



**AUDIT OF THE OFFICE OF JUSTICE PROGRAMS
SOUTHWEST BORDER PROSECUTION
INITIATIVE FUNDING RECEIVED BY
DOÑA ANA COUNTY, NEW MEXICO**

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

Audit Report GR-60-12-018
August 2012

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EXECUTIVE SUMMARY

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 Doña Ana County, New Mexico. For the third and fourth quarter of fiscal year (FY) 2008, Doña Ana County received SWBPI funding totaling \$651,386 on a pro-rata basis. For FYs 2009 and 2010, Doña Ana County requested \$1,685,302 in SWBPI funding, which has been approved by OJP but not yet reimbursed.

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, e.g., High Intensity Drug Trafficking Areas and Organized Crime Drug Enforcement Task Forces. 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 2012, Congress appropriated \$10 million for border prosecution initiatives to reimburse local governments for costs associated with the prosecution of criminal cases declined by local offices of the United States Attorneys.

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

We found that Doña Ana 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 \$205,242.¹ Specifically, we found that Doña Ana County:

- Received excess pre-trial detention reimbursements totaling \$125,987 for 15 cases that were submitted for detention days in excess of the actual number of pre-trial detention days.
- Received unallowable reimbursements totaling \$61,570 for 28 cases that were submitted under pre-trial detention that did not meet the requirements for pre-trial detention.
- Received excess pre-trial detention reimbursements totaling \$9,039 for all cases, which claimed reimbursements using per diem rates that exceeded the publicized per diem rates.
- Received unallowable reimbursements totaling \$8,167 for one case for which the detention related to a probation violation, not a federally initiated case.
- Received unsupported reimbursements totaling \$384 for one case for which the supporting pre-trial detention information was not located.
- Received unallowable reimbursements totaling \$95 for one case that was investigated or prosecuted during a concurrent period of time with a case involving the same defendant that was also submitted for reimbursement.

Additionally, we found that Doña Ana County claimed reimbursements that were approved but not yet reimbursed for cases that were ineligible under the SWBPI guidelines. Based on the deficiencies listed below, we identified funds to better use totaling \$84,726.² Specifically we found that Doña Ana County:

¹ We reduced the total dollar-related findings detailed in Appendix II by the duplicated questioned costs that were questioned based on other SWBPI criteria. As a result, the total questioned costs figure excludes duplicate questioned costs that were questioned based on other SWBPI criteria.

² We reduced the total dollar-related findings detailed in Appendix II by the duplicated funds to better use that were questioned based on other SWBPI criteria. As a result, the total funds to better use figure excludes duplicate funds to better use that were questioned based on other SWBPI criteria.

- Received excess pre-trial detention reimbursements totaling \$35,803 for 10 cases that were submitted for detention days in excess of the actual number of pre-trial detention days.
- Received unallowable reimbursements totaling \$13,707 for three cases that were investigated or prosecuted during a concurrent period of time with cases involving the same defendant that were also submitted for reimbursement.
- Received excess pre-trial detention reimbursements totaling \$25,005 for all cases, which claimed reimbursements using per diem rates that exceeded the publicized per diem rates.
- Received unallowable reimbursements totaling \$5,445 for 52 cases that were submitted under pre-trial detention that did not meet the requirements for pre-trial detention.
- Received unsupported reimbursements totaling \$4,677 for one case for which the supporting pre-trial detention information was not located.
- Received unallowable reimbursements totaling \$88 for one case for which the detention booking date was after the case was disposed.

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.

TABLE OF CONTENTS

INTRODUCTION	1
Background.....	1
FINDINGS AND RECOMMENDATIONS	5
Case Eligibility	5
Recommendations.....	8
APPENDIX I: OBJECTIVES, SCOPE, AND METHODOLOGY	10
APPENDIX II: SCHEDULE OF DOLLAR-RELATED FINDINGS	11
APPENDIX III: DETAILS OF QUESTIONED COSTS.....	13
APPENDIX IV: DETAILS OF FUNDS TO BETTER USE.....	16
APPENDIX V: DOÑA ANA COUNTY’S RESPONSE TO THE DRAFT REPORT	20
APPENDIX VI: OJP’S REPOSE TO THE DRAFT REPORT.....	23
APPENDIX VII: OIG ANALYSIS AND SUMMARY OF ACTIONS NECESSARY TO CLOSE REPORT	28

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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 Doña Ana County, New Mexico. The objective of the audit was to determine whether the SWBPI reimbursements received by Doña Ana County were allowable, supported, and in accordance with applicable laws, regulations, guidelines, 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 illegal 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 fiscal year (FY) 2002 to support state and local prosecutions along the southwest border.

For FY 2012, Congress appropriated \$10 million in funding for border prosecution initiatives, Pub. L. No. 112-55 (2011), 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 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. For cases disposed of between FY 2002 and the second quarter of FY 2008, each eligible case submitted for 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 submitted for reimbursement, 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 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 from FYs 2002 through 2006, to meet the pre-trial detention services requirement, the defendant was required to be detained overnight, i.e., from one calendar day to the next. For cases disposed after FY 2006, to meet the pre-trial detention services requirement, the defendant must be detained for at least 24 hours.

For cases disposed between the third and fourth quarter of FY 2008, jurisdictions may 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 were based on the average hourly rate for the county's prosecutors and cannot include fringe benefits. Detention reimbursements were 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.

For cases disposed after FY 2008, jurisdictions may receive reimbursements based on the personnel costs associated with prosecuting a case, including the personnel costs for prosecutors, paralegals, judges, judicial staff, public defenders, clerical staff and indigent screening personnel. The allowable costs are then allocated to each case based on the percentage of eligible SWBPI cases prosecuted by the jurisdiction out of the total number of cases prosecuted during the period. This percentage is calculated separately for misdemeanor cases and felony cases, and then is multiplied by the total allowable misdemeanor and felony costs to arrive at total allowable prosecution costs per case. Detention reimbursements are still 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.

In New Mexico, only pre-trial detention services are reported in a county's online application. Prosecution services are provided through state agencies and are reflected in a state-level application. The state application must be completed before counties can complete the application and the counties are restricted to entering pre-trial detention for cases reported by the state.

Pursuant to the SWBPI guidelines, when reimbursement requests exceed available funding, applicants receive funds on a uniform, pro-rata basis. The pro-rata reimbursement percentages for Doña Ana County are shown in Exhibit 1.

EXHIBIT 1: PRO-RATA REIMBURSEMENT BASIS TO DOÑA ANA COUNTY

REPORTING PERIOD	START DATE	END DATE	PERCENTAGE REIMBURSED
FY08, 3 rd Quarter	04/01/08	06/30/08	111.05%
FY08, 4 th Quarter	07/01/08	09/30/08	109.15%
FY09, All Quarters	10/01/08	09/30/09	100.00%
FY10, All Quarters	10/01/09	09/30/10	100.00%

Source: Office of Justice Programs

Doña Ana County received reimbursements from SWBPI funds totaling \$651,386 for the third and fourth quarter of FY 2008, as shown in Exhibit 2.

