



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

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

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EXECUTIVE SUMMARY¹

The U.S. Department of Justice, Office of the Inspector General, Audit Division, has completed an audit of the Southwest Border Prosecution Initiative (SWBPI) funding awarded by the Office of Justice Programs (OJP) to Coconino County, Arizona. From fiscal years (FY) 2006 through 2008, Coconino County received SWBPI funding totaling \$1,015,733.

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

The SWBPI was established in FY 2002, when Congress began appropriating funds to reimburse state, county, parish, tribal, and municipal governments for costs associated with the prosecution of criminal cases declined by local U.S. Attorneys' offices. The SWBPI reimburses the eligible applicants for costs incurred during prosecution for three major categories based on the types of services provided: (1) prosecution only, (2) pre-trial detention only, and (3) both prosecution and pre-trial detention. Reimbursements received from SWBPI funding may be used by applicant jurisdictions for any purpose not otherwise prohibited by federal law. For FY 2011, Congress appropriated \$31 million for the SWBPI.

¹ Coconino County's response to this report contains limited information that may be protected by the Privacy Act of 1974, 5 U.S.C. § 552(a), may implicate the privacy rights of identified individuals, or may be law enforcement sensitive. Therefore, the Office of the Inspector General redacted such portions of the response to create this public version of the report.

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

We found that Coconino County claimed and was reimbursed for cases that were ineligible under the SWBPI guidelines. Based on the deficiencies listed below, we identified questioned costs totaling \$856,610. Specifically, we found that Coconino County:

- Received unallowable reimbursements totaling \$849,211 for 198 cases that were not federally initiated.
- Received excess reimbursements totaling \$7,399 for nine cases that were submitted under the both prosecution and pre-trial detention category that did not meet the requirements for pre-trial detention.

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

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INTRODUCTION

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

Background

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

For FY 2011, Congress appropriated \$31 million in funding for the SWBPI to reimburse state, county, parish, tribal, or municipal governments for costs associated with the prosecution of criminal cases declined by local U.S. Attorneys' offices. Reimbursements received from the SWBPI funding may be used by applicant jurisdictions for any purpose not otherwise prohibited by federal law; however, the direct support and enhancement of jurisdictions' prosecutorial and detention services are encouraged.

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

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

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

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

For cases disposed of between FY 2002 and the second quarter of FY 2008, the disposition period of a case with both prosecution and pre-trial detention services was calculated using the prosecution disposition period. For cases disposed of from FYs 2002 through 2006, to meet the pre-trial detention services requirement, the defendant must have been incarcerated overnight – from 1 calendar day to the next. For cases disposed after FY 2006, to meet the pre-trial detention services requirement, the defendant must have been detained for at least 24 hours.

For cases disposed of between the third and fourth quarters of FY 2008, jurisdictions were to only receive reimbursements for the actual number of prosecutor hours charged to the case and the number of days the defendant was detained prior to the disposition of the case. Prosecutors' salaries charged to the case are based on the average hourly rate for the

county's prosecutors and cannot include fringe benefits. Detention reimbursements are based on the number of days the defendant was detained prior to the disposition and are calculated using the published federal detention per diem rate for the jurisdiction.

Pursuant to the SWBPI guidelines, when reimbursement requests exceed available funding, applicants receive funds on a uniform, pro-rata basis. The following table shows the pro-rata reimbursement percentages for Coconino County.¹

PRO-RATA REIMBURSEMENT BASIS TO COCONINO COUNTY

REPORTING PERIOD	START DATE	END DATE	PERCENTAGE REIMBURSED
FY06, 2 nd Quarter	01/01/06	03/31/06	47.61%
FY06, 3 rd Quarter	04/01/06	06/30/06	43.09%
FY06, 4 th Quarter	07/01/06	09/30/06	44.05%
FY07, 1 st Quarter	10/01/06	12/31/06	52.34%
FY07, 2 nd Quarter	01/01/07	03/31/07	52.45%
FY07, 3 rd Quarter	04/01/07	06/30/07	49.03%
FY07, 4 th Quarter	07/01/07	09/30/07	57.26%
FY08, 1 st Quarter	10/01/07	12/31/07	86.97%
FY08, 2 nd Quarter	01/01/08	03/31/08	71.63%
FY08, 3 rd Quarter	04/01/08	06/30/08	111.05%
FY08, 4 th Quarter	07/01/08	09/30/08	109.15%

Source: Office of Justice Programs

¹ Coconino County did not request any reimbursements for the first quarter of FY 2006.

As shown in the following table, Coconino County received reimbursements from SWBPI funds totaling \$1,015,733 from FYs 2006 through 2008. Coconino County has not requested any reimbursements since the fourth quarter of FY 2008.

REIMBURSEMENTS TO COCONINO COUNTY²

REPORTING PERIOD	START DATE	END DATE	AMOUNT REQUESTED	AMOUNT REIMBURSED
FY06, 2 nd Quarter	01/01/06	03/31/06	\$382,500	\$182,124
FY06, 3 rd Quarter	04/01/06	06/30/06	400,000	172,340
FY06, 4 th Quarter	07/01/06	09/30/06	205,000	90,298
FY07, 1 st Quarter	10/01/06	12/31/06	120,000	62,802
FY07, 2 nd Quarter	01/01/07	03/31/07	212,500	111,452
FY07, 3 rd Quarter	04/01/07	06/30/07	170,000	83,357
FY07, 4 th Quarter	07/01/07	09/30/07	102,500	58,696
FY08, 1 st Quarter	10/01/07	12/31/07	195,500	169,594
FY08, 2 nd Quarter	01/01/08	03/31/08	87,500	62,673
FY08, 3 rd Quarter	04/01/08	06/30/08	8,638	9,593
FY08, 4 th Quarter	07/01/08	09/30/08	11,731	12,805
TOTAL				\$1,015,733

Source: Office of Justice Programs

² Throughout the report, the differences in the total amounts are due to rounding, in that the sum of individual numbers prior to rounding reported may differ from the sum of the individual numbers rounded.

FINDINGS AND RECOMMENDATIONS

We found that Coconino County received SWBPI funds totaling \$856,610 for 208 cases that were not eligible for reimbursement pursuant to the SWBPI guidelines. Specifically, we found that Coconino County claimed and was reimbursed \$849,211 for 198 cases that were not federally initiated. We also found that Coconino County received excess reimbursements totaling \$7,399 for nine cases that were submitted under the both prosecution and pre-trial detention category that did not meet the requirements for pre-trial detention.

Case Eligibility

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

We analyzed the 232 cases submitted for reimbursement by Coconino County to determine whether the cases were eligible for reimbursement under the requirements of the SWBPI guidelines.

