusion in the FBI's databases.

In Report No. DoDIG-2017-054, "Evaluation of Military Criminal Investigative Organizations' Adult Sexual Assault Investigations," February 14, 2017, we evaluated a sample of 378 Army, Navy, USAF, and Marine Corps subjects who were investigated for sexual assault between January 1, 2014, and December 31, 2015, and were required to have their fingerprints collected and submitted to the FBI CJIS Division. We determined that 15 of 378 (4 percent) fingerprint cards were not collected by Military Criminal Investigative Organizations (MCIOs) or were collected but not submitted to the FBI.⁶⁸ The MCIOs had an overall fingerprint collection noncompliance rate of 4 percent.

In another example, in Report No. DoDIG-2015-094, "Evaluation of Military Criminal Investigative Adult Sexual Assault Investigations," March 24, 2015, we evaluated a sample of 536 Army, Navy, USAF, and Marine Corps subjects who were investigated for sexual assault between January 1, 2012 and December 31, 2013, and were required to have their fingerprints collected and submitted to the FBI CJIS Division. We determined that 51 of 536 (10 percent) fingerprint cards were not collected by MCIOs, or were collected but not submitted to the FBI CJIS Division. The MCIOs had an overall fingerprint collection noncompliance rate of 10 percent.

Additionally, in Report No. DoDIG-2015-055, "Evaluation of Military Criminal Investigative Organizations' Child Death Investigations," December 22, 2014, we evaluated a sample of 82 Army, Navy, USAF, and Marine Corps Service members who were subjects in child death investigations between October 1, 2012 and September 30, 2013, and were required to have their fingerprints collected and submitted to the FBI CJIS Division. We determined that 2 of 82 (2 percent) fingerprints were not collected by MCIOs or were collected but were not submitted to the FBI CJIS Division. The MCIOs had an overall fingerprint collection noncompliance rate of 2 percent.

⁶⁸ The MCIOs are the U.S. Army Criminal Investigation Command, the Naval Criminal Investigative Service, and the AFOSI.

In another example, in Report No. DoDIG-2014-105, "Evaluation of Military Criminal Investigative Organizations' Child Sexual Assault Investigations," September 9, 2014, we evaluated a sample of 163 Army, Navy, USAF, and Marine Corps subjects who were investigated for the sexual assault of children between April 2013 and July 2013, and were required to have their fingerprints collected and submitted to the FBI CJIS Division. We determined that 24 of 163 (15 percent) fingerprints were not collected, or were collected but were not submitted to the FBI CJIS Division.

In Report No. DoDIG-2013-091, "Evaluation of Military Criminal Investigative Organizations' Sexual Assault Investigations," July 9, 2013, we evaluated a sample of 501 Army, Navy, USAF, and Marine Corps sexual assault subjects identified in investigation reports that closed out in 2010, and were required to have their fingerprints collected and submitted to the FBI. We determined that 101 of 501 (20 percent) fingerprints were not collected, or were collected but were not submitted to the FBI.

V. Analysis of Missed Opportunities to Submit Kelley's Fingerprints and Final Disposition Report to the FBI

In this section of the report, we analyze the United States Air Force's (USAF) missed opportunities to collect and submit Kelley's fingerprints and final disposition report to the FBI's Criminal Justice Information Services (CJIS) Division. We compare the DoD, USAF, and Air Force Office of Special Investigations (AFOSI) policy requirements with the facts related to Kelley's interactions with USAF law enforcement entities.

A. The USAF's Missed Opportunities to Submit Kelley's Fingerprints and Final Disposition Report to the FBI, as Required by DoD and USAF Policy

In November 2012, the USAF convicted Kelley of assault and subsequently discharged him. On several occasions during the course of that criminal investigation and after his conviction, the USAF should have submitted his fingerprints and final disposition report to the FBI CJIS Division for inclusion in the FBI's databases. Specifically, our investigation determined that the USAF had at least four opportunities when it should have, according to DoD, USAF, and AFOSI policy, collected and submitted Kelley's fingerprints to the FBI CJIS Division. In addition, it had two opportunities when it should have submitted the final disposition report to the FBI.

If the USAF had submitted the fingerprints and the final disposition report, it would have created a record in the Interstate Identification Index that would have been identified by the NICS personnel when Kelley attempted to purchase a firearm from Federal Firearms Licensed (FFL) dealers. The record would have required the NICS personnel to conduct the research to determine that Kelley was prohibited from purchasing a firearm. Because the USAF did not submit Kelley's fingerprints and final disposition, he was able to purchase firearms from federal firearms dealers, which he used during a shooting at the First Baptist Church of Sutherland Springs, Sutherland Springs, Texas.

The following sections of this report address each of the opportunities that the USAF missed to collect and submit Kelley's fingerprints or the final disposition report. In each instance that Kelley was questioned or was in the custody of USAF law enforcement, we examine the circumstances surrounding those events. We discuss the requirements of the applicable policies relating to the submission of his fingerprints, and then we discuss the specific missed opportunities and failures of the

USAF to collect and submit his fingerprints and final disposition report to the FBI. Additionally, we analyze the AFOSI Detachment 225 staffing, experience levels, and operations tempo to assess whether these factors may have contributed to the USAF not submitting Kelley's fingerprints or final disposition report to the FBI CJIS Division.

Finally, at the end of this section, we discuss Kelley's mental health status and whether it would have affected his eligibility to purchase firearms.

1. First Missed Opportunity to Submit Fingerprints: The USAF Interviews Kelley for the Assault on his Stepson

The first missed opportunity for the USAF to submit Kelley's fingerprints to FBI occurred on June 9, 2011. AFOSI Detachment 225 opened an investigation for assault on a child, listing Kelley as a subject, based upon information from a social worker from the Children, Youth and Families Department (CYFD), Alamogordo, New Mexico, that Kelley's stepson was assaulted. The same day, AFOSI conducted a subject interview of Kelley. After receiving Article 31 rights advisement for assault, Kelley waived his rights and agreed to speak to the AFOSI Detachment 225 Special Agents. Kelley told the Special Agents that he did not know how his stepson sustained the injuries and that the injuries may have been the result of "falling on the floor while he was crawling or playing in his crib."

At the end of his interview, Kelley's fingerprints were collected on the fingerprint cards, as required by DoD and USAF policy, and placed in the investigative case file. However, the AFOSI Detachment 225 Special Agents did not submit Kelley's fingerprints to the FBI CJIS Division, as also required by DoD policy and AFOSI policy.

a) Policy Requirements

As noted above, DoDI 5505.11 requires that fingerprints be collected from military subjects under investigation by a DoD law enforcement organization for offenses listed in Enclosure 2. DoDI 5505.11 also requires submittal of the subject's fingerprints to the FBI CJIS Division. It states that:

For military subjects (investigated by a DCIO or other DoD law enforcement organization), the FD-249 [fingerprint card] shall be submitted when an agent or law enforcement official determines, following coordination with the servicing SJA [Staff Judge Advocate] or legal advisor if necessary (in no case earlier than apprehension [military], arrest [civilian], or the subject interview), that probable cause exists to believe that the person committed an offense listed Enclosure 2.

In addition, AFOSI Handbook 71-105, "An Agent's Guide to Conducting and Documenting Investigations," March 9, 2009, states that AFOSI case agents should collect a subject's fingerprints on Subject Fingerprint Cards, or the electronic equivalent, once a subject interview is completed or terminated. It further states that Detachment leadership must review fingerprint cards and final disposition reports for accuracy, to verify the fingerprints were acceptable, and then document that review in the investigative case file.

AFOSI Manual 71-118, volume 4, requires that all subjects of AFOSI investigations be fingerprinted using the fingerprint card or the appropriate I2MS application. It further states that fingerprints are usually obtained after a subject interview if the subject was investigated for committing a certain offense as prescribed in DoDI 5505.11, and it refers special agents to DoDI 5505.11 for the criteria on collecting and submitting fingerprints to the FBI CJIS Division.

In addition, AFOSI Manual 71-121 requires AFOSI Special Agents to complete two sets of fingerprint cards for every military subject suspected of committing an offense listed in attachment 8. It also states "[f]or military members, submit the electronic FD-249 through the Criminal Fingerprint activity to the FBI upon determination, following coordination with the servicing SJA [Staff Judge Advocate], and, as appropriate, civilian prosecutorial authority, that probable cause exists to believe the SUBJECT has committed an offense listed in attachment 8. The legal coordination will be documented in I2MS."

b) Kelley's First Interaction with AFOSI

On June 9, 2011, AFOSI Detachment 225 initiated an investigation regarding suspected abuse of Kelley's stepson because the doctor that examined Kelley's stepson determined that his injuries were caused by a human being and not by a fall. The AFOSI Detachment 225 Special Agents conducted a subject interview of Kelley because they suspected he caused those injuries. After receiving Article 31 rights advisement for assault, Kelley waived his rights and agreed to speak to the Special Agents. Following the subject interview, AFOSI Detachment 225 Special Agents did collect Kelley's fingerprints as required by DoD and USAF policy because the Special Agents believed probable cause existed that Kelley committed the assault on his stepson.

Also on June 9, 2011, an AFOSI Detachment 225 Special Agent wrote an affidavit to the military magistrate to obtain authority to search Kelley's on-base residence for evidence related to Kelley's alleged assault of his stepson.⁶⁹ The AFOSI Detachment 225 Special Agent wrote the affidavit after Kelley's subject interview, and the Special Agent coordinated with the Staff Judge Advocate to obtain a search authority from the military magistrate. In the affidavit, the Special Agent wrote:

I believe probable cause exists to conduct a search of VICTIM's crib and immediate surrounding within VICTIM's bedroom . . . for evidence of Assault (Child Abuse).

On June 17, 2011, a second AFOSI Detachment 225 Special Agent wrote a separate affidavit to the military magistrate, requesting authority to seize Kelley and Tessa Kelley's wedding rings to compare them against her son's injuries. The AFOSI Detachment 225 Special Agent wrote the affidavit and coordinated with the Staff Judge Advocate to obtain a search authority from the military magistrate. In the affidavit, the AFOSI Detachment 225 Special Agent wrote:

~~(FOUO)~~ I believe probable cause exists to search and or seize ~~(b) (6)~~ webbing [wedding] rings for analysis by USACIL [U.S. Army Criminal Investigation Laboratory] in an effort to determine the source of VICTIM's injuries.⁷⁰

The AFOSI's actions indicate that the AFOSI Special Agents believed there was probable cause that Kelley had committed assault.

However, the two original fingerprint cards, dated June 9, 2011, remained in the investigative case file and were not submitted to the FBI CJIS Division, as required by DoDI 5505.11 and AFOSI Manual 71-121. Additionally, the AFOSI Detachment 225 supervision did not create a note in the investigative case file stating that the fingerprint card had been reviewed, as required by AFOSI Handbook 71-105.

We contacted the FBI CJIS Division to determine if it had received any fingerprint cards for Kelley. An FBI CJIS Criminal History Information and Policy Unit program analyst searched the FBI's Next Generation Identification system for Kelley's fingerprints and informed us that the FBI CJIS Division did not receive Kelley's fingerprint cards from the AFOSI Detachment 225.⁷¹

⁶⁹ The military magistrate's primary duty is to determine whether probable cause exists to issue search, seizure, or apprehension authorizations in criminal investigations and, if so, to issue such authorizations. The authorizations are issued based upon written or oral statements or any other evidence or information made known to the magistrate.

⁷⁰ ~~(FOUO)~~ AFOSI Detachment 225 Special Agents identified ~~(b) (6)~~ in the affidavit.

⁷¹ The Next Generation Identification system is a new system developed by the FBI CJIS Division to replace the Integrated Automated Fingerprint Identification System. Next Generation Identification provides the criminal justice community with the world's largest and most efficient electronic repository of biometric and criminal history information.

c) Interviews of AFOSI Special Agents

Our interviews of AFOSI Special Agents also indicate that they believed there was probable cause to believe that Kelley committed the assault on his stepson when they interviewed him. We interviewed the Special Agents who were assigned to AFOSI Detachment 225 during the Kelley assault investigation to determine if they understood the DoD and USAF policy pertaining to the collection and submission of fingerprints to the FBI CJIS Division. Specifically, we asked the Special Agents if when they collected Kelley's fingerprints, they believed that there was probable cause to submit the fingerprints to the FBI CJIS Division, and why they did not submit Kelley's fingerprints.

The AFOSI Detachment 225 Special Agents who interviewed Kelley during his first subject interview told us that they were aware of the AFOSI policy requirements to collect and submit fingerprints to the FBI CJIS Division if that subject was suspected of committing an offense listed in AFOSI Manual 71-121, Enclosure 8. They told us that one copy of the fingerprint cards would be retained in the investigative case file, and the other one should be submitted to the FBI CJIS Division within a few days after a subject interview.

The former Special Agent-in-Charge (SAIC), who conducted Kelley's first subject interview, told us that, while he was the SAIC, the Detachment's practice for the collection and submission of fingerprints was to collect the fingerprints following the subject interview and immediately send the fingerprints to the FBI. He stated that the Detachment's practice for collecting fingerprints from the subject was "your case, your prints." He said that this meant that it was the case agent's responsibility to collect and submit fingerprints. The former SAIC said that he could not remember the details regarding the Kelley investigation because he retired from the USAF shortly after Kelley's June 9, 2011, subject interview. However, he said that he believed that Kelley's fingerprints should have been submitted to the FBI CJIS Division. He said he did not know why Kelley's fingerprints were not submitted to the FBI CJIS Division.

The former Detachment 225 Superintendent who also participated in Kelley's first subject interview told us that the Detachment's practice was to conduct a subject interview and then collect two copies of fingerprints on two fingerprint cards. He said one copy would be placed into the investigative case file and the other would be submitted to the FBI CJIS Division, approximately 1 to 2 days after the subject interview. We asked him if he believed that probable cause existed during Kelley's first AFOSI Detachment 225 interview. He told us that based on the medical review from the doctors of the injuries to Kelley's stepson, he believed that there was

probable cause that Kelley committed the offense of assault on his stepson and that Detachment 225 personnel should have submitted Kelley's fingerprints to the FBI. The former Superintendent said he did not know why Kelley's fingerprints were not submitted to the FBI CJIS Division.⁷²

The case agent in the Kelley assault investigation, who did not participate in the subject interview, told us that at the time of the Kelley assault investigation, the AFOSI Detachment 225's normal practice was to collect fingerprints immediately after the subject interview and put them into the investigative case file. However, he stated that the fingerprints would be mailed to the FBI CJIS Division after a conviction. He said that the AFOSI Detachment 225 coordinated with the Staff Judge Advocate weekly to update that office on the investigations.

The case agent also told us that he could not recall a specific conversation with the Staff Judge Advocate to determine if there was probable cause that Kelley committed the crime. However, the case agent said that he believed that probable cause existed that Kelley committed the assault once the doctor determined that only a human could cause the child's injuries. He stated that at the time of the Kelley assault investigation, he was not aware of the requirement for submission of the fingerprints to the FBI CJIS Division upon a probable cause determination.

d) Analysis of the USAF's First Missed Opportunity to Collect and Submit Kelley's Fingerprints

In sum, we concluded that the AFOSI Detachment 225 Special Agents did not follow DoD and AFOSI policies regarding the submission of fingerprints, and some did not understand the policies.

DoDI 5505.11 and AFOSI Manual 71-121 require the submission of fingerprints to the FBI CJIS Division when probable cause was established to believe that a subject committed a crime. The former Superintendent and the case agent believed that probable cause existed that Kelley committed the assault on his stepson, based on the doctor's determination that the stepson's injuries were caused by a human being and could not have been caused by a fall.

⁷² On November 10, 2017, AFOSI interviewed the former superintendent, and he provided testimony stating that all subject's fingerprints were collected and placed in the investigative case files until the AFOSI Detachment 225 received command action. This contradicted testimony that he gave to DoD OIG on June 11, 2018, when he stated that one copy of the subject's fingerprints would be placed into the investigative case file and the other would be submitted to the FBI CJIS Division, approximately 1 to 2 days after the subject interview. When asked about the discrepancy, he stated that he had given more thought to how the process actually worked when he was at AFOSI Detachment 225 in 2011. He told the DoD OIG that he now recalled the process differently than when he was interviewed by AFOSI.

At this point in the investigation, with sufficient probable cause established, the AFOSI Detachment 225 Special Agents should have submitted Kelley's fingerprints to the FBI CJIS Division, as required by DoD and AFOSI policy. The submission of Kelley's fingerprints should have consisted of placing the completed fingerprint card in a pre-addressed, postage paid envelope, and mailing the fingerprint card to the FBI CJIS Division. We know this did not happen because both fingerprint cards remained in the investigative case file and we verified this with the FBI CJIS Division.

We also found confusion among the AFOSI Special Agents as to when fingerprints should be submitted to the FBI CJIS Division. The former SAIC and Superintendent believed that fingerprints were normally submitted within 2 days of the subject interview. The case agent stated that at the time of the Kelley assault investigation, he was not aware that of the requirement for submission of the fingerprints to the FBI CJIS Division upon a probable cause determination.

Ultimately, none of the AFOSI Special Agents had a clear or supportable reason or explanation why Kelley's fingerprints were not submitted to the FBI CJIS Division.⁷³

2. Second Missed Opportunity to Submit Fingerprints: The USAF Interviews Kelley for the Assault on Tessa Kelley

The second missed opportunity for the USAF to submit Kelley's fingerprints to the FBI occurred on February 17, 2012. The 49th Security Forces Squadron opened an investigation on Kelley for assaulting Tessa Kelley, after she told the 49th Security Forces Squadron investigators that Kelley had been physically abusing her since July 2011.

On February 17, 2012, the 49th Security Forces Squadron investigators conducted a subject interview of Kelley in their office regarding the assault. After receiving Article 31 rights advisement for assault, Kelley requested legal counsel and did not make a statement.

⁷³ If the USAF had submitted Kelley's fingerprints to FBI CJIS Division without a final disposition report, when Kelley tried to purchase a firearm, the NICS would have queried all available records in the National Crime Information Center, the Interstate Identification Index, and the NICS Indices to determine his eligibility for purchasing a firearm. Because the FBI CJIS Division would not have had final disposition matching Kelley's fingerprints, the NICS would have issued the FFL a "delay" status regarding his request to purchase a firearm. A delayed transaction prevents an FFL from transferring the firearm prior to the passage of 3 business days. If after 3 days, the USAF had not responded with disposition status, the FFL would have the option to proceed with the sale or further delay the sale, until the FBI CJIS received the final disposition report.