EXHIBIT 2: REIMBURSEMENTS MADE TO DOÑA ANA COUNTY¹

REPORTING PERIOD	START DATE	END DATE	AMOUNT REQUESTED	AMOUNT REIMBURSED
FY08, 3 rd Quarter	04/01/08	06/30/08	339,764	\$ 377,304
FY08, 4 th Quarter	07/01/08	09/30/08	251,111	274,083
TOTAL				\$651,386

Source: Office of Justice Programs

For FYs 2009 and 2010, Doña Ana County requested \$1,685,302 in SWBPI funding, which has been approved by OJP but not yet reimbursed, as shown in Exhibit 3.

EXHIBIT 3: REIMBURSEMENTS REQUESTED BY DOÑA ANA COUNTY

REPORTING PERIOD	START DATE	END DATE	AMOUNT REQUESTED	AMOUNT REIMBURSED
FY09, All Quarters	10/01/08	09/30/09	881,076	\$ 881,076
FY10, All Quarters	10/01/09	09/30/10	804,225	804,225
TOTAL				\$1,685,302

Source: Office of Justice Programs

¹ 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 Doña Ana County claimed and was both reimbursed for and approved but not yet reimbursed for cases that were ineligible under the SWBPI guidelines. Specifically, we found the county: (1) submitted cases with excess detention days, (2) submitted cases that did not meet the requirements for pre-trial detention, (3) claimed per diem rates that were higher than actual per diem rates, (4) claimed jail time related to a probation violation, (5) submitted cases with missing jail records, (6) submitted cases that were investigated or prosecuted concurrently, and (7) submitted a case despite the jail booking date occurring after case disposition. As a result, we identified questioned costs totaling \$205,242 and funds to better use totaling \$84,726.²

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, e.g., High Intensity Drug Trafficking Areas and Organized Crime Drug Enforcement Task Forces. 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 163 cases submitted for reimbursement by Doña Ana County to determine whether the cases were eligible for reimbursement

² We reduced the total dollar-related findings detailed in Appendix II by the duplicated questioned costs and duplicated funds to better use that were questioned based on other SWBPI criteria. As a result, the total questioned costs figure and the total funds to better use figure exclude duplicate costs that were questioned based on other SWBPI criteria.

under the requirements of the SWBPI guidelines. In addition, we reviewed all cases submitted to determine if: (1) reimbursements were submitted in the period the cases were disposed, (2) the cases met the pre-trial detention requirements, (3) there were duplicates or concurrently prosecuted cases, (4) the approved federal detention rate was used to calculate the detention reimbursement claimed, and (5) cases had federal law enforcement involvement.³

We found that Doña Ana 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 \$205,242. A detailed listing of the cases claimed by Doña Ana County that were not eligible for reimbursement is provided in Appendix III. Specifically, we found that Doña Ana County:⁴

- Received excess pre-trial detention reimbursements totaling \$125,987 for 15 cases that were submitted for detention days in excess of the actual number of pre-trial detention days.
- Received unallowable reimbursements totaling \$61,570 for 28 cases that were submitted under pre-trial detention that did not meet the requirements for pre-trial detention.
- Received excess pre-trial detention reimbursements totaling \$9,039 for all cases, which claimed reimbursements using per diem rates that exceeded the publicized per diem rates.
- Received unallowable reimbursements totaling \$8,167 for one case for which the detention related to a probation violation, not a federally initiated case.
- Received unsupported reimbursements totaling \$384 for one case for which the supporting pre-trial detention information was not located.

³ In addition to reviewing information for Doña Ana County, we also reviewed the related prosecution information for the State of New Mexico, which was retained by OJP and the state. This allowed us to verify that the pre-trial detention reported by the county was related to cases that were federally initiated and to ensure no jail time was reported after the disposition date.

⁴ The number of unallowable cases detailed includes cases that have duplicate questioned costs because the cases were questioned previously, based on other SWBPI reimbursement criteria. The total amount of duplicate questioned costs has been reduced from the total dollar-related findings detailed in Appendix II.

- Received unallowable reimbursements totaling \$95 for one case that was investigated or prosecuted during a concurrent period of time with a case involving the same defendant that was also submitted for reimbursement.

Additionally, we found that Doña Ana County claimed reimbursements that were approved but not yet reimbursed for cases that were ineligible under the SWBPI guidelines. Based on the deficiencies listed below, we identified funds to better use totaling \$84,726. A detailed listing of the cases claimed by Doña Ana County that were not eligible for reimbursement is provided in Appendix IV. Specifically, we found that Doña Ana County: ⁵

- Received excess pre-trial detention reimbursements totaling \$35,803 for 10 cases that were submitted for detention days in excess of the actual number of pre-trial detention days.
- Received unallowable reimbursements totaling \$13,707 for three cases that were investigated or prosecuted during a concurrent period of time with cases involving the same defendant that were also submitted for reimbursement.
- Received excess pre-trial detention reimbursements totaling \$25,005 for all cases, which claimed reimbursements using per diem rates that exceeded the publicized per diem rates.
- Received unallowable reimbursements totaling \$5,445 for 52 cases that were submitted under pre-trial detention that did not meet the requirements for pre-trial detention.
- Received unsupported reimbursements totaling \$4,677 for one case for which the supporting pre-trial detention information was not located.
- Received unallowable reimbursements totaling \$88 for one case for which the detention booking date was after the case was disposed.

⁵ The number of unallowable cases detailed includes cases that have duplicate funds to better use because the cases were questioned previously, based on other SWBPI reimbursement criteria. The total amount of duplicate funds to better use has been reduced from the total dollar-related findings detailed in Appendix II.

Recommendations

We recommend that OJP:

1. Remedy \$125,987 in unallowable questioned costs received by Doña Ana County for 15 cases that were submitted for detention days in excess of the actual number of pre-trial detention days.
2. Remedy the \$61,570 in unallowable questioned costs received by Doña Ana County for 28 cases that were submitted under pre-trial detention that did not meet the requirements for pre-trial detention.
3. Remedy the \$9,039 in unallowable questioned costs received by Doña Ana County for all cases, which claimed reimbursements using per diem rates that exceeded the publicized per diem rates.
4. Remedy the \$8,167 in unallowable questioned costs received by Doña Ana County for one case for which the detention related to a probation violation, not a federally initiated case.
5. Remedy the \$384 in unsupported questioned costs received by Doña Ana County for one case for which the supporting pre-trial detention information was not located.
6. Remedy the \$95 in unallowable questioned costs received by Doña Ana County for one case that was investigated or prosecuted during a concurrent period of time with a case involving the same defendant that was also submitted for reimbursement.
7. Remedy the \$35,803 in funds to better use requested, but not yet received by Doña Ana County for 10 cases that were submitted for detention days in excess of the actual number of pre-trial detention days.⁶

⁶ As discussed in appendix VII, our draft audit report excluded from recommendation 7 funds to better use for a case that were reported, but duplicated with recommendation 8. Recommendation 8 in this final audit report does not include those costs. Therefore, we included appropriate funds to better use for the case in recommendation 7.