Based on our review, we found that Coconino County received SWBPI funds totaling \$856,610 for 208 cases that were not eligible for reimbursement pursuant to the SWBPI guidelines. A detailed listing of the cases claimed by Coconino County that were not eligible for reimbursement is provided in Appendix III. Specifically, we found that Coconino County:

- Received unallowable reimbursements totaling \$849,211 for 198 cases that were not federally initiated.
- Received excess reimbursements totaling \$7,399 for nine cases that were submitted under the both prosecution and pre-trial detention category that did not meet the requirements for pre-trial detention.
- Received reimbursement for one case that was unsupported because the case information could not be located.³

Accuracy of Reimbursements

Coconino County requested reimbursements from SWBPI funds through an on-line application available on the Bureau of Justice Assistance website. Pursuant to the SWBPI guidelines, for FYs 2006 through 2007 eligible cases were reimbursed using a uniform payment per case schedule based on the length of disposition, which is calculated from the date of the suspect's arrest through case resolution. Resolution of the case is defined as dismissal, conviction, or plea.

We reviewed the reimbursement requests submitted by Coconino County for FYs 2006 through 2007 to determine if the number of cases claimed for each disposition category was supported by the detailed case listings obtained during fieldwork.⁴ Based on our review, we determined that the reimbursement requests were supported by the master case listing.

³ There are no questioned costs associated with the one case that was unsupported because the case was already questioned as not federally initiated.

⁴ We did not reconcile cases submitted to OJP after FY 2007 because starting in the first quarter of FY 2008, SWBPI recipients were required to provide OJP a detailed listing of cases for which they were requesting reimbursement. Prior to the third quarter of FY 2008, SWBPI recipients were only required to provide OJP the number of cases for which they were requesting reimbursement for each disposition category.

Recommendations

We recommend that OJP:

1. Remedy the \$849,211 in questioned costs received by Coconino County for 198 cases that were not federally initiated.
2. Remedy the \$7,399 in questioned costs received by Coconino County for nine cases that were submitted under the both prosecution and pre-trial detention category that did not meet the requirements for pre-trial detention.

OBJECTIVES, SCOPE, AND METHODOLOGY

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

We conducted this audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Our audit concentrated on, but was not limited to, the reimbursements claimed from January 1, 2006 through September 30, 2008.

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

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

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

SCHEDULE OF DOLLAR-RELATED FINDINGS

QUESTIONED COSTS:	<u>AMOUNT</u>	<u>PAGE</u>
Unallowable cases that were not federally initiated.	\$849,211	6
Excess reimbursements for cases that were erroneously claimed as both prosecution and pre-trial detention that did not meet the pre-trial detention requirement.	\$7,399	6
Total Questioned Costs:⁵	\$856,610	
TOTAL DOLLAR-RELATED FINDINGS	\$856,610	

⁵ **Questioned Costs** are expenditures that do not comply with legal, regulatory or contractual requirements, or are not supported by adequate documentation at the time of the audit, or are unnecessary or unreasonable. Questioned costs may be remedied by offset, waiver, recovery of funds, or the provision of supporting documentation.

DETAILS OF QUESTIONED COSTS

CASES WHICH WERE NOT FEDERALLY INITIATED

CASE NO.	INITIATING AGENCY	OFFENSE	REIMBURSEMENT CATEGORY	AMOUNT QUESTIONED
CR2007-0652	DPS ⁶	Transportation of marijuana for sale	91+ Days	\$8,697
CR2007-0421	DPS	Transportation of narcotic drugs	91+ Days	8,697
CR2007-0650	DPS	Transportation of dangerous drugs	91+ Days	8,697
CR2007-0651	DPS	Transportation of dangerous drugs	91+ Days	8,697
CR2007-0354	DPS	Transportation of marijuana for sale	91+ Days	8,697
CR2007-0681	DPS	Transportation of narcotic drugs	91+ Days	8,697
CR2007-0290	DPS	Transportation of narcotic drugs	91+ Days	8,697
CR2007-0054	DPS	Transportation of narcotic drugs	91+ Days	8,697
CR2007-0130	DPS	Transportation of narcotic drugs	91+ Days	8,697
CR2006-1148	DPS	Transportation of marijuana for sale	91+ Days	8,697
CR2007-0395	DPS	Transportation of marijuana for sale	91+ Days	8,697
CR2004-1246	DPS	Transportation of dangerous drugs	91+ Days	8,697
CR2007-0639	DPS	Transportation of narcotic drugs for sale	91+ Days	8,697
CR2007-0007	DPS	Possession of Marijuana for sale	91+ Days	8,697
CR2005-0257	DPS	Possession of Marijuana for sale	91+ Days	8,697
CR2004-1216	DPS	Transportation of dangerous drugs	91+ Days	8,697
CR2007-0800	DPS	Possession of Marijuana for sale	91+ Days	7,163
CR2007-0398	DPS	Transportation of dangerous drugs	91+ Days	7,163
CR2007-0816	DPS	Transportation of marijuana for sale	91+ Days	7,163
CR2007-0970	DPS	Transportation of marijuana for sale	91+ Days	7,163

⁶ Arizona Department of Public Safety (DPS)

CASE No.	INITIATING AGENCY	OFFENSE	REIMBURSEMENT CATEGORY	AMOUNT QUESTIONED
CR2007-0971	DPS	Transportation of marijuana for sale	91+ Days	7,163
CR2007-1055	DPS	Possession of drug paraphernalia	31 - 90 Days	6,523
CR2007-1056	DPS	Transportation of dangerous drugs	31 - 90 Days	6,523
CR2007-0313	DPS	Transportation of narcotic drugs for sale	91+ Days	5,726
CR2007-0201	DPS	Transportation of narcotic drugs for sale	91+ Days	5,726
CR2007-0423	DPS	Transportation of narcotic drugs for sale	91+ Days	5,726
CR2007-0516	DPS	Transportation of narcotic drugs for sale	91+ Days	5,726
CR2007-0311	DPS	Transportation of marijuana for sale	91+ Days	5,726
CR2007-0150	DPS	Transportation of narcotic drugs for sale	91+ Days	5,726
CR2004-0552	DPS	Transportation of marijuana for sale	91+ Days	5,726
CR2003-610	DPS	Transportation of narcotic drugs for sale	91+ Days	5,726
CR2007-1077	DPS	Transportation of narcotic drugs for sale	31 - 90 Days	5,372
CR2008-0085	DPS	Possession of Marijuana for sale	31 - 90 Days	5,372
CR2006-0501	DPS	False reporting to law enforcement	91+ Days	5,245
CR2006-0766	DPS	Transportation of marijuana for sale	91+ Days	5,245
CR2006-1037	DPS	Possession of marijuana for sale	91+ Days	5,245
CR2006-1121	DPS	Transportation of dangerous drugs for sale	91+ Days	5,245
CR2006-1122	DPS	Transportation of dangerous drugs for sale	91+ Days	5,245
CR2006-1109	DPS	Transportation of marijuana for sale	91+ Days	5,245
CR2006-0989	DPS	Transportation of marijuana for sale	91+ Days	5,245
CR2006-0988	DPS	Possession of marijuana for sale	91+ Days	5,245
CR2006-0767	DPS	Transportation of marijuana for sale	91+ Days	5,245
CR2006-0580	DPS	Transportation of marijuana for sale	91+ Days	5,245
CR2006-0197	DPS	Transportation of marijuana for sale	91+ Days	5,245