At that time, the 49th Security Forces Squadron investigators should have collected Kelley's fingerprints, in accordance with DoD and USAF policy. However, the 49th Security Forces Squadron could not provide us any records that demonstrated that the investigators collected Kelley's fingerprints.⁷⁴ We verified that the 49th Security Forces Squadron investigators did not submit Kelley's fingerprints to the FBI CJIS Division.

a) Policy Requirements

At the time of the Kelley investigation, DoDI 5505.11 and AFI 31-206 established fingerprint policy for the USAF Security Forces.⁷⁵ As noted above, DoDI 5505.11 requires that "Fingerprints and all information required on FD-249 shall be obtained from military subjects under investigation by a DCIO or other DoD law enforcement organization for offenses listed in Enclosure 2." The offense of assault, which Kelley was alleged to have committed, is an offense listed in Enclosure 2. DoDI 5505.11 also requires submittal of the subject's fingerprints to the FBI CJIS Division when probable cause is established that the subject committed the crime they were suspected of and the crime is listed in enclosure 2.

AFI 31-206, which applied to USAF Security Forces at the time of the Kelley investigation, but has since been rescinded, required the 49th Security Forces investigators to collect two complete sets of fingerprints on the fingerprint cards and submit one of set of fingerprints to the FBI CJIS Division.⁷⁶ It stated that:

DoDI 5505.11 requires an FD-249, *Suspect Fingerprint Card*, be submitted on all suspects under investigation by SF [Security Forces] for offenses listed in DoDI 5505.11, *Fingerprint Card and Final Disposition Report Submission Requirements*, **Enclosure 3**, only when such offenses are disposed of by court-martial or command action by an Article 15.

It further stated:

If final disposition of the proceedings is expected within 60 days, [Security Forces should] hold the FD-249, and submit it with the command action taken. If proceedings are expected to take longer than 60 days, submit the FD-249 without command action and follow it up with the FBI/DOJ Form R-84, Final Disposition Report, when action is taken. Do not delay filing the FD 249 past 60 days.

⁷⁴ The 49th Security Forces Squadron Confinement Facility permanently closed on May 25, 2016.

⁷⁵ The USAF Security Forces is not subject to AFOSI policies because they are not part of the AFOSI command.

⁷⁶ We identified a conflict that existed between AFI 31-206 and DoDI 5505.11 regarding the timing of the submission of fingerprints to the FBI CJIS Division. AFI 31-206 did not require a probable cause determination for the submission of fingerprints but instructed USAF Security Forces Squadrons to hold the fingerprint cards for up to 60 days if final disposition was expected in that time. DoDI 5505.11 requires the submission of fingerprint cards when probable cause exists and does not allow for a waiting period before that submission. AFI 31-115, which superseded AFI 31-206 on November 10, 2014, corrected this conflict. However, we determined that, in this case, the conflict was not a factor in the 49th Security Forces Squadron's failure to submit Kelley's fingerprints to the FBI CJIS Division.

b) Kelley's First Interaction with USAF Security Forces

On February 17, 2012, Tessa Kelley told 49th Security Forces Squadron investigators that Kelley had been physically abusing her since July 2011. Tessa Kelley provided a statement describing the physical abuse by Kelley and provided the investigators with four photographs showing the bruises she reported receiving from him.

That same day, the 49th Security Forces Squadron investigators conducted a subject interview of Kelley in their office regarding the assault. After receiving Article 31 rights advisement for assault, Kelley requested legal counsel and did not make a statement.

According to the 49th Security Forces Squadron's incident report, the 49th Security Forces investigators briefed the servicing Staff Judge Advocate regarding their investigation of Kelley. However, the investigative case file did not describe what was discussed.

The USAF did not have evidence that the 49th Security Forces Squadron investigators collected Kelley's fingerprints because the original investigative case file had been destroyed, in accordance with USAF records disposition policy.⁷⁷ We therefore could not determine if the 49th Security Forces Squadron collected Kelley's fingerprints after the subject interview of him.

However, Kelley's fingerprints were not submitted to the FBI CJIS Division. We contacted the FBI CJIS Division to determine if it received any fingerprint cards for Kelley. An FBI CJIS Criminal History Information and Policy Unit program analyst searched the Next Generation Identification system for Kelley's fingerprints and informed us that the FBI CJIS Division did not receive Kelley's fingerprint card from the 49th Security Forces Squadron.

c) Interviews of 49th Security Forces Squadron Investigators

We interviewed the two 49th Security Forces Squadron investigators who investigated the assault on Tessa Kelley and an investigator that was assigned to the same office during that time. We asked the investigators if they collected Kelley's

⁷⁷ According to Air Force Manual 37-139, Table 31-1, Rule 1 USAF Security Forces records of investigations, including the report of investigation and fingerprints that were maintained in the Kelley investigative case file could have been destroyed 3 years after the disposition of the case was received. The USAF was unable to provide documentation showing when or where the records were destroyed, but the records would have been eligible for destruction in November 2015.

fingerprints, if they believed that there was probable cause to believe that Kelley had committed assault, and why they did not submit the fingerprints to the FBI CJIS Division.

One investigator stated he believed that the 49th Security Forces Squadron did not collect Kelley's fingerprints because Kelley was "not guilty of anything [at that time]." He stated that immediately following Kelley's interview, Kelley was released to his unit as a matter of the 49th Security Forces Squadron Office of Investigations standard operating procedure. He also stated that he did not remember the Kelley assault investigation well enough to know if probable cause existed during or after Kelley's subject interview.

The second investigator told us that he did not remember taking Kelley's fingerprints, but that it was the 49th Security Forces Squadron Office of Investigations' "protocol" to collect fingerprints after a subject interview, and he did not know why he would not have done it.⁷⁸ When asked specifically if he collected Kelley's fingerprints after the subject interview, the investigator said, "I don't remember, but I'm going to say yes, because that's protocol." The investigator then said that he could not recall when or who would have taken Kelley's fingerprints. The investigator also said he did not recall submitting Kelley's fingerprints to the FBI CJIS Division, but that submitting fingerprints was something that would have been done in 49th Security Forces Squadron Office of Investigations office. The investigator also told us he thought probable cause existed based on Tessa Kelley's interview and the photographs of the injuries she had. However, he said he could not remember discussing a probable cause determination with the Staff Judge Advocate.

We interviewed a third investigator who was assigned to the 49th Security Forces Squadron Office of Investigations at the time of the Kelley investigation, but was not involved in the Kelley investigation. He told us that before 2014, the 49th Security Forces Squadron Office of Investigations did not collect fingerprints until after offenses were adjudicated by court-martial or command action was taken with nonjudicial punishment.⁷⁹ He stated that if the subject received nonjudicial punishment, the Investigations Office would fingerprint the subject. He also stated that if the subject went to a court-martial, the confinement facility fingerprinted the subject.

⁷⁸ Although the investigator said this was a protocol, the USAF did not provide any written policy specific to the 49th Security Forces Squadron in response to our data call memorandum. The investigator also said that this was just the procedure that was followed, not that it was written in any policy.

⁷⁹ In 2014, the USAF published AFI 31-118, "Security Forces Standards and Procedures," March 5, 2014. This policy requires USAF Security Forces personnel to submit the fingerprint card when it is determined, following coordination with the servicing SJA or legal advisor (in no case earlier than apprehension or the subject interview), that probable cause exists to believe the person has committed an offense listed in Attachment 8).

We also asked the HAFB Staff Judge Advocate who was assigned during the time of the Kelley investigation whether the 49th Security Forces Squadron had discussed probable cause during the Kelley assault investigation. He told us that he could not recall any specific probable cause discussions about the Kelley investigation.

In addition, we interviewed the Chief of Military Justice at the Holloman AFB Staff Judge Advocate Office, who stated that if the 49th Security Forces Squadron contacted the Staff Judge Advocate Office regarding a probable cause determination after subject interviews of Kelley, he was not aware of it.

d) Analysis of the USAF's Second Missed Opportunity to Collect and Submit Kelley's Fingerprints

We concluded that the 49th Security Forces Squadron investigators did not have a clear understanding of, and did not follow, DoD and USAF policy regarding the collection and submission of fingerprints. There was no evidence that the 49th Security Forces Squadron investigators collected or submitted Kelley's fingerprints as required by DoDI 5505.11 and AFI 31-206.

At least one of the 49th Security Forces Squadron investigators involved in the Kelley investigation believed that probable cause existed that Kelley had assaulted Tessa Kelley based on her testimony and injuries. We agree that this information would have been sufficient for the investigator to establish probable cause and therefore he should have collected and submitted Kelley's fingerprints to the FBI CJIS Division. However, the investigator could not explain why he did not submit Kelley's fingerprints.

As noted in footnote 76, DoDI 5505.11 requires the submission of fingerprints to the FBI CJIS Division once probable cause is established; however, AFI 31-206 did not specify any requirement for probable cause to be established in order to submit the fingerprints. Instead, AFI 31-206 allowed the USAF Security Forces to hold fingerprints for up to 60 days before submitting the fingerprints to the FBI if final disposition was expected within those 60 days. Yet, if the 49th Security Forces Squadron followed either the DoD or the USAF policy, Kelley's fingerprints would have been submitted to the FBI CJIS Division.

3. Third Missed Opportunity to Collect and Submit Fingerprints: The USAF Interviews Kelley for Assault and Absence Without Leave

The third missed opportunity for the USAF to collect and submit Kelley's fingerprints to FBI occurred on June 8, 2012, when AFOSI interviewed Kelley immediately after he was placed in pretrial confinement.⁸⁰ That same day, AFOSI Detachment 225 Special Agents reinterviewed Kelley regarding Tessa Kelley's allegation from February 17, 2012, that Kelley had assaulted her and her son. They also wanted to question him about his Absent without Leave status when he left Peak Behavioral Health Services.⁸¹ According the AFOSI subject interview summary, after receiving Article 31 rights advisement for assault and absence without leave, Kelley told the AFOSI Detachment 225 Special Agents that he wanted to talk about things but "could not due to his legal counsel request."

According to the AF Form 3985, "Interview Record," contained in the AFOSI investigative case file, the AFOSI Detachment 225 Special Agents collected Kelley's fingerprints at the end of the subject interview. However, we did not find any fingerprints associated with this interview in the investigative case file. We also determined that the AFOSI Detachment 225 Special Agents did not submit Kelley's fingerprints to the FBI CJIS Division.

a) Policy Requirements

As noted above, DoDI 5505.11 requires that fingerprints be collected from military subjects under investigation by a DoD law enforcement organization for offenses listed in Enclosure 2. It states that "For military subjects, the FD-249 [fingerprint card] shall be submitted when an agent or law enforcement official determines, following coordination with the servicing SJA [Staff Judge Advocate]

⁸⁰ As noted above, on June 7, 2012, Kelley left the PBHS and was therefore absent without leave, a violation of the UCMJ, Article 86. On June 8, 2012, the PBHS Director located and detained Kelley at a Greyhound bus station in El Paso. Kelley was transported back to HAFB, his Commander determined that Kelley was a flight risk, and ordered him into pretrial confinement. AFI 31-205, "The Air Force Corrections System," April 7, 2004, Incorporating Change 1, July 6, 2007, Certified Current on April 28, 2011, required the 49th Security Forces Squadron personnel to collect Kelley's fingerprints, during his in-processing at the confinement facility. Specifically, the AFI 31-205 stated that fingerprints were to be collected when an inmate was in-processed into the confinement facility. We could not determine if the 49th Security Forces Squadron collected Kelley's pretrial confinement fingerprints because Kelley's confinement file was destroyed as part of the standard USAF records retention policy. The purpose of the AFI 31-205 requirement to fingerprint a detainee upon entering pretrial confinement was for personal identification and there was no requirement to submit these fingerprints to the FBI CJIS Division. Therefore, this requirement had no impact on Kelley's eligibility to purchase firearms legally.

⁸¹ These offenses differed from the offense that AFOSI Detachment 225 Special Agents interviewed Kelley for on June 9, 2011, when he received his Article 31 rights advisement for the assault on his stepson. Kelley made the confession video on April 27, 2012, and it primarily addressed the assault of his stepson. Therefore, the AFOSI Detachment 225 Special Agents did not have it during their first subject interview. This was the first opportunity for the AFOSI Detachment 225 to conduct an interview of Kelley following his departure from the PBHS.

or legal advisor if necessary that probable cause exists to believe that the person committed an offense listed Enclosure 2.” DoDI 5505.11 requires submittal of the subjects fingerprints to the FBI CJIS Division.

In addition, AFOSI Handbook 71-105, “An Agent’s Guide to Conducting and Documenting Investigations,” March 9, 2009, states that AFOSI case agents should collect a subject’s fingerprints on Subject Fingerprint Cards, or the electronic equivalent, once a subject interview is completed or terminated. It further states that Detachment leadership must review fingerprint cards and final disposition reports for accuracy, to verify the fingerprints were acceptable, and then document that review in the investigative case file.

AFOSI Manual 71-118, volume 4, requires that all subjects of AFOSI investigations be fingerprinted using the fingerprint card or the appropriate I2MS application. It further states that fingerprints are usually obtained after a subject interview if the subject was investigated for committing a certain offense as prescribed in DoDI 5505.11, and refers special agents to DoDI 5505.11 for the criteria of collecting and submitting fingerprints to the FBI CJIS Division.

In addition, AFOSI Manual 71-121 requires AFOSI Special Agents to complete two sets of fingerprint cards for every military subject suspected of committing an offense listed in attachment 8. It further states “[f]or military members, submit the electronic FD-249 through the Criminal Fingerprint activity to the FBI upon determination, following coordination with the servicing SJA [Staff Judge Advocate], and, as appropriate, civilian prosecutorial authority, that probable cause exists to believe the SUBJECT has committed an offense listed in attachment 8. The legal coordination will be documented in I2MS.”

b) Kelley’s Second Interaction with AFOSI

On June 8, 2012, AFOSI Detachment 225 Special Agents performed a subject interview of Kelley for a second time regarding Tessa Kelley’s assault allegation and about his Absent without Leave status. After being advised of his rights, Kelley stated that he wanted “to talk about things, but could not due to his legal counsel request.” However, in an unsolicited spontaneous statement before departing the subject interview, Kelley told the interviewing special agents that he made the video where he confessed to assaulting his stepson of his own free will.⁸² The AFOSI Special Agents told us that they believed that probable cause existed that Kelley assaulted his stepson, based on Kelley’s admission in the video.

⁸² On April 27, 2012, Kelley made a confession video, in which, he admitted to hitting his stepson multiple times.

After the subject interview, one the Special Agents initialed the block on the AF Form 3985, "Interview Record," signifying that Kelley's fingerprints were collected. However, there was no evidence that they were collected, and they were not submitted to the FBI CJIS Division.

c) Interviews of AFOSI Special Agents

We interviewed three AFOSI Detachment 225 Special Agents who were involved in the third missed opportunity to collect and submit Kelley's fingerprints to the FBI CJIS Division. We asked the Special Agents why Kelley's fingerprints were not collected following the June 8, 2012, subject interview. We also asked them if they believed that there was probable cause to submit Kelley's fingerprints to the FBI CJIS Division and why they did not do so.

Two of the three AFOSI Special Agents recalled that there was an AFOSI policy requiring the collection and submission of fingerprints, and said they were familiar with the requirement of when to collect fingerprints. However, they said they were not familiar with the requirements on when to submit fingerprint cards or the final disposition reports to the FBI. The Special Agents also told us that they did not know why Kelley's fingerprints were not collected or submitted to the FBI CJIS Division. Additionally, they said they believed, based on Kelley's video confession, that probable cause existed that he had committed assault against Tessa Kelley and her son.

One of these Special Agents, who conducted the subject interview of Kelley on June 8, 2012, and who completed the AF Form 3985, told us that he was not sure if Kelley was fingerprinted after the subject interview. He told us that the Detachment's procedure was to collect fingerprints on the fingerprint cards, mail one fingerprint card to the FBI CJIS Division, and keep the second fingerprint card in the investigative case file. After the trial, the final disposition report would be mailed to the FBI. However, he said that the case agent had primary responsibility for ensuring that the fingerprints and final disposition cards were submitted and that he was not assigned as the case agent. He added that "[t]he standard procedure at the unit was to fingerprint and photograph a subject after the interview was completed, and then release the subject to his command."

We also asked him if he was aware whether Kelley had been fingerprinted during his first subject interview on June 9, 2011. He told us that he did not recall reviewing Kelley's investigative case file for the fingerprints because he was not assigned as the case agent.⁸³ However, the Special Agent could not explain why

⁸³ According to the Interview Record, the case agent was not present during Kelley's second subject interview on June 8, 2012.

he initialed the AF Form 3985, "Interview Record," next to the investigative step signifying that Kelley's fingerprints were collected during this interview. The Special Agent also told us that if Kelley's fingerprints were previously collected, he may not have collected them a second time. Finally, he said he believed, after watching the confession video that Kelley made, that probable cause existed that Kelley committed an assault and that he did not know why the AFOSI Detachment 225 did not submit Kelley's fingerprints to the FBI CJIS Division.

We asked the second Special Agent, who was the case agent, if he collected Kelley's fingerprints after the June 8, 2012, subject interview. The case agent told us that he was not involved in Kelley's June 8, 2012, subject interview and therefore did not collect Kelley's fingerprints after the interview. He also told us that he was unsure if Kelley's fingerprints were collected after the June 8, 2012, interview.

A third Special Agent, who was the permanent SAIC, said that he believed, based on Kelley's confession video, there was probable cause that Kelley had committed an assault. However, he said he did not remember having a discussion with the Staff Judge Advocate about the confession video or a probable cause determination. The permanent SAIC stated that it was AFOSI Detachment 225's practice to collect fingerprints following a subject interview. He said the Special Agent who interviewed the subject would be responsible for the collection of fingerprints, and once the fingerprints were obtained, they would be placed in the fingerprint card envelope in the investigative case file.