8. Remedy the \$13,707 in funds to better use requested, but not yet received by Doña Ana County for three cases that were investigated or prosecuted during a concurrent period of time with cases involving the same defendant that were also submitted for reimbursement.⁷
9. Remedy the \$25,005 in funds to better use requested, but not yet received by Doña Ana County for all cases, which claimed reimbursements using per diem rates that exceeded the publicized per diem rates.⁸
10. Remedy the \$5,445 in funds to better use requested, but not yet received by Doña Ana County for 52 cases that were submitted under pre-trial detention that did not meet the requirements for pre-trial detention.
11. Remedy the \$4,677 in funds to better use requested, but not yet received by Doña Ana County for one case for which the supporting pre-trial detention information was not located.
12. Remedy the \$88 in funds to better use requested, but not yet received by Doña Ana County for one case for which the detention booking date was after the case was disposed.

⁷ Our draft audit report reported \$25,160 in funds to better use for recommendation 8. However, subsequent analysis discussed in appendix VII reduced this to \$13,707.

⁸ As discussed in appendix VII, our draft audit report excluded from recommendation 9 funds to better use for a case that were reported, but duplicated with recommendation 8. Recommendation 8 in this final audit report does not include those costs. Therefore, we included appropriate funds to better use for the case in recommendation 9.

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, guidelines, 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. The scope of our audit included reimbursements received by Doña Ana County for the third quarter of FY 2008 through FY 2011.

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 Doña Ana 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 Doña Ana County as a whole. The Single Audit Report for Doña Ana County was prepared under the provisions of Office of Management and Budget Circular A-133 for the fiscal year ended June 30, 2011. We reviewed the independent auditor's assessment to identify internal control weaknesses and significant non-compliance issues related to Doña Ana 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>
Excess reimbursements for cases that claimed pre-trial detention days in excess of actual detention days.	\$125,987	6
Unallowable reimbursements for cases that did not meet the pre-trial detention requirement.	61,665	6
Excess reimbursements for cases using per diem rates that exceeded publicized per diem rates.	13,031	6
Unallowable reimbursements for cases where the detention related to a probation violation.	8,167	6
Unsupported cases for which the supporting pre-trial detention information could not be located.	384	6
Unallowable cases that were prosecuted concurrently.	95	7
Questioned Costs:	\$209,328	
Less Duplicated Questioned Costs:⁹	(\$4,086)	
Total Questioned Costs:¹⁰	\$205,242	

⁹ We reduced the total dollar-related findings by the duplicated questioned costs that were questioned based on other SWBPI criteria. As a result, the total questioned costs figure excludes duplicate questioned costs that were questioned based on other SWBPI criteria.

¹⁰ **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.

FUNDS TO BETTER USE:	<u>AMOUNT</u>	<u>PAGE</u>
Excess reimbursements for cases that claimed pre-trial detention days in excess of actual detention days.	\$35,893	7
Excess reimbursements for cases using per diem rates that exceeded publicized per diem rates	25,912	7
Unallowable cases that were prosecuted concurrently.	13,707	7
Unallowable reimbursements for cases that did not meet the pre-trial detention requirement.	5,535	7
Unsupported cases for which the supporting pre-trial detention information could not be located.	4,677	7
Unallowable cases for which the jail booking dates were after the cases were disposed.	88	7
Funds To Better Use:	\$85,812	
Less Duplicated Funds To Better Use:¹¹	(\$1,087)	
Total Funds To Better Use:¹²	\$84,726	

¹¹ We reduced the total dollar-related findings by the duplicated funds to better use that were questioned based on other SWBPI criteria. As a result, the total funds to better use figure excludes duplicate questioned costs that were questioned based on other SWBPI criteria.

¹² **Funds to Better Use** are requested 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. Funds to better use may be remedied by not approving or disallowing future payments or the provision of supporting documentation.

APPENDIX III

DETAILS OF QUESTIONED COSTS¹³

CASES REIMBURSED FOR EXCESS DETENTION DAYS

CASE No.	REPORTING PERIOD	DETENTION DAYS REPORTED TO OJP	ACTUAL DETENTION DAYS	AMOUNT QUESTIONED
D-307-CR-2007-00798	FY 08-3 RD QTR	367	1	\$ 35,165
D-307-CR-2008-00367	FY 08-4 TH QTR	232	3	21,643
D-307-CR-2007-01368	FY 08-3 RD QTR	230	14	20,753
D-307-CR-2008-00038	FY 08-4 TH QTR	257	110	13,893
D-307-CR-2008-00189	FY 08-3 RD QTR	129	55	7,110
D-307-CR-2008-00497	FY 08-4 TH QTR	125	51	6,994
D-307-CR-2007-01401	FY 08-3 RD QTR	232	163	6,629
D-307-CR-2008-01108	FY 08-4 TH QTR	78	8	6,616
D-307-CR-2008-00442	FY 08-3 RD QTR	81	22	5,669
D-307-CR-2008-00538	FY 08-4 TH QTR	134	123	1,040
D-307-CR-2008-00503	FY 08-3 RD QTR	75	74	96
D-307-CR-2007-01064	FY 08-3 RD QTR	280	279	96
D-307-JR-2008-00327	FY 08-4 TH QTR	21	20	95
D-307-JR-2008-00326	FY 08-4 TH QTR	21	20	95
D-307-CR-2008-01130	FY 08-4 TH QTR	14	13	95
TOTAL				\$125,987

CASES WITHOUT 24 HOURS OF DETENTION

CASE No.	PERIOD SUBMITTED	DETENTION DAYS REPORTED TO OJP	ACTUAL DETENTION DAYS	AMOUNT QUESTIONED
D-307-CR-2007-01468	FY 08-3 RD QTR	315	< 24-hours	\$ 30,265
D-307-CR-2008-00554	FY 08-4 TH QTR	144	< 24-hours	13,610
D-307-CR-2008-00838-A	FY 08-4 TH QTR	130	< 24-hours	12,286
D-307-CR-2008-00340	FY 08-4 TH QTR	29	< 24-hours	2,741
D-307-CR-2007-00342	FY 08-3 RD QTR	2	< 24-hours	192
D-307-CR-2008-00172	FY 08-3 RD QTR	2	< 24-hours	192
D-307-CR-2008-00339	FY 08-3 RD QTR	2	< 24-hours	192

¹³ All tables in this appendix reflect questioned costs for all cases questioned, including duplicated questioned costs. Appendix II details dollar-related findings and the adjustment for duplicated costs.

CASE No.	PERIOD SUBMITTED	DETENTION DAYS REPORTED TO OJP	ACTUAL DETENTION DAYS	AMOUNT QUESTIONED
D-307-CR-2008-00343	FY 08-3 RD QTR	2	< 24-hours	192
D-307-CR-2008-00414	FY 08-4 TH QTR	2	< 24-hours	189
D-307-CR-2006-00921	FY 08-3 RD QTR	1	< 24-hours	96
D-307-CR-2007-00490	FY 08-3 RD QTR	1	< 24-hours	96
D-307-CR-2007-00788	FY 08-3 RD QTR	1	< 24-hours	96
D-307-CR-2007-01077	FY 08-3 RD QTR	1	< 24-hours	96
D-307-CR-2007-01105	FY 08-3 RD QTR	1	< 24-hours	96
D-307-CR-2007-01523	FY 08-3 RD QTR	1	< 24-hours	96
D-307-CR-2006-01042	FY 08-4 TH QTR	1	< 24-hours	95
D-307-CR-2006-01605	FY 08-4 TH QTR	1	< 24-hours	95
D-307-CR-2007-00164	FY 08-4 TH QTR	1	< 24-hours	95
D-307-CR-2007-00454	FY 08-4 TH QTR	1	< 24-hours	95
D-307-CR-2007-01399	FY 08-4 TH QTR	1	< 24-hours	95
D-307-CR-2007-01400	FY 08-4 TH QTR	1	< 24-hours	95
D-307-CR-2007-01648	FY 08-4 TH QTR	1	< 24-hours	95
D-307-CR-2008-00029	FY 08-4 TH QTR	1	< 24-hours	95
D-307-CR-2008-00061	FY 08-4 TH QTR	1	< 24-hours	95 ¹⁴
D-307-CR-2008-00190	FY 08-4 TH QTR	1	< 24-hours	95
D-307-CR-2008-00258	FY 08-4 TH QTR	1	< 24-hours	95
D-307-CR-2008-00502	FY 08-4 TH QTR	1	< 24-hours	95
D-307-CR-2008-00961	FY 08-4 TH QTR	1	< 24-hours	95
Total				\$61,665