CASE NO.	INITIATING AGENCY	OFFENSE	REIMBURSEMENT CATEGORY	AMOUNT QUESTIONED
CR2002-0568	DPS	Possession of dangerous drugs for sale	91+ Days	5,245
CR2006-0611	DPS	Sale of narcotic drugs	91+ Days	5,234
CR2006-0612	DPS	Misconduct involving weapons/possession of narcotics	91+ Days	5,234
CR2006-0240	DPS	Transportation of marijuana for sale	91+ Days	5,234
CR2006-0986	DPS	Transportation of marijuana for sale	91+ Days	5,234
CR2006-0741	DPS	Transportation of marijuana for sale	91+ Days	5,234
CR2006-0716	DPS	Transportation of dangerous drugs for sale	91+ Days	5,234
CR2006-0683	DPS	Transportation of marijuana for sale	91+ Days	5,234
CR2006-0481	DPS	Transportation of marijuana for sale	91+ Days	5,234
CR2006-0320	DPS	Transportation of marijuana for sale	91+ Days	5,234
CR2006-0189	DPS	Transportation of marijuana for sale	91+ Days	5,234
CR2007-0284	DPS	Transportation of marijuana for sale	91+ Days	4,903
CR2006-1186	DPS	Transportation of marijuana for sale	91+ Days	4,903
CR2006-0715	DPS	Transportation of drugs/Unlawful use of means of transportation	91+ Days	4,903
CR2006-0502	DPS	Transportation of marijuana for sale	91+ Days	4,903
CR2004-0023	DPS	Transportation of narcotic drugs for sale	91+ Days	4,903
CR2007-0199	DPS	Transportation of marijuana for sale	91+ Days	4,903
CR2006-1158	DPS	Transportation of marijuana for sale	91+ Days	4,903
CR2006-1157	DPS	Transportation of marijuana for sale	91+ Days	4,903
CR2007-0128	DPS	Transportation of marijuana for sale	91+ Days	4,903
CR2006-1160	DPS	Transportation of marijuana for sale	91+ Days	4,903
CR2006-1007	DPS	Transportation of marijuana for sale	91+ Days	4,903
CR2004-0545	DPS	Transportation of narcotic drugs for sale	91+ Days	4,903

CASE NO.	INITIATING AGENCY	OFFENSE	REIMBURSEMENT CATEGORY	AMOUNT QUESTIONED
CR2005-1177	DPS	Transportation of dangerous drugs	91+ Days	4,761
CR2005-0898	DPS	Transportation of marijuana for sale	91+ Days	4,761
CR2005-0734	DPS	Transportation of marijuana for sale	91+ Days	4,761
CR2004-0743	DPS	Transportation of marijuana for sale	91+ Days	4,761
CR2005-1090	DPS	Transportation of marijuana for sale	91+ Days	4,761
CR2005-1089	DPS	Transportation of marijuana for sale	91+ Days	4,761
CR2005-1134	DPS	Transportation of marijuana for sale	91+ Days	4,761
CR2005-0831	DPS	Transportation of marijuana for sale	91+ Days	4,761
CR2005-1043	DPS	Transportation of marijuana for sale	91+ Days	4,761
CR2005-0881	DPS	Transportation of narcotic drugs for sale	91+ Days	4,761
CR2005-0733	DPS	Transportation of marijuana for sale	91+ Days	4,761
CR2005-0812	DPS	Conspiracy to commit sale of marijuana	91+ Days	4,761
CR2005-0811	DPS	Transportation of narcotic drugs for sale	91+ Days	4,761
CR2005-0639	DPS	Transportation of marijuana for sale	91+ Days	4,761
CR2005-0618	DPS	Transportation of marijuana for sale	91+ Days	4,761
CR2005-0584	DPS	Transportation of marijuana for sale	91+ Days	4,761
CR2005-0436	DPS	Transportation of dangerous drugs for sale	91+ Days	4,761
CR2005-0566	DPS	Transportation of narcotic drugs for sale	91+ Days	4,761
CR2005-0222	DPS	Transportation of marijuana for sale	91+ Days	4,761
CR2005-0221	DPS	Transportation of marijuana for sale	91+ Days	4,761
CR2005-0423	DPS	Transportation of marijuana for sale	91+ Days	4,761
CR2005-0437	DPS	Transportation of marijuana for sale	91+ Days	4,761
CR2005-0255	DPS	Transportation of marijuana for sale	91+ Days	4,761
CR2005-0109	DPS	Conspiracy to commit sale of dangerous drugs	91+ Days	4,761

CASE NO.	INITIATING AGENCY	OFFENSE	REIMBURSEMENT CATEGORY	AMOUNT QUESTIONED
CR2004-0686	DPS	Transportation of narcotic drugs for sale	91+ Days	4,761
CR2006-0588	DPS	Transportation of marijuana for sale	91+ Days	4,405
CR2006-0479	DPS	Transportation of marijuana for sale	91+ Days	4,405
CR2006-0414	DPS	Possession of drug paraphernalia	91+ Days	4,405
CR2006-0191	DPS	Transportation of marijuana for sale	91+ Days	4,405
CR2005-0964	DPS	Transportation of dangerous drugs	91+ Days	4,405
CR2005-0567	DPS	Transportation of narcotic drugs for sale	91+ Days	4,405
CR2006-0579	DPS	Sale of marijuana	91+ Days	4,405
CR2006-0566	DPS	Transportation of marijuana for sale	91+ Days	4,405
CR2006-0568	DPS	Sale of marijuana	91+ Days	4,405
CR2006-0482	DPS	Transportation of marijuana for sale	91+ Days	4,405
CR2006-0459	DPS	Transportation of marijuana for sale	91+ Days	4,405
CR2006-0196	DPS	Transportation of marijuana for sale	91+ Days	4,405
CR2005-1203	DPS	Transportation of marijuana for sale	91+ Days	4,405
CR2006-0038	DPS	Transportation of marijuana for sale	91+ Days	4,405
CR2005-1243	DPS	Transportation of marijuana for sale	91+ Days	4,405
CR2005-1248	DPS	Transportation of narcotic drugs for sale	91+ Days	4,309
CR2005-1160	DPS	Transportation of marijuana for sale	91+ Days	4,309
CR2006-0135	DPS	Transportation of marijuana for sale	91+ Days	4,309
CR2006-0136	DPS	Transportation of marijuana for sale	91+ Days	4,309
CR2006-0079	DPS	Transportation of dangerous drugs for sale	91+ Days	4,309
CR2005-1242	DPS	Transportation of marijuana for sale	91+ Days	4,309
CR2006-0007	DPS	Transportation of marijuana for sale	91+ Days	4,309
CR2006-0008	DPS	Transportation of marijuana for sale	91+ Days	4,309
CR2006-0198	DPS	Transportation of marijuana for sale	91+ Days	4,309