The permanent SAIC told us that the Detachment would not submit the fingerprints to the FBI until it received the Report of Result of Trial from the Staff Judge Advocate or the Commander's record of discipline. He also told us that, at the time of the Kelley investigation, he was not clear on the fingerprint collection and submission requirements and stated that he was not properly trained. The permanent SAIC told us that he now understands that his Detachment's process for submitting fingerprints to the FBI was incorrect and that the fingerprint cards should have been submitted after the AFOSI determined probable cause existed to believe a subject committed a crime. Finally, he said he did not know why Kelley's fingerprints were not submitted to the FBI CJIS Division.

d) Analysis of the USAF's Third Missed Opportunity to Collect and Submit Kelley's Fingerprints

We concluded that the AFOSI Special Agents did not know or follow DoD and AFOSI policy, and they did not collect and submit Kelley's fingerprints to the FBI CJIS Division following his second subject interview on June 8, 2012.

Kelley was under investigation for the assault on his wife and stepson and for being Absent Without Leave (AWOL). Because of this, AFOSI Special Agents were required by DoDI 550.11 to collect Kelley's fingerprints. The Special Agent who conducted Kelley's subject interview, inexplicably initialed the block on the AF Form 3985, "Interview Record," signifying that Kelley's fingerprints were collected following the interview. However, he did not collect Kelley's fingerprints and did not review the investigative case file to determine whether Kelley's fingerprints had already been collected after the June 9, 2011, interview.

Based on Kelley's confession video and the totality of the information, the Special Agent who conducted the interview and the permanent SAIC believed that probable cause was established; they therefore should have submitted his fingerprints to the FBI CJIS Division. However, the permanent SAIC did not have a clear understanding that fingerprints should be submitted to the FBI CJIS Division once probable cause was determined.

We agree that at this point in the investigation, the AFOSI Detachment 225 Special Agents had probable cause to believe Kelley committed the assault and should have submitted Kelley's fingerprints to the FBI CJIS Division, as required by DoD and AFOSI policy.

We concluded that the failure to collect or submit the fingerprints occurred, in part, because of the SAIC's practice not submit the fingerprints to the FBI CJIS Division until after the Detachment received the Report of Result of Trial from the Staff Judge Advocate or the Commander's record of discipline. However, none of the Special Agents could provide a sufficient or supportable reason why Kelley's fingerprints were not collected or submitted following his subject interview.

4. Fourth Missed Opportunity to Submit Fingerprints and First Missed Opportunity to Submit Final Disposition Report: Kelley Enters the USAF Corrections System

The fourth missed opportunity for the USAF to submit Kelley's fingerprints and the first missed opportunity to submit Kelley's final disposition report to the FBI occurred on November 7, 2012, when Kelley was convicted by General Court-Martial for assault on Tessa Kelley and his stepson.

a) Policy Requirements

DoDI 5505.11 states that DoD law enforcement organizations are required to submit fingerprints to the FBI CJIS Division for subjects who commit offenses listed in Enclosure 2, once probable cause is established that the subject committed the offense. It further states that if a DoD law enforcement organization submits fingerprints after command action is received or after post-trial conviction, the fingerprint card is submitted to the FBI CJIS Division with the final disposition annotated on it, instead of submitting the R-84.

AFI 31-205, which was in effect during the Kelley case, required that all post-trial inmates be fingerprinted and have their deoxyribonucleic acid (DNA) collected during in-processing into the confinement facility.⁸⁴ The Instruction also required the Security Forces Squadron personnel to submit one of those fingerprint cards with the final disposition reported on it to the FBI CJIS Division.

Specifically, the Instruction stated:

Complete two originals of the FD-249, Arrest and Institution Card and attach the inmate's photograph to the form on all post-trial inmates. One is mailed to the FBI, CJIS Division, 1000 Custer Hollow Road, Clarksburg, WV 26306, and the second is maintained in the CTF [correctional treatment file] Upon receipt of the Convening Authority (CA) action in which the adjudged sentence is set aside, remitted or overturned, accomplish FBI Form R-84, Final Disposition Report. Mail one to the above address and maintain the second in the CTF.

⁸⁴ AFI 31-105, "Air Force Corrections System," superseded AFI 31-205 on June 15, 2015. AFI 31-105 contains a requirement to collect and submit an inmate's fingerprints and final disposition to the FBI CJIS Division when the inmate is in-processed to the facility.

b) Kelley's Second Interaction with USAF Security Forces

As noted above, on November 7, 2012, Kelley was convicted in a court-martial proceeding for assaulting Tessa Kelley and her son. He was reduced in rank to Airman Basic (E-1), confined for 12 months, and received a Bad Conduct Discharge. Upon conviction, Kelley returned to the 49th Security Forces Squadron Confinement Facility at HAFB. The conviction changed Kelley's confinement status from a pretrial confinement detainee to a post-trial confinement inmate and prompted the 49th Security Forces Squadron to in-process Kelley again.

As noted above, Air Force Corrections System policy required the confinement facility personnel to collect an inmate's fingerprints and submit the fingerprints with final disposition during in-processing into the confinement facility. As required by AFI 31-205, the 49th Security Forces Squadron Confinement Facility staff should have included the final disposition on the fingerprint card they collected when they in-processed Kelley into the confinement facility after his court-martial. That fingerprint card should have been sent to the FBI CJIS Division with the final disposition report.

As noted above, the USAF could not provide any evidence that the 49th Security Forces Squadron confinement personnel collected Kelley's fingerprints when he was in processed following his court-martial conviction because the original correctional treatment file had been destroyed in accordance with USAF records disposition policy.⁸⁵ As a result, we could not determine if the 49th Security Forces Squadron collected Kelley's fingerprints during his in-processing.

However, the FBI CJIS Division did not receive Kelley's fingerprints or a final disposition report from the 49th Security Forces Squadron.⁸⁶ The FBI CJIS Division analyst told us that there was no information in the Next Generation Identification system pertaining to Kelley, including a final disposition report from Kelley's court-martial conviction in 2012.

⁸⁵ As noted in footnote 26, according to Air Force Manual 37-139, Table 31-2, Rule 1 USAF Security Forces Inmate confinement facility records for inmates that were released from local confinement, including the fingerprints and final disposition that were maintained in the Kelley correctional treatment file, could have been destroyed 4 years after the release of the inmate from the confinement facility. The USAF was unable to provide documentation showing when or where the records were destroyed, but the records would have been eligible for destruction in December 2016. Additionally, the 49th Security Forces Squadron Confinement Facility permanently closed on May 25, 2016.

⁸⁶ The final disposition report documents the results of the trial and is posted to an individual's criminal history record. When an individual attempts to purchase a firearm from an FFL, the FFL contacts NICS and a search of required databases is conducted to determine if the individual is prohibited from possessing or receiving a firearm.

c) *Interviews of 49th Security Forces Squadron Confinement Facility Staff*

We interviewed the 49th Security Forces Squadron Confinement Non-Commissioned Officer in Charge (NCOIC) and a confinement staff member who were responsible for in-processing Kelley as a post-trial confinement inmate. We asked them whether they collected Kelley's fingerprints and why they did not submit Kelley's fingerprints with final disposition to the FBI CJIS Division as required by USAF policy.

The Confinement NCOIC acknowledged knowing that there was a requirement to collect Kelley's fingerprints during in-processing for post-trial confinement. The Confinement NCOIC told us that he was not sure if he had collected Kelley's fingerprints during Kelley's in-processing, but that it was the confinement facility's standard operating procedure to do so.⁸⁷ The Confinement NCOIC added that he was "almost positive" that Kelley's fingerprints were collected at the 49th Security Forces Squadron Confinement Facility.

The Confinement NCOIC said that he could not remember if there was a requirement to submit the fingerprints with final disposition to the FBI in Kelley's circumstance. He said he did not recall mailing the fingerprint cards to the FBI CJIS Division. He told us he thought that he filed the fingerprint cards in Kelley's Correctional Treatment File (CTF), which was maintained in a drawer in the 49th Security Forces Squadron Confinement Facility office.

The confinement facility staff member who was present during the in-processing of Kelley into the confinement facility told us she remembered seeing the NCOIC collect Kelley's fingerprints when he arrived for pretrial confinement. She said she remembered Kelley's pre-trial in-processing and fingerprint collection because it was late at night and she walked into the booking area to see if the NCOIC needed any help. However, she later told us that she could not remember if this happened before or after Kelley's court-martial.

She said that she also could not clearly remember when, or even whether, Kelley's fingerprints were submitted. She said that when prisoners were placed in confinement, their fingerprints and DNA were collected at the same time. Furthermore, she said she thought, but did not clearly remember, that in the case

⁸⁷ The 49th Security Forces Squadron Confinement NCOIC told us the Confinement Facility personnel mailed the DNA kit to U.S. Army Criminal Investigation Laboratory. The Chief of the Combined DNA Index System Branch verified that the U.S. Army Criminal Investigation Laboratory received Kelley's DNA from the 49th Security Forces Squadron on December 10, 2012. The Confinement Facility Personnel could not explain why the DNA kit was mailed but Kelley's fingerprint cards were not.

of Kelley, his fingerprints and DNA would have been mailed at the same time. She also told us that the Confinement NCOIC would have mailed the fingerprints and DNA, but she did not know when or to whom the fingerprints would have been mailed.

d) Analysis of the USAF's Fourth Missed Opportunity to Submit Kelley's Fingerprints and First Missed Opportunity to Submit Final Disposition

We concluded that the 49th Security Forces Confinement Facility personnel did not follow DoD and USAF policy regarding the collection and submission of fingerprints and the final disposition report during in-processing after his court-martial conviction.

Because Kelley was convicted of assault and was entered into post-trial confinement at 49th Squadron Forces Confinement Facility, USAF policy required the 49th Security Forces Squadron Confinement Facility personnel to submit Kelley's fingerprint card with the final disposition to the FBI CJIS Division. The Confinement Facility personnel told us they could not remember if they collected Kelley's fingerprints. We attempted to locate Kelley's correctional treatment file to determine whether Kelley's fingerprints were collected, but his file had been destroyed in accord with USAF policy. As a result, we were unable to verify if Kelley's fingerprints were collected during his in-processing into the confinement facility.

However, we did verify that the FBI CJIS Division did not receive Kelley's fingerprints or final disposition report from the 49th Security Confinement Facility personnel.

The Confinement NCOIC was unsure of what the USAF policy required him to do with Kelley's fingerprints upon in-processing at the 49th Security Forces Squadron Confinement Facility. He said thought he had filed Kelley's fingerprints in Kelley's correctional treatment file, which was maintained in a cabinet within the 49th Security Forces Squadron Confinement Facility. Therefore, even if the confinement staff had collected Kelley's fingerprints, the Confinement NCOIC would not have submitted the fingerprints or final disposition report to the FBI CJIS Division because he was unfamiliar with the submission requirement.

5. The AFOSI Receives Kelley's Court-Martial Results: Second Missed Opportunity to Submit Final Disposition Report

The second missed opportunity for the USAF to submit Kelley's final disposition report to the FBI occurred on December 14, 2012, when the AFOSI Detachment 225 SAIC received the results of Kelley's trial and closed the Kelley investigation. On that

day, the SAIC certified in AFOSI's database system, the Investigative Information Management System (I2MS), that Kelley's fingerprint cards and final disposition report were submitted to the FBI CJIS Division. This was not accurate. Kelley's fingerprint cards remained in the investigative case file and the AFOSI Closed Investigation File Checklist in the investigative case file was not completed, without Kelley's fingerprints or final disposition report being submitted to the FBI CJIS Division.

a) Policy Requirements

DoDI 5505.11 requires that DoD law enforcement organizations submit the final disposition report to the FBI CJIS Division within 15 calendar days of the final disposition. DoDI 5505.11 instructs DoD law enforcement organizations not to hold the fingerprint cards or final disposition report until the completion of appellate actions.

AFOSI Manual 71-121 requires AFOSI Special Agents to submit a completed final disposition report on military members convicted of a qualifying offense to the FBI within 15 days of sentencing. AFOSI Manual 71-121, Attachment 8, lists the qualifying offenses. Kelley's assault offense was listed as a qualifying offense in Attachment 8.

AFOSI Manual 71-121 also instructs AFOSI Special Agents not to hold the fingerprint card or final disposition report until the completion of appellate actions.

Furthermore, AFOSI Manual 71-121 requires AFOSI Detachment leadership to "[r]eview I2MS, reports and record copy investigative files for sufficiency." According to the Manual, this review "will" include documentary items, such as the FBI's final disposition report for updated charges, disposition and date, or final military judicial or nonjudicial punishment disposition documents from the date the allegation is received until the case is closed. AFOSI Manual 71-121 also requires AFOSI Detachment 225 leadership to use the "AFOSI Closed Investigation File Checklist" to close investigative case files and submit them to the Headquarters AFOSI archive.⁸⁸ AFOSI Manual 71-121 requires that the checklist be maintained with the investigative case file to certify that the required documents are in place, properly marked, and all applicable activities, notes, and file entries are accurate and complete. The supervisor reviewing the file for closure signs the front of the case file, on the investigative case file cover sheet.

⁸⁸ According to AFOSI Manual 71-121, the I2MS checklist must be completed as part of the case closure process in I2MS. The items must be checked off before the case can be closed. The Closed Investigation File Checklist is a printed checklist containing 32 items to verify in the physical investigative case file. The Closed Investigation File Checklist is submitted with the investigative case file to the AFOSI archive.

b) Kelley's Investigative Case File is Closed Without Submission of the Final Disposition Report

On December 14, 2012, the AFOSI Detachment 225 SAIC documented that he received the Report of Result of Trial from Kelley's assault conviction. The SAIC filled in an electronic checklist in I2MS, which is completed to close the case in I2MS. The completed checklist reported that the fingerprint cards and the final disposition report were submitted to the FBI CJIS Division. The SAIC checked off both of these items, allowing the case to be closed in I2MS. However, the fingerprint cards and the final disposition report were not submitted to the FBI CJIS Division.⁸⁹

Moreover, the investigative case file cover sheet did not contain a supervisor's signature or a date to signify that the file was reviewed for closure, as required by AFOSI Manual 71-121.

c) Interviews of AFOSI Detachment 225 Leadership

We interviewed the AFOSI Detachment SAIC and Superintendent to determine why, upon their receiving the Report of Result of Trial, they did not submit the final disposition report submitted to the FBI CJIS Division. We asked them if they understood the AFOSI policy pertaining to the closure of investigative case files. We also asked why the SAIC certified in I2MS that Kelley's fingerprints and final disposition report had been submitted to the FBI CJIS Division when they were not. In addition, we asked why the case was closed in I2MS before the fingerprints and final disposition report had been sent to the FBI CJIS Division.

The AFOSI Detachment 225 SAIC told us that it was his "expectation" that the case agent submitted the fingerprint cards with final disposition to the FBI CJIS Division. The SAIC told us that, as a matter of practice, the AFOSI Detachment 225 personnel waited for the "results of trial and the disposition" before sending the fingerprints with final disposition to the FBI CJIS Division. He said that once the Detachment received the final disposition, after the Detachment Special Agents spoke with the Staff Judge Advocate office, the fingerprints should be submitted to the FBI CJIS Division. The SAIC said it was the case agent's responsibility to complete that investigative task and document it in I2MS.

⁸⁹ The I2MS checklist is completed as part of the case closure process in I2MS. The items must be checked off before the case can be closed. The Closed Investigation File Checklist is a printed checklist containing 32 items to verify in the physical investigative case file. The Closed Investigation File Checklist is submitted with the investigative file to the archive.

We asked the SAIC why Kelley's final disposition was not submitted to the FBI CJIS Division. He told us that he did not know and that he believed that there was a lack of comprehension of the requirement when to submit the fingerprints and final disposition.⁹⁰

The SAIC told us that once AFOSI Detachment 225 received the Report of Result of Trial, which was before the fingerprints were submitted to the FBI, there was "a conversation with the chief [of military] justice [within the SJA Office] that the fingerprints should have been sent off around that time after the conviction." He also told us that "typically," the case agent would be assigned the task of updating the Report of Result of Trial in I2MS, but occasionally he would complete the I2MS inputs depending on the case agent's availability. However, the SAIC said he could not recall the specific details about closing the AFOSI Detachment 225's Kelley assault investigation.

We also asked the SAIC to describe the process he used to review investigative case files for closure. He told us that he relied on the Superintendent to physically check the investigative case file for fingerprints collection and submission. He told us that in the course of normal operations he would complete the I2MS checklist after discussing the checklist items with the case agent and receiving confirmation [from the case agent] that the tasks were completed. The SAIC also told us that he checked the boxes in I2MS without physically verifying if fingerprint cards had been submitted. He said that he normally relied on discussions that he had with the case agents to ensure that all case file actions were completed. He then checked the boxes in I2MS.

The SAIC told us that he did not remember specifically reviewing the Kelley investigative case file for closure. He also said that he did not know why the AFOSI Manual 71-121, "Closed Investigation File Checklist," was not complete or why the investigative case file cover sheet was not dated or signed.

The SAIC also told us that he did not specifically remember checking the I2MS box that indicated Kelley's fingerprint cards and final disposition report had been sent to the FBI CJIS Division. Furthermore, he said that he did not remember "checking the button" in I2MS that electronically closed the Kelley investigative case file and electronically sent the investigative case file to the archives. We asked the SAIC why he checked the box in the I2MS case closure checklist that Kelley's fingerprint cards had been submitted when they were still in the case file. He told us that although he

⁹⁰ The AFOSI Detachment 225 SAIC's practice of submitting final disposition on the fingerprint cards after receiving the Report of Result of Trial did not comply with the DoD or AFOSI policy. However, the SAIC's practice did not contribute to AFOSI Detachment 225 leadership's failure to ensure that Kelley's fingerprints and final disposition were submitted to the FBI CJIS Division during the case closure process.

did not specifically remember closing the Kelley assault investigation, he would have followed his normal case closure practices as described above. However, the SAIC said he could not recall who the case agent was when the Kelley investigation closed or if they had assigned a new case agent. The SAIC was also unable to recall if the original case agent had already departed the base permanently at the time he closed the Kelley investigation.

