

Report of Investigation Regarding Allegations of Mishandling of Classified Documents by Attorney General Alberto Gonzales



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TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	BACKGROUND	2
	A. Gonzales’s Professional Background	2
	B. Overview of National Security Information Classification.....	3
	C. Security Facilities Available to Gonzales as Attorney General for the Handling of Classified Materials	4
	1. Justice Department	4
	2. Gonzales’s Residences.....	5
	D. Security Briefings Received by Gonzales as White House Counsel and as Attorney General	7
III.	GONZALES’S HANDLING OF CERTAIN CLASSIFIED DOCUMENTS...	8
	A. Creation and Handling of the Handwritten Notes as White House Counsel	8
	B. Gonzales’s Handling of the Handwritten Notes After He Was Sworn In As Attorney General	11
	C. Gonzales’s Handling of the Notes and Other SCI Documents as Attorney General.....	14
	1. OAG practices concerning the OAG safe	14
	2. Gonzales’s statements to White House attorneys and Justice Department officials about the notes.....	17
	3. Storage of other TS/SCI documents	20
IV.	OIG ANALYSIS.....	21
	A. Gonzales Took the Classified Notes to His Residence	22
	B. Storing the Notes and Other TS/SCI Materials Outside of a SCIF.....	25
	C. Justice Department Security Regulations	26
V.	CONCLUSION.....	28

I. INTRODUCTION

This report describes the investigation by the Department of Justice Office of the Inspector General (OIG) into allegations that Alberto Gonzales mishandled classified documents while serving as the Attorney General. The matter was referred to the OIG by Kenneth Wainstein, former Assistant Attorney General for the National Security Division, on August 10, 2007. The White House Counsel's Office had initially notified the Department of Justice (Department) about the matter, and Wainstein, after consultation with other senior Department officials, referred the matter to the OIG for investigation.

The allegations initially concerned Gonzales's handling of a document that contained classified information about a sensitive intelligence program generally referred to in this report as the NSA surveillance program. The surveillance program is administered by the National Security Agency (NSA) and is classified at the Top Secret/Sensitive Compartmented Information (TS/SCI) level.

During the course of the OIG investigation, we learned of several other classified documents that Gonzales may have mishandled. Most of these documents also concerned the NSA surveillance program. Other documents concerned a detainee interrogation program also classified at the TS/SCI level. We investigated Gonzales's handling of these documents as well.

To conduct this investigation, the OIG interviewed Gonzales on three occasions. Gonzales voluntarily agreed to an initial interview and two follow-up interviews. We also interviewed attorneys in the White House Counsel's Office, members of Gonzales's staff within the Office of the Attorney General (OAG), and other officials in the Department knowledgeable about the handling of classified documents in general and the handling of the specific documents at issue in this investigation. We also reviewed all of the classified documents at issue in this matter.

The classified materials that are the subject of this investigation consist of notes that Gonzales drafted to memorialize a classified briefing of congressional leaders about the NSA surveillance program when Gonzales was the White House Counsel; draft and final Office of Legal Counsel opinions about both the NSA surveillance program and a detainee interrogation program; correspondence from congressional leaders to the Director of Central Intelligence; and other memoranda describing legal and operational aspects of the two classified programs.

This report summarizes the results of the OIG's investigation. Section II provides background information related to this matter, including an overview of classification issues for National Security Information, a description of the facilities available to Gonzales as Attorney General for storing classified

information, and a summary of pertinent security briefings provided to Gonzales as White House Counsel and as Attorney General.

In Section III of this report we discuss the facts surrounding Gonzales's creation and handling of the classified handwritten notes that caused this matter to be referred to the OIG, as well as his handling of the other classified documents at issue in this matter. We also include a discussion of Gonzales's familiarity with and use of the facilities available to him for the storage of classified materials.

In Section IV we provide our analysis of Gonzales's actions regarding the handling of the classified material. Section V contains our conclusions.

In sum, our investigation concluded that Gonzales mishandled classified materials regarding two highly sensitive compartmented programs. We found that Gonzales took his classified handwritten notes home and stored them there for an indeterminate period of time. The notes contained operational aspects and other information about the NSA surveillance program that is classified at the TS/SCI level. By regulation, such material must be stored in a Sensitive Compartmented Storage Facility (SCIF). At the time he took these materials home, Gonzales did not have a SCIF at his house. Although Gonzales did have a safe at his residence at this time, we found that he did not use it to store the notes.

We also found that Gonzales improperly stored other highly classified documents about the two compartmented programs in a safe at the Department that was not located in a SCIF. Several employees in the OAG had access to the safe where Gonzales stored the documents even though they lacked the necessary security clearances for this information. We concluded that Gonzales's mishandling of both the notes and the other classified documents violated Department security requirements and procedures.

II. BACKGROUND

A. Gonzales's Professional Background

After serving as a partner in a Texas law firm, Alberto Gonzales served as General Counsel to the Governor of Texas, George Bush, from 1995 to 1997. From 1997 to 1999, he served as the Texas Secretary of State. In 1999, Governor Bush appointed Gonzales to the Texas Supreme Court. Gonzales served as White House Counsel for President Bush from January 2001 until February 3, 2005, when Gonzales was sworn in as Attorney General. Gonzales resigned as Attorney General on September 17, 2007.

B. Overview of National Security Information Classification

According to Executive Order 12958, as amended, (EO 12958, as amended) National Security Information can be classified at one of the following three levels:¹

“Confidential” applies to “information, the unauthorized disclosure of which reasonably could be expected to cause damage to the national security that the original classification authority is able to identify or describe.”

“Secret” applies to “information, the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security that the original classification authority is able to identify or describe.”

“Top Secret” applies to “information, the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security that the original classification authority is able to identify or describe.”

Access to classified material may be further restricted if the material pertains to a Special Access Program, defined as “a program established for a specific class of classified information that imposes safeguarding and access requirements that exceed those normally required for information at the same classification level.” Information concerning a Special Access Program is referred to as Sensitive Compartmented Information or SCI information.

Classified information may be compartmented within a classification level. Thus, TS/SCI is information classified at the Top Secret (TS) level that is subject to the enhanced controls applicable to Sensitive Compartmented Information. For instance, TS material must either be “under the personal control of an authorized or appropriately cleared person” or “guarded or stored in a locked security container,” typically a General Services Administration-approved safe. See DOJ Security Program Operation Manual at 6-202. However, SCI material must be stored in a SCIF irrespective of its classification level. According to Director of Central Intelligence Directive No. 6/9 (Nov. 18, 2002), a SCIF is a specially constructed room or other structure “intended to prevent as well as detect visual, acoustical, technical, and physical access by unauthorized persons.”

Under EO 12958, as amended, classified information at any level may be either “original” or “derivative.” Original classification means that an initial

¹ Executive Order 12958 (April 17, 1995), was amended by Executive Order 13292 (March 25, 2003).

determination has been made that the “information requires, in the interest of national security, protection against unauthorized disclosure.” Derivative classification refers to “incorporating, paraphrasing, restating or generating in new form information that is already classified.” Derivative classified information must be marked in a manner consistent with the markings of the source information and handled in accordance with the original classification decisions. See also 28 C.F.R. § 17.26(a)(persons need not possess original classification authority to derivatively classify information based on source documents or classification guides).

Each component within the Department, including the OAG, has a Security Programs Manager (SPM) available to provide guidance to employees on the proper handling and storage procedures for classified information. According to DOJ Order 2600.2C, SPMs are responsible for “the management and coordination of all Department security programs and plans within their respective organizations.” These responsibilities include ensuring that employees “are fully informed and periodically reminded of their responsibilities” concerning Department security programs, and “[o]bserving, enforcing, and when necessary, implementing security regulations or procedures pertaining to the classification, . . . safeguarding, handling, and storage of classified national security information, SCI, and other DOJ sensitive material.”