¹⁴ Case D-307-CR-2008-00061, which included \$95 in costs for not meeting the pre-trial detention requirement, was excluded from questioned costs for recommendation 2 to avoid duplicate questioned costs for recommendation 6, which also includes the case.

**CASES REIMBURSED FOR EXCESS DETENTION BASED
ON OVERSTATED DETENTION PER DIEM RATES**

CASES	REPORTING PERIOD	DETENTION DAYS REPORTED TO OJP	AMOUNT QUESTIONED
AN EXCESS RATE OF \$2.93 FOR ALL DETENTION CASES REIMBURSED BY OJP (PRO-RATA REIMBURSEMENT %: 111.05%)	FY 08-3 RD QTR	3,927	\$ 12,777
AN EXCESS RATE OF \$0.08 FOR ALL DETENTION CASES REIMBURSED BY OJP (PRO-RATA REIMBURSEMENT %: 109.15%)	FY 08-4 TH QTR	2,900	253
TOTAL			\$13,031

**CASES REIMBURSED FOR PRE-TRIAL DETENTION
RELATED TO A PROBATION VIOLATION**

CASE No.	REPORTING PERIOD	DETENTION DAYS REPORTED TO OJP	AMOUNT QUESTIONED
D-307-CR-2007-01544	FY 08-3 RD QTR	85	\$ 8,167
TOTAL			\$8,167

CASES WITH NO JAIL RECORD

CASE No.	REPORTING PERIOD	AMOUNT QUESTIONED
D-0905-CR-200700787	FY 08-3 RD QTR	\$ 384
TOTAL		\$384

CASES THAT WERE CONCURRENTLY PROSECUTED

CASE No.	REPORTING PERIOD	AMOUNT QUESTIONED
D-307-CR-2008-00061	FY 08-4 TH QTR	\$ 95
TOTAL		\$95

APPENDIX IV

DETAILS OF FUNDS TO BETTER USE¹⁵

CASE REIMBURSEMENTS REQUESTED BUT NOT YET RECEIVED FOR EXCESS DETENTION DAYS

CASE No.	REPORTING PERIOD	DETENTION DAYS REPORTED TO OJP	ACTUAL DETENTION DAYS	FUNDS TO BETTER USE
D-307-CR-200701056	FY 2009	229	42	\$ 16,501
D-307-CR-200800296	FY 2009	154	63	8,030
D-307-CR-200800710	FY 2009	244	177	5,912
D-307-CR-201000352	FY 2010	127	105	1,984
D-307-CR-200801200	FY 2009	21	1	1,765
D-307-CR-200900740	FY 2010	160	153	631
D-307-CR-201000057	FY 2010	200	195	451
D-307-CR-200800693	FY 2009	17	13	353
D-307-CR-200700087	FY 2009	3	1	177
D-307-CR-200901232	FY 2010	34	33	90 ¹⁶
TOTAL				\$35,893

CASE REIMBURSEMENTS REQUESTED BUT NOT YET RECEIVED FOR EXCESS DETENTION BASED ON OVERSTATED DETENTION PER DIEM RATES

CASES	REPORTING PERIOD	DETENTION DAYS REPORTED TO OJP	FUNDS TO BETTER USE
AN EXCESS RATE OF \$1.30 FOR ALL DETENTION CASES REIMBURSED BY OJP	FY 2009	9,985	\$ 12,981
AN EXCESS RATE OF \$1.45 FOR ALL DETENTION CASES REIMBURSED BY OJP	FY 2010	8,918	12,931
TOTAL			\$25,912

¹⁵ All tables in this appendix reflect funds to better use for all cases questioned, including duplicated funds to better use. Appendix II details dollar-related findings and the adjustment for duplicated costs.

¹⁶ Case D-307-CR-200901232, which included \$90 in costs for excess detention days, was excluded from funds to better use for recommendation 7 to avoid duplicate funds to better use for recommendation 8, which also includes the case.

CASES THAT WERE PROSECUTED CONCURRENTLY

CASE No.	REPORTING PERIOD	FUNDS TO BETTER USE
D-307-CR-200901023	FY 2010	10,551
D-307-CR-200901232	FY 2010	3,066
D-307-CR-200901167	FY 2010	90
TOTAL		\$13,707

CASES WITHOUT 24 HOURS OF DETENTION

CASE No.	PERIOD SUBMITTED	DETENTION DAYS REPORTED TO OJP	ACTUAL DETENTION DAYS	FUNDS TO BETTER USE
D-307-CR-200900178	FY 2010	2	< 24-hours	\$ 180
D-307-CR-200900431	FY 2010	2	< 24-hours	180
D-307-CR-200901145	FY 2010	2	< 24-hours	180
D-307-CR-200901228	FY 2010	2	< 24-hours	180
D-307-CR-200700352	FY 2009	2	< 24-hours	176
D-307-CR-200800918	FY 2009	2	< 24-hours	176
D-307-CR-200801026	FY 2009	2	< 24-hours	176
D-307-CR-200801420	FY 2009	2	< 24-hours	176
D-307-CR-200801876	FY 2009	2	< 24-hours	176
D-307-CR-200900347	FY 2009	2	< 24-hours	176
D-307-CR-200800685	FY 2010	1	< 24-hours	90
D-307-CR-200801843	FY 2010	1	< 24-hours	90
D-307-CR-200900111	FY 2010	1	< 24-hours	90
D-307-CR-200900210	FY 2010	1	< 24-hours	90
D-307-CR-200900216	FY 2010	1	< 24-hours	90
D-307-CR-200900319	FY 2010	1	< 24-hours	90
D-307-CR-200900370	FY 2010	1	< 24-hours	90
D-307-CR-200900377	FY 2010	1	< 24-hours	90
D-307-CR-200900378	FY 2010	1	< 24-hours	90
D-307-CR-200900387	FY 2010	1	< 24-hours	90
D-307-CR-200900557	FY 2010	1	< 24-hours	90
D-307-CR-200900561	FY 2010	1	< 24-hours	90
D-307-CR-200900686	FY 2010	1	< 24-hours	90
D-307-CR-200900774	FY 2010	1	< 24-hours	90
D-307-CR-200900912	FY 2010	1	< 24-hours	90
D-307-CR-200901014	FY 2010	1	< 24-hours	90
D-307-CR-200901015	FY 2010	1	< 24-hours	90
D-307-CR-200901052	FY 2010	1	< 24-hours	90