CASE No.	INITIATING AGENCY	OFFENSE	REIMBURSEMENT CATEGORY	AMOUNT QUESTIONED
CR2005-1240	DPS	Transportation of marijuana for sale	91+ Days	4,309
CR2005-1227	DPS	Transportation of marijuana for sale	91+ Days	4,309
CR2005-1249	DPS	Transportation of narcotic drugs for sale	91+ Days	4,309
CR2006-0036	DPS	Transportation of marijuana for sale	91+ Days	4,309
CR2006-0124	DPS	Transportation of marijuana for sale	91+ Days	4,309
CR2005-1164	DPS	Transportation of marijuana for sale	91+ Days	4,309
CR2006-0080	DPS	Transportation of dangerous drugs for sale	91+ Days	4,309
CR2005-1161	DPS	Transportation of marijuana for sale	91+ Days	4,309
CR2005-1178	DPS	Transportation of dangerous drugs for sale	91+ Days	4,309
CR2005-1159	DPS	Transportation of marijuana for sale	91+ Days	4,309
CR2005-1166	DPS	Transportation of marijuana for sale	91+ Days	4,309
CR2005-1241	DPS	Possession of marijuana for sale	91+ Days	4,309
CR2006-0123	DPS	Transportation of marijuana for sale	91+ Days	4,309
CR2005-1044	DPS	Transportation of marijuana for sale	91+ Days	4,309
CR2006-0039	DPS	Transportation of marijuana for sale	91+ Days	4,309
CR2005-1162	DPS	Transportation of marijuana for sale	91+ Days	4,309
CR2005-1163	DPS	Transportation of marijuana for sale	91+ Days	4,309
CR2005-0829	DPS	Transportation of marijuana for sale	91+ Days	4,309
CR2005-0177	DPS	Transportation of marijuana for sale	91+ Days	4,309
CR2004-0306	DPS	Transportation of dangerous drugs for sale	91+ Days	4,309
CR2003-0654	DPS	Transportation of narcotic drugs for sale	91+ Days	4,309
CR2003-0655	DPS	Transportation of narcotic drugs for sale	91+ Days	4,309
CR2007-0397	DPS	Transportation of marijuana for sale	31 - 90 Days	4,295

CASE NO.	INITIATING AGENCY	OFFENSE	REIMBURSEMENT CATEGORY	AMOUNT QUESTIONED
CR2007-0422	DPS	Transportation of marijuana for sale	31 - 90 Days	4,295
CR2007-0096	DPS	Possession or use of narcotic drugs	31 - 90 Days	4,295
CR2007-0168	DPS	Theft/Forgery	31 - 90 Days	3,934
CR2006-1213	DPS	Fraudulent Schemes and artifices	31 - 90 Days	3,934
CR2006-1104	DPS	Transportation of marijuana for sale	31 - 90 Days	3,934
CR2006-1081	DPS	Transportation of marijuana for sale	31 - 90 Days	3,934
CR2007-0051	DPS	Conspiracy to commit transportation of marijuana for sale	31 - 90 Days	3,934
CR2007-0052	DPS	Conspiracy to commit transportation of marijuana for sale	31 - 90 Days	3,934
CR2007-0310	DPS	Transportation of marijuana for sale	31 - 90 Days	3,678
CR2007-0202	DPS	Transportation of marijuana for sale	31 - 90 Days	3,678
CR2007-0200	DPS	Transportation of marijuana for sale	31 - 90 Days	3,678
CR2006-0349	DPS	Transportation of dangerous drugs	31 - 90 Days	3,571
CR2006-0102	DPS	Transportation of marijuana for sale	31 - 90 Days	3,571
CR2005-1167	DPS	Transportation of marijuana for sale	31 - 90 Days	3,571
CR2005-1165	DPS	Transportation of marijuana for sale	31 - 90 Days	3,571
CR2005-1226	DPS	Transportation of marijuana for sale	31 - 90 Days	3,571
CR2005-1244	DPS	Transportation of marijuana for sale	31 - 90 Days	3,571
CR2008-0048	DPS	Transportation of narcotic drugs for sale	N/A	3,557
CR2006-0622	DPS	Transportation of marijuana for sale	31 - 90 Days	3,304
CR2006-0695	DPS	Transportation of dangerous drugs	31 - 90 Days	3,304
CR2006-0192	DPS	Transportation of dangerous drugs	31 - 90 Days	3,231
CR2006-0201	DPS	Transportation of marijuana for sale	31 - 90 Days	3,231
CR2006-0200	DPS	Transportation of marijuana for sale	31 - 90 Days	3,231
CR2006-0413	DPS	Transportation of dangerous drugs for sale	31 - 90 Days	3,231

CASE NO.	INITIATING AGENCY	OFFENSE	REIMBURSEMENT CATEGORY	AMOUNT QUESTIONED
CR2004-0691	DPS	Transportation of marijuana for sale	N/A	2,549
CR2007-0734	DPS	Possession or use of marijuana	N/A	2,371
CR2008-331FE	DPS	Possession of narcotic drug for sale	0 - 15 Days	1,791
CR2007-0171	DPS	Possession or use of marijuana	N/A	1,390
CR2007-1126	DPS	Possession of marijuana for sale	N/A	1,159
CR2007-1127	DPS	Possession of marijuana for sale	N/A	1,159
CR2007-1128	DPS	Possession of marijuana for sale	N/A	1,159
CR2008-0301	DPS	Transportation of marijuana for sale	N/A	711
CR2008-0351	DPS	Possession or use of marijuana	N/A	711
CR2008-0159	DPS	Transportation of marijuana for sale	N/A	695
CR2008-0078	DPS	Possession of marijuana for sale	N/A	569
CR2008-0299	DPS	Transportation of dangerous drugs	N/A	474
CR2008-0332	DPS	Conspiracy to commit transportation	N/A	474
CR2008-0337	DPS	Possession or use of dangerous drugs	N/A	474
CR2001-0287	DPS	Sale of marijuana	N/A	379
CR2007-0679	DPS	Transportation of marijuana for sale	N/A	371
CR2007-0680	DPS	Transportation of marijuana for sale	N/A	371
CR2008-0430	DPS	Possession of dangerous drugs for sale	N/A	237
CR2007-1207	DPS	Transportation of marijuana for sale	N/A	232
CR2008-0130	DPS	Transportation of marijuana for sale	N/A	232
CR2004-0895	DPS	Forgery/Transportation of marijuana for sale	N/A	190
CR2008-0198	DPS	Possession of narcotic drugs for sale	N/A	190
CR2008-0306	DPS	Possession of marijuana for sale	N/A	190
CR2008-0355	DPS	Possession of narcotic drugs for sale	N/A	190
CR2007-1187	DPS	Possession of marijuana for sale	N/A	142