C. Security Facilities Available to Gonzales as Attorney General for the Handling of Classified Materials

1. Justice Department

The Office of the Attorney General (OAG) is located in the Robert F. Kennedy Main Justice Building in Washington, D.C. The Attorney General’s staff occupies offices along two corridors emanating from the Attorney General’s suite.² According to the SPM for the OAG, there are five safes and one SCIF in the OAG.³ The SPM and other OAG witnesses stated that one safe is located in a small office within the Attorney General’s suite, and the other four are located in other offices throughout the OAG. These five safes are

² For purposes of this report, we refer to the Attorney General’s personal office and adjacent offices used by his personal and special assistants as the “Attorney General’s suite.”

³ The SPM for the OAG is also the OAG Office Manager. She told the OIG that her duties as SPM include managing requests for security clearances and ensuring that classified material is handled properly. She also said she ensures that security codes to equipment and offices are changed when necessary and acts as the OAG’s liaison with the Department’s Security Office. The SPM stated that while she is available to answer questions regarding the proper handling of classified materials and other security issues, she does not provide security briefings to OAG staff. Rather, these briefings are handled by the Department’s Security and Emergency Planning Staff (SEPS).

certified for storing materials classified up to the TS level, but they cannot be used to store SCI material because they are not housed within a SCIF. The safe in the small office within the Attorney General's suite is significant to this investigation because it is where Gonzales acknowledged to the OIG he stored the handwritten notes and other SCI documents described in this report. We refer to this safe in this report as the OAG safe.

The SPM told us that the OAG also has a small storage SCIF, containing two additional safes, which is located approximately five offices down a corridor from the Attorney General's personal office. The SPM stated that the SCIF was the only facility available to Gonzales within the OAG certified for the storage of SCI materials, a fact confirmed to us by the Director of the Department's Security and Emergency Planning Staff (SEPS).⁴ Both the SPM and the SEPS Director told the OIG that the Justice Command Center, a SCIF facility located one floor above the OAG and available to Gonzales, was also certified for storage of SCI materials.⁵

2. Gonzales's Residences

During his tenure as the Attorney General, Gonzales first lived at a residence in Vienna, Virginia. Gonzales stated that in August 2005 he moved to another residence in the Washington area.

The OIG interviewed a Program Manager for the Department's Technical Surveillance Countermeasures Program who was responsible for the installation and removal of security equipment for senior Department officials, including Gonzales. The Program Manager told the OIG that as White House Counsel, Gonzales had been provided with a safe and a shredder by the Executive Office of the President (EOP) at his Vienna, Virginia residence.⁶

Gonzales became the Attorney General on February 3, 2005. According to the Program Manager, on February 26, 2005, all White House security equipment provided to Gonzales for his residence, with the exception of the EOP safe, was removed and replaced with DOJ equipment.

The Program Manager stated that in order to minimize traffic in and out of Gonzales's residence, he arranged with the EOP's Security Office to keep the

⁴ SEPS is responsible for developing policy, methods, and procedures for the implementation of security programs for the Department.

⁵ The Justice Command Center is a secure 24-hour facility that operates in support of the Department's law enforcement and national security programs.

⁶ The Program Manager stated that the White House Communications Agency had also supplied Gonzales with a secure phone and a secure facsimile machine for his Vienna residence.

EOP safe at Gonzales's residence and to reimburse the EOP with a DOJ safe. Although an e-mail from the Program Manager to his supervisor indicates that Gonzales was at home on February 26, 2005, when the White House equipment was removed from his residence, Gonzales told the OIG that he had no recollection of the removal of the White House equipment and the installation of the DOJ equipment, and that he was unaware of the decision to retain the White House-provided safe at his residence.

The Program Manager said that in early March 2005 a member of Gonzales's security detail called him to ask for the combination to Gonzales's safe because Gonzales could not open it.⁷ The Program Manager told us he attempted to find out the combination to the safe from the EOP but that the EOP had no records matching the bar code and serial number for Gonzales's safe. The Program Manager said he also tried the factory default setting for the combination, as well as several variations of that setting, without success.

The Program Manager also provided the OIG with a March 15, 2005, e-mail from an EOP official to him stating that "[t]he AG's assistant . . . said the AG does not know the combination either." The assistant referenced in the e-mail told the OIG that she had no recollection of discussing this safe or its combination with Gonzales.

Gonzales told the OIG that he had no specific recollection of ever using the White House-provided safe in his Vienna residence, and in any event did not recall whether the safe was suitable for the storage of TS material. Gonzales also said he did not recall whether Department or FBI security personnel were unable to open the safe, nor did he recall being asked by anyone for the combination to it. Gonzales also said he did not recall being asked for the combination by his assistant, but stated that he had no reason to dispute that the assistant had indicated that Gonzales did not know the combination. He said it was possible he had forgotten the combination to the safe.

Gonzales moved to a new residence in the Washington area in August 2005. According to the Program Manager, the EOP safe was removed from Gonzales's former residence, still unopened, and eventually returned to the White House. Both the Program Manager and the Director of SEPS stated that on August 12, 2005, Gonzales's secure telephone, facsimile machine and shredder were moved to the new residence and a new Department safe was

⁷ According to the Program Manager, the security detail thought that the Program Manager had reset the combination to the safe at some point. However, the Program Manager told the detail that he had not done so and that the combination to the safe should have been the same as it was before the Department's involvement.

installed there.⁸ The Director of SEPS told the OIG that the Department safe was certified for the storage of materials up to the TS level but could not be used to store SCI materials because the safe was not housed within a SCIF. The Director also stated that the Department never constructed a SCIF in Gonzales's residences.

D. Security Briefings Received by Gonzales as White House Counsel and as Attorney General

The White House Counsel's Office informed the OIG that Gonzales received an SCI briefing on January 17, 2001, just prior to becoming the White House Counsel. Gonzales received his formal TS/SCI clearance in the White House on January 23, 2001. Gonzales acknowledged in his interview with the OIG that all White House personnel receive a security briefing about procedures "consistent with handling classified information." However, he said that he did not recall this general briefing or a briefing specifically concerning SCI at the White House. The OIG confirmed through the White House Counsel's Office that Gonzales signed a form acknowledging that he received an SCI briefing on January 17, 2001.⁹

Gonzales also received another SCI security briefing when he became Attorney General. Gonzales was confirmed by the Senate on February 3, 2005, and was sworn in as Attorney General that day. During the evening of February 3, Gonzales received an SCI briefing in the Justice Command Center to authorize his access to several Special Access Programs.

According to the Director of SEPS, who was present at the briefing, the briefing consisted of a PowerPoint presentation explaining the rights and obligations of persons with SCI clearance, how SCI material must be stored and under what conditions SCI can be discussed, proper SCI document control and transmission, and proper communication and processing of SCI material. The OIG reviewed the PowerPoint presentation given to Gonzales during his briefing. Of particular relevance to this investigation, the presentation covered the requirement that SCI can be discussed and stored "only in an accredited SCI facility (SCIF)" and also advised that after-hours storage of SCI is available at the Justice Command Center.

Immediately following the briefing, Gonzales signed a Form 4414 SCI Nondisclosure Agreement. In signing the SCI Nondisclosure Agreement, Gonzales affirmed that he "received a security indoctrination concerning the

⁸ The safe was removed from this residence on September 17, 2007, upon Gonzales's resignation as Attorney General.