We interviewed the Superintendent about Kelley's fingerprint cards and final disposition report, and when fingerprint cards and final disposition were typically submitted to the FBI CJIS Division. He told us he followed the guidance of the SAIC. The Superintendent said that he believed that the SAIC "was under the impression that you wait until the appellate review – is done" before submitting fingerprints to the FBI CJIS Division.

We asked the Superintendent if he knew that the fingerprint cards were in the Kelley investigative case file, and why they had not been submitted with final disposition report to the FBI CJIS Division. He stated "so I still to this day don't know if the 249 [fingerprint card] was ever sent or not. Or if – I don't even know if fingerprints were collected, you know. I don't know if I reviewed it or not." However, he stated that it was his, the SAIC's, and everyone else's responsibility to ensure the fingerprints with final disposition were sent to the FBI CJIS Division.

The Superintendent also said that when a case was ready for closure [after a result of trial had been received] the case agent would provide the case file to the Superintendent and he would review the case for sufficiency. He said his process was to read the ROI for grammatical errors and outstanding investigative steps and use the case closure checklist to document completion. After any corrections were made and the Superintendent was assured by the case agent that the file was complete, the Superintendent said he would turn the case file into the SAIC, who would "give the final review and blessing." The SAIC would then close the case in I2MS and sign the Report of Investigation, upload it, and close it I2MS.

We asked the Superintendent if he had reviewed the Kelley investigative case file. He told us he did not remember if he reviewed the Kelley investigative case file before submitting it to the SAIC for closure. He also told us that he did not assign a new case agent in I2MS when the original case agent departed the base permanently, and that he did not know who he would have tasked to complete the administrative actions that were required for the case closure. He was unable to explain why a

new case agent was not assigned. He said that he believed the failure to submit the fingerprints and the final disposition was an oversight, and that the lack of training, personnel issues, and outside issues with family members were all factors as to why the fingerprints were not submitted to the FBI CJIS.⁹¹

The Special Agent who was listed as the case agent for the Kelley assault investigation in I2MS told us that he had permanently left AFOSI Detachment 225 in October 2012, and was not present to complete final investigative steps or submit final disposition to the FBI CJIS Division in December 2012 when the Report of Result of Trial was received. When we asked him why Kelley's fingerprints and final disposition were not submitted to the FBI CJIS Division, he told us that he was not assigned to the Detachment when the AFOSI Detachment received notice of Kelley's conviction and he could not speak to why Kelley's final disposition report was not submitted. He also said that things would be overlooked because so many of the agents handled each case.

d) Analysis of the USAF's Second Missed Opportunity to Submit Kelley's Final Disposition Report

We concluded that the AFOSI Detachment 225 SAIC and Superintendent did not follow DoD and AFOSI policy for the submission of Kelley's fingerprints and the final disposition report to the FBI CJIS Division when they received the Report of Result of Trial from Kelley's court-martial.

On December 14, 2012, the AFOSI Detachment 225 received the Report of Result of Trial from Kelley's court-martial. Kelley was convicted of assaulting Tessa Kelley and his stepson. In accordance with DoDI 5505.11 and AFOSI Manual 71-121, Kelley's final disposition report should have been submitted to the FBI CJIS Division within 15 days of the Report of Result of Trial. This did not happen. Furthermore, the SAIC certified that Kelley's fingerprints had been submitted when they had not.

If the AFOSI Detachment 225 had followed the SAIC's practice, the case agent would have submitted the final disposition to the FBI CJIS Division on the fingerprint card in a preaddressed, postage paid envelope, and placed it in the U.S. Mail system.⁹² The case agent would then have reviewed the file to ensure the documentation was correct and forward the investigative case file to the Detachment

⁹¹ The outside issues with family members he mentioned referred to health and marital problems that some AFOSI Detachment 225 Special Agents were experiencing during the time of the Kelley assault investigation.

⁹² If AFOSI Detachment 225 Special Agents had submitted Kelley's fingerprints to the FBI CJIS Division when they determined probable cause existed, as required by DoD and AFOSI policy, then upon receipt of the Report of Result of Trial the AFOSI Detachment 225 would have reported the final disposition to the FBI CJIS Division on the R-84, "Final Disposition Report."

leadership (SAIC or Superintendent) for closure in I2MS. However, the case agent permanently departed HAFB approximately 1 month before the Detachment received the Report of Result of Trial. The SAIC and Superintendent failed to assign another Special Agent to the investigation to perform the administrative tasks that were required after Kelley's court-martial. Because they did not, those tasks were neglected and the fingerprints remained in the investigative case file without being submitted to the FBI CJIS Division.

In addition, the Detachment leadership did not review the file or complete the AFOSI Closed Investigative File checklist and the I2MS checklist properly. Instead, the SAIC assumed that the case agent had completed the actions necessary and submitted Kelley's fingerprints and final disposition to the FBI CJIS Division. He therefore completed the two checklists without verifying that the fingerprints and final disposition report had been submitted to the FBI CJIS Division.

The AFOSI Closed Investigative File checklist and the I2MS checklist required the SAIC and Superintendent to review the investigative case file for closure. It also should have served as a reminder for the SAIC and Superintendent to submit Kelley's fingerprint cards with final disposition to the FBI CJIS Division. If the SAIC and Superintendent had included a review of Kelley's fingerprints in the leadership review, the fact that the fingerprints had not been submitted would have been identified.

The AFOSI Detachment 225 SAIC and Superintendent told us they did not know why the AFOSI Closed Investigative File checklist was not completed, why the fingerprints remained in the investigative case file, or why final disposition was not submitted to the FBI CJIS Division. The AFOSI Detachment 225 SAIC could not tell us why he completed the checklist in I2MS, certifying that Kelley's fingerprints and final disposition report had been submitted to the FBI CJIS Division. The SAIC was unable to provide a reasonable explanation for why this occurred, stating only that he trusted his agents to do their jobs and relied on their word.

The SAIC and Superintendent approved the closure of the investigative case file based on their false assumption that all administrative tasks had been completed by the case agent without reviewing the investigative case file themselves as required by AFOSI policy. The SAIC was supposed to verify that all administrative actions, including fingerprints with final disposition, were complete prior to closing the investigative case file. If they had done their due diligence, they would have discovered that Kelley's fingerprints were still in the investigative case file and that the fingerprints and final disposition report had not been submitted to the FBI CJIS

Division. The Detachment leadership was unable to provide a reasonable explanation as to why the SAIC certified that Kelley's fingerprints with final disposition were not submitted to the FBI CJIS Division.

B. AFOSI Supervisory Reviews of Kelley's Investigative Case File

In this section of the report, we discuss the AFOSI monthly supervisory reviews of the investigative case file and the policy that requires the reviews to be documented in I2MS. The monthly supervisory reviews are different from the review that takes place in conjunction with case closure that was discussed in the preceding section.

According to AFOSI Manual 71-121, all AFOSI criminal investigations require monthly supervisory reviews to ensure that investigators follow AFOSI policy and that investigations are sufficient and timely.

We determined that the AFOSI Detachment 225 leadership conducted 15 supervisory reviews of the Kelley investigation from June 29, 2011, through October 5, 2012.⁹³ However, none of the supervisory reviews that were documented in I2MS discussed fingerprint card collection or submission.

1. Policy Requirements

AFOSI Manual 71-121 requires AFOSI Detachment leadership to "[r]eview I2MS, reports and record copy investigative files for sufficiency "from the date the case is opened until it is forwarded to Headquarters AFOSI for retention."⁹⁴ AFOSI Manual 71-121 also states that the review is conducted to "ensure investigative sufficiency, progress, and data integrity between the ROI [Report of Investigation] and activity Narrative and Note fields." According to AFOSI Manual 71-121, this review will include "the FBI's R-84, *Final Disposition Report*, for updated charges, disposition and date; final military judicial or NJP [nonjudicial punishment] disposition documents." During the supervisory review in I2MS, the unit leadership documents who performed the review and when. The review does not necessarily document any deficiencies found during the review.

⁹³ In addition, on August 8, 2011, and May 9, 2012, an Action Officer from the 2nd Field Investigations Region, Langley AFB, Virginia, reviewed the Kelley investigative case file as part of a random quality control process. This was an electronic review only, and the note stated that feedback was given to the Detachment leadership. There was no mention of the status of Kelley's fingerprint submittal to the FBI. However, there was no requirement for the Action Officer to review that part of the investigation at the time.

⁹⁴ The "record copy" is the six-part investigative case file, which includes the original copies of all documents generated and obtained throughout an AFOSI investigation. During the investigation, the documents are placed inside a folder called an AF Form 3986, "Case File Documents Outer Envelope." When all military judicial or nonjudicial punishment dispositions have been received, all investigative and administrative actions, including evidence disposition, have been completed, the pertinent documents from the record copy will be removed from the investigative file and placed in an AFOSI Form 2, "AFOSI Case File Cover."

2. Facts of the Supervisory Reviews

The AFOSI Detachment 225 leadership documented in I2MS that from June 29, 2011, through October 5, 2012, they performed 15 monthly reviews of the Kelley investigation.⁹⁵ The AFOSI Detachment 225 leadership monthly review notes in I2MS did not specify any required corrective action or recommendations, nor did they specify whether the physical case file or the electronic case file was reviewed.⁹⁶

During the 15 monthly reviews, the AFOSI Detachment 225 leadership did not note that Kelley's fingerprint cards were still in the physical case file and had not been submitted to the FBI CJIS Division.

3. Interviews of AFOSI Special Agents

We asked the AFOSI Detachment 225 permanent SAIC and Superintendent to explain their process for conducting monthly supervisory reviews, including those that were conducted on the Kelley assault investigation. The permanent SAIC and Superintendent said they could not specifically remember conducting any reviews on the Kelley assault investigation because of the length of time since the investigation. However, they told us that during monthly supervisory reviews, they would not have looked for fingerprint cards or at the final disposition report, because the focus of the review was on investigative sufficiency, and checking for fingerprints was not part of the review process.

The permanent SAIC also told us that when he arrived to the Detachment in December 2011, the Detachment was inundated with case files for such a small Detachment. He said that he reviewed the open cases in I2MS and would never look at the hardcopy case to identify investigative sufficiency. He said that he reviewed the dates for investigative steps on the investigative plan, and reviewed the investigative documentation to identify additional investigative steps. He said most cases for which he performed monthly reviews required additional or correctional steps, and for the first few months, he would document the insufficiencies in the IDP, until the Region told him the IDP was discoverable and that he should find another way to communicate the information. Therefore, he said he developed a case review checklist that covered more information than what was required by AFOSI policy. However, this checklist did not address fingerprint collection or submission, even though AFOSI Manual 71-121 identified them as examples of areas to be reviewed.

⁹⁵ "Leadership" in the context of the Kelley case refers to all SAICs and Superintendents assigned to AFOSI Detachment 225 during the time of the Kelley assault investigation.

⁹⁶ AFOSI Manual 71-121, states that reviewers are not to include comments or recommendations resulting from their supervisory reviews in I2MS because they are subject to discovery and might be used to discredit the agents conducting the investigations.

The permanent SAIC said he shared the results of his monthly reviews directly with the case agent by e-mailing them specific notes or by speaking with them in person, and he documented the completion of the supervisory reviews in I2MS.

The Superintendent said that during his supervisory reviews, he would read the entire report of investigation, as well as review I2MS for any missing investigative activity that needed to be addressed. If the Superintendent found an outstanding item, he said he would either speak with the case agent or write an e-mail to the case agent identifying the deficiency. He said that he would then document in I2MS that he had completed a supervisory review. However, he said he did not verify if Kelley's fingerprints had been submitted or were still in the case file. He also said that he was not familiar with AFOSI policy regarding the monthly supervisory reviews.

4. Analysis of the Supervisory Reviews of the Kelley Investigation

During the 17-month Kelley investigation, the AFOSI Detachment 225 SAIC and Superintendent conducted 15 monthly reviews of the Kelley investigative case file. The AFOSI Detachment 225 monthly review notes that were documented in I2MS by the SAIC and Superintendent provided little detail about the supervisors' observations of the Kelley investigation. There was no indication that the SAIC or the Superintendent had identified that Kelley's fingerprint cards were still in the investigative case file and had not been submitted to the FBI CJIS Division.

Although AFOSI policy required supervisory reviews to include both I2MS and the investigative case file (record copy), the AFOSI Detachment 225 SAIC and Superintendent focused their reviews on the I2MS activities and not on investigative case files. This is significant because Kelley's fingerprint cards were retained in the investigative case file, without a corresponding I2MS activity. Therefore, their review of I2MS activities would not have identified that Kelley's fingerprints had not been submitted to the FBI CJIS Division as required by AFOSI policy.

Furthermore, the SAIC and Superintendent's supervisory reviews focused solely on investigative sufficiency and not reviewing administrative tasks. Therefore, they would not have been looking for fingerprint cards even if they had been reviewing the investigative case file.

Additionally, the permanent SAIC arrived after December 2011, but AFOSI Detachment 225 did not submit fingerprint cards to the FBI CJIS Division until receipt of the Report of Result of Trial. Therefore, after December 2011, if a monthly supervisory review had detected that Kelley's fingerprint cards were still in the investigative case file, it still would not have prompted them to submit Kelley's fingerprint cards to the FBI CJIS Division.

In sum, we concluded that AFOSI Detachment 225 monthly supervisory reviews of Kelley's investigative case file were incomplete and ineffective in identifying that Kelley's fingerprint cards remained in the investigative case file and had not been submitted to the FBI CJIS Division.

C. Work Environment and USAF Fingerprint Training

In this section of the report, we examined AFOSI Detachment 225's personnel assignment history, its leadership gaps, its investigative caseload, and other factors to assess whether these issues contributed to the failure to submit Kelley's fingerprints to the FBI CJIS Division for inclusion in its database.

The 49th Security Forces Squadron investigators assigned to the Office of Investigations during the Kelley assault investigation told us that they were not aware of any significant personnel assignment issues or leadership gaps during the Kelley assault investigation. Additionally, the investigators did not say that they had an excessive caseload in the 49th Security Forces Office of Investigations during that time. Therefore, we do not address those items in this section of the report.

Additionally, we examined AFOSI and USAF Security Forces training to determine if that training covered the requirements identified in DoD and USAF policies for the collection and submission of fingerprints to the FBI CJIS Division.

1. AFOSI Personnel Assignment History

We analyzed the AFOSI Detachment 225's personnel assignment history to determine the level of investigative experience within the unit at the time of the Kelley assault investigation. During the AFOSI's investigation of Kelley for assault, nine AFOSI Special Agents and Supervisory Special Agents were assigned to AFOSI Detachment 225 and participated in investigative activities associated with the Kelley assault investigation. The Special Agents averaged 5.4 years of experience with AFOSI when the investigation was closed. Of these nine AFOSI Special Agents, four graduated from the FLETC in 2010 or 2011, making them probationary Special Agents during the time of the Kelley assault investigation. The case agent on the

Kelley assault investigation had approximately 1 year of investigative experience when the Kelley case was initiated. During the time of the Kelley assault investigation, one of the Special Agents, who had approximately 1.5 years of investigative experience at the time, was promoted to the AFOSI Detachment 225 Superintendent position. The SAICs and Superintendents assigned to AFOSI Detachment 225 had a combined average experience level with AFOSI of 7.44 years when the investigation was closed or when they left Holloman AFB, New Mexico.

In July 2011, approximately one month after Kelley's first subject interview, the AFOSI case agent took approximately one month of leave and then deployed to Afghanistan for six months.⁹⁷ He returned to AFOSI Detachment 225 from Afghanistan in February 2012. The case agent told us that upon his return, the case appeared to be "untouched." The last significant investigative step in the assault investigation was a telephonic interview conducted by the case agent on October 1, 2012. The case agent permanently departed AFOSI Detachment 225 in October 2012.⁹⁸ The SAIC closed the Kelley assault investigation in I2MS on December 14, 2012.

The first interim SAIC who was assigned to lead AFOSI Detachment 225 from July 2011 until October 2011, said that during the four months that he was the SAIC, two of the AFOSI Detachment 225 Special Agents were on probation, and two had just completed their probationary time and then deployed elsewhere. He said that one Special Agent who arrived in September 2011, did not receive his badge and credentials until April 2012, and therefore could not conduct any investigative activities. The interim SAIC also said that the 2nd Field Investigations Region leadership knew that AFOSI Detachment 225 would be a challenge to manage because there were not enough Special Agents to do the investigative work.

2. AFOSI Leadership

AFOSI Detachment 225 is a geographically separated field office under the operational control of the 2nd Field Investigations Region, which is located at Langley AFB, Virginia. From October 2009 through July 2011, AFOSI Detachment 225 was led by a SAIC who began his terminal leave in August 2011, and retired in October 2011.⁹⁹

⁹⁷ The case agent was not present for Kelley's first subject interview with AFOSI Detachment 225 on June 9, 2011.

⁹⁸ The AFOSI's Kelley assault report of investigation documented that no investigative activity was completed between September 2011 and March 2012, during the time that the case agent was deployed. We asked the case agent, the Superintendent, and the SAIC to explain why there was no investigative activity completed on the case during this time. The case agent said he did not know why the investigation remained stagnant for approximately 6 months while he was deployed. The Superintendent could not recall who was responsible for the case during the case agent's deployment and guessed that the slow coordination to obtain medical results added to the reason for the idleness. The SAIC said he could not account for the lack of inactivity activity between September 2011 and December 2011, because he had not arrived at the Detachment yet. He said that when he reviewed the case upon his arrival, he noticed the case was not complete and told the case agent to complete the additional steps, which could explain why investigative activity had resumed.

⁹⁹ According to AFI 36-3003, terminal leave is chargeable leave taken in conjunction with retirement or separation from active duty.

For the next four months, from July 2011 until November 2011, the 2nd Field Investigations Region temporarily assigned three interim SAICs to lead AFOSI Detachment 225, each at a different time. The interim SAICs each served various lengths of time until the permanent SAIC arrived in December 2011.

The first interim SAIC said that he had about 3 years of AFOSI experience when he was temporarily assigned to AFOSI Detachment 225. The interim SAIC said he was expected to be a short-term fix until the permanent SAIC was assigned. The interim SAIC told us that he understood his responsibility was to keep operations moving forward, reduce the case backlog, and assist in the high operations tempo experienced by AFOSI Detachment 225. He said that upon his arrival, he had a few hours of turnover discussion with the outgoing SAIC.