CASE NO.	INITIATING AGENCY	OFFENSE	REIMBURSEMENT CATEGORY	AMOUNT QUESTIONED
CR2008-0095	DPS	Transportation of marijuana for sale	N/A	142
CR2008-0196	DPS	Possession of narcotic drugs for sale	N/A	142
CR2008-0305	DPS	Transportation of marijuana for sale	N/A	142
CR2008-0331	DPS	Possession of marijuana for sale	N/A	142
CR2008-0333	DPS	Possession of marijuana for sale	N/A	142
CR2008-0334	DPS	Possession of marijuana for sale	N/A	142
CR2008-0354	DPS	Possession of marijuana for sale	N/A	142
CR2008-0605	DPS	Transportation of marijuana for sale	N/A	142
CR2005-0110	DPS	Transportation of dangerous drugs	N/A	139
CR2008-0195	DPS	Possession of narcotic drugs for sale	N/A	139
Total				\$849,211

CASES WITH UNALLOWABLE DETENTION⁷

CASE NO.	QUARTER SUBMITTED	REIMBURSEMENT CATEGORY	BOOKING DATE	AMOUNT QUESTIONED
CR2006-0989	FY07-2	91+ Days	8/19/2006	\$2,622
CR2006-0965	FY07-2	91+ Days	10/10/2006	2,622
CR2005-0622	FY06-3	91+ Days	2/6/2005	2,154
CR2007-0398	FY08-2	91+ Days	4/27/2007	0
CR2007-1055	FY08-1	31 - 90 Days	12/28/2007	0
CR2006-0580	FY07-2	91+ Days	8/22/2006	0
CR2002-0568	FY07-2	91+ Days	6/6/2007	0
CR2007-0284	FY07-3	91+ Days	6/11/2006	0
CR2005-0423	FY06-2	91+ Days	4/21/2005	0
Total				\$7,399

MISSING CASE FILE INFORMATION

CASE NO.	INITIATING AGENCY	PROSECUTION ONLY OR BOTH	DISPOSITION DATE	AMOUNT QUESTIONED
CR2001-0287	DPS	Pros. Only	9/30/2008	\$0
Total				\$0

⁷ The number of unallowable cases detailed throughout this report includes cases that have had no questioned costs because the cases were questioned previously, based on other SWBPI reimbursement criteria.

COCONINO COUNTY RESPONSE TO THE DRAFT REPORT



COCONINO COUNTY ARIZONA

OFFICE OF THE COUNTY ATTORNEY

We serve the public by advocating for justice.

November 21, 2011

DAVID W. ROZEMA
COUNTY ATTORNEY

MICHAEL J. LESSLER
CHIEF DEPUTY ATTORNEY

KIM MUSSELMAN
SENIOR MANAGER

JONATHAN C. MOSHER
SENIOR TRIAL ATTORNEY

JANE NICOLETTI-JONES
SENIOR CHARGING ATTORNEY

JEAN E. WILCOX
SENIOR CIVIL ATTORNEY

DEPUTY ATTORNEYS

AMMON BARKER

MICHELLE D'ANDREA

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

Re: Response of Coconino County Attorney's Office Draft Audit Report,
Southwest Border Prosecution Initiative Funding, dated October 31, 2011

Dear Mr. Sheeren:

We are in receipt of DOJ/OIG's Draft Audit Report concerning Southwest
Border Prosecution Initiative (SWBPI) funding provided to Coconino County,
Arizona during fiscal years (FY) 2006, 2007 and 2008. By this correspondence, we
provide Coconino County's response within the three (3) week time frame stated in
your letter of October 31, 2011.

While we certainly appreciate the opportunity to respond to the draft audit
and the professionalism of the auditors, which was beyond reproach, we have
several serious concerns about the basis of the draft report and its timing. Our
response first addresses the basis of the questioned reimbursements. In this part of
our response we include additional information clarifying federal law enforcement
involvement early in the investigations of fifty-five (55) cases, and discuss concerns
related to reimbursements for pre-trial detention. The response then turns to the
timing of the audit and related concerns.

COCONINO COUNTY'S OBJECTIONS TO THE BASIS FOR THE
CHALLENGED REIMBURSEMENTS:

1. Fifty five (55) Cases, Reimbursement Costs for which Total
\$226,639 Fall within the Definition of "Federally Initiated Case".

Perhaps what is most notable about the Draft Audit Report is what it does
not question. The report questions neither the necessity nor the reasonableness of
any of the costs for which Coconino County was reimbursed; it notes that of 232
cases reviewed only one appeared not to be supported by adequate documentation;
and, it acknowledges the accuracy of all of the reimbursements. In short, the draft
report does not question the way in which Coconino County administered its

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SWBPI cases. Rather, the report challenges reimbursements in 198 cases – totaling almost \$850,000 – solely on the grounds that they were not “federally initiated”. With this response, we have included a complete listing of the challenged cases (tracking the sequence used in Appendix III of the Draft Audit Report, and attached as Exhibit A), the vast majority of which involved the transportation of illegal and dangerous drugs on interstate highways, and nearly 90% of which resulted in conviction and dozens of jail and prison terms.

The term, “Federally Initiated Case” is defined by the SWBPI Guidelines to include “a case [that] results from a criminal investigation or an arrest involving federal law enforcement authorities for a potential violation of criminal law.” The plain language of this definition is broad. It does not require that a case prosecuted by state or local authorities originate by federal arrest; it only requires that the prosecuted case “result from a criminal *investigation involving* federal law enforcement authorities.” [Emphasis added.] See SWBPI Guidelines, attached as Exhibit B, at 2. Since receiving the audit report, we have consulted with Special Agent, [REDACTED] of the U.S. Drug Enforcement Agency (USDEA), with whom we have worked closely (along with other federal authorities) over several years in investigating and prosecuting drug offenses that constitute felonies under both Arizona and federal law. Special Agent [REDACTED] has identified 55 cases of the 198 challenged by the Draft Audit Report as cases in which USDEA participated in the pre-indictment investigation and which resulted in prosecution by this office. In correspondence dated November 10, 2011 (attached as Exhibit C), Special Agent [REDACTED] explains that in each of the 55 cases USDEA’s involvement included “leads that were passed on to other jurisdictions, known intelligence to DEA regarding continuing activity that became actionable, and or search warrants and arrests that were made from the initial investigation that were started in Coconino County.” The reimbursements for cases in which USDEA Special Agent [REDACTED] documents his agency’s involvement total \$226,639. (A list of the cases with federal agency involvement and the corresponding reimbursements is attached as Exhibit D.)