⁹ The White House Counsel's Office was unable to provide us more details on the contents of the White House SCI briefing for Gonzales.

nature and protection of SCI,” and had “been advised that the unauthorized disclosure, unauthorized retention, or negligent handling of SCI . . . could cause irreparable injury to the United States or be used to advantage by a foreign nation.” The OIG showed Gonzales a copy of his signed SCI Nondisclosure Agreement, and he confirmed that the signature on the document was his.

Despite his acknowledgement of his signature on the Nondisclosure Agreement form, Gonzales told us he did not recall attending any security briefings upon becoming Attorney General, including the briefing he received on his first day as the Attorney General in connection with receiving his TS/SCI security clearance at the Department and his signing the SCI Nondisclosure Agreement. However, during his OIG interview, Gonzales stated to us that he had a “general understanding” of the proper handling of SCI material and said that he “understood the importance of handling classified information,” especially after the September 11, 2001, terrorist attacks. Gonzales also stated that he understood his obligations as Attorney General and that he needed to “lead by example” in his handling of sensitive materials.

III. GONZALES’S HANDLING OF CERTAIN CLASSIFIED DOCUMENTS

In this section of the report, we discuss the facts surrounding Gonzales’s creation and handling of the handwritten notes about the NSA surveillance program, his handling of other classified documents about the NSA program and a detainee interrogation program that Gonzales had acquired during his tenure as Attorney General, and his familiarity with and use of the facilities available to him for the proper handling of these documents.

A. Creation and Handling of the Handwritten Notes as White House Counsel

Early in his tenure as White House Counsel, Gonzales worked with officials in the Intelligence Community on the NSA surveillance program. Gonzales told us that he was personally involved in the creation and development of the program and thus was not formally “read in” to the program as subsequent participants were.¹⁰

As a consequence of Gonzales’s involvement with the NSA surveillance program both as White House Counsel and as Attorney General, Gonzales reviewed numerous documents marked as TS with SCI designations concerning

¹⁰ The process of being “read in” to a compartmented program generally entails receiving a briefing about the program followed by a formal acknowledgement of the briefing, usually indicated by the signing of a Nondisclosure Agreement binding the individual to obligations regarding the handling and use of information concerning the program.

the NSA surveillance program before and after March 2004 when he drafted the notes at issue in this matter. Regarding his understanding of the classification of the NSA surveillance program, Gonzales told the OIG that he knew it was “very, very limited access.” However, he stated he could not say whether the program was TS or TS/SCI, although he said he knew it was of the highest level of secrecy.¹¹ Gonzales said he “assumed” documents related to the program bore classification markings that would have indicated the precise classification of the program, but that he did not create such documents, so he could not be certain.

One of the documents at issue in this investigation is Gonzales’s handwritten notes that he created in connection with a dispute between the Department and the White House concerning the legal reasoning supporting the NSA surveillance program. According to public testimony before congressional committees, then-Attorney General John Ashcroft had been hospitalized with acute pancreatitis on March 4, 2004, and Deputy Attorney General James Comey, as Acting Attorney General, would not certify the legality of a Presidential order to reauthorize the surveillance program. Gonzales told the OIG that on March 10, 2004, a meeting was held to inform congressional leaders of Comey’s position and to explore legislative solutions to the impasse.

On the afternoon of Wednesday, March 10, 2004, Gonzales and other White House and intelligence agency officials, including the Vice President and NSA Director Michael Hayden, convened an “emergency meeting” in the White House Situation Room with Senate Majority and Minority Leaders Bill Frist and Tom Daschle; Senate Select Committee on Intelligence Leader Pat Roberts and Ranking Member Jay Rockefeller; Speaker of the House Dennis Hastert and House Minority Leader Nancy Pelosi; and House Permanent Select Committee on Intelligence Chairman Porter Goss and Ranking Member Jane Harman.¹² See Transcript of Gonzales’s Testimony before the Senate Judiciary Committee, July 24, 2007. Gonzales told the OIG that in addition to a discussion of Comey’s decision not to certify the program, the congressional leadership briefing also included a description of certain operational details of the surveillance program. Gonzales stated that he did not recall what briefing materials were used during the meeting or whether there were any indications

¹¹ Gonzales publicly has described the program as “one of the most highly protected [programs] in the United States government” and as a “very, very secretive, protected program.” See, e.g., Transcript of Attorney General Interview on CBS Early Show, December 19, 2005, available at <http://www.usdoj.gov/ag/readingroom/surveillance.htm>.

¹² This group of Congressional leaders was known informally as the “Gang of Eight.”

that the meeting concerned a TS/SCI program.¹³ He stated that the meeting was held in the White House Situation Room, which is a SCIF.

Gonzales told the OIG that President Bush directed him to memorialize the March 10, 2004, meeting. Gonzales stated that he drafted notes about the meeting in a spiral notebook in his White House Counsel's Office within a few days of the meeting, probably on the weekend immediately following the meeting. Gonzales stated that he wrote the notes in a single sitting except for one line, which he told us he wrote within the next day. Gonzales said that his intent in drafting the notes was to record the reactions of the congressional leaders during the meeting, as opposed to recording any operational details about the program that were discussed. In the notes, Gonzales listed who was present, followed by a general summary of the briefing given to the congressional leaders by intelligence agency officials, and the congressional leaders' responses to the briefing. However, Gonzales's summary also referenced TS/SCI operational aspects of the program by his use of specific terms associated with the program. The notes also included the SCI codeword used to identify the program. Gonzales did not apply any classification markings to the notes.¹⁴

Gonzales told the OIG that he stored the notes in his safe in the West Wing of the White House, a location Gonzales described as very secure and accessible only by himself and possibly his confidential assistant.¹⁵ He said he regarded the notes as "sensitive" because the President had asked him to write them, and accordingly he "treated [the notes] as classified." However, Gonzales said he did not recall thinking that the notes were classified and said that he did not think to mark the notes as classified. Gonzales told the OIG that he used two envelopes to double-wrap the notes. Gonzales stated he may have written an abbreviation for the codeword of the program on the inner envelope.

¹³ An NSA official who was present at this briefing told the OIG that briefing materials about the NSA surveillance program were handed out to the participants at the briefing and that these materials were marked as TS with SCI designations. The OIG reviewed a copy of the briefing materials and confirmed the presence of the TS/SCI markings.

¹⁴ In July 2007, after several Department and White House officials became aware of Gonzales's notes, the notes were reviewed by two NSA officials, one of whom is an Original Classifying Authority for the NSA surveillance program, to determine whether the notes include any classified information. The NSA officials determined that 3 of 21 paragraphs in the notes contain SCI information about the NSA surveillance program, 1 paragraph contains SCI information about signals intelligence, and the remaining paragraphs are unclassified. These NSA officials told the OIG that the three paragraphs about the NSA surveillance program contain SCI information based on references to operational aspects of the program as well as the use of the codeword for the program in conjunction with these operational aspects. The other information included in the notes that was deemed classified by the NSA cannot be described in this unclassified report.

¹⁵ Gonzales told the OIG he was fairly certain his confidential assistant would not have been briefed in to the NSA surveillance program referred to in the notes.

On the outer envelope Gonzales said he wrote “AG – EYES ONLY – TOP SECRET.”

Gonzales stated that he stored the notes in the White House safe through the remainder of his tenure as White House Counsel. According to White House attorneys interviewed by the OIG, the safe used by Gonzales was located in the office assigned to the White House Counsel, which is a SCIF.