The second interim SAIC said that he was temporarily assigned to the AFOSI Detachment 225 for approximately one week in October 2011. This SAIC said that the administrative process for closing cases was a “disaster,” referring to a large backlog of investigative case files that were stacked throughout the Detachment Office area.

The third interim SAIC said that he was temporarily assigned to the AFOSI Detachment 225 for approximately five weeks in November 2011. The SAIC said that he received guidance from the Region personnel to focus on administrative items and documenting investigative activity. He said that upon arrival at AFOSI Detachment 225, he observed approximately 30 cases spread throughout the Detachment office area in various stages of closure, in terrible condition, with many of the cases missing investigative documentation and corresponding activities with the agent notes. The SAIC said that the agents were motivated but had no leadership to teach them.

The AFOSI assigned a permanent SAIC to AFOSI Detachment 225 in late December 2011. This SAIC said that when he arrived at AFOSI Detachment 225, he had a deficiency in criminal investigation knowledge because he had not been in a field assignment for several years. He described AFOSI Detachment 225 as “hell” because of the operations tempo and the staffing challenges. The SAIC also said that AFOSI Detachment 225 was severely behind in closing out old cases and described the unit as a “bottomless pit” that was impossible to dig out from. He told us that there were old investigations requiring closure and new investigations being opened at the same time.

The permanent SAIC said that when he first arrived at AFOSI Detachment 225, there were “standards” issues within the unit. For instance, the agents would often report to work in blue jeans and T-shirts, instead of the required business attire. The SAIC said that in his opinion, the prior AFOSI Detachment 225 leadership had not been focused on the administrative functions of managing the AFOSI Detachment 225. He said that the previous (permanently assigned) SAIC did not uphold case management standards, but was personable and popular among the agents. The SAIC stated that everything he did, he coordinated with the Region, including telling the Region, “[t]his is a big mess.”

The Region Commander who was assigned to the 2nd Field Investigations Region from August 2010 through April 2012, during the time that the Kelley assault investigation was opened, told us that he had concerns about the administrative aspects of case management within AFOSI Detachment 225, specifically with timeliness and quality of work. He said that he also had some concerns with the detachment’s leadership, specifically with the first permanent SAIC and the Superintendent. He stated that the AFOSI Detachment 225 performed below average compared to the other units in his Region. The Region Commander stated that he was not aware of the Detachment caseload or the experience level of the agents assigned to the AFOSI Detachment 225.

The Region Superintendent, who was assigned to the 2nd Field Investigations Region from May 2010 through August 2012, during the time that the Kelley assault investigation, told us that AFOSI Detachment 225 was “not functioning well” under the AFOSI Detachment 225 SAIC and Superintendent who were in place in 2010. He said that the 2nd Field Investigations Region leadership had concerns with AFOSI Detachment 225’s poor investigative documentation, poor case management, and investigative timeliness. Upon the recommendation of the SAIC, the 2nd Field Investigations Region leadership replaced the AFOSI Detachment 225 Superintendent with another AFOSI Detachment 225 Special Agent, who had less experience. The 2nd Field Investigations Region leadership discussed replacing the SAIC because of the concerns they had with case management. However, the SAIC chose to retire in October 2011, but began his terminal leave in August 2011.

The Region Commander who was assigned to the 2nd Field Investigations Region from May 2012 through June 2014, during the time that the Kelley assault investigation was open and when it was closed, told us that his assessment of the AFOSI Detachment 225 was that it was “not breaking anything,” was “not burning it up,” and that it was the “middle of the road” compared to other Detachments within

his Region. He said that he knew that AFOSI Detachment 225 had been a source of problems for the previous Region Commander. The Region Commander told us that he offered to send additional assistance. However, the permanent SAIC declined the extra assistance. Additionally, the Region Commander told us that although the overall workload had increased at AFOSI Detachment 225, with the new DoD requirement to investigate all sexual assault allegations, no additional personnel had been assigned to any of the Detachments. He said the AFOSI Detachment 225 was “busy, but not sinking.”

The Region Superintendent who was assigned to the 2nd Field Investigations Region from July 2012 through September 2014, during the time that the Kelley assault investigation was open and when it was closed, told us that the AFOSI Detachment 225 was an “average” Detachment and “nothing stellar.” The 2nd Field Investigations Region told us that the AFOSI Detachment 225 had some issues with Detachment leadership that he could not recall specifics for and that there was a backlog in investigations, especially with death cases.

3. AFOSI Operations Tempo

The AFOSI Detachment 225 opened 84 investigations between January 2011 and February 2013. The Kelley assault investigation was conducted from June 9, 2011, through December 14, 2012. The 84 AFOSI Detachment 225 investigations included sexual assault allegations, drug-related allegations, and death investigations.¹⁰⁰ During the same time, the AFOSI Detachment 225 closed 70 investigations.

We examined these 70 closed investigations for fingerprint card and final disposition report submission to the FBI CJIS Division to determine if the failure to submit Kelley’s fingerprint cards was an isolated incident or a systemic problem during this time. We determined that this failure to submit Kelley’s fingerprints was part of a systemic problem in AFOSI Detachment 225. In the 70 investigations, there were 49 subjects whose fingerprints and final disposition reports should have been submitted to the FBI CJIS Division in accordance with DoD and AFOSI policy. The AFOSI Detachment 225 collected 45 of the required 49 (92 percent) subject’s fingerprints. However, the AFOSI Detachment 225 did not submit 10 of the required 49 (20 percent) subject fingerprint cards to the FBI CJIS Division. In addition, the AFOSI Detachment 225 did not submit 15 of the required 49 (31 percent) final disposition reports to the FBI CJIS Division.

¹⁰⁰ Death investigations are complex investigations, requiring extensive review, additional reporting and review requirements, and additional evidence retention requirements. These investigations require a significant amount of an AFOSI Detachment’s time and resources.

(FOUO) The case agent for the Kelley assault investigation told us that his time at AFOSI Detachment 225 was one of the “most horrible times of his life,” referring to the AFOSI Detachment 225’s operations tempo. He said that he was deployed for almost 7 months during this time. He said that he was still identified as the case agent on the Kelley case for duration of his deployment. He said that another Special Agent conducted minor steps in the Kelley investigation to prevent investigative gaps. The case agent recalled one instance when he went to the SAIC office and said, “Boss, I’m burnt out, I’m so burnt out.” “Boss, I want to get out. I can’t do this anymore.” The Special Agent said that the SAIC calmed him down by telling him how proud he should be of the number of cases he was running. The Special Agent also said that he worked over 12 hours per day and that he was working harder at AFOSI Detachment 225 than he did in Afghanistan. He also told us that (b) (6) the AFOSI Detachment 225 (b) (6), which he claimed were a direct result of the stress and excessive workload at AFOSI Detachment 225. We asked the case agent if the work environment at AFOSI Detachment 225 prevented the submission of Kelley’s fingerprints to the FBI CJIS Division and he told us “Yes, it prevented the agents from doing the basic tasks.” He told us that it was “so busy that no one could get everything done.”

The second interim SAIC, who was temporarily assigned to the AFOSI Detachment 225 for approximately one week in October 2011, said that the AFOSI Detachment 225 experienced a high operations tempo.

We asked the permanent SAIC why AFOSI Detachment 225 did not submit 20 percent of the required fingerprint cards and 31 percent of the final disposition reports to the FBI CJIS Division. He told us that he believed that the low staffing, the inexperience of the Special Agents, and the inability to understand exactly when fingerprints were required to be submitted, all contributed to the low submission rate.

The Superintendent also told us that he did not believe the work environment was a factor in why Kelley’s fingerprints were not submitted to the FBI CJIS Division. He said that he did not know of a specific reason why Detachment 225’s fingerprint and final disposition submission rate to the FBI was low but believed lack of training affected the reason. He stated that he did not know why Kelley’s fingerprints and final disposition report were not submitted and believed it was an oversight. He also stated “we weren’t doing the job right.” The Superintendent told us he did not feel adequately prepared to take on the superintendent position and was overwhelmed.

4. AFOSI Fingerprint Training¹⁰¹

AFOSI Special Agents begin training at the FLETC with an 11-week course called the Criminal Investigator Training Program (CITP). The CITP curriculum is designed to provide special agent trainees from federal agencies with the basic skills and knowledge for being a criminal investigator.¹⁰² One part of the training curriculum includes a block of training titled, “Prisoner Processing Lab.” This training focused on the completion of the fingerprint cards and the final disposition report. However, the training did not provide instructions on when or how to submit either the fingerprint card or the final disposition report to the FBI CJIS Division.

Following the completion of CITP, AFOSI agent trainees attend an 8 week AFOSI Basic Special Investigators Course at the USAF Special Investigations Academy, also located at FLETC. The AFOSI Basic Special Investigators Course curriculum teaches AFOSI agent trainees how to conduct investigations for the USAF, expanding on the topics taught at CITP. One block of training in the Detachment Advisor Guide, “Integrated Automated Fingerprint Identification System (IAFIS),” January 2007, provides agent trainees with instruction on the specific steps in the collection and submission of fingerprints to the FBI CJIS Division. The training consists of classroom lectures and a hands-on fingerprinting activity that ended with the agent trainees submitting fingerprints to the FBI through an I2MS training database. The training curriculum does not provide instruction on when to submit fingerprint cards and final disposition reports to the FBI CJIS Division.

We asked the AFOSI Detachment 225 Special Agents about AFOSI’s formal training at FLETC, including what they were taught about collecting and submitting fingerprint cards and final disposition reports to the FBI CJIS Division. All but one of the Special Agents told us that they remembered being trained on how to collect fingerprint cards. Only the case agent told us he did not remember getting fingerprint training at FLETC. However, they all said that they did not recall receiving formal training at FLETC either in the CITP or in the Basic Special Investigators Course on the submission of fingerprint cards or final disposition reports to the FBI CJIS Division.

¹⁰¹ As discussed previously in this report in Section 1 on page 1, the roles and responsibilities of the USAF Security Forces and the AFOSI differ. The USAF Security Forces perform a security and law enforcement function on USAF installations. The AFOSI performs major criminal and counterintelligence investigations for the USAF. As a result, USAF Security Forces and the AFOSI have separate training requirements and the personnel in those organizations attend training at different locations, with different training curriculums. The USAF Security Forces receives its training at the USAF Security Forces Academy, Joint Base San Antonio-Lackland, Texas. The AFOSI Special Agents receive training at FLETC, and at the USAF Special Investigations Academy (located on FLETC), Glynco, Georgia. Both organizations are required to collect and submit fingerprints and final disposition.

¹⁰² The CITP provides basic investigative training in law, interviewing, informants, defensive tactics, emergency driving, evidence processing, firearms, search and seizure, arrest techniques, report writing, testifying and surveillance. Individual agencies provide training that is more specific because each one may have different process, including procedures for collecting and submitting fingerprints and final disposition reports to the FBI CJIS Division.

We also asked the AFOSI Detachment 225 Special Agents about unit-level training they received for collection and submission of fingerprints to the FBI CJIS Division. They said that experienced AFOSI Detachment 225 Special Agents taught the probationary AFOSI Detachment 225 Special Agents how to collect the fingerprints during on-the-job training sessions. However, the AFOSI Detachment 225 Special Agents told us that although they understood how and when to collect fingerprints, they did not think that the training that they received prepared them for the fingerprint card and final disposition report submission requirements.

We also asked the permanent SAIC if the work environment at AFOSI Detachment 225 prevented the submission of Kelley's fingerprints to the FBI CJIS Division. He told us "No, the work environment doesn't seem like it would have been a barricade." He said that he firmly believed a lack of comprehension and a lack of training were reasons for the failure to submit Kelley's fingerprints to the FBI CJIS Division because the DoD and AFOSI fingerprint policies were not completely understood.

The SAIC told us that during the time that the Kelley assault investigation was open, he believed that fingerprint cards should be submitted to the FBI CJIS Division at the conclusion of all "conviction notices." He said there was a clear lack of comprehension by himself and the AFOSI Detachment 225 Special Agents on the requirement when to submit fingerprints and final disposition reports to the FBI CJIS Division. He added that he believed that lack of comprehension was one reason that prevented the mailing of the fingerprint cards because it was not completely understood and the training he received was inadequate. He told us that he has since learned that the requirement was to submit the fingerprints when probable cause was established. The SAIC further stated he did not recall receiving any training on fingerprint collection and submission at FLETC, and said that the only training he remembered was some on-the-job training after the electronic fingerprint machine was set up at AFOSI Detachment 225 sometime in 2012. This on-the-job training was self-taught and consisted of how to physically roll the fingerprints, not when to submit them. He added that there was no ancillary training provided by AFOSI.

He said having previously worked with the USAF Security Forces, which conducted annual refresher training on various law enforcement functions, he was surprised that AFOSI did not have any additional training on case management and investigative steps when he joined AFOSI. He said the training at HAFB during his tenure focused on operational and tactical activity, but there was no investigative "quality control" training provided by AFOSI.

The Superintendent told us that he believed the lack of adequate training contributed to why Kelley's fingerprints were not submitted to the FBI CJIS Division. He said that he did not recall being trained on the specific process of when to send fingerprints and that lack of knowledge hindered the agents at the AFOSI Detachment 225 from knowing how to do their job well. He added that many of the agents at AFOSI Detachment 225 were new, and he believed both formal training and on-the-job training were insufficient.

5. USAF Security Forces Fingerprint Training

USAF Security Forces personnel attend training at the Air Force Security Forces Academy at Joint Base San Antonio-Lackland, Texas. The approximately 65-day course covered basic military police functions, including directing traffic, and the detection and prevention of criminal activities. At the time of the Kelley assault investigation, the Air Force Security Forces Academy did not include training for fingerprint collection and submission or final disposition submission procedures.¹⁰³

We asked two 49th Security Forces Squadron investigators who conducted Kelley's subject interview about the fingerprint training they received. One investigator told us that the only fingerprint training he received was "on-the-job" and that it related to the collection of fingerprints. He stated it was adequate but that the training was not conducted annually or on any recurring basis. The second investigator said he could not recall if he received any fingerprint training. Neither investigator recalled receiving any training for the submission of fingerprints or final disposition report to the FBI CJIS Division.

We interviewed a third investigator in the 49th Security Forces Squadron, who was not assigned to the Kelley assault investigation but had knowledge of the 49th Security Forces Squadron training at HAFB during that time. He said that he did not recall the 49th Security Forces Squadron having fingerprint training during the time of the Kelley assault investigation. The investigator told us that the majority of the 49th Security Forces personnel were not familiar with collecting fingerprints at the time of the Kelley assault investigation.

¹⁰³ In 2015, the USAF Security Forces created fingerprint training as part of the "Annual Home Station Training" requirements. The 1-hour long lesson plan was designed to be used by individual Security Forces Squadrons to train personnel on the physical collection of fingerprints and completion of the fingerprint card. However, the lesson plan does not contain any information relating to the submission of fingerprints. Additionally, the lesson plan did not reference DoD or USAF policy requirement and did not specify the conditions under which the fingerprint cards should be submitted nor did the lesson plan discuss the submission of the final disposition report.

The 49th Security Forces Squadron Confinement Facility staff we interviewed said they did not recall receiving training on the submission of fingerprint cards or final disposition reports to the FBI CJIS Division during their attendance at the Naval Corrections Academy at Joint Base San Antonio-Lackland. The 49th Security Forces Squadron Confinement Facility Commander did not recall having training on the submission of fingerprint cards or final disposition reports to the FBI CJIS Division at the unit.

The Air Force Security Forces Center Action Officer told us that at the time of the Kelley assault investigation, the USAF Security Forces Academy did not train students on fingerprint card collection and submission or on final disposition report submission procedures. He said that the lesson plans developed by the Air Force Security Forces Center primarily focused on security of military installations instead of law enforcement training procedures. He told us that individual Security Forces units were free to create their own specialized training based on the requirements laid out in the "Security Forces Training Guide." Of note, at the time of the Kelley investigation, the Air Force Security Forces Center was responsible for training, equipping, and organizing all Security Forces for the USAF.

We also interviewed the Curriculum Control Model Manager at the Naval Corrections Academy, who told us that when the two 49th Security Forces Squadron Confinement Facility members attended training at the Naval Corrections Academy in 2012, the curriculum contained fingerprint training based on Navy policy. He said that the curriculum taught students that fingerprints would be collected from inmates upon in-processing, but the fingerprints were not to be submitted to the FBI. He said that the students were taught that in accordance with Secretary of the Navy Instruction 1640.9C, "Department of the Navy Corrections Manual," January 3, 2006, the fingerprints were filed in the inmate's confinement record. He stated that the students were told that the submission of fingerprints and final disposition reports were a function of the law enforcement agencies.

6. Analysis of the Work Environment and USAF Fingerprint Training

The AFOSI Detachment 225 experienced several factors that created a challenging work environment during the Kelley investigation. These factors included inexperienced Special Agents, personal issues, leadership gaps, and a high operations tempo.

~~(FOUO)~~ For example, five different SAICs led AFOSI Detachment 225 in the space of approximately 4 months; three of them were temporarily assigned for periods of approximately 1 to 10 weeks. As a result, the unit lacked the strong, consistent leadership required to address the significant administrative issues that were well known to the 2nd Field Investigations Region. In addition, four of the nine special agents assigned to the AFOSI Detachment 225 were probationary agents who had little or no experience in criminal investigations. Furthermore, (b) (6) [REDACTED]. Additionally, the case agent deployed to Afghanistan for approximately 7 months, which affected the Kelley investigation and left an additional resource deficit at AFOSI Detachment 225.

These circumstances were compounded by the high operations tempo. Concurrently, the case volume continued to increase, with the special agents opening 84 and closing 70 investigations.