2. Coconino County has Shouldered the Burden of Prosecuting what are Essentially Federal Crimes involving Federal Law Enforcement Interests.

Beyond specific cases which did, in fact, result from investigations with federal agency involvement, we have a broader but equally serious concern that for many years Coconino County has shouldered the burden of prosecuting what are essentially federal crimes involving federal law enforcement interests.

Coconino County, Arizona, and its county seat, Flagstaff, lie at the crossroads of two of the biggest drug trafficking highways in the United States: Interstate 17, which runs north from Phoenix to Flagstaff, and Interstate 40, which runs cross-country from Los Angeles through North Carolina. In land area, with more than 18,000 square miles, Coconino County, Arizona is the second largest county in the United States. Alone, Coconino County is larger than the states of Maryland, Massachusetts and Vermont. Together with the other Northern Arizona counties of Navajo, Mohave and Apache, the land area is roughly the size of New England.

The use of interstate highways through Coconino County plays a vital role in the illegal distribution of dangerous drugs from Mexico and the Western United States to millions of people in the Midwest, South and Northeast United States. In fact, none of the thousands of pounds of dangerous drugs intercepted on I-17 and I-40 by Arizona DPS and prosecuted by this office were destined for Coconino County, Arizona. They were headed for markets to the east. To be sure, the transportation of illegal drugs along the interstate corridors presents a federal law enforcement problem, national in scope and impact.

To confront the interstate transportation of drugs through the vast expanse of Northern Arizona the federal government has dedicated [REDACTED] DEA special agents. With all due respect to those agents – which is considerable – there is no way that they, or any [REDACTED] law enforcement officers, can be expected to detect and investigate even a tiny fraction of the drug transportation crimes occurring on the interstate highways in this county (let alone other Northern Arizona counties as well). Thus, to a great extent it has fallen to state and local law enforcement agencies in Coconino County and this office to address what, in reality, is a federal law enforcement problem: the transportation of illegal drugs from Mexico and the West Coast to markets in other parts of the United States.

During FYs 2006, 2007 and 2008, and, indeed, for many years before that, state and local law enforcement agencies (LEAs) in Coconino County, together with this office, investigated and prosecuted hundreds of cases involving the interstate transportation of large quantities of dangerous drugs along I-17 and I-40. These investigations resulted in the seizure of thousands of pounds of illegal and dangerous drugs; felony convictions in nearly 90% of the cases indicted; and, the imposition of dozens of jail and prison terms. These cases comprise the lion's share of the reimbursement the Draft Audit Report seeks to claw back. Of the 198 cases challenged in the Draft Audit Report as not "federally initiated" 160 involved the transportation of illegal drugs along interstate corridors. The reimbursement associated with those 160 cases was \$728,043. (A list of the Interstate Drug Transportation Cases and the corresponding reimbursements for each case is attached as Exhibit E.)

The SWBPI grant legislation was designed specifically to alleviate the burden of prosecuting federal crime, which state and local LEAs and prosecutors had borne for years. Accordingly, the SWBPI definition of "federally initiated" is broad (as discussed above). To "involve" federal law enforcement it certainly would have been sufficient to place a phone call to a DEA agent asking whether federal authorities would be interested in investigating and/or prosecuting the case. With such a phone call federal law enforcement authorities would have been afforded the opportunity to complete the investigation and prosecute the case. But, because these cases involved quantities of drugs that did not meet federal investigation and prosecution thresholds, they surely would have been declined and "referred" to state or local authorities (a point that the Draft Audit Report does not contest). Thus, the Draft Audit Report stands on what is really a technicality – the absence of a phone call inquiring about federal interest in the case, which surely would have been declined -- to claw back hundreds of thousands of dollars in reimbursement to a rural county that for years has taken the laboring oar in addressing crime that is indisputably federal in nature, scope and impact.

3. Unallowable Detention Questioned Costs Discrepancy in Audit Report

Of the cases identified in the audit report as Cases With Unallowable Detention we find inaccuracy with the questioned cost of \$2622 for CR2006-0989. As referenced by footnotes 3 and 7 in the Draft Audit Report pgs. 5 and 19, "The number of unallowable cases detailed throughout this report includes cases that have \$0 in questioned costs because the cases were questioned previously, based on other SWBPI reimbursement criteria." This specific case number is questioned previously in the cases questioned as not federally initiated and has a questioned amount of \$5245. This same case is again questioned in the Cases With Unallowable Detention with a questioned amount of \$2622. The questioned amount in Cases With Unallowable Detention should be \$0 as it is for the other cases previously questioned. Please refer to Exhibit A for highlighted case CR2006-0989 appearing in both the Detail of Questioned Costs and in Cases with Unallowable Detention.

With respect to the other Questioned Unallowable Detention it should be noted that neither the arrest nor the release dates were required to be provided to SWBPI when claims for these cases were submitted and the source of verification at the time of submittal was a phone call or email to Jail Services Officers requesting verification of a 24 hour stay.

COCONINO COUNTY'S CONCERNS ABOUT THE TARDINESS OF THE AUDIT:

The unfairness of the reimbursement claw back has been compounded by the tardiness of the audit. In 2007, 2008 and 2009, Coconino County's SWBPI submittals were reviewed, and *nine reimbursement deposits totaling more than \$1,000,000* (\$1,015,734) were issued. Specifically, the following reimbursements were made in 2007, 2008 and 2009:

March 9, 2007-	\$182,124
March 9, 2007-	\$172,340
March 27, 2007-	\$90,298
December 17, 2007-	\$62,802
May 8, 2008-	\$253,505
November 9, 2009-	\$169,594
November 9, 2009-	\$62,673
November 9, 2009-	\$9593
November 9, 2009-	\$12,805

If Coconino County had been informed back in July, 2006, when the first submittal for reimbursement were made, that in DOJ's view Interstate Drug Transportation cases did not qualify for reimbursement, or, for that matter, had any objections to reimbursement been made, then Coconino County would have been able to address the situation without being financially disadvantaged. Even if the county had been informed of DOJ's position within half a year of the July, 2006 submittal, the county would not have been financially disadvantaged.

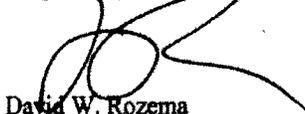
Instead, the federal government continued to review and issue reimbursements, not just once or twice, but time and time again over the course of several years, thus reinforcing the county's understanding that its cases qualified for reimbursement. So, by May of 2008, \$761,069

had been sent to Coconino County. Now, 3 ½ years later, and relying largely on what is essentially a technicality in the 160 Interstate Drug Transportation Cases (not making a phone call to afford federal authorities the opportunity to participate in the investigation, the answer to which was a foregone conclusion given the federal government's woefully inadequate funding of DEA's efforts in Northern Arizona), the federal government seeks to claw back \$850,000. This office has already expended substantial resources prosecuting crime that is *federal* in nature, scope and impact, and this would inflict serious financial harm upon a rural county that can ill afford it. The unfairness of the federal government's action cannot be overstated.