B. Gonzales’s Handling of the Handwritten Notes After He Was Sworn In As Attorney General

On the afternoon of February 3, 2005, Gonzales was sworn in as the Attorney General. Gonzales told us that on that day he personally took the handwritten notes, still double-wrapped, from the White House to the Justice Department after his swearing-in at the White House. Gonzales said he arrived at the Justice Department in the early evening accompanied by his FBI security detail, two White House aides, and his wife. He told the OIG that he did not recall whether any OAG staff were present when he arrived at the Attorney General’s suite. Gonzales said that his White House possessions had been moved to the Department in boxes, but could not recall who had moved them. He stated that he would not have placed the handwritten notes in any of these boxes, and would have kept them in his briefcase during the ride from the White House to the Department. Gonzales told us he did not recall how long he remained at the Department on the evening of his swearing-in.

Gonzales stated he could not recall where he stored the notes after he arrived at the Department. Gonzales described to us the OAG safe located in the office just outside the Attorney General’s office, but stated that he did not recall accessing the safe or receiving the combination to this safe or giving the notes to anyone to store while at the Department that evening.

We therefore sought to determine whether anyone who was with Gonzales on the night he first arrived at the Department opened the safe for him to store the notes. We found no evidence that anyone did so. The OAG SPM told us that she and several other OAG staff were present in the suite when Gonzales moved in that evening. The SPM said that she was the only person there who had the combination to the safe when Gonzales was at the Department that evening. She said that she did not give the combination to anyone that evening, and never provided the combination to or opened the safe for Gonzales. The SPM also told us that Gonzales did not ask her to open the safe or any other storage facility for him that evening.

We determined through witness testimony that a total of four White House aides may have accompanied Gonzales to the Department on the evening of February 3, 2005. Both Gonzales and the SPM told us that at least two of Gonzales’s aides from the White House Counsel’s Office accompanied

Gonzales to the Department that evening. One of these aides served as Gonzales's first special assistant for his first 4 months as Attorney General. This first special assistant told us she received the combination to the safe from the SPM within the first couple of days after February 3, 2005, but not on that evening. She also told us she may have given the combination to Gonzales after she received it, and that he personally accessed the safe on a daily basis during her 4-month tenure as his special assistant. She stated that she never accessed the safe during this period, and that Gonzales generally maintained and stored his own documents, including classified documents.

Another aide who may have accompanied Gonzales to the Department that evening became Gonzales's first personal assistant in the OAG. He told us through his counsel that he did not specifically recall whether he came to the Department with Gonzales on the evening of February 3, 2005. However, the aide also stated that he did not recall ever receiving a combination to any safe within the OAG.¹⁶

During the OIG's initial interview with Gonzales, we asked him whether he took the notes home with him that evening. Gonzales said he did not recall. However, he also said that if he did not have the ability to store the notes in the safe outside his OAG office that evening, he would have taken the notes home "of necessity." Gonzales said that if he took the notes home, he would have left the notes in his briefcase in his office at his residence, adding that he did not recall if he had a safe in his residence at that time. Gonzales said that the briefcase in which he would have kept the notes had a lock, but that he did not always use the lock.

Subsequent to our initial interview with Gonzales, and as described above, the OIG learned that Gonzales did have a safe in his Vienna residence but that in early March 2005 Department officials became aware that Gonzales could not open it. When we informed Gonzales of these facts in a subsequent interview, Gonzales stated that he had no specific recollection of ever using the safe in his Vienna residence.¹⁷ We asked him whether these facts concerning the safe in his Vienna residence changed his recollection of how he handled the notes on February 3, 2005, and he said they did not.

¹⁶ The OIG determined through witness testimony that a third White House aide may have also accompanied Gonzales to the Department that evening. This third aide also joined the OAG upon Gonzales's confirmation as Attorney General. He told us that he did not recall whether the office just outside of Gonzales's office contained a safe, and in any event did not recall receiving the combination to that safe. The fourth aide identified by witnesses as accompanying Gonzales to the Justice Department that evening told us he was not aware of or did not recall a safe in the office by Gonzales's office and in any event never received a combination to it.

¹⁷ Because the notes contained SCI material, Gonzales was required to store them in a SCIF, a feature his residence did not have.

Gonzales said that if he brought the notes home with him, he would have brought them back to the Department the next day and had them stored in the safe outside his office. However, he said he had no specific recollection of doing so. In addition, the SPM told us that she was the only person in the OAG with the combination to the OAG office safe for some period of time after Gonzales arrived, although she could not recall the duration of this period. As noted, the SPM told us she never provided Gonzales with the combination to the safe. As also discussed, the first special assistant told us that she received the combination to the safe from the SPM within the first couple of days after February 3, 2005, and that she may have given it to Gonzales at some point thereafter.

We also asked Gonzales why on that first evening he did not leave the notes in the Justice Command Center, a facility available to him for storage of TS/SCI materials. Gonzales responded that he did not recall thinking about it, and that he might not have “felt comfortable” leaving the notes there at that time. However, as noted above, during Gonzales’s SCI briefing that he received that first evening, he was informed that after-hours storage of SCI materials was available at the Justice Command Center.

We also asked Gonzales why he removed the notes from the White House in the first instance. Gonzales said his decision to take the notes with him when he left the White House was “instinctive,” and that he wanted to “protect” the notes. He also stated that his decision to take the notes was in part based on the fact that he was remaining with the federal government and would continue to be involved with the NSA surveillance program as Attorney General. Gonzales said that these were the only materials related to the NSA surveillance program that he brought with him from the White House, and that he always handled the notes himself and did not allow anyone else to handle them.

However, Gonzales also stated that he considered the notes to be a “Presidential record.”¹⁸ Gonzales said he did not seek permission from White House officials to take the notes from the White House when he became Attorney General, and no one at the White House knew he had taken them with him.

¹⁸ The Presidential Records Act of 1978 governs the custody and management of official Presidential and Vice Presidential documents. See 44 U.S.C. §§ 2201-2207. “Presidential records” are defined, in relevant part, as “documentary materials . . . created or received by the President, his immediate staff, or a unit or individual of the Executive Office of the President whose function is to advise and assist the President, in the course of conducting activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President.” *Id.* at § 2201(2).

C. Gonzales's Handling of the Notes and Other SCI Documents as Attorney General

1. OAG practices concerning the OAG safe

Gonzales told the OIG that at some point after he became Attorney General – whether on the night of his swearing-in or some time thereafter – he stored the handwritten notes and the other TS/SCI materials at issue in this investigation in the OAG safe located in the office just outside his personal office. Gonzales said he knew that was where he stored these notes because he retrieved them from the safe sometime in May or June 2007 in connection with a congressional hearing about the NSA surveillance program. Gonzales also said that he retrieved these other documents from the safe to give to the Department's Office of Legal Counsel shortly before his departure as the Attorney General.

Gonzales told the OIG he believed it was appropriate to store the documents in the safe outside his office, and that he had never been told otherwise. He described the Attorney General's suite where the safe was located as a "very secure area" with "very limited access." However, with the exception of the notes, all of the documents at issue in this investigation had cover sheets and header and footer markings indicating they were TS with SCI designations and, as noted above, the safe was not authorized for the storage of TS/SCI materials because it was not located in a SCIF.

We asked Gonzales what he knew about the storage requirements for TS/SCI information. Gonzales told us he was aware that TS/SCI may only be discussed with others cleared to have access to the information, and that TS/SCI materials must be marked and stored in a particular way. However, Gonzales stated that while serving as Attorney General he was not aware that TS/SCI material had to be stored in a SCIF, although he has since been made aware of this requirement. In addition, as noted above, Gonzales told the OIG that he did not remember receiving the SCI briefing in February 2005, although he acknowledged his signature on the SCI Nondisclosure Agreement form. That briefing, which he attended on the day he brought the notes to the Department, included instruction on the requirement that TS/SCI information must be stored in a SCIF.