CASE No.	PERIOD SUBMITTED	DETENTION DAYS REPORTED TO OJP	ACTUAL DETENTION DAYS	FUNDS TO BETTER USE
D-307-CR-200901079	FY 2010	1	< 24-hours	90
D-307-CR-200901096	FY 2010	1	< 24-hours	90
D-307-CR-200901144	FY 2010	1	< 24-hours	90
D-307-CR-200901167	FY 2010	1	< 24-hours	90 ¹⁷
D-307-CR-200901186	FY 2010	1	< 24-hours	90
D-307-CR-201000383	FY 2010	1	< 24-hours	90
D-307-JR-201000269	FY 2010	1	< 24-hours	90
D-307-CR-200800402	FY 2009	1	< 24-hours	88
D-307-CR-200800402	FY 2009	1	< 24-hours	88
D-307-CR-200800508	FY 2009	1	< 24-hours	88
D-307-CR-200800650	FY 2009	1	< 24-hours	88
D-307-CR-200800663	FY 2009	1	< 24-hours	88
D-307-CR-200800663	FY 2009	1	< 24-hours	88
D-307-CR-200800706	FY 2009	1	< 24-hours	88
D-307-CR-200800849	FY 2009	1	< 24-hours	88
D-307-CR-200800909	FY 2009	1	< 24-hours	88
D-307-CR-200800946	FY 2009	1	< 24-hours	88
D-307-CR-200800946	FY 2009	1	< 24-hours	88
D-307-CR-200801057	FY 2009	1	< 24-hours	88
D-307-CR-200801173	FY 2009	1	< 24-hours	88
D-307-CR-200801576	FY 2009	1	< 24-hours	88
D-307-CR-200801693	FY 2009	1	< 24-hours	88
D-307-CR-200900016	FY 2009	1	< 24-hours	88
D-307-CR-200900175	FY 2009	1	< 24-hours	88
Total				\$5,535

CASES WITH NO JAIL RECORD

CASE No.	REPORTING PERIOD	FUNDS TO BETTER USE
D-307-CR-200900104	FY 2009	\$ 4,677
TOTAL		\$4,677

¹⁷ Case D-307-CR-200901167, which included \$90 in costs for not meeting the pre-trial detention requirement, was excluded from funds to better use for recommendation 10 to avoid duplicate funds to better use for recommendation 8, which also includes the case.

**CASES WITH JAIL BOOKING DATES
AFTER THE CASES WERE DISPOSED**

CASE No.	REPORTING PERIOD	DISPOSITION DATE	BOOKING DATE	FUNDS TO BETTER USE
D-307-CR-200800918	FY 2009	02/03/2009	02/06/2009	\$ 88
TOTAL				\$88

DOÑA ANA COUNTY'S RESPONSE TO THE DRAFT REPORT



Doña Ana County DETENTION CENTER

1850 Copper Loop • Las Cruces, New Mexico 88005 • (575) 647-7600

July 18, 2012

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

Dear Mr. Sheeren:

The Dona Ana County Detention Center (DACDC) has received your draft audit report on the Southwest Border Prosecution Initiative (SWBPI) funds reimbursed to Dona Ana County, New Mexico.

In response to the Audit we enter the following, DACDC has briefly made a break down or explanation of your finding from pages 13 to 18 data findings.

The SWBPI Audit identified several areas of overpayment. DACDC recognizes that some overpayment was made, however in some areas DACDC contends that SWBPI used guidelines not applicable for some of the discrepancies identified. The following responses will clarify our viewpoint based on the audit submitted by the SWBPI.

Starting with INELIGIBLE CASES:

SWBPI used FY2012 guidelines "inmate must be held in custody at least 24 hour period". DACDC submits that based on copies of the guidelines FY2008 to FY2010 reflect that this requirement did not exist or appear prior to FY2012 Guidelines. Our assessment suggests that our submittals were accurate and in compliance with FY2008 – FY 2010 guidelines. We are requesting that funding "audit finding" is rescinded based on this stipulation and be replaced pursuant to existing guidelines of FY2008 to FY2010.

–Note- DACDC adhered to FY2012 (24 hour guidelines); for FY2011 {retro-submittal} most recent submittals.

Page 13

Cases reimbursed for excess Detention Days:

Copies of the NM case Report and Inmates Face sheet have been reviewed. Due to many of the dates from the Master Spread Sheet and what is reported in your audit, copies of the NM Court Research on case numbers and Jail Management have been copied for your review. We concur DACDC error for tracking actual sentenced dates by District Court reporting for FY2008 and FY2009.

Case without 24 Hours of Detention:

Refer to *Ineligible cases [heading note]*, comments on the past guidelines on >24 hours detention.

Page 13 & 14

Cases Reimbursed For Excess Detention Based on Overstated Detention Per Diem Rate

Upon re-evaluation of audit response, excess rate may be reassessed.

Page 15

Cases Reimbursed For Pre-Trial Detention Related to a Probation Violation:

This case [D-307-CR-2007-01544] was a DACDC reporting error. The inmate was brought back from Prison in continuation of a District Court case.

Cases with No Jail Record:

This case [D-0905-CR-200700787] is not reflected as a Dona Ana County District Court case, nor can we find an appearance on our master spreadsheet reported to SWBPI, additionally this case number cannot be located in the NM Court Cases Review.

Cases That Were Concurrently Prosecuted:

DACDC is unable to locate dual court case numbers, suggesting concurrent prosecution or charge.

Page 16

Cases reimbursed for excess Detention Days:

Starting FY2009 guidelines, DACDC was tasked to reconcile with Dona Ana County District Court applications for SWBPI cases. DACDC has only submitted cases concurring with submittals originally and initially by the District Court. DACDC recognizes that incorrect data submitted according for payment may be in error. DACDC acknowledges that SWBPI reconciliation with District Court may have revealed adjustments by the Court not made evident to DACDC resulting in inadvertent overpayment.

Cases Reimbursed For Excess Detention Based on Overstated Detention Per Diem Rate

DACDC recognizes that upon re-evaluation of audit response, excess rate may be reassessed.

Page 17 & 18

Cases That Were Concurrently Prosecuted:

DACDC is unable to locate dual court case numbers, suggesting concurrent prosecution or charge.

Case without 24 Hours of Detention:

Refer to *Ineligible cases [heading note]*, comments on the past guidelines on >24 hours detention.

Page 18

Cases With No Jail Record:

This case number is a juvenile number at the time of detention...therefore case number is D-307-JR-200900104 (actual juvenile number) but under federal prosecution. Your audit may not have researched juvenile numbers. Upon re-evaluation of audit response, payment for "unfounded Jail record" may be reassessed.

Cases with Jail Booking Dates After the Cases were Disposed:

Our audit of this record reflects that D-307-CR-200800918 was not booked on 02/03/2009. SWBPI has identified this record as receiving a court disposition on 02/03/2009. Inmate was first booked into DACDC on 02/06/2009 and court disposition recorded on 02/16/2009. Face sheet and Record check included.

Please accept this response as our position on your "draft audit" submittal. We await your review of our responses of the Southwest Border Prosecution initiative (SWBPI) submitted by Dona Ana County FY2008 thru FY2010.