The leadership gap at AFOSI Detachment 225 continued until the arrival of the permanent SAIC in December 2011. He found that the special agents lacked discipline in their daily administrative case management. Our interviews and analysis of the AFOSI Detachment 225 investigative documentation at the time of the Kelley investigation confirmed that it had systemic issues related to the collection and submission of fingerprints and final disposition reports. For the period of January 2011 through February 2013, we identified 49 subjects from AFOSI Detachment 225 whose fingerprints and final disposition reports were required to be submitted to the FBI CJIS Division for inclusion in the FBI database. Of the 49 subjects we identified, AFOSI Detachment 225 did not submit 10 subjects (20 percent) fingerprint cards and 15 subjects (31 percent) final disposition reports to the FBI as required.

Although the permanent SAIC became aware of these issues, these administrative deficiencies continued throughout the time of the Kelley investigation.

Training on submission of fingerprints and final disposition reports was also inconsistent and ineffective. Six of the AFOSI Detachment 225 Special Agents told us that they received no formal fingerprint submission training. However, we found that the AFOSI did have fingerprint submission training at the CITP and AFOSI Basic Special Investigators Course. Although minimal, the AFOSI training program did address the DoD and AFOSI requirements to collect and submit fingerprints to the FBI CJIS Division. As discussed earlier in this report, DoD and AFOSI policy requirements on the collection and submission of fingerprints and final disposition information provided clear, sufficient guidance on when Kelley's fingerprints should have been

submitted to the FBI CJIS Division. Therefore, the AFOSI Detachment 225 SAIC and special agents should have understood the DoD and AFOSI policy requirements on fingerprint collection and submission.

In contrast, at the time of the Kelley investigation, the USAF Security Forces training program did not include instruction on the collection and submission of fingerprints and final disposition information to the FBI CJIS Division. Furthermore, we found no evidence that the 49th Security Forces Squadron conducted any fingerprint training during the time of the Kelley assault investigation.

The 49th Security Forces Squadron used on-the-job training as its primary method of instruction for fingerprint collection and submission. However, this training was insufficient and it was not based on any established curriculum or policy requirements. The three 49th Security Forces Squadron investigators that we interviewed provided us with three different incorrect interpretations of DoD and USAF fingerprint policies. The two 49th Security Forces Squadron confinement personnel we interviewed also were not familiar with the DoD and USAF fingerprint policy requirements.

However, we do not believe that these factors justify the failure to submit the required fingerprints. However, the investigators and confinement personnel had a duty to know, and should have known, the DoD and USAF fingerprint policies, and should have followed them. While these factors provide context for AFOSI Detachment 225 and the 49th Security Forces' failures to submit the fingerprints and final disposition report, the factors do not excuse these failures.

D. Kelley's Mental Health and His Right to Legally Purchase Firearms

In this section of the report, we discuss the details of Kelley's mental health treatment. We examined Kelley's mental health treatment to determine whether his patient status affected his right to purchase firearms legally.

Between February 2012, and June 2012, Kelley sought mental health treatment at the HAFB Mental Health Clinic and at the PBHS. We reviewed Kelley's mental health records, interviewed family members, and analyzed federal statutes and policy requirements to determine whether he was prohibited under 18 U.S.C. § 922(g)(4) from legally purchasing a firearm under any of the disabilities listed in the Gun Control Act of 1968. Specifically, the Gun Control Act prohibits firearm possession by individuals who have been "committed to a mental institution" or "adjudicated as a mental defective."

1. Federal Law and Policy Requirements

The Gun Control Act of 1968 prohibits the interstate sale or transfer of firearms except for licensed firearms manufacturers, FFL dealers, and licensed firearms importers.¹⁰⁴ The Act imposes strict regulations prohibiting the sale of firearms and ammunition to felons and certain other prohibited persons, including any person who:

- 922(g)(4): has been adjudicated as a mental defective or has been committed to any mental institution.

DoDI 6490.04, “Mental Health Evaluations of Members of the Military Services,” March 4, 2013, directs the Military Service Secretaries to “develop policy that ensures active duty Service member involuntary psychiatric hospitalization procedures at DoD inpatient facilities are modeled after guidance prepared by professional civilian mental health organizations.” It further states that an involuntary inpatient admission to a mental treatment facility “is appropriate only when a psychiatrist [or other qualified doctor] makes an evaluation that the Service member has, or likely has a severe mental disorder or poses imminent or potential danger to self or others.”

The USAF addresses this requirement in AFI 44-172, “Mental Health,” November 13, 2015, paragraph 6.10.1.3 and 6.10.1.4. Specifically, the paragraphs state:

6.10.1.3. Voluntary inpatient admission is appropriate when a psychiatrist, or, when a psychiatrist is not available, a physician or another MHP [Mental Health Provider] with admitting privileges, determines that admission is clinically indicated and the Service member has the capacity to provide and does provide informed consent regarding treatment and admission.

6.10.1.4. An involuntary inpatient admission to an MTF [Military Treatment Facility] is appropriate only when a psychiatrist, or, when a psychiatrist is not available, a physician or another MHP with admitting privileges, makes an evaluation that the Service member has, or likely has, a severe mental disorder or poses imminent or potential danger to self or others. . . .

2. Facts Surrounding Kelley’s Mental Health and His Right to Legally Purchase Firearms

Kelley sought outpatient treatment at the HAFB Mental Health Clinic at least 14 times between September 7, 2011, and April 28, 2012. Kelley was treated for anxiety, Attention Deficit Hyperactivity Disorder, and ability to cope with stress at work. Additionally, according to a psychologist at the HAFB Mental Health Clinic,

¹⁰⁴ Section 921, title 18, U.S.C., contains the definitions used in the Gun Control Act. Section 922, title 18, U.S.C., contains the prohibitions for the sale, transport, possession, and receipt of firearms.

Kelley had difficulty interacting with authority figures and he perceived that they were criticizing him. During this time, Kelley was prescribed Atomoxetine, Ibuprofen, Albuterol, Fluticasone, and Omeprazole. However, none of the psychologists that treated Kelley indicated that he was a safety concern either to himself or to others.

Kelley voluntarily entered in-patient care at the PBHS on two separate occasions and was treated for severe depression and suicidal ideations. However, he was never involuntarily committed to an in-patient program.

3. Interview of Kelley's Family Members

(FOUO) We asked Kelley's (b) (6) if Kelley had been treated by a mental health professional after he was released from confinement at the Naval Consolidated Brig, Miramar, California. According to Kelley's (b) (6), Kelley did not receive any mental health treatment between the time he was released from the Naval Consolidated Brig, Miramar on March 31, 2013, and the day of the shooting at the First Baptist Church of Sutherland Springs, Sutherland Springs, Texas on November 5, 2017.¹⁰⁵

4. Analysis of Kelley's Mental Health Status and His Right to Legally Purchase Firearms

We determined that Kelley did not meet the criteria of a "prohibited person" under the Gun Control Act of 1968 because of his mental health treatment. To be prohibited from legally owning or purchasing a firearm under 18 U.S.C. § 922(g)(4), Kelley would have had to have been determined to be mentally defective or committed to a mental institution involuntarily. Kelley was treated in a mental institution, but he was not involuntarily committed or deemed mentally defective. Kelley's mental health treatment and mental health history would not have disqualified him from purchasing a firearm, nor did it require the USAF to report Kelley to the FBI for inclusion in the NICS database.

As a part of this investigation, we also consulted with the ATF. It agreed that according to 18 U.S.C. § 922(g)(4) Kelley's mental health treatment did not prohibit him from purchasing a firearm, because he was not adjudicated a mental defective or committed to a mental institution.

¹⁰⁵ (FOUO) Kelley's (b) (6) said that neither she, nor Kelley's parents were aware that Kelley was prohibited from purchasing firearms. (b) (6) told us that the USAF never told Kelley that he was not permitted to purchase firearms. However, there is no requirement for the USAF to notify a convicted member's family of any prohibition from purchasing firearms.

E. Kelley's No Contact Order and Military Protective Order

In this section of the report, we discuss whether the no contact order or the Military Protective Order issued to Kelley in 2012, should have been entered into the NCIC database or would have prohibited him from purchasing a firearm.¹⁰⁶

On February 17, 2012, the 49th Logistics Readiness Squadron Commander issued Kelley a no contact order after Tessa Kelley accused him of abusing her. The no contact order prohibited Kelley from initiating any contact or communication with Tessa Kelley.

On June 25, 2012, Kelley's Commander also issued Kelley a Military Protective Order, which prohibited him from initiating any contact or communication with Tessa Kelley.¹⁰⁷

1. Federal Law and NCIC Policy

18 U.S.C § 922(g)(8), states that a person will be prohibited from purchasing a firearm if the person:

is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that— (A) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and (B)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury;

¹⁰⁶ Military Protective Orders issued after 2014 are eligible to be entered into the NCIC database. Whereas, fingerprints and final disposition reports are submitted to the FBI CJIS Division. However, because Kelley's Military Protective Order was issued to him in 2012, it was not eligible to be entered into the NCIC database.

¹⁰⁷ The Commander remembered issuing the Military Protective Order but could not recall the specific reason he issued it. The order does not state the specific reason that the Commander issued it. At the time that this order was issued, Kelley was in pretrial confinement and awaiting court-martial.

The NCIC Operating Manual implements 18 U.S.C. § 922 by establishing the entry requirements for a protection order file, which are:

Any injunction, restraining order, or any other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence or contact or communication with, or physical proximity to another person including any temporary and final orders issued by civil or criminal courts whether obtained by filing an independent action or as a pendent lite order in another proceeding so long as any civil order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection and. . . .

No contact orders and Military Protective Orders are different documents with essentially the same purpose. A no contact order is in a letter format, while a Military Protective Order is filled out on DD Form 2873. The military uses the phrase “no contact order” synonymously with Military Protective Orders. A commander can issue a no contact order or Military Protective Order when necessary to safeguard a victim, quell a disturbance, and maintain good order and discipline while a victim has time to pursue a protection order through a civilian court. The Military Protective Order can be issued to support an existing Civilian Protection Order.

2. Analysis of Kelley’s No Contact Order and the Military Protective Order Issuance

Section 922, 18 U.S.C., requires a protective order to be issued by a court in order to prohibit the purchase of a firearm. Kelley’s no contact order and his Military Protective Order were not eligible to be submitted to the FBI CJIS Division for entry into the NCIC database because they were issued by his military commander and not a court.¹⁰⁸

The FBI’s NCIC Federal Liaison agreed with our assessment that neither the no contact order nor the Military Protective Order issued to Kelley would have been eligible for entry into NCIC. Because Kelley’s no contact order and his Military Protective Order were not issued by a court, Kelley was not disqualified from purchasing a firearm legally by those orders.

¹⁰⁸ The NCIC database maintains twenty-one files, (seven property files and fourteen person files). The category of files include article file, gun file, boat file, securities file, vehicle file, vehicle and boat part file, license plate file, missing persons file, foreign fugitive file, identity theft file, immigration violator file, protection order file, supervised released file, unidentified persons file, protective interest file, gang file, Known or appropriately suspected terrorist file, wanted persons file, national sex offender registry file, NICS denied transaction file, and violent person file. In 2014, the Advisory Policy Board authorized the inclusion of Military Protection Orders for law enforcement information purposes only. Because the FBI exception to policy did not occur until 2014, the no contact order and the Military Protective Order issued to Kelley were not eligible for entry into NCIC, and therefore, they were not available or identified to the NICS.

F. Post-Trial Events

In this section of the report, we provide details of events that occurred after Kelley's court-martial.

1. Kelley's Incarceration at the Naval Consolidated Brig, Miramar

From November 7, 2012, through December 18, 2012, Kelley was held in post-trial confinement at the 49th Security Forces Squadron Confinement Facility at HAFB. As discussed previously, the Confinement Facility personnel were required to collect and submit Kelley's fingerprints to the FBI CJIS Division, upon Kelley's conviction, which they did not do.

On December 18, 2012, the USAF transferred Kelley to the Naval Consolidated Brig, Miramar, California, where he was incarcerated until his release on March 31, 2013. The Secretary of the Navy Instruction 1640.9C, "Department of the Navy Corrections Manual" January 3, 2006, requires its confinement facilities to collect and maintain prisoner fingerprints for inclusion in the prisoner's confinement records for prisoner identification purposes, but does not require the submission of the fingerprints to the FBI.¹⁰⁹

We determined that Kelley's fingerprint cards were in his confinement records at the Naval Consolidated Brig, as required by Navy Policy.

2. Closed Case Submittal to the AFOSI Archives

On April 8, 2013, AFOSI Detachment 225 Special Agents shipped the closed Kelley investigative case file to the AFOSI archives.

¹⁰⁹ Secretary of the Navy Instruction 1640.9C, "Department of the Navy Corrections Manual," January 3, 2006, deleted the requirement for the confinement facilities to submit fingerprints to the FBI. It requires that confinement facilities collect and maintain fingerprints on all prisoners upon arrival for inclusion into the prisoner's confinement record. It also states that the fingerprints "shall" not be submitted to the FBI but "will serve as a backup set for immediate availability" in an emergency.

VI. Overall Conclusions

This DoD OIG investigation examined the United States Air Force's (USAF) failure to submit Devin Kelley's fingerprints and final disposition report to the FBI's Criminal Justice Information Services (CJIS) Division for inclusion in its databases after he was convicted of a crime of domestic violence by a USAF General Court-Martial. The USAF's failure to submit Kelley's fingerprints and final disposition information allowed Kelley to pass the federally mandated background checks and to purchase four firearms from Federal Firearms Licensed (FFL) dealers. Kelley used three of those four firearms on November 5, 2017, to kill 26 people and wound 22 others at the First Baptist Church of Sutherland Springs, Sutherland Springs, Texas.

Because of the seriousness of this matter, we expended significant resources in our investigation of how this occurred. We interviewed 41 witnesses inside and outside the USAF and the DoD, including Kelley's ex-wife, his second wife, and his father. We constructed a detailed chronology of the events related to Kelley. We reviewed DoD, USAF, and Air Force Office of Special Investigations (AFOSI) policies concerning requirements for the collection and submission of fingerprints to the FBI. We also consulted with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), and coordinated with the FBI CJIS Division and the Texas Department of Public Safety (the Texas Rangers).

Our investigation determined that multiple organizations and individuals in the USAF did not submit Kelley's fingerprints or final disposition report to the FBI CJIS Division, as required by DoD, USAF, and AFOSI policy. Specifically, we determined that the USAF had four opportunities to collect and submit Kelley's fingerprints to the FBI CJIS Division and two opportunities to submit his final disposition report to the FBI CJIS Division, as required, but never did so.

First, on June 9, 2011, during the first AFOSI subject interview of Kelley for the assault of his stepson, the AFOSI Detachment 225 Special Agents collected Kelley's fingerprints. Although there was probable cause that Kelley committed the assault, the AFOSI Detachment 225 Special Agents did not submit the fingerprints to the FBI CJIS Division, as required by DoD and AFOSI policy.

Second, on February 17, 2012, during the 49th Security Forces Squadron subject interview of Kelley for the assault of his wife, the 49th Security Forces Squadron should have collected Kelley's fingerprints, as required by DoD and USAF policy. We could not determine if the 49th Security Forces Squadron collected Kelley's fingerprints. However, we determined that the 49th Security Forces Squadron did not submit the fingerprints to the FBI CJIS Division.

Third, on June 8, 2012, during the second AFOSI subject interview of Kelley for assault, both on his stepson and his wife, and for being absent without leave, the AFOSI Detachment 225 Special Agents did not collect Kelley's fingerprints or submit his fingerprints to the FBI CJIS Division, as required by DoD and AFOSI policy.

Fourth, on November 7, 2012, after Kelley's General Court-Martial conviction, the 49th Security Forces Squadron Confinement Facility staff should have collected Kelley's fingerprints, as required by USAF policy. We could not determine if the 49th Security Forces Squadron collected his fingerprints at that time. However, we determined that the 49th Security Forces Squadron did not submit Kelley's fingerprints to the FBI CJIS Division.

November 7, 2012, was the first opportunity for the USAF to submit Kelley's final disposition report to the FBI CJIS Division. After Kelley's General Court-Martial, the fingerprint card containing the final disposition documenting his assault conviction should have been submitted by the 49th Security Forces Confinement Facility staff to the FBI CJIS Division. This was not done.

The second opportunity for the USAF to submit Kelley's final disposition report occurred on December 14, 2012, when AFOSI Detachment 225 received the results of Kelley's General Court-Martial. The AFOSI Detachment 225 Special Agent-in-Charge (SAIC) did not submit the fingerprints or the final disposition report to the FBI CJIS Division, as required DoD and AFOSI policy. We determined that the SAIC electronically certified that Kelley's fingerprints and the final disposition report were sent to the FBI CJIS Division, but they were not. The AFOSI Detachment 225 SAIC closed the Kelley investigation at this time, although Kelley's fingerprint cards remained in the investigative case file and had not been submitted to the FBI CJIS Division.

We investigated the reasons for these multiple failures. As noted above, we determined that, after Kelley's first AFOSI subject interview on June 9, 2011, the AFOSI Detachment 225 Special Agents did not follow DoD and AFOSI policies when they failed to submit Kelley's fingerprints. We found that the special agents did not understand the policies as to when fingerprints should be submitted to the FBI CJIS Division. For example, the former SAIC and the Superintendent believed that fingerprints were normally submitted within 2 days of a subject interview. However, the case agent stated that at the time of the Kelley assault investigation, the case agent was not aware that the requirement for submitting fingerprints to the FBI CJIS Division relied upon a probable cause determination. The case agent and the Superintendent both acknowledged to us that they believed that probable cause existed that Kelley

committed the assault on his stepson and therefore should have submitted Kelley's fingerprints to the FBI CJIS Division. However, none of the AFOSI Special Agents gave us a clear, supportable reason or explanation why Kelley's fingerprints were not submitted to the FBI CJIS Division.

Similarly, on February 17, 2012, the 49th Security Forces Squadron investigators did not have a clear understanding of, and did not follow, DoD and USAF policies regarding the collection and submission of fingerprints when they investigated the domestic violence complaint made by Tessa Kelley against Kelley. At least one of the investigators believed that probable cause existed that Kelley had assaulted Tessa Kelley, based on her testimony and her injuries, and therefore he should have collected and submitted Kelley's fingerprints to the FBI CJIS Division. However, the investigator could not explain why he did not submit Kelley's fingerprints.