Gonzales also told the OIG that he was unaware that the OAG had a SCIF. During his interview with the OIG, he asked us to point out its location on a floor plan. (The SCIF is located approximately five offices down a corridor from the Attorney General's personal office.) The OAG SPM told us that she could not recall whether she ever informed Gonzales of the SCIF's existence or location.

We also sought to determine who besides Gonzales had the combination to or otherwise had access to the contents of the safe in which he stored the handwritten notes regarding the NSA surveillance program and the other TS/SCI documents. The SPM stated that one of Gonzales's personal assistants and his two special assistants had the combination to the safe.¹⁹ The SPM said she seriously doubted that employees other than the personal assistant and special assistants would have been allowed access to this safe, but stated she could not be certain the combination had not been given to others. The SPM also said that although she and her backup SPM had the combination to this safe, neither had ever opened it.

We determined through the NSA that none of the persons besides Gonzales who had the combination to the safe where he stored the notes and other TS/SCI documents had been read into the NSA surveillance program. We also determined that those having access to the safe in the OAG over Gonzales's tenure included his five special and personal assistants, the SPM, and the back-up SPM. We asked Gonzales whether he knew if any of his assistants had been read into the NSA surveillance program. He told us that he did not know, but expressed doubt that they had been.

We interviewed the special assistant who worked for Gonzales from mid-2005 through August 2007, the month before Gonzales resigned as Attorney General, as well as the personal assistant who worked for Gonzales from August 2006 through Gonzales's departure as Attorney General. The special assistant stated that Gonzales handled very few classified documents on a day-to-day basis, and that she had primary responsibility for facilitating the proper storage of these materials. She stated that she had no knowledge of Gonzales maintaining classified materials anywhere in the OAG other than in the OAG safe by his office.

Gonzales and his special and personal assistants gave us varying accounts of the extent to which the assistants retrieved documents from the OAG safe for Gonzales. Gonzales told us he never asked his assistants to retrieve materials from the safe for him because he did not think they would be able to identify what he needed. Consistent with Gonzales's recollection, the special assistant during Gonzales's first 4 months as Attorney General stated that she never accessed the safe during this period. Further, the personal assistant who worked for Gonzales from August 2006 through the end of Gonzales's tenure at Attorney General told us he did not recall retrieving documents from the safe for Gonzales. In contrast, Gonzales's special assistant from mid-2005 through August 2007 told us that both she and the personal assistant retrieved classified documents from the safe for Gonzales to

¹⁹ Gonzales told us he had a total of two personal assistants and three special assistants who served at various times over the course of his tenure as Attorney General.

review, and then returned the documents to the safe when Gonzales was finished, although this happened only a few times.

Gonzales stated that he would either open the safe himself or ask an assistant to open it for him. Both the special assistant from mid-2005 through August 2007 and the personal assistant who worked for Gonzales from August 2006 through Gonzales's departure as Attorney General told us they sometimes opened the safe and waited while Gonzales looked through its contents for materials he wished to review. The special assistant also told us that she never saw Gonzales personally open the safe. However, as noted above, Gonzales's special assistant during his first 4 months as the Attorney General told us that Gonzales used the safe daily and that she saw him open it several times.

Gonzales's special assistant from mid-2005 through August 2007 told us that all documents in the OAG safe appeared to be marked with cover sheets. She also told us that all the materials in the safe appeared to be "opened and read," and she did not remember seeing any double-wrapped packages stored there.

We asked Gonzales whether he believed it was appropriate to store TS/SCI materials in a safe in which staff without the requisite clearances could access them. Gonzales stated that he never gave "conscious consideration" to the fact that people who were not read in to certain programs would have access to documents related to those programs. He emphasized that his assistants were "trusted people" who, with the exception of one of the personal assistants, had worked for him at the White House. Further, Gonzales said he did not equate access to the safe with access to the notes because the notes were double-wrapped. He also said he doubted his assistants would open and read the contents of an envelope marked "AG – EYES ONLY."

Gonzales also told us that while he had no specific policy prohibiting his staff from opening the safe in his absence, his "expectation" was that no one would open the safe while he was not there. Gonzales said that his staff had no cause to open the safe without him asking them to.

However, Gonzales's special assistant from mid-2005 through August 2007 told us about one instance in late 2006 when she and the personal assistant were asked by the former Deputy Chief of Staff to conduct a search of OAG documents pursuant to a Freedom of Information Act (FOIA) request. She stated that she and the personal assistant were instructed to search the safe "document by document," including any classified materials, and that they "looked through every single thing in the safe." The special assistant stated she was not sure Gonzales knew about the search and thought he may have been out of town. The personal assistant told us that he did not pay much

attention to the documents in the safe and did not recall accessing the safe other than in connection with requests from Gonzales.²⁰

Gonzales said that he had no recollection of OAG staff ever searching the OAG safe in response to a FOIA request, nor of being told that such a search had ever been conducted during his absence.

2. Gonzales's statements to White House attorneys and Justice Department officials about the notes

Gonzales told us that he retrieved the handwritten notes about the NSA surveillance program from the safe outside his office in either late May or June 2007, after former Deputy Attorney General Comey testified before the Senate Judiciary Committee on May 15, 2007. In his testimony, Comey discussed the events surrounding a March 10, 2004, visit by Gonzales and White House Chief of Staff Andrew Card to the George Washington University Hospital to see Attorney General Ashcroft about Comey's decision not to certify the NSA surveillance program. Gonzales told the OIG that after Comey testified, Gonzales informed White House Counsel Fred Fielding that he had notes memorializing his recollections of the March 10, 2004, meeting with congressional leadership that preceded the hospital visit that day. Gonzales told us he gave a copy of his notes to Fielding sometime after Comey's testimony.

Fielding told the OIG that Gonzales had informed him sometime after Comey testified that Gonzales had some notes concerning the March 10, 2004, meeting, but that Gonzales "wasn't sure where they were." Fielding added that Gonzales said he was not sure if he had left the notes at the White House or had taken them with him when he left the White House to become the Attorney General. Fielding stated that Gonzales later told him he had found the notes and described for Fielding what the notes said.

Gonzales provided the OIG with a similar account of his discussions with Fielding concerning the whereabouts of the notes. Gonzales stated that after he spoke with Fielding about the notes, Gonzales recalled "being a little confused about where the notes were." He said he may have told Fielding that the notes might have been at home. Gonzales stated that he realized a week or so later that the notes might be in the OAG safe by his office at the Justice

²⁰ Because neither of the assistants who conducted the FOIA review was read in to the NSA surveillance program or the detainee interrogation program, we could not show them any of the documents about the programs or ask descriptive questions about the documents to ascertain whether they recalled seeing any of the documents during the FOIA review.

Department. Gonzales stated that he had his assistant open the safe for him, and that he found the notes, double- wrapped, inside the safe.²¹

Fielding stated that he received a copy of Gonzales's notes, although he could not recall when. Fielding recalled that the notes were wrapped in one, and possibly two, manila envelopes. The envelope (or envelopes) contained only the copy of Gonzales's handwritten notes, and no other documents.

Gonzales told us that he personally brought the notes, double-wrapped, to the White House and reviewed them with Fielding. Gonzales stated that after meeting with Fielding he returned the notes to the OAG safe.