CONCLUSION:

The purpose of the SWBPI grant funding legislation is to help alleviate the burden on state and local prosecutors for prosecuting federal offenses. For years this office prosecuted Interstate Drug Transportation cases, which are indisputably federal in nature, scope and impact, and in 2006, 2007 and 2008 submitted requests for reimbursement under the SWBPI. DOJ never voiced any objection whatsoever; but, rather, issued a series of nine reimbursements, totaling \$1,015,734. To attempt years later to renege on these reimbursements is not only egregiously unfair; it would undercut the purpose of the SWBPI legislation. These monies should remain with Coconino County, which has already undertaken the burden of prosecuting these federal crimes, and whose citizens will be harmed by a claw back of these monies.

Respectfully submitted,



David W. Rozema
Coconino County Attorney

CC : Office of Justice Programs (OJP)

Enclosures

**OFFICE OF THE INSPECTOR GENERAL COMMENTS ON
COCONINO COUNTY'S RESPONSE TO THE DRAFT REPORT**

The Office of the Inspector General (OIG), Audit Division has identified several issues in Coconino County's response to our draft report (Appendix IV) that we believe should be specifically addressed. As a result, we are providing the following comments on Coconino County's response to the draft report.

Coconino County's response on page 20 of this report states:

The report questions neither the necessity nor the reasonableness of any of the costs for which Coconino County was reimbursed; it notes that of 232 cases reviewed only one appeared not to be supported by adequate documentation; and, it acknowledges the accuracy of all of the reimbursements. In short, the draft report does not question the way in which Coconino County administered its SWBPI cases.

We disagree with Coconino County's interpretation of the nature of unallowable costs identified in this report. The objective of our audit was to determine if the SWBPI reimbursements received by Coconino County were allowable, supported, and in accordance with applicable laws, regulations, and terms and conditions of the SWBPI program. We did not evaluate how the cases themselves were administered, nor did we assess the necessity of the reimbursements received by Coconino County. In addition, despite the fact that Coconino County maintained documentation related to most of the cases submitted for reimbursement, we did not acknowledge the accuracy of the reimbursements since 198 cases were unallowable because the cases were not federally initiated and one case did not have any documentation. Further, Coconino County's statement that "only one [case] appeared not to be supported by adequate documentation" is unfounded. Specifically, none of the 198 unallowable cases we questioned had adequate support in the case files to establish that they were federally initiated. One case file we requested was missing and not available for review – this case is referred to as "unsupported" in our report, but that does not indicate that the rest of the cases were supported. The findings in our audit were based on the fact that Coconino County did not comply with the SWBPI guidelines established by OJP, who administers the SWBPI program. During our audit, we identified cases that did not meet the criteria for reimbursement under the SWBPI guidelines. As a result, those cases did not qualify for reimbursement.

Additionally, on page 21 of this report, Coconino County goes on to state:

. . . the report challenges reimbursements in 198 cases - totaling almost \$850,000 - solely on the grounds that they were not "federally initiated". With this response, we have included a complete listing of the challenged cases (tracking the sequence used in Appendix III of the Draft Audit Report, and attached as Exhibit A), the vast majority of which involved the transportation of illegal and dangerous drugs on interstate highways, and nearly 90% of which resulted in conviction and dozens of jail and prison terms.

Coconino County's statement that these cases should be considered federally initiated because the vast majority of the cases occurred on interstate highways and resulted in convictions and prison terms, is incorrect. The SWBPI guidelines state federal initiation requires a federal law enforcement agency's involvement in the investigation or arrest. The fact that the vast majority of cases occurred on a federal interstate do not meet the criteria for federal initiation, especially since the arrests were made by the Arizona Department of Public Safety (DPS), which is a state law enforcement agency.

Coconino County's response on page 21 of this report also states:

The plain language of this [federal initiation] definition is broad. It does not require that a case prosecuted by state or local authorities originate by federal arrest; it only requires that the prosecuted case "result from a criminal investigation involving federal law enforcement authorities." [Emphasis added.] Since receiving the audit report, we have consulted with . . . [a Special Agent of] the U.S. Drug Enforcement Agency [sic] (USDEA) [This Special Agent] has identified 55 cases of the 198 challenged by the Draft Audit Report as cases in which USDEA participated in the pre-indictment investigation and which resulted in prosecution by this office. In correspondence dated November 10, 2011 (attached as Exhibit C), . . . [This Special Agent] explains that in each of the 55 cases USDEA's involvement included "leads that were passed on to other jurisdictions, known intelligence to DEA regarding continuing activity that became actionable, and or search warrants and arrests that were made from the initial investigation that were started in Coconino County."

Coconino County's statements imply that it recognizes the requirement that cases must have a federal law enforcement agency's involvement in the investigation or arrest to qualify for SWBPI reimbursement. However, for those cases that we identified as not federally initiated, we did not find evidence in the case file of Drug Enforcement Administration (DEA) involvement in the criminal investigation or arrest. Based on the information we reviewed in the case file during audit fieldwork, the cases in question were all initiated by the Arizona DPS. In addition, although we informed Coconino County about the cases that lacked federal initiation in the early stages of the audit, Coconino County failed to provide any supporting documentation of federal law enforcement involvement in these cases prior to the issuance of the draft report. Furthermore, the limited documentation provided by Coconino County in its response to the draft report is insufficient to assert that 55 of the cases we questioned were "federally initiated" as defined by the SWBPI guidelines. Specifically, the fact that 55 cases claimed by Coconino County that were initiated by the Arizona DPS were reported to the DEA, which provided the DEA with intelligence and leads that were passed on to other jurisdictions, resulting in search warrants and subsequent additional arrests in new cases does not change the fact that a federal law enforcement agency was not involved in the investigation or arrest for the initial cases claimed by Coconino County.

Further, Coconino County provided an incomplete quote of the SWBPI guidelines in its response. The SWBPI guidelines effective at the time of Coconino County's reimbursement requests stated that "[a] federally initiated case results from a criminal investigation or an arrest involving federal law enforcement authorities for a potential violation of federal criminal law. This may include investigations resulting from multi-jurisdictional task forces (e.g., High Intensity Drug Trafficking Areas (HIDTA), Organized Crime Drug Enforcement Task Forces (OCDETF), etc.)" Arizona DPS is not a federal law enforcement agency; therefore, the cases that were initiated by DPS are not eligible for reimbursement under the SWBPI guidelines. Additionally, based on the information we reviewed in the case files, the cases we questioned were not for potential violations of federal criminal law; rather they were for violations of Arizona state law. As a result, these cases fail to meet the SWBPI criteria for federal initiation.