After Kelley's second AFOSI subject interview on June 8, 2012, the AFOSI Detachment 225 Special Agents also did not know or follow DoD and AFOSI policies, and did not submit Kelley's fingerprints to the FBI CJIS Division, even though they believed there was probable cause that Kelley committed the assault against Tessa Kelley and his stepson. The Special Agent who conducted Kelley's subject interview initialed the block on the AF Form 3985, "Interview Record," signifying that Kelley's fingerprints had been collected following the interview. However, we found no evidence that he in fact had collected Kelley's fingerprints. Additionally, the permanent SAIC did not have a clear understanding that once probable cause was established, fingerprints should be submitted to the FBI CJIS Division. The SAIC told us that his practice was to not submit the fingerprints to the FBI CJIS Division until after the Detachment received the Report of Result of Trial from the Staff Judge Advocate or the Commander's record of discipline. Ultimately, none of these Special Agents could provide a sufficient or supportable reason why Kelley's fingerprints were not collected or submitted following his second subject interview.

On November 7, 2012, the 49th Security Forces Confinement Facility personnel did not follow DoD and USAF policies regarding the collection and submission of fingerprints and the final disposition report during Kelley's in-processing after his court-martial conviction. We determined that the Confinement Non-Commissioned Officer-in-Charge was unsure what the USAF policy required him to do with Kelley's fingerprints upon in-processing at the 49th Security Forces Squadron Confinement Facility.

Finally, on December 14, 2012, the AFOSI Detachment 225 SAIC and Superintendent did not follow DoD and AFOSI policies for the submission of Kelley's fingerprints and the final disposition report to the FBI CJIS Division even after they received the Report of Result of Trial from Kelley's court-martial. Nevertheless, the SAIC certified that Kelley's fingerprints had been submitted to the FBI CJIS Division. We determined that the SAIC and Superintendent did not review the file or properly complete the AFOSI Closed Investigative File checklist and the I2MS checklist. Instead, the SAIC told us that he assumed that the case agent had submitted Kelley's fingerprints and final disposition to the FBI CJIS Division.

The SAIC and Superintendent also told us they did not know why the AFOSI Closed Investigative File checklist was not completed, why the fingerprints remained in the investigative case file, or why final disposition was not submitted to the FBI CJIS Division. Instead, they approved the closure of the investigative case file based on their false assumption that all administrative tasks had been completed by the case agent, without reviewing the investigative case file themselves as required by AFOSI policy. If they had reviewed the investigative case file, they would have discovered that Kelley's fingerprints were still in the investigative case file and that the fingerprints and final disposition report had not been submitted to the FBI CJIS Division. Again, the Detachment leadership was unable to provide a reasonable explanation as to why the SAIC certified that Kelley's fingerprints with final disposition were not submitted to the FBI CJIS Division.

In addition, we found that AFOSI Detachment 225 monthly supervisory reviews of Kelley's investigative case file were incomplete and ineffective. The reviews failed to identify that Kelley's fingerprint cards remained in the investigative case file and had not been submitted to the FBI CJIS Division. During the 17-month investigation of Kelley, the AFOSI Detachment 225 SAICs and Superintendents conducted 15 monthly reviews of the Kelley investigative case file. The AFOSI Detachment 225 monthly review notes that were documented in I2MS provided little detail about the supervisors' observations of the Kelley investigation. Although AFOSI policy required supervisors to review both I2MS (electronic) entries and the investigative case file (record copy), the AFOSI Detachment 225 SAIC and Superintendent focused their reviews on the I2MS activities and not on the investigative case files. This is significant because Kelley's fingerprint cards were retained in the investigative case file, without a corresponding I2MS activity. Therefore, their review of I2MS activities would not have identified that Kelley's fingerprints had not been submitted to the

FBI CJIS Division. Furthermore, the SAIC and Superintendent's supervisory reviews focused solely on investigative sufficiency and not administrative tasks. Therefore, we determined that they would not have been looking for fingerprint cards, even if they had been reviewing the investigative case file.

~~(FOUO)~~ In this investigation, we attempted to assess the environment in which these special agents and supervisors worked when they failed to collect and submit the fingerprints and final disposition reports. We found several factors that created a challenging work environment. These factors included inexperienced special agents, individual personal issues at the time, leadership gaps, and a high operations tempo. For example, five different SAICs led AFOSI Detachment 225 in the space of approximately 4 months; three of them were temporarily assigned for periods of approximately 1 to 10 weeks. In addition, four of the nine special agents assigned to the AFOSI Detachment 225 were probationary agents who had little or no experience in criminal investigations. Furthermore, (b) (6) [REDACTED]. These difficulties were compounded by the high operations tempo of the office.

In addition, we found that training on the submission of fingerprints and final disposition reports was inconsistent and ineffective in the AFOSI Detachment 225 and the 49th Security Forces Squadron. Six of the AFOSI Detachment 225 Special Agents told us that they received no formal training on the submission of fingerprints. Yet, we found that the AFOSI did have fingerprint submission training at the Criminal Investigator Training Program and AFOSI Basic Special Investigators Course. Although minimal, the AFOSI training program did address the DoD and AFOSI requirements to collect and submit fingerprints to the FBI CJIS Division. Therefore, the AFOSI Detachment 225 SAIC and Special Agents should have understood the DoD and AFOSI policy requirements on fingerprint collection and submission, but they said they did not.

We also found that training for the USAF Security Forces was lacking. The USAF Security Forces training program did not include instruction on the collection and submission of fingerprints and final disposition information to the FBI CJIS Division. Additionally, we found no evidence that the 49th Security Forces Squadron conducted any fingerprint training during the time of the Kelley assault investigation. Rather, the 49th Security Forces Squadron used on-the-job training as its primary method of instruction for fingerprint collection and submission. However, this training was insufficient and was not based on any established curriculum or policy requirements. The three 49th Security Forces Squadron investigators that

we interviewed provided us with three different, incorrect interpretations of DoD and USAF fingerprint policy requirements. The two 49th Security Forces Squadron confinement personnel we interviewed were also not familiar with the DoD and USAF fingerprint policy requirements.

These factors provide context for the failures to submit the fingerprints and final disposition report to the FBI CJIS Division. However, they do not excuse the failures. The investigators and confinement personnel had a duty to know, and should have known, the DoD and USAF fingerprint policies, and should have followed them. The failures had drastic consequences and should not have occurred.

In sum, we concluded that there was no valid reason for the USAF's failures to submit Kelley's fingerprints and final disposition report to the FBI CJIS Division.

Moreover, as noted above, we are currently conducting a follow-up review to assess the progress throughout the DoD in ensuring that all fingerprints required to be submitted to the FBI are in fact submitted. This review will also assess whether DoD law enforcement agencies submit DNA to the FBI's Combined DNA Index System, as well as criminal history data, mental health information, and sex offender information, as required.

Finally, in the following section, we make eight recommendations to the DoD and the USAF to address the findings in this report.

VII. Recommendations

In this section of the report, we provide eight recommendations to the DoD and the USAF, based on the findings in this report.¹¹⁰ We do not repeat the broader recommendations we made in our December 2017 report, “Evaluation of Fingerprint Card and Final Disposition Report Submissions by Military Service Law Enforcement Organizations,” which examined whether all Military Services Law Enforcement Organizations had submitted fingerprint cards and final disposition reports for Military Service members, as required by DoD instructions. The recommendations listed below are additional recommendations arising from this investigation of the Kelley case specifically.

A. USAF Recruiting Process Background Checks

Recommendation 1

We recommend that the Air Force consider implementing a system to ensure that the Air Force Recruiting Service conduct National Crime Information Center and local criminal history record checks before an applicant’s formal entry into the Air Force on active duty, regardless of whether that check was conducted during the applicant’s participation in the Delayed Enlistment Program.

As discussed in Part II of this report, our investigation found multiple instances of Kelley being accused of criminal activity prior to entering the USAF, in one instance only days before entering active duty. None of those allegations or investigations was listed in his USAF enlistment documents, even though they were available through NCIC and local law enforcement records checks. These allegations may have served as a warning to USAF recruiting officials and security clearance background investigators, perhaps even disallowing Kelley from entering the USAF. The USAF should consider conducting National Crime Information Center and local criminal history record checks immediately prior to an applicant entering Basic Military Training to ensure that applicants are not under investigation for a crime that could disqualify them from military service.

¹¹⁰ We also considered recommendations for the Air Force Security Forces and the Air Force Office of Special Investigations to institute and require a redundant system of checks to ensure that fingerprints are collected and submitted to the FBI CJIS Division in accordance with DoDI 5505.11. However, as noted above, we made similar recommendations in our Report No. DODIG-2018-035, and our ongoing “Evaluation of DoD Submission of Criminal History Data to the FBI” will assess the remedial measures proposed and taken in response to these recommendations.

B. USAF Security Forces File Retention

Recommendation 2

We recommend that the Air Force revise its Records Information Management System, Table 31-01, to require Security Forces to retain original investigative case files for 15 years.

Recommendation 3

We recommend that the Air Force revise its Records Information Management System, Table 31-02, to require Security Forces to retain original confinement facility records for 15 years.

Recommendation 4

We recommend that the Air Force revise Air Force Instruction 31-120 to require Security Forces to retain original investigative and confinement facility records for 15 years.

As discussed in Part V, the 49th Security Forces Squadron was unable to provide evidence that it had collected Kelley's fingerprints after its investigators interviewed Kelley for assault because the records were destroyed in accordance with USAF records disposition policy. That policy requires that records of USAF Security Forces investigations be retained for only 3 years after the disposition is received. In addition, the 49th Security Forces Squadron was unable to provide evidence that it collected Kelley's fingerprints after its confinement personnel in-processed Kelley into the confinement facility following his court-martial conviction, because the records were destroyed in accordance with USAF records disposition policy. That policy requires that records of inmates be retained for only 4 years after the inmate is released from a USAF confinement facility. These policies prevent verification of the proper collection of fingerprint cards in situations such as the Kelley shooting investigation. The policies also prevent the investigation and confinement records from being accessible by law enforcement in instances, when the records could be used to assess additional allegations or determine that a subject is a suspected repeat offender. We chose a 15-year retention period because it matched the AFOSI file retention period for criminal investigative files.

C. USAF Training Program Revisions

Recommendation 5

We recommend that the Air Force review the Air Force Office of Special Investigations formal training programs on the procedures and requirements for the collection and submission of fingerprints and final disposition reports to the Federal Bureau of Investigation Criminal Justice Information Services Division and ensure that the training adequately addresses the requirements of DoD Instruction 5505.11.

Recommendation 6

We recommend that the Air Force implement Air Force Security Forces formal training programs on the procedures and requirements for the collection and submission of fingerprints to the Federal Bureau of Investigation Criminal Justice Information Services Division that are aligned with DoD Instruction 5505.11.

As discussed in Part V of this report, our investigation determined that the AFOSI training on the submission of fingerprints and final disposition reports was inconsistent and ineffective. We found that although AFOSI conducted fingerprint submission training at the CITP and AFOSI Basic Special Investigators Course, the training was minimal. In addition, the AFOSI Detachment 225 Special Agents told us the training did not adequately familiarize them on the requirements of when fingerprints and final disposition reports should be submitted to the FBI CJIS Division. Additionally, we found that the AFOSI Detachment 225 unit-level training did not reinforce the requirements of DoD Instruction 5505.11 for the submission of fingerprint cards and final disposition reports. We recommend that both the formal and unit-level training programs include the requirements of DoD Instruction 5505.11 for the collection of fingerprint cards and submission of final disposition reports.

The USAF Security Forces also lacked adequate formal and unit-level training program on the submission of fingerprints and final disposition reports to the FBI CJIS Division. Both the formal and unit-level training programs should include the requirements of DoD Instruction 5505.11 for the collection of fingerprint cards and submission of final disposition reports.

D. No Contact Orders

Recommendation 7

We recommend that the Under Secretary of Defense Personnel and Readiness, in consultation with the Under Secretary of Defense for Intelligence and the General Counsel of the Department of Defense, consider pursuing legislation amending the Gun Control Act, Section 922(g)(8) to specifically include commander-issued no contact orders and Military Protective Orders as disqualifiers in determining eligibility to purchase firearms from a Federal Firearms Licensed dealer.

As discussed in Part V of this report, we found that Kelley was issued a no contact order and a Military Protective Order (MPO) by his military commander. Section 922, 18 U.S.C., requires a protective order be issued by a court in order to prohibit the purchase of a firearm. Because Kelley's no contact order and MPO were not considered court ordered protective orders, they could not be used by NICS as a disqualifier in determining his eligibility to purchase firearms from a Federal Firearms Licensed (FFL) dealer. Amending the Gun Control Act to include commander-issued no contact orders and MPOs as disqualifying factors would prevent the person subject to the order from purchasing a firearm from an FFL.

We therefore recommend that the DoD examine whether to seek legislation to specifically include commander-issued no contact orders and MPOs as disqualifying factors, so they will be considered when the subject of an MPO attempts to purchase a firearm from an FFL, as Kelley did.

E. Performance of USAF Personnel

Recommendation 8

We recommend that the Air Force review this report, the facts described in it, and any other relevant factors to assess the overall performance of the individuals described in this report and implement any administrative, performance, or disciplinary actions, as appropriate.

We determined that several USAF law enforcement personnel did not follow DoD, USAF, and AFOSI policy regarding the collection and submission of Kelley's fingerprints and final disposition report to the FBI CJIS Division. Specifically, our investigation determined that USAF personnel missed four opportunities to collect and submit Kelley's fingerprints to the FBI CJIS Division. Additionally, USAF personnel

missed two opportunities to submit Kelley's final disposition report to the FBI CJIS Division. Moreover, AFOSI Detachment 225 leadership was required to review the AFOSI Kelley investigative case file to ensure that Kelley's fingerprints were collected and submitted, but this did not happen

We believe that the USAF should review the findings of this report and consider whether individuals should be held accountable for these failures, either administratively or in the performance process.

F. Management Comments and Our Response

The USAF concurred with this report and its recommendations. However, it did not provide specific actions that had addressed, or would address, each of the recommendations in this report.

For example, the USAF described many actions it has taken after the November 5, 2017, shooting, such as reviewing archived cases files to ensure compliance with reporting requirements; establishing a centralized criminal justice indexing cell at Headquarters AFOSI; updating governing instructions and policies; providing digital fingerprint equipment to USAF processing locations; and providing mandatory refresher training for all AFOSI special agents on criminal history reporting. The USAF's actions after the shooting, while significant, did not fully or directly address each of the specific recommendations we made in this report.

Moreover, we have not verified that the USAF's reported actions are complete or sufficient to fully address the recommendations in this report. In addition, as noted earlier in this report, we are currently conducting a separate evaluation of all the Military Services' actions in implementing corrective actions after the November 5, 2017, shooting. That separate evaluation will include an assessment of the USAF's corrective actions after the shooting.

Therefore, because the USAF concurred with the recommendations in this report, the recommendations are resolved but remain open. We will close these recommendations once we verify that the USAF has implemented sufficient corrective actions to fully address each of the specific recommendations in this report.

The Office of the Under Secretary of Defense for Personnel and Readiness (OUSD[P&R]) considered and agreed with Recommendation 7. The OUSD(P&R) did not include a plan to satisfy and implement the recommendation, but agreed to consult with the Office of the Under Secretary of Defense for Intelligence (OUSD[I]) and the DoD Office of General Counsel. Therefore, this recommendation is unresolved and will remain open. We will close this recommendation once we verify that the OUSD(P&R) has taken action in furtherance of our recommendation.

VIII. Appendix A

A. Prior OIG Reports

The DoD Office of Inspector General (OIG) previously issued several reports related to fingerprint card and disposition data submission. This Appendix contains summaries of each of those reports.

**Report No. DODIG-2018-035, “Evaluation of Fingerprint Card and Final Disposition Report Submissions by Military Service Law Enforcement Organizations,”
December 5, 2017**

This evaluation examined whether all Military Services Law Enforcement Organizations submitted fingerprint cards and final disposition reports for Military Service members convicted by court-martial of qualifying offenses, as required by DoD instruction. We reviewed these submissions for the period from January 1, 2015, to December 31, 2016. For this period, we identified 2,502 convicted offenders from the Military Services whose fingerprint cards and final disposition reports required submission to the Federal Bureau of Investigation’s (FBI) Criminal Justice Information Services (CJIS) Division for inclusion in its database.

We determined that the Military Services still did not consistently submit fingerprint cards and final disposition reports as required. Overall, of the 2,502 fingerprint cards that should have been submitted, 601 (24 percent) were not submitted. Of the 2,502 final disposition reports that should have been submitted, 780 (31 percent) were not submitted.

We determined the United States Air Force (USAF) [Air Force Office of Special Investigations (AFOSI) and USAF Security Forces combined] had improved since the previous report. However, it failed to submit 105 of 743 (14 percent) of the required fingerprint cards and 106 of 743 (14 percent) of the final disposition reports. Of the 588 fingerprints that the AFOSI was required to submit, it failed to submit 12 (2 percent). Of the 588 final disposition reports that the AFOSI was required to submit, it failed to submit 13 (2 percent). Of the 155 fingerprints that the USAF Security Forces was required to submit, it failed to submit 93 (60 percent). Of the 155 final disposition reports that the USAF Security Forces was required to submit, it failed to submit 93 (60 percent).

Finally, we determined that not all the Military Services law enforcement organizations provide training on the collection of fingerprints and the submission of final disposition reports. The U.S. Army Military Police School, Fort Leonard Wood, Missouri, fingerprint collection training focused on collecting fingerprints solely for evidentiary purposes, but does not teach students the requirement to submit fingerprint cards or final disposition reports to the FBI CJIS Division. We also determined that the Naval Criminal Investigative Service (NCIS) Biometrics Division trained and tested NCIS Special Agent students on the use of live scan devices for the collection and submission of fingerprint cards and final disposition reports. Further, the Navy Security Forces did not have formal fingerprint collection and final disposition submission training. Additionally, we determined the AFOSI provided training on fingerprint collection and final disposition report during the AFOSI Basic Special Investigators Course and the Advance General Crimes Investigation Course. Lastly, the Air Force Security Forces Center Police Services Branch has fingerprint training as a part of its Annual Home-Station Training requirements. However, the training focused on the collection of fingerprints, but did not address the requirement to submit fingerprint cards and final disposition reports to the FBI CJIS Division.