Gonzales told us he also used the notes in connection with his preparation to testify before a congressional committee in July 2007. According to Steven Bradbury, Principal Deputy Assistant Attorney General for the Office of Legal Counsel, Gonzales produced the notes to Bradbury and other Department officials on July 19, 2007, as they helped prepare Gonzales for his appearance before the Senate Judiciary Committee on July 24, 2007.²² Gonzales stated that he recalled using the notes to prepare for a closed hearing before the House Permanent Select Committee on Intelligence earlier that month. Gonzales stated that he did not recall whether he used the notes in connection with his preparation for one or both of the July 2007 hearings; however, he stated that he discussed the notes with others only in the Justice Command Center.²³

Bradbury told the OIG that Gonzales informed him the notes "had not always been kept in a safe." Gonzales told us he did not recall making this or any other statements to Bradbury concerning his handling or storage of the notes. Gonzales also told us that while he did not recall bringing the notes either to his residence or from his residence to his office, he was certain that he had retrieved them from the safe by his office when he provided them to Bradbury.

²¹ We asked Gonzales whether his use of the term "wrapped" meant that the envelopes were sealed, or merely meant that one envelope was enclosed in another. Gonzales stated that he did not recall whether his general practice was to seal the envelopes after each time he removed and returned the notes to the envelopes.

²² Bradbury, who had been read in to the NSA surveillance program in February 2005, stated to us it was evident to him when he saw them that the notes contained classified information.

²³ We also asked Gonzales whether he used the notes to prepare for testimony before the Senate Judiciary Committee on February 6, 2006. That testimony in part concerned the NSA surveillance program. Gonzales stated that he had no specific recollection of using the notes to prepare for this hearing, but stated that he may have accessed them for this purpose.

The OIG also interviewed two attorneys from the White House Counsel's Office about the notes. The two attorneys told us that they reviewed the notes on July 24, 2007, immediately after several current and former congressional leaders publicly disputed the accuracy of Gonzales's testimony before the Senate Judiciary Committee earlier that day regarding their reactions to the March 10, 2004, White House meeting.

The White House Counsel's Office attorneys, both of whom had been read in to the NSA surveillance program, told us that when they reviewed the notes they realized that the notes might contain classified information. The two attorneys said that they and White House Counsel Fielding met with Gonzales on July 25, 2007, to discuss his handling of the notes. The meeting lasted approximately 15 minutes. The two White House Counsel's Office attorneys made contemporaneous notes of their July 25 meeting with Gonzales, and they provided these notes to the OIG.

Their contemporaneous notes of the meeting state that Gonzales told the White House Counsel's Office attorneys that he had stored the notes in a safe in his office while White House Counsel, and had taken the notes with him when he left the White House for the Department of Justice. According to the notes, Gonzales said he had taken no other documents from the White House. The attorneys' notes also state that Gonzales told them that at the Department he stored the notes in a safe "just outside his office." He said that his immediate assistant had access to the safe, and was not sure if his personal assistant also had access. According to the attorneys' notes, Gonzales told them he did not know if his office was a SCIF, but thought it was.

The White House attorneys' notes further state: "AG has taken them out of safe; he thinks he may have taken them home to look at and probably kept in safe at home". The attorneys' notes also state that Gonzales described how he had wrapped the notes in three layers of envelopes and that "other materials related to program (maybe DOJ materials)" were included in the outermost envelope. According to the White House attorneys' notes, Gonzales told them there were no copies of the handwritten notes other than the one he had given to Fielding.²⁴ Lastly, the White House attorneys' notes state that Gonzales gave his original notes to Bradbury after Bradbury told him that the White House Counsel's Office would be calling Bradbury about them, and because the Office of Legal Counsel already had in its possession many documents related to the NSA surveillance program.

²⁴ During the OIG's interview of Gonzales, we also learned that the Department photocopying machine that Gonzales had used to reproduce his notes for Fielding was not certified for copying TS/SCI materials. The OIG brought this matter to the attention of the Department's Security and Emergency Planning Staff Director so that appropriate action could be taken to "clear" the photocopier.

After the July 25 meeting with Gonzales, the White House Counsel's Office attorneys decided to have Gonzales's notes reviewed by the NSA for an official determination of whether the notes contained classified information. Two NSA officials reviewed the notes on July 26, 2007, and determined that 3 of 21 paragraphs in the notes contained TS/SCI information about the NSA surveillance program, 1 paragraph contained TS/SCI information about signals intelligence, and the remaining paragraphs were unclassified. The NSA officials told the OIG that the three paragraphs about the NSA surveillance program were TS/SCI based on references to operational aspects of the program, as well as the use of the codeword for the program in conjunction with these operational aspects. The NSA official responsible for classifying the notes told the OIG that one aspect of the program explicitly referred to twice in the notes was "zealously protected" by the NSA and that designating these references TS/SCI was "not a close call."²⁵

The OIG showed Gonzales a copy of the White House Counsel's Office attorneys' notes of the July 25, 2007, meeting. Gonzales told us he did not recall telling the attorneys that he may have taken the notes home to look at and had probably kept them in a safe there, but he said the statement was consistent with his belief that if he had taken the notes home he would have kept them in a safe.

Gonzales stated that he had no specific recollection of bringing the notes to his residence at any point, and said that he had no reason to bring the notes to his residence to review them. Gonzales added that he would have had no reason to look at the notes until he prepared to testify before the Senate Judiciary Committee in February 2006.²⁶

Gonzales also said the White House Counsel's Office attorneys' characterization in their notes of how Gonzales described triple-wrapping the handwritten notes along with other program-related documents was not consistent with his recollection. Gonzales told us he double-wrapped the notes, and no other materials were included in the package when he gave it to Bradbury.

3. Storage of other TS/SCI documents

On August 27, 2007, Gonzales announced that he was resigning as Attorney General, effective September 17. Bradbury told the OIG that on September 14, 2007, Gonzales gave Bradbury two additional envelopes with

²⁵ The other classified information included in the notes that was deemed classified by the NSA cannot be described in this unclassified report.

²⁶ As noted, Gonzales did not specifically recall reviewing the notes for the February 2006 hearing, but did recall using the notes to prepare for a hearing in July 2007.

documents to retain in the Office of Legal Counsel. Gonzales told us he acquired these documents at different times during his tenure as Attorney General and had stored them in the OAG safe along with the handwritten notes relating to the NSA surveillance program. Gonzales stated that he did not recall whether the documents had cover sheets or how the documents had been wrapped or marked. Bradbury told us he maintained the documents in the same condition as he had received them from Gonzales.

The OIG reviewed these additional documents. The two envelopes contained a total of 17 separate documents. The envelope containing documents related to the NSA surveillance program bore the handwritten markings, “TOP SECRET – EYES ONLY – ARG” followed by an abbreviation for the SCI codeword for the program. The envelope containing the documents relating to a detainee interrogation program bore classification markings related to that program. Each document inside the envelopes had a cover sheet and header-footer markings indicating the document was TS/SCI. The documents related to the NSA surveillance program discussed in Gonzales’s handwritten notes as well as to a detainee interrogation program. The documents included Office of Legal Counsel opinions that discuss the legal bases for various aspects of the compartmented programs, memoranda summarizing the operational details of the programs, correspondence from congressional Intelligence Committee leaders to Director of Central Intelligence Hayden about one of the TS/SCI programs, a “talking points” memorandum about one of the compartmented programs, and a draft legal declaration of a high-ranking intelligence agency official relating to the NSA surveillance program.

As noted above, the NSA told the OIG that none of the special and personal assistants and other personnel in the OAG with access to the safe was read in to the NSA surveillance program. In addition, a SEPS official told the OIG that only one of Gonzales’s assistants, and neither of the SPMs, had been read in to the other compartmented TS/SCI program, a detainee interrogation program, which was discussed in the documents described above.

IV. OIG ANALYSIS

In this section we present our analysis of Gonzales’s handling of the handwritten notes and the 17 other TS/SCI documents discussed above.