Respectfully,



Chris Barela, Director
Dona Ana County Detention Center

OJP'S RESPONSE TO THE DRAFT REPORT



U.S. Department of Justice

Office of Justice Programs

Office of Audit, Assessment, and Management

Washington, D.C. 20531

20 JUL 2012

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

FROM: Maureen A. Henneberg
Director *MA Henneberg*

SUBJECT: Response to the Draft Audit Report, *Audit of the Office of Justice Programs, Southwest Border Prosecution Initiative Funding Received by Doña Ana County, New Mexico*

The Office of Justice Programs (OJP) appreciates the opportunity to review and comment on the Office of the Inspector General's (OIG's) draft report, entitled "Audit of the Office of Justice Programs Southwest Border Prosecution Initiative Funding Received by Doña Ana County, New Mexico," dated June 18, 2012. We consider the subject report resolved and request written acceptance of this action from your office.

As a result of the OIG's audit of the Southwest Border Prosecution Initiative (SWBPI) Program in fiscal years (FYs) 2008 and 2010, and the Office of Audit, Assessment, and Management's (OAAM) review of this program in FY 2011, the Bureau of Justice Assistance (BJA) made the following enhancements: 1) modified the SWBPI application system to require that each prosecution case submitted by a jurisdiction for reimbursement contain the case/docket number, defendant's first and last name, referring Federal agency, referred date, resolution type, and resolved date; 2) established new internal guidelines to ensure that SWBPI reimbursements are analyzed to identify anomalies that may indicate unallowable or unsupported payments to specific jurisdictions; and 3) implemented a process to identify overlapping requests for detention expenses between SWBPI and the State Criminal Alien Assistance Program.

BJA's enhanced monitoring process over SWBPI payments has resulted in increased scrutiny, and now includes a review of a minimum of 10% of the annual payments made under the program. It should be noted that Doña Ana County was not included in any of BJA's samples of SWBPI case file reviews.

The report contains **12** recommendations, **\$205,242** in questioned costs, and **\$94,042** in funds to be put to better use. However, the \$94,042 have been requested by Doña Ana County, but not yet provided by BJA. The following is OJP's 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 \$125,987 in unallowable questioned costs received by Doña Ana County for 15 cases that were submitted for detention days in excess of the actual number of pre-trial detention days.**

We agree with the recommendation. We will coordinate with Doña Ana County to remedy the \$125,987 in questioned costs related to the 15 cases that were submitted for detention days in excess of the actual number of pre-trial detention days.

- 2. We recommend that OJP remedy the \$61,570 in unallowable questioned costs received by Doña Ana County for 28 cases that were submitted under pre-trial detention that did not meet the requirements for pre-trial detention.**

We agree with the recommendation. We will coordinate with Doña Ana County to remedy the \$61,570 in questioned costs associated with the 28 cases that were submitted under pre-trial detention that did not meet the requirements for pre-trial detention.

- 3. We recommend that OJP remedy the \$9,039 in unallowable questioned costs received by Doña Ana County for all cases, which claimed reimbursements using per diem rates that exceeded the publicized per diem rates.**

We agree with the recommendation. We will coordinate with Doña Ana County to remedy the \$9,039 in questioned costs associated with all of the cases, which claimed reimbursements using per diem rates that exceeded the publicized per diem rates.

- 4. We recommend that OJP remedy the \$8,167 in unallowable questioned costs received by Doña Ana County for one case for which the detention related to a probation violation, not a Federally initiated case.**

We agree with the recommendation. We will coordinate with Doña Ana County to remedy the \$8,167 in questioned costs related to the one case that was not Federally initiated.

5. **We recommend that OJP remedy the \$384 in unsupported questioned costs received by Doña Ana County for one case for which the supporting pre-trial detention information was not located.**

We agree with the recommendation. We will coordinate with Doña Ana County to remedy the \$384 in questioned costs associated with the one case for which the supporting pre-trial detention information was not located.

6. **We recommend that OJP remedy the \$95 in unallowable questioned costs received by Doña Ana County for one case that was investigated or prosecuted during a concurrent period of time with a case involving the same defendant that was also submitted for reimbursement.**

We agree with the recommendation. We will coordinate with Doña Ana County to remedy the \$95 in questioned costs related to the one case that was investigated or prosecuted during a concurrent period of time with a case involving the same defendant that was also submitted for reimbursement.

7. **We recommend that OJP remedy the \$33,819 in funds to better use requested, but not yet received, by Doña Ana County for 10 cases that were submitted for detention days in excess of the actual number of pre-trial detention days.**

We agree with the recommendation. We will coordinate with Doña Ana County to remedy the \$33,819 in funds to be put to better use which were requested, but not yet received, for the 10 cases that were submitted for detention days in excess of the actual number of pre-trial detention days.

8. **We recommend that OJP remedy the \$25,160 in funds to better use requested, but not yet received, by Doña Ana County for four cases that were investigated or prosecuted during a concurrent period of time with cases involving the same defendant that were also submitted for reimbursement.**

We agree with the recommendation. We will coordinate with Doña Ana County to remedy the \$25,160 in funds to be put to better use which were requested, but not yet received, for the four cases that were investigated or prosecuted during a concurrent period of time, with cases involving the same defendant, that were also submitted for reimbursement.

9. **We recommend that OJP remedy the \$24,853 in funds to better use requested, but not yet received, by Doña Ana County, for all cases which claimed reimbursements using per diem rates that exceeded the publicized per diem rates.**

We agree with the recommendation. We will coordinate with Doña Ana County to remedy the \$24,853 in funds to be put to better use which were requested, but not yet received, for all of the cases which claimed reimbursements using per diem rates that exceeded the publicized per diem rates.

10. **We recommend that OJP remedy the \$5,445 in funds to better use requested, but not yet received, by Doña Ana County, for 52 cases that were submitted under pre-trial detention that did not meet the requirements for pre-trial detention.**

We agree with the recommendation. We will coordinate with Doña Ana County to remedy the \$5,445 in funds to be put to better use which were requested, but not yet received, for the 52 cases that were submitted under pre-trial detention that did not meet the requirements for pre-trial detention.

11. **We recommend that OJP remedy the \$4,677 in funds to better use requested, but not yet received by Doña Ana County, for one case for which the supporting pre-trial detention information was not located.**

We agree with the recommendation. We will coordinate with Doña Ana County to remedy the \$4,677 in funds to be put to better use, which were requested, but not yet received, for the one case for which the supporting pre-trial detention information was not located.

12. **We recommend that OJP remedy the \$88 in funds to better use requested, but not yet received, by Doña Ana County, for one case for which the detention booking date was after the case was disposed.**

We agree with the recommendation. We will coordinate with Doña Ana County to remedy the \$88 in funds to be put to better use which were requested, but not yet received, for the one case for which the detention booking date was after the case was disposed.