We recommended that the Secretaries of the Army, Navy, and Air Force ensure that all fingerprint cards and final disposition reports that we identified as not submitted during the period of our review, from 2015 through 2016, be promptly submitted to the FBI CJIS Division. We also recommended that the Secretaries of the Army, Navy, and Air Force; the Under Secretary of Defense for Intelligence; and the Deputy Chief Management Officer immediately perform a comprehensive review of their criminal investigative databases and files to ensure that all required fingerprint cards and final disposition reports for qualifying offenses at least to 1998 have been submitted to FBI CJIS Division in compliance with DoD and FBI requirements.

Additionally, we recommended that the review extend back to at least 1998 because that is when DoD policy required the Military Services to submit such qualifying fingerprints and final disposition reports. We also recommended that the Secretaries of the Army, Navy, and Air Force; the Under Secretary of Defense for Intelligence; and the Deputy Chief Management Officer take prompt action to institute command, supervisory, and management oversight

controls to verify compliance with fingerprint card and final disposition report submission requirements, in the past and in the future, and also ensure that such compliance is included as a special interest item in Service Inspector General inspections.

Finally, we recommended that the Secretaries of the Army, Navy, and Air Force; the Under Secretary of Defense for Intelligence; and the Deputy Chief Management Officer conduct a comprehensive review of their criminal history reporting programs to ensure fingerprinting and final disposition report submission policy, training, and processes are consistent with DoDI 5505.11, the DoD policy covering the submission of fingerprints and final disposition reports, and are being implemented.

The Army agreed with our recommendations. In addition, the Army described steps it is taking to implement the recommendations. These steps include coordinating with officials at both the NCIC and the NICS to submit automated data regarding felony convictions and submitting final disposition reports.

The Navy agreed with our recommendations. The NCIS described steps it is taking to implement the recommendations, including developing a “Fingerprint Verification Plan” to correct previous fingerprint submission deficiencies and to prevent future submission failures.

The USAF agreed with our recommendations. AFOSI stated that it has already taken steps to identify and obtain missing fingerprint cards and disposition reports and will continue that effort.

The Marine Corps agreed with our recommendations. The Marine Corps described steps it is taking to implement the recommendations, such as tasking all installation Provost Marshal’s Offices and Marine Corps Criminal Investigation Division offices to review all incident reporting to determine if suspect fingerprint cards and final disposition reports were completed and submitted to the FBI.

Report No. DoDIG-2015-081, “Evaluation of Department of Defense Compliance with Criminal History Data Reporting Requirements,” February 12, 2015

This evaluation examined whether Military Criminal Investigative Organizations (MCIOs) and other DoD law enforcement organizations reported offender criminal history data collected from service members convicted of qualifying offenses between June 1, 2010, and October 31, 2012, and submitted

the data to the FBI CJIS Division as DoD policy mandates. Specifically, we determined whether fingerprints and final disposition reports for 1,102 Navy, USAF, and Marine Corps service members convicted of qualifying offenses were submitted to the FBI CJIS Division. Our analysis did not determine the reasons that fingerprints or final disposition reports that should have been included in Integrated Automated Fingerprint Identification System (IAFIS) were not. We did not evaluate fingerprint collection or submission of final disposition reports training.

We determined that the Navy failed to submit 68 of 317 (21 percent) required fingerprint cards and 80 of 317 (25 percent) required disposition reports. The USAF failed to submit 110 of 358 (31 percent) required fingerprint cards and 113 of 358 (32 percent) required disposition reports and the Marine Corps failed to submit 126 of 427 (30 percent) required fingerprint cards and 141 of 427 (33 percent) required final disposition reports.

We recommended that the Secretaries of the Navy and Air Force take prompt action to submit the missing fingerprints and final disposition reports to the FBI for inclusion into IAFIS.

Additionally, we recommended that the Secretaries of the Navy and Air Force take prompt action to ensure fingerprints and final disposition reports for future arrestees and convicted offenders conform to DoD Instruction 5505.11. The Secretaries of the Navy and Air Force agreed with our recommendations but expressed concern regarding their jurisdictional and legal authority to collect criminal history data from individuals no longer subject to the Uniform Code of Military Justice (UCMJ).

Report No. PO 97-003, "Criminal Investigations Policy Memorandum Number 10, Criminal History Data Reporting Requirements," January 28, 1997

This evaluation was performed because of a requirement in the "National Defense Authorization Act for Fiscal Year 1996." The Secretary of Defense was directed to provide a report to Congress on the consistency with which fingerprint cards and final dispositions are reported by the Defense Criminal Investigative Organizations (DCIOs) to the FBI for inclusion in the FBI's criminal history identification files.¹¹¹

¹¹¹ The DCIOs are the U.S. Army Criminal Investigation Command, the Naval Criminal Investigative Service, the AFOSI, and the Defense Criminal Investigative Service. The Defense Criminal Investigative Service is the criminal investigative arm of the DoD Office of Inspector General.

Our evaluation's primary objective was to examine whether the DCIOs were reporting fingerprint cards and final disposition reports to the FBI in compliance with DoD Criminal Investigations Policy Memorandum Number 10 (CPM No. 10), "Criminal History Data Reporting Requirements," March 25, 1987. We did not evaluate fingerprint collection or submission of final disposition reports training.

We determined that the MCIOs were not consistently submitting criminal history data to the FBI criminal history files. Specifically, the evaluation determined that between December 1995 and July 1996, the Army failed to send fingerprint cards to the FBI for approximately 82 percent of the cases; the Navy 83 percent; and the USAF 38 percent. The Army failed to submit the final disposition report for 79 percent of the cases; the Navy 94 percent, and the USAF 50 percent.

We also determined that the level of the MCIOs' noncompliance in the submission of fingerprint cards and final dispositions was high and consistent throughout the MCIOs. Inadequate implementing procedures, lack of emphasis by the MCIOs on reporting, and lack of sufficient oversight focusing on this issue contributed significantly to the noncompliance. The DoD OIG further found that definitive and comprehensive guidance with management emphasis was needed at all levels to improve reporting.

We recommended that Military Departments' and Defense agencies' law enforcement organizations investigating serious offenses as described in CPM No. 10 develop interim policies and implementing procedures for reporting to the FBI criminal history data files while awaiting a new DoD Instruction.

The Army concurred with our recommendation and stated that policy guidance would be established requiring the submission of reporting documents within 10 working days of a triggering event. The Army also stated that compliance on reporting requirements would be an inspected item during assistance visits to all field units.

The Navy disagreed with our finding, stating that statistical data are questionable because an FBI backlog in data entry exists and the requirements for the use of plain language on the fingerprint card may have resulted in the FBI not processing submissions. In addition, the Navy did not agree with our recommendation, stating that NCIS had policy and implementing procedures

already in place that adequately address CPM No. 10 and reflect the guidance of the DoD OIG memorandum, November 14, 1996.

The USAF agreed with our recommendation and stated that procedural guidance in the DoD OIG memorandum of November 14, 1996, would be used until a new DoD Instruction was developed. The AFOSI issued a memorandum on December 9, 1996, informing its field units of the suggested DoD OIG policy and emphasized that reporting requirements are a mandatory inspection item for all AFOSI self-inspections and AFOSI Inspector General inspections.

B. Other DoD OIG Reports

In addition, other previous DoD OIG evaluations examined the handling of specific types of investigations by the Military Service law enforcement organizations, such as sexual assault investigations, or the handling of specific types of evidence, such as deoxyribonucleic acid (DNA). In these reports, the DoD OIG found that the Military Services were not consistently or uniformly submitting required data from criminal investigations for inclusion in the FBI's databases.

Report No. DoDIG-2017-054, "Evaluation of Military Criminal Investigative Organizations' Adult Sexual Assault Investigations," February 14, 2017

This evaluation examined a sample of 378 Army, Navy, USAF, and Marine Corps subjects who were investigated for sexual assault between January 1, 2014 and December 31, 2015, and were required to have their fingerprints collected and submitted to the FBI CJIS Division. We did not evaluate fingerprint collection or submission of final disposition reports training.

We determined that 15 of 378 (4 percent) fingerprint cards were not collected by MCIOs or were collected but not submitted to the FBI. The MCIOs had an overall fingerprint collection noncompliance rate of 4 percent.

We recommended that the Commander, U.S. Army Criminal Investigation Command (USACIDC), and Commander, AFOSI, implement measures to improve compliance with supervisory case review requirements. We also recommended that the Director, NCIS, and Commander, AFOSI, implement measures to improve compliance with subject processing requirements.

The Commander, USACIDC, did not directly respond to our recommendation, but offered an alternative. The Commander's intention to complete an internal study to determine the continued necessity of his internal policy requirement

is within the scope of his authority. According to the Assistant Deputy Chief of Staff for Operations, Headquarters, USACIDC, the internal study would be completed by July 12, 2017. We requested that the Commander, USACIDC, provide additional comments to this report concerning the status of the Group level case review requirement while the internal study is underway. In addition, we requested the results of USACIDC's internal study upon its completion.

The Executive Assistant Director, NCIS, agreed with comment to our recommendation to implement measures to improve compliance with subject processing requirements. NCIS is adding documentation of a subject's release to its "Standardized Case Review Sheet," thus making it an inspection item for the first-line supervisor. NCIS completed the draft form on February 3, 2017, and expects to complete the executive review and final approval for dissemination to the field no later than February 17, 2017. We requested NCIS provide a copy of the updated form upon completion.

The Vice Commander, AFOSI, partially agreed with comment to our recommendation to implement measures to improve compliance with supervisory case review requirements. In response to our recommendation, AFOSI specifically addressed our recommendation by reemphasizing the requirement of documenting case reviews during AFOSI's senior leader conference on January 24, 2017. In addition, the Vice Commander, AFOSI, stated, "The requirement to conduct and document supervisory case reviews is an AFOSI requirement, not a DoD requirement. While DOD policy emphasizes the need for MCIOs to conduct thorough investigations, execution oversight and investigation quality control are the responsibility of the AFOSI Commander." We agreed with the Vice Commander, AFOSI, that the supervisory case review is not a DoD requirement. However, we assessed AFOSI using its own procedures and internal controls concerning the conduct and documentation of supervisory case reviews and our review identified deficiencies related to those controls.

The Vice Commander, AFOSI, agreed with comment to our recommendation to implement measures to improve compliance with subject processing requirements. AFOSI modified its policy in August 2016, to comply with Air Force Instruction 90-505, "Suicide Prevention Program," October 6, 2014. Since then, subjects may only be released to their commander or first sergeant and such release must be documented in the case file.

Report No. DoDIG-2015-094, "Evaluation of Military Criminal Investigative Adult Sexual Assault Investigations," March 24, 2015

This evaluation examined a sample of 536 Army, Navy, USAF, and Marine Corps subjects who were investigated for sexual assault between January 1, 2012 and December 31, 2013, and were required to have their fingerprints collected and submitted to the FBI CJIS Division. We did not evaluate fingerprint collection or submission of final disposition reports training.

We determined that 51 of 536 (10 percent) fingerprint cards were not collected by MCIOs, or were collected but not submitted to the FBI CJIS Division. The MCIOs had an overall fingerprint collection noncompliance rate of 10 percent.

We recommended that the Director and Commanders of the MCIOs enhance supervision and training to highlight the critical role physical evidence has in sexual assault investigations. We also recommended that the Director, NCIS, and Commander, AFOSI, enhance supervision regarding responses to crime scenes as required by revised policy. Finally, we recommended that the Commanders of the USACIDC and the AFOSI implement measures to improve the issuance and recording of the issuance of the DD Form 2701, "Initial Information for Victims and Witnesses of Crime," and implement measures to improve the notification and recording of the notification of the Sexual Assault Response Coordinator.

The Commander, USACIDC, agreed with our recommendation and pointed out USACIDC's guidance changes and planned sexual assault training as efforts to emphasize thorough completion of sexual assault investigations.

The Director, NCIS, agreed and highlighted its revision of policy regarding sex offenses, implementation of enhanced supervisory actions, and a mandate for designated investigators and supervisors to attend the NCIS Advanced Adult Sexual Assault Investigations Training Program.

The Commander, AFOSI, agreed with our recommendation and stated that AFOSI revised its Advanced General Crimes Investigators Course to highlight increased emphasis on the skills supervisors need to have in order to oversee violent crime investigations. The Commander also highlighted AFOSI's recent revision to its crime scene manual with enhanced guidance pertaining to the collection of physical, biological, and digital evidence at crime scenes.

Report No. DoDIG-2015-055, "Evaluation of Military Criminal Investigative Organizations' Child Death Investigations," December 22, 2014

This evaluation examined a sample of 82 Army, Navy, USAF, and Marine Corps Service members who were subjects in child death investigations between October 1, 2012, and September 30, 2013, and were required to have their fingerprints collected and submitted to the FBI CJIS Division. We did not evaluate fingerprint collection or submission of final disposition reports training.

We determined that 2 of 82 (2 percent) fingerprints were not collected by MCIOs or were collected but were not submitted to the FBI CJIS Division. The MCIOs had an overall fingerprint collection noncompliance rate of 2 percent.

We recommended that the Director and Commanders of the MCIOs continue to ensure thorough child death investigations. Ensure thorough death scene documentation as well as evidence identification and collection, and forensic identification and documentation of post-mortem decomposition in all child death scene processing, through increased supervisory reviews, and internal oversight. We also recommended that the Commander, USACIDC, ensure documentation of all headquarters-level quality assurance reviews of final reports.

The Director and Commanders of the MCIOs concurred with our recommendations and management comments were responsive.

Report No. DoDIG-2014-105, "Evaluation of Military Criminal Investigative Organizations' Child Sexual Assault Investigations," September 9, 2014

This evaluation examined a sample of 163 Army, Navy, USAF, and Marine Corps subjects who were investigated for the sexual assault of children between April 2013 and July 2013, and were required to have their fingerprints collected and submitted to the FBI CJIS Division. We did not evaluate fingerprint collection or submission of final disposition reports training.

We determined that 24 of 163 (15 percent) fingerprints were not collected by MCIOs, or were collected but were not submitted to the FBI CJIS Division. The MCIOs had an overall fingerprint card collection noncompliance rate of 16 percent.

We recommended that the Director and Commanders of the MCIOs continue to emphasize thorough completion of all child sexual assault investigations, implement measures to improve the issuing and recording the DD Form 2701 and consider enhancement of existing policy guidance regarding the collection of clothing and digital evidence. We also recommended that the Director, NCIS improve guidance and enhance supervision regarding responses to crime scenes.

The Commander, USACIDC, expressed concern regarding our review processes. The project's evaluation and reporting processes were independently evaluated and were found to comply with the Council of Inspectors General for Integrity and Efficiency standards. We considered management comments when preparing the final report and made changes as appropriate. The Director, NCIS, and Commander of the AFOSI concurred with our recommendations and management comments were responsive.

Report No. DoDIG-2013-091, "Evaluation of Military Criminal Investigative Organizations' Sexual Assault Investigations," July 9, 2013

This evaluation examined a sample of 501 Army, Navy, USAF, and Marine Corps sexual assault subjects identified in investigation reports that closed out in 2010, and were required to have their fingerprints collected and submitted to the FBI for inclusion in the IAFIS criminal history database. We did not evaluate fingerprint collection or submission of final disposition reports training.

We determined that 101 of 501 (20 percent) fingerprints were not collected by MCIOs, or were collected but were not submitted to the FBI. The MCIOs had an overall fingerprint collection noncompliance rate of 20 percent.

We recommended that the Director and Commanders of the MCIOs implement measures to improve crime scene processing, evidence collection, supervision, and documentation to reduce investigative deficiencies. We also recommended that the Commanders of USACIDC and AFOSI evaluate their existing policies regarding the collection of clothing worn by suspects and victims subsequent to a sexual assault.

Additionally, we recommended that the Director of NCIS evaluate current policy regarding the timely notification and coordination with servicing judge advocates upon the initiation of sexual assault cases, as well as the continued coordination with the servicing judge advocates until final case disposition. We also recommended that the Commander of USACIDC and Director of NCIS evaluate existing policy guidance regarding the timely completion of records checks.

Finally, we recommended that the Director of NCIS implement policy requiring Sexual Assault Response Coordinator notifications and documentation.

The Commander, USACIDC, agreed with our recommendations. The Director, NCIS, and the Commander, AFOSI, agreed in part with our recommendations, but objected to our assessment in a number of areas in the report.

IX. Appendix B

Acronyms and Abbreviations

AFB	Air Force Base
AFI	Air Force Instruction
AFOSI	Air Force Office of Special Investigations
ATF	Bureau of Alcohol, Tobacco, Firearms, and Explosives
BDOC	Base Defense Operations Center
CCSO	Comal County Sheriff's Office
CITP	Criminal Investigator Training Program
CJIS	Criminal Justice Information Services
CTF	Correctional Treatment File
CYFD	Children, Youth and Families Department
DBIDS	Defense Biometric Identification System
DCIO	Defense Criminal Investigative Organization
DNA	Deoxyribonucleic Acid
FBI	Federal Bureau of Investigation
FD	Federal Document
FFL	Federal Firearms Licensed
FLETC	Federal Law Enforcement Training Center
FOUO	For Official Use Only
HAFB	Holloman Air Force Base
I2MS	Investigative Information Management System
IAFIS	Integrated Automated Fingerprint Identification System
III	Interstate Identification Index
LEO	Law Enforcement Officer
LOC	Letter of Counseling
LOR	Letter of Reprimand
MCIO	Military Criminal Investigative Organization
MFR	Memorandum for Record
NBPD	New Braunfels Police Department
NCIC	National Crime Information Center
NCIS	Naval Criminal Investigative Service
NCOIC	Non-Commissioned Officer-in-Charge
NICS	National Instant Criminal Background Check System
OIG	Office of Inspector General

- PBHS** Peak Behavioral Health Services
- PTA** Pretrial Agreement
- PTC** Pretrial Confinement
- SAIC** Special Agent-in-Charge
- SNCO** Senior Non-Commissioned Officer
- U.S.C.** United States Code
- UCMJ** Uniform Code of Military Justice
- USACIDC** U.S. Army Criminal Investigation Command
- USAF** United States Air Force



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