We concluded that Gonzales mishandled these classified documents in various ways. Notwithstanding his vague recollections, the evidence showed that Gonzales took the handwritten notes about the NSA program, which contained TS/SCI information, to his Vienna residence. The evidence also showed that although Gonzales had a safe at this residence, he did not use it, and appears not to have known the combination to the safe at that time. In

addition, his residence was not furnished with a SCIF, the only proper facility for storage of such SCI material. Moreover, the evidence showed that when Gonzales brought the notes back to the Department, he kept them, as well as other TS/SCI documents, in a safe outside his office. This safe was not located in a SCIF, and therefore it was not an authorized location for the storage of these TS/SCI documents. The OIG determined that several individuals without the necessary clearances had regular access to this safe and these documents.

We concluded that Gonzales's handling of these documents violated basic Department regulations and procedures governing the proper handling of such classified materials.

A. Gonzales Took the Classified Notes to His Residence

First, we concluded that the evidence showed that Gonzales knew or should have known that his notes of the meeting with the congressional leaders about the NSA surveillance program were classified. In his OIG interview, Gonzales said that he was unaware of the classification level and compartmented nature of the NSA program he referenced in the notes. Gonzales also stated he did not recall thinking that the notes themselves were classified. Rather, Gonzales stated that he regarded the notes as "sensitive" because the President asked him to draft them, and thus he "treated [the notes] as classified."

However, it is clear that the notes contained classified information. Gonzales acknowledged that he created the notes to memorialize an official briefing of congressional leaders concerning a sensitive NSA surveillance program that Gonzales himself described as being of the highest level of secrecy. While he told us that his notes were meant to capture the congressional leaders' reactions to the briefing, and not operational details of the program, Gonzales in fact recorded in his notes specific operational terms associated with the program, as well as the codeword used to identify the program.

Both the Office of Legal Counsel official and the attorneys from the White House Counsel's Office who were read in to the NSA surveillance program and had considered the notes prior to the NSA conducting its classification review told us that the notes appeared classified to them. In addition, the NSA official who reviewed the notes for classification told us that one of these operational terms was "zealously protected" by the NSA and that designating the references to the term in the notes as TS/SCI was "not a close call."

Moreover, by the time Gonzales created the notes in March 2004, he had reviewed other documents discussing operational details of the NSA surveillance program. These other documents, which we cannot describe in this unclassified report, were clearly marked as TS with SCI designations. His

familiarity with these documents should have put him on notice that his handwritten notes, which referred to some of the same operational aspects of the surveillance program, had to be handled in accordance with TS/SCI protocols. In fact, the materials used during the March 10, 2004, briefing of the congressional leaders – the very briefing Gonzales summarized in his notes – bore TS markings with SCI designations.

Further, Gonzales's own actions indicated that he viewed the notes as classified. Gonzales told us he double-wrapped the notes and marked them as "AG – EYES ONLY – TOP SECRET." While Gonzales told us that because he regarded the notes as "sensitive" he treated them as classified, he wrote "Top Secret" on the envelope containing the notes. We believe that writing "Top Secret" on the envelope suggests that he knew the notes were in fact classified, not simply that the notes were sensitive.

The evidence further showed that Gonzales took these notes to his home for some period of time after he became the Attorney General. Gonzales brought the notes with him from the White House to the Department of Justice on the evening of February 3, 2005, just after he had been sworn in as Attorney General. Gonzales told us he did not recall whether he took the notes home with him that evening. However, he also stated that he did not recall accessing the safe just outside his office, receiving the combination to this safe, or giving the notes to anyone to store while at the Department that evening. In addition, he said that if he did not have the ability to store the notes in the safe outside his OAG office that evening, he would have taken the notes home "of necessity." He also said that if he brought the notes home with him, he would have brought them back to the Department the next day and had them stored in the safe outside his office. However, he said he had no specific recollection of doing any of this.

When we asked him why on that first evening he did not leave the notes in the Justice Command Center, a facility available to him for the storage of TS/SCI materials, he said he did not recall thinking about it, and that he might not have "felt comfortable" leaving the notes there at that time.

The evidence established that Gonzales in fact did not have access to the OAG safe the evening he was sworn in as Attorney General and took the notes home. The OAG SPM told us she was present that evening and was the only OAG staff person who would have had the combination to the safe in the Attorney General's suite. She stated that she never gave Gonzales the combination to the safe and that she did not open that safe or any other storage facilities for him that evening. None of Gonzales's aides present with him that evening said they stored the notes for him that evening or had the combination to the safe that evening. We therefore concluded that Gonzales took the notes home with him on the evening of February 3, 2005.

The evidence further indicated that Gonzales kept the notes in a briefcase at his residence that evening. Gonzales stated that if he took the notes home on February 3, 2005, he would have left the notes in his briefcase in his office at his residence, adding that he did not know if he had a safe in his residence at this time.²⁷ As discussed above, although Gonzales had a safe in his residence on February 3, 2005, the evidence showed that he did not use the safe to store the notes. Gonzales told the OIG that he had no specific recollection of ever using the safe in his residence. In addition, a DOJ Program Manager responsible for coordinating the installation of a DOJ safe in Gonzales's residence after Gonzales became the Attorney General told us that in early March 2005 Gonzales did not know the combination to the safe. Further, the evidence showed that because later efforts to determine the combination to the safe were unsuccessful, Gonzales was given a new safe when he moved to a new residence several months later. We asked Gonzales whether these facts concerning the safe in his Vienna residence changed his recollection of how he handled the notes on February 3, 2005. He said they did not.

Moreover, Gonzales's statements to Office of Legal Counsel official Bradbury and to the White House Counsel attorneys also indicate that he may not always have maintained the notes in a safe and may have taken the notes to his residence. According to Bradbury, when Gonzales first told Bradbury about the notes in 2007 Gonzales stated that the notes "had not always been kept in a safe." Gonzales said he did not recall making this statement to Bradbury.

According to contemporaneous notes of the White House Counsel attorneys who interviewed Gonzales about his handling of the notes, Gonzales told them that he "has taken them out of safe; he thinks he may have taken them home to look at and probably kept in safe at home". When we asked him about this statement, Gonzales told us he did not recall telling the attorneys this, but he also said the statement was consistent with his belief that if he had taken the notes home he would have kept them in a safe.²⁸

The OIG was unable to determine how long Gonzales kept the notes at his residence. Gonzales told us he had no specific recollection of bringing the notes from his residence to the Department, but said he would have returned them to the Department the following day. However, the Security Programs Manager told us that she was the only person in the OAG who knew the

²⁷ Gonzales told us that his briefcase had a lock, but that he did not always use it.

²⁸ The White House Counsel's Office attorneys' notes also suggest that Gonzales may have taken the notes home again at some point after the night of February 3, 2005. However, we found insufficient evidence to conclude that Gonzales brought the notes to his residence at any time other than on the evening of February 3, 2005.

combination to the safe outside Gonzales's office for some period of time, although she was unable to recall how long this remained the case. She stated that she did not open the safe for Gonzales on his first evening as Attorney General or at any other time. She told us that at some indeterminate point after Gonzales's arrival as Attorney General, others in the OAG obtained access to the safe and could have stored materials there for him. Gonzales's first special assistant upon his becoming the Attorney General told us she received the combination from the SPM within the first couple of days of Gonzales's arrival at the Department, and that she may have given the combination to Gonzales thereafter. Gonzales added little to the OIG's ability to assess the duration of the violation, stating only that if he had taken the notes home, he would have brought them to the Department the next day, although he did not recall doing so.

In sum, we concluded that on February 3, 2005, when he was sworn in as Attorney General, Gonzales took classified notes about the NSA surveillance program from the White House to the Department of Justice and then to his residence, where he kept them for an indeterminate period of time and stored them there in his briefcase. We further concluded that although Gonzales had a safe in his residence, he did not store the notes in it, and that in any event a SCIF, the only proper storage facility for such TS/SCI materials, was never installed there.