The response provided by Coconino County and the supporting spreadsheets are not adequate to support the federal initiation requirement for the 55 cases mentioned. The OIG and OJP will continue to work with Coconino County to resolve this and other issues that were brought up during the audit.

Coconino County's response on page 23 of the report states:

[W]e find inaccuracy with the questioned cost of \$2622 for CR2006-0989. . . . This specific case number is questioned previously in the cases questioned as not federally initiated and has a questioned amount of \$5245. This same case is again questioned in the Cases With Unallowable Detention with a questioned amount of \$2622. The questioned amount in Cases With Unallowable Detention should be \$0 as it is for the other cases previously questioned.

We disagree with Coconino County's implication that the questioned costs associated with Cases With Unallowable Detention for case number CR2006-0989 should be \$0. The case in question has two different defendants, for which Coconino County received separate SWBPI reimbursements. The SWBPI guidelines state "[e]ach defendant represents a separate case. That is, one case with multiple defendants should be claimed as separate cases for the purposes of this application." As such, we treated the two defendants as separate cases pursuant to the SWBPI guidelines. The first defendant's case did not show evidence of federal initiation, and was questioned in full. The second defendant was not incarcerated "overnight for one or more days in a secure facility," as required for pre-trial detention reimbursement by the SWBPI guidelines. Contrary to Coconino County's assertion, the questioned costs for these cases were not duplicated and the OIG appropriately questioned the costs associated with these cases.

Additionally, Coconino County's response on page 24 of the report states:

The unfairness of the reimbursement claw back has been compounded by the tardiness of the audit.

. . .

. . . [T]he federal government continued to review and issue reimbursements, not just once or twice, but time and time again over the course of several years, thus reinforcing the county's understanding that its cases qualified for reimbursement. . . . Now, 3 ½ years later, and relying largely on what is essentially a technicality in the 160 Interstate Drug Transportation Cases . . . the federal government seeks to claw back \$850,000.

We disagree with Coconino County's implication that the audit was conducted in an untimely and unfair fashion. First, the SWBPI documentation retention criteria clearly state that "[p]rogram payments and transactions are subject to audits by the General Accounting Office, Department of Justice's Office of the Inspector General, and applicable state/local auditors. . . . Recipients of federal funds are expected to retain documentation supporting all transactions for at least three years after the application has been approved." The audit was conducted within the retention period stipulated by the SWBPI guidelines.

Second, Coconino County's argument assumes that the audit was unfair because Coconino County was not informed within a reasonable time that the cases it submitted were not allowable. We again disagree with that contention on grounds of practicality. The fact that OJP issued reimbursements to Coconino County does not conclusively imply that all the cases were appropriate for reimbursement. It was not until late FY 2008 that OJP was provided with enough verifiable data by the SWBPI applicants to help ensure the allowability of cases. The OIG has audited the SWBPI program and OJP has since improved the SWBPI application process enough to better monitor the applicants' reimbursement requests.

Third, Coconino County portrays its violations of SWBPI regulations as a "technicality". All recipients of SWBPI program funds are expected to abide by the SWBPI regulations and those funds are provided on the condition that the regulations are followed. Coconino County may have avoided submitting ineligible cases and questioned costs by strictly adhering to the regulations to which it agreed when submitting the SWBPI reimbursement requests. If funds are returned, it is not due to an unfair or unwarranted process, rather one possibly appropriate remedy for violations of SWBPI regulations. As a result, the OIG appropriately conducted the audit and questioned ineligible reimbursements received by Coconino County from FY 2007 through FY 2009.

We should also mention that the SWBPI guidelines were changed in FY 2008, requiring applicants including Coconino County to report the federal law enforcement agency that initiated each case, along with other pertinent case information. This change should have alerted Coconino County that the Arizona DPS cases that they were submitting were unallowable under the SWBPI guidelines. In addition, rather than listing Arizona DPS as the initiating agency, Coconino County falsely claimed that the DEA was the federal initiating agency on its FY 2008 applications.

OJP RESPONSE TO THE DRAFT REPORT



U.S. Department of Justice

Office of Justice Programs

Office of Audit, Assessment, and Management

Washington, D.C. 20531

November 29, 2011

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

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

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

This memorandum is in response to your correspondence, dated October 31, 2011, transmitting the subject draft audit report for Coconino County (County). We consider the subject report resolved and request written acceptance of this action from your office.

The report contains **two** recommendations and **\$856,610** in questioned costs. The following is the Office of Justice Programs' (OJP) analysis of the draft audit report recommendations. For ease of review, the recommendations are restated in bold and are followed by our response.

- 1. We recommend that OJP remedy the \$849,211 in questioned costs received by Coconino County for 198 cases that were not Federally initiated.**

We agree with the recommendation. We will coordinate with the County to remedy the \$849,211 in questioned costs related to 198 cases submitted for reimbursement under the Southwest Border Prosecution Initiative program, that were not Federally initiated.

2. **We recommend that OJP remedy the \$7,399 in questioned costs received by Coconino County for 9 cases that were submitted under both the prosecution and pre-trial detention categories that did not meet the requirements for pre-trial detention.**

We agree with the recommendation. We will coordinate with the County to remedy the \$7,399 in questioned costs related to the 9 cases that were submitted under both the prosecution and pre-trial detention categories, that did not meet the requirements for pre-trial detention.

We appreciate the opportunity to review and comment on the draft audit report. If you have any questions or require additional information, please contact Jeffery A. Haley, Deputy Director, Audit and Review Division, on (202) 616-2936.

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**ANALYSIS AND SUMMARY OF ACTIONS
NECESSARY TO CLOSE REPORT**

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

Recommendation Number

1. **Resolved.** OJP concurred with our recommendation to remedy the \$849,211 in questioned costs received by Coconino County for 198 cases that were not federally initiated. OJP stated in its response that they will coordinate with Coconino County to remedy the \$849,211 in questioned costs related to 198 cases submitted for reimbursement under the SWBPI program that were not federally initiated.

This recommendation can be closed when we receive documentation that OJP remedied the \$849,211 in questioned costs received by Coconino County for 198 cases that were not federally initiated.

2. **Resolved.** OJP concurred with our recommendation to remedy the 7,399 in questioned costs received by Coconino County for nine cases that were submitted under the both prosecution and pre-trial detention category that did not meet the requirements for pre-trial detention. OJP stated in its response that they will coordinate with Coconino County to remedy the \$7,399 in questioned costs related to the 9 cases that were submitted under both the prosecution and pre-trial detention categories, that did not meet the requirements for pre-trial detention.

This recommendation can be closed when we receive documentation that OJP remedied the \$7,399 in questioned costs received by Coconino County for nine cases that were submitted under the both prosecution and pre-trial detention category that did not meet the requirements for pre-trial detention.