If you have any questions or require additional information, please contact Jeffery A. Haley, Deputy Director, Audit and Review Division, on (202) 616-2936.

cc: Jeffery A. Haley
Deputy Director, Audit and Review Division
Office of Audit, Assessment, and Management

cc: Tracey Trautman
Acting Deputy Director for Programs
Bureau of Justice Assistance

Amanda LoCicero
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Bureau of Justice Assistance

Louise Duhamel, Ph.D.
Acting Assistant Director, Audit Liaison Group
Internal Review and Evaluation Office
Justice Management Division

OJP Executive Secretariat
Control Number 20121002

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

The OIG provided a draft of this audit report to OJP and Doña Ana County. OJP's response, which is included in Appendix VI of this report, states that OJP agrees with our recommendations and that it will coordinate with Doña Ana County to remedy questioned costs and funds to better use. OJP also states that "BJA's enhanced monitoring process over SWBPI payments has resulted in increased scrutiny, and now includes a review of a minimum of 10 percent of the annual payments made under the program. It should be noted that Doña Ana County was not included in any of BJA's samples of SWBPI case file reviews." We recognize the changes that OJP made to the SWBPI program based on recommendations provided in prior OIG reports.¹⁸ However, questioned costs related to the ineligible cases submitted must still be remedied. 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 \$125,987 in unallowable questioned costs received by Doña Ana County for 15 cases that were submitted for detention days in excess of the actual number of pre-trial detention days. OJP stated in its response that it will coordinate with Doña Ana County to remedy the \$125,987 in questioned costs related to the 15 cases that were submitted for detention days in excess of the actual number of pre-trial detention days.

This recommendation can be closed when we receive documentation that OJP remedied the \$125,987 in unallowable questioned costs received by Doña Ana County for 15 cases that were submitted for detention days in excess of the actual number of pre-trial detention days.

¹⁸ U.S. Department of Justice Office of the Inspector General, *Southwest Border Prosecution Initiative Reimbursement Program*, Audit Report 08-22 (March 2008); and U.S. Department of Justice Office of the Inspector General, *Southwest Border Prosecution Initiative Reimbursements*, Audit Report 10-20 (March 2010).

2. **Resolved.** OJP concurred with our recommendation to remedy the \$61,570 in unallowable questioned costs received by Doña Ana County for 28 cases that were submitted under pre-trial detention that did not meet the requirements for pre-trial detention. OJP stated in its response that it will coordinate with Doña Ana County to remedy the \$61,570 in questioned costs associated with the 28 cases that were submitted under pre-trial detention that did not meet the requirements for pre-trial detention.¹⁹

Doña Ana County's response, included as Appendix V, page 20 of this report, states that the requirement that an inmate be held in custody for at least 24 hours did not appear in the guidelines prior to FY 2012. Doña Ana County states that it complied with the FY 2008 through FY 2012 guidelines. However, we reviewed the SWBPI guidelines for the third and fourth quarter of FY 2008, the period related to the questioned costs outlined in this finding, and identified the following language: "An eligible jurisdiction must have held the case defendant in a secure facility for 24 hours or more." The 28 cases did not meet the requirements for pre-trial detention, based on criterion applicable for the submissions questioned.

This recommendation can be closed when we receive documentation that OJP remedied the \$61,570 in unallowable questioned costs received by Doña Ana County for 28 cases that were submitted under pre-trial detention that did not meet the requirements for pre-trial detention.

3. **Resolved.** OJP concurred with our recommendation to remedy the \$9,039 in unallowable questioned costs received by Doña Ana County for all cases, which claimed reimbursements using per diem rates that exceeded the publicized per diem rates. OJP stated in its response that it will coordinate with Doña Ana County to remedy the \$9,039 in questioned costs associated with all of the cases, which claimed reimbursements using per diem rates that exceeded the publicized per diem rates.

This recommendation can be closed when we receive documentation that OJP remedied the \$9,039 in unallowable questioned costs received by Doña Ana County for all cases, which claimed reimbursements using per diem rates that exceeded the publicized

¹⁹ Case D-307-CR-2008-00061, which included \$95 in costs for not meeting the pre-trial detention requirement, was excluded from questioned costs for recommendation 2 to avoid duplicate questioned costs for recommendation 6, which also includes the case.

per diem rates.

- 4. Resolved.** OJP concurred with our recommendation to remedy the \$8,167 in unallowable questioned costs received by Doña Ana County for one case for which the detention related to a probation violation, not a federally initiated case. OJP stated in its response that it will coordinate with Doña Ana County to remedy the \$8,167 in questioned costs related to the one case that was not federally initiated.

This recommendation can be closed when we receive documentation that OJP remedied the \$8,167 in unallowable questioned costs received by Doña Ana County for one case for which the detention related to a probation violation, not a federally initiated case.

- 5. Resolved.** OJP concurred with our recommendation to remedy the \$384 in unsupported questioned costs received by Doña Ana County for one case for which the supporting pre-trial detention information was not located. OJP stated in its response that it will coordinate with Doña Ana County to remedy the \$384 in questioned costs associated with the one case for which the supporting pre-trial detention information was not located.

Doña Ana County's response, included as Appendix V, page 21 of this report, states, "This case [D-0905-CR-200700787] is not reflected as a Doña Ana County District Court Case, nor can we find an appearance on our master spreadsheet reported to SWBPI." In the third quarter of FY 2008, Doña Ana County received reimbursements from SWBPI funds totaling \$377,304. According to the documentation Doña Ana County provided us, case D-0905-CR-200700787 was one of 37 cases Doña Ana County included as part of the SWBPI reimbursement for that period.

This recommendation can be closed when we receive documentation that OJP remedied the \$384 in unsupported questioned costs received by Doña Ana County for one case for which the supporting pre-trial detention information was not located.

- 6. Resolved.** OJP concurred with our recommendation to remedy the \$95 in unallowable questioned costs received by Doña Ana County for one case that was investigated or prosecuted during a concurrent period of time with a case involving the same defendant that was also submitted for reimbursement. OJP stated in its response that it will coordinate with Doña Ana County to remedy the \$95 in

questioned costs related to the one case that was investigated or prosecuted during a concurrent period of time with a case involving the same defendant that was also submitted for reimbursement.

Doña Ana County's response, included as Appendix V, page 21 of this report, states they were "unable to locate dual court case numbers, suggesting concurrent prosecution or charge." According to the SWBPI guidelines for the third and fourth quarter of FY 2008, "One defendant charged in multiple cases should be claimed as only one case to the extent the defendant's cases are being investigated and/or prosecuted during concurrent periods of time." Case D-307-CR-2008-00061 was prosecuted at the same time as another case involving the same defendant and both cases were included as part of the SWBPI reimbursement for the fourth quarter of FY 2008.

This recommendation can be closed when we receive documentation that OJP remedied the \$95 in unallowable questioned costs received by Doña Ana County for one case that was investigated or prosecuted during a concurrent period of time with a case involving the same defendant that was also submitted for reimbursement.

7. **Resolved.** OJP concurred with our recommendation to remedy the \$33,819 in funds to better use requested, but not yet received by Doña Ana County for 10 cases that were submitted for detention days in excess of the actual number of pre-trial detention days. OJP stated in its response that it will coordinate with Doña Ana County to remedy the \$33,819 in funds to be put to better use which were requested, but not yet received for the 10 cases that were submitted for detention days in excess of the actual number of pre-trial detention days.