B. Storing the Notes and Other TS/SCI Materials Outside of a SCIF

We also determined that when Gonzales brought the notes back to the Department, he improperly stored them in a safe just outside his office that was not suitable for the storage of these TS/SCI notes. In addition, we determined that Gonzales inappropriately kept at least 17 additional TS/SCI documents in this safe. These 17 documents were accessible to other individuals who had access to the safe but who did not have the necessary clearance to view the documents. These documents described legal and operational aspects of the NSA surveillance program and a detainee interrogation program, and were clearly marked as TS/SCI on cover sheets and by header-footer markings.

Gonzales told us he believed the Attorney General's suite, where the safe was located, was a "very secure area" with "very limited access." He stated he believed that the safe was an appropriate place to store the notes and the other documents, and that no one had told him otherwise. However, Gonzales had been briefed on the proper handling of SCI materials, including the requirement that SCI materials be stored in a SCIF. Gonzales told us he did

not ask anyone whether the safe satisfied this requirement, nor did he ever ask whether the OAG had a SCIF.²⁹

By storing the notes and the other TS/SCI documents in the safe outside his office instead of in a SCIF, Gonzales also made them accessible to individuals not cleared into the two compartmented programs. We found that at least five members of the OAG staff – none of whom were cleared into the NSA surveillance program – had access to the OAG safe, and had access to some or all the NSA surveillance program documents. Further, four of those OAG staff members had not been read in to the detainee interrogation program that was the subject of some of the other documents stored in the safe.

Gonzales told us that he never gave “conscious consideration” to the fact that people who were not read in to certain programs would have access to documents in the safe by his office related to those programs. He stated that his assistants were “trusted people,” and that he did not equate access to the safe with access to his notes about the NSA program because the notes were double-wrapped. He also said he doubted his assistants would open and read the contents of an envelope marked “AG – EYES ONLY” or with similar restrictive language. However, the fact remains that several people on Gonzales’s staff had access to the materials stored in the safe yet lacked clearances for the NSA surveillance and detainee interrogation programs. Moreover, we learned that two of Gonzales’s assistants may have gone through all documents stored in the OAG safe in response to a FOIA request.³⁰

C. Justice Department Security Regulations

Gonzales’s handling of the notes and the other classified documents violated basic Department regulations and procedures governing the proper handling of such classified materials.

First, as noted above, in addition to his White House security briefing, Gonzales received a briefing on the proper handling of SCI materials when he became the Attorney General. Despite having transported the classified notes about the NSA surveillance program from the White House to the Department

²⁹ The SPM for the OAG stated that she did not brief Gonzales on the handling of classified documents within the OAG while he was the Attorney General. While the SPM has responsibilities that are designed to prevent the mishandling of classified documents by Department employees, the burden ultimately rests with the employee to ensure that classified material is properly handled.

³⁰ As noted above, because neither of the assistants who conducted the FOIA review was read in to the NSA surveillance program or the detainee interrogation program, we could not show them any of the documents about the programs or ask descriptive questions about the documents to ascertain whether they recalled seeing any of the documents during the FOIA review.

on the same day of the briefing, he did not ask about how these notes could be appropriately stored. Instead, the evidence indicates that he took them home and stored them in his briefcase before bringing them back to the Department at some point and putting them in a safe outside his office without inquiring whether the notes could be stored in that safe.

All Department employees are subject to the provisions of 28 C.F.R. Part 17, which are designed to ensure that National Security Information within the Department is properly classified and handled. Under the authority of Executive Order 12958, as amended, and 28 C.F.R. Part 17, the Department also has promulgated a Security Program Operating Manual (Manual). The Manual establishes security policies and operational procedures within the Department for the protection of National Security Information, including the substantive requirements for the handling of SCI. As a Department employee, Gonzales was subject to the provisions of the Manual. Manual at 1-102.

The procedures established in the Manual, and reinforced in security briefings, provide that classified material must be either “under the personal control of an authorized or appropriately cleared person” or “guarded or stored in a locked security container,” typically a General Services Administration-approved safe. However, regarding the handling of TS/SCI material, the Manual provides that “SCI information may only be . . . stored within a Sensitive Compartmented Information Facility (SCIF).” Further, “SCI material must not be sent to a building that does not have a SCIF or to someone who does not have access to a SCIF.” As discussed above, the Manual’s requirement that SCI material be stored in a SCIF was covered in the SCI briefing Gonzales received the day he became the Attorney General.

We found that Gonzales violated these provisions by taking the notes home and then later storing these notes, as well as other SCI documents, in a safe not authorized to hold such materials. In these actions, he failed to adhere to fundamental procedures for storing and handling TS/SCI materials. He took these actions despite being briefed on the proper handling of SCI, including the requirement that such material must be stored in a SCIF, and being advised that the Justice Command Center was available to store SCI materials.³¹

³¹ As noted above, although Gonzales stated that he was not aware his handwritten notes were classified, we found evidence that he knew or should have known that they were classified. However, his awareness of the document’s classification level is not relevant to establishing whether he violated Department requirements for the proper handling of classified information. Under the Manual, the state of mind of an employee who violates a security requirement is a potential factor for other purposes, such as determining the applicable reporting procedures and the imposition of sanctions. See e.g., Manual at 1-201, 1-302h; 1-303c(6). According to the Director of SEPS, infractions short of a criminal violation could

(Cont’d.)

As noted above, Gonzales's conduct also allowed the documents to be accessible to persons on his staff who were not authorized to see them. While Gonzales told us he trusted his staff not to review the SCI documents in the safe, his trust in staff members and his expectation about how they would conduct themselves was not a substitute for his compliance with basic SCI handling requirements. For example, there is evidence that two of Gonzales's assistants had to review all of the documents in the safe in response to a FOIA request.

The Federal Criminal Code contains statutes relating to the improper handling of classified documents.³² In light of Gonzales's handling of these documents, and in particular the handwritten notes which we found he improperly brought to his residence, we provided our report to the Department's National Security Division for its review. After reviewing the matter, the National Security Division declined prosecution.

We have also provided our report to the Department's Security and Emergency Planning Staff and to the NSA for their review and any actions related to our findings that these entities consider appropriate.

V. CONCLUSION

In sum, our investigation found that Gonzales mishandled classified materials while serving as Attorney General. The evidence shows that he took TS/SCI notes about the NSA surveillance program to his residence and improperly stored them in a briefcase there for an indeterminate period of time. When he brought the notes back to the Department, he stored these notes, along with other highly classified documents about the NSA surveillance program and a compartmented detainee interrogation program, in a safe outside his office that was not authorized to hold these documents.

subject the employee to a range of disciplinary actions – from security awareness training re-education to revocation of the employee's security clearance – depending on the circumstances.

³² For example, 18 U.S.C. § 1924 provides in relevant part:

Unauthorized removal and retention of classified documents or material

(a) Whoever, being an officer, employee, contractor, or consultant of the United States, and, by virtue of his office, employment, position, or contract, becomes possessed of documents or materials containing classified information of the United States, knowingly removes such documents or materials without authority and with the intent to retain such documents or materials at an unauthorized location shall be fined under this title or imprisoned for not more than one year, or both.

Like all other Department employees, Gonzales was responsible for safeguarding classified materials, familiarizing himself with the facilities available to him in the OAG for storing these materials, and observing the rules and procedures for the proper handling of classified documents. Our investigation found that Gonzales did not fulfill these obligations and instead mishandled highly classified documents about the NSA surveillance program and a detainee interrogation program.