Subsequent analysis of case D-307-CR-201000352 resulted in remedying funds to better use in recommendation 8 related to this case. However, as reported in our draft report and the table on page 16, this case was also one of the 10 cases that were submitted for excess detention days. To avoid duplicate funds to better use with recommendation 8, the \$33,819 in funds to better use reported in our draft report for recommendation 7 excluded case D-307-CR-201000352. Because this case was remedied in recommendation 8 and will no longer duplicate funds to better use in recommendation 7, for this final report we included in the funds to

better use for recommendation 7 the costs for excess days (\$1,984) associated with case D-307-CR-201000352.²⁰

The recommendation can be closed when we receive documentation that OJP remedied the \$35,803 (\$33,819 + \$1,984) in funds to better use requested, but not yet received by Doña Ana County for 10 cases that were submitted for detention days in excess of the actual number of pre-trial detention days.

8. **Resolved.** OJP concurred with our recommendation to remedy the \$25,160 in funds to better use requested, but not yet received by Doña Ana County for four cases that were investigated or prosecuted during a concurrent period of time with cases involving the same defendant that were also submitted for reimbursement. OJP stated in its response that it will coordinate with Doña Ana County to remedy the \$25,160 in funds to be put to better use which were requested, but not yet received for the four cases that were investigated or prosecuted during a concurrent period of time with cases involving the same defendant that were also submitted for reimbursement.

Doña Ana County's response, included as Appendix V, page 21 of this report, states it was "unable to locate dual court case numbers, suggesting concurrent prosecution or charge." According to the SWBPI guidelines for FY 2010, "One defendant charged in multiple cases should be claimed as only one case to the extent the defendant's cases are being investigated and/or prosecuted during concurrent periods of time." Cases D-307-CR-200901023, D-307-CR-200901232, and D-307-CR-200901167 were prosecuted at the same time as other cases involving the same defendants and all cases were included as part of the SWBPI reimbursement for FY 2010. However, subsequent analysis of another case determined that the same defendant was prosecuted at a different time. We updated this final report with this information and revised the funds to better use for remedy in association with this recommendation to \$13,707 (\$25,160 - \$11,453).

The recommendation can be closed when we receive documentation that OJP remedied the \$13,707 in funds to better use requested, but not yet received by Doña Ana County for the remaining three cases

²⁰ Case D-307-CR-200901232, which included \$90 in costs for excess detention days, was excluded from funds to better use for recommendation 7 to avoid duplicate funds to better use for recommendation 8, which also includes the case.

that were investigated or prosecuted during a concurrent period of time with cases involving the same defendant that were also submitted for reimbursement.

9. **Resolved.** OJP concurred with our recommendation to remedy the \$24,853 in funds to better use requested, but not yet received by Doña Ana County for all cases, which claimed reimbursements using per diem rates that exceeded the publicized per diem rates. OJP stated in its response that it will coordinate with Doña Ana County to remedy the \$24,853 in funds to be put to better use which were requested, but not yet received for all of the cases, which claimed reimbursements using per diem rates that exceeded the publicized per diem rates.

Subsequent analysis of case D-307-CR-201000352 resulted in remedying funds to better use in recommendation 8 related to this case. However, as reported in our draft report and the table on page 16, all of the cases were submitted using an excess per diem rate. To avoid duplicate funds to better use with recommendation 8, the \$24,853 in funds to better use reported in our draft report for recommendation 9 excluded case D-307-CR-201000352. Because this case was remedied in recommendation 8 and will no longer duplicate funds to better use in recommendation 9, for this final report we included in the funds to better use for recommendation 9 the costs for excess per diem (\$152) associated with case D-307-CR-201000352. The excess per diem excludes duplicate funds to better use related to this case that were included as part of recommendation 7.

The recommendation can be closed when we receive documentation that OJP remedied the \$25,005 (\$24,853 + \$152) in funds to better use requested, but not yet received by Doña Ana County for all cases, which claimed reimbursements using per diem rates that exceeded the publicized per diem rates.

10. **Resolved.** OJP concurred with our recommendation to remedy the \$5,445 in funds to better use requested, but not yet received by Doña Ana County for 52 cases that were submitted under pre-trial detention that did not meet the requirements for pre-trial detention. OJP stated in its response that it will coordinate with Doña Ana County to remedy the \$5,445 in funds to be put to better use which were requested, but not yet received for the 52 cases that were

submitted under pre-trial detention that did not meet the requirements for pre-trial detention.²¹

Doña Ana County's response, included as Appendix V, page 20 of this report, states that the requirement that an inmate be held in custody for at least 24 hours did not appear in the guidelines prior to FY 2012. Doña Ana County states that it complied with the FY 2008 through FY 2012 guidelines. However, we reviewed the guidelines for FY 2009 and FY 2010, the periods related to the funds to better use outlined in this finding, and identified the following language in both guidelines: "An eligible jurisdiction must have held the case defendant in a secure facility for 24 hours or more." The 52 cases did not meet the requirements for pre-trial detention, based on criteria applicable for the submissions identified.

The recommendation can be closed when we receive documentation that OJP remedied the \$5,445 in funds to better use requested, but not yet received by Doña Ana County for 52 cases that were submitted under pre-trial detention that did not meet the requirements for pre-trial detention.

- 11. Resolved.** OJP concurred with our recommendation to remedy the \$4,677 in funds to better use requested, but not yet received by Doña Ana County for one case for which the supporting pre-trial detention information was not located. OJP stated in its response that it will coordinate with Doña Ana County to remedy the \$4,677 in funds to be put to better use, which were requested, but not yet received for the one case for which the supporting pre-trial detention information was not located.

Doña Ana County's response, included as Appendix V, page 22 of this report, states that "this case number is a juvenile number at the time of detention . . . Your audit may not have researched juvenile numbers." Although we requested documentation for the cases submitted for reimbursement, including this case, the record was not made available to us during our audit. We have not received documentation supporting the pre-trial detention costs related to this case.

The recommendation can be closed when we receive documentation

²¹ Case D-307-CR-200901167, which included \$90 in costs for not meeting the pre-trial detention requirement, was excluded from funds to better use for recommendation 10 to avoid duplicate funds to better use for recommendation 8, which also includes the case.

that OJP remedied the \$4,677 in funds to better use requested, but not yet received by Doña Ana County for one case for which the supporting pre-trial detention information was not located.

- 12. Resolved.** OJP concurred with our recommendation to remedy the \$88 in funds to better use requested, but not yet received by Doña Ana County for one case for which the detention booking date was after the case was disposed. OJP stated in its response that it will coordinate with Doña Ana County to remedy the \$88 in funds to be put to better use which were requested, but not yet received for the one case for which the detention booking date was after the case was disposed.

Doña Ana County's response, included as Appendix V, page 22 of this report, states that, "SWBPI has identified this record as receiving court disposition on 02/03/2009. [The] inmate was first booked . . . on 02/06/2009 and court disposition [was] recorded on 02/16/2009." In New Mexico, only pre-trial detention services are reported in a county's online application. Prosecution services are provided through state agencies and are reflected in a state-level application. This means the state, not the county, is responsible for reporting the case disposition date to SWBPI. According to the state's SWBPI records, the disposition date for this case was February 3, 2009. The county did not make available to us documentation indicating the disposition date was not February 3, 2009. Further, the county did not include any documentation with its response to the draft report.

The recommendation can be closed when we receive documentation that OJP remedied the \$88 in funds to better use requested, but not yet received by Doña Ana County for one case for which the detention booking date was after the case was disposed.