

U.S. Office of Personnel Management  
Office of Merit Systems Oversight and Effectiveness  
Classification Appeals and FLSA Programs

Philadelphia Oversight Division  
600 Arch Street, Room 3400  
Philadelphia, PA 19106-1596

**Classification Appeal Decision**  
**Under section 5112 of title 5, United States Code**

**Appellant:** [appellant's name]  
[appellant's name]

**Agency classification:** Criminal Investigator  
GS-1811-12

**Organization:** Investigations Branch  
[name] District  
[name] Regional Office  
Immigration and Naturalization Service  
U.S. Department of Justice  
[location]

**OPM decision:** Criminal Investigator  
GS-1811-12

**OPM decision number:** C-1811-12-16

/s/ Robert D. Hendler

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Robert D. Hendler  
Classification Appeals Officer

2/8/02

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Date

As provided in section 511.612 of title 5, Code of Federal Regulations, this decision constitutes a certificate that is mandatory and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the government. The agency is responsible for reviewing its classification decisions for identical, similar, or related positions to ensure consistency with this decision. There is no right of further appeal. This decision is subject to discretionary review only under conditions and time limits specified in the *Introduction to the Position Classification Standards* (PCS's), appendix 4, section G (address provided in appendix 4, section H).

**Decision sent to:**

[appellants' name and addresses]

[attorney's name and address]

Ms. Carol Hall  
Assistant Commissioner for  
Office of Human Resources and Development  
Immigration and Naturalization Service  
Department of Justice  
800 K Street, NW, Room 5000  
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## **Introduction**

On May 10, 2001, the Philadelphia Oversight Division of the U.S. Office of Personnel Management (OPM) accepted a classification appeal from [attorney's name] on behalf of [appellants' names] who occupy identical additional positions. The position is currently classified as Criminal Investigator, GS-1811-12. They believe the position should be classified as Criminal Investigator, GS-1811-13. The appellants work in the Investigations Branch, [name] District, [name] Regional Office, Immigration and Naturalization Service (INS), U.S. Department of Justice, [location]. We have accepted and decided this appeal under section 5112(b) of title 5, United States Code (U.S.C.). We received the initial appeal administrative report on June 13, 2001, and supplementary case information from the appellants on August 20, 2001. Our factfinding was delayed due to the events of September 11, 2001.

## **General issues**

In his correspondence, the appellants' representative points to their performance appraisals, training certificates, and awards that cite the importance of their work in support of their appeal. He states that the agency failed to analyze substantive information when it evaluated the appellants' work. The representative says that the agency's analysis contains numerous factual inaccuracies and erroneous characterizations, fails to note the significance of information provided during its fact-finding process, and fails to consider the appellants' workload. Both the appellants and sources supportive of their appeal stress their large number of arrests and awards for their work.

OPM is required by law to classify positions on the basis of their duties, responsibilities, and qualification requirements by comparison to the criteria specified in the appropriate PCS or guide (5 U.S.C. 5106, 5107, and 5112). The law does not authorize use of other methods or factors of evaluation. We will consider the appellants' training and education only to the extent that the knowledge obtained is required and applied in performing their assigned duties. The performance management and awards programs cover the quality of performance. These issues are not covered by or germane to the classification appeal process. Our decision sets aside all previous agency decisions regarding the classification of the position in question.

## **Position information**

The appellants initiate, conduct, control and/or coordinate criminal investigations under a variety of immigration laws and program initiatives, e.g., the Immigration Reform Act of 1986, Narcotic Traffickers Deportation Act of 1986, and the Immigration Marriage Fraud Amendments Act of 1986. Investigations are aimed at limiting the access of illegal or unqualified aliens to jobs and benefits, and apprehending and removing criminal aliens from the country. The appellants participate in agency and interagency initiatives and investigations geared toward large-scale criminal organizations and activities, e.g., drug smuggling and distribution; and large-scale marriage, document and other immigration fraud by individuals and groups. The appellants perform these functions as members of the Violent Gangs Task Force (VGTF), composed of representatives of several Federal, State and local law enforcement agencies. They report to a Supervisory Criminal Investigator, but work closely with the Organized Crime and Terrorism Unit (OCTU), U.S. Attorney's Office for the [name] District of [location] ([acronym]).

We conducted a telephone audit with the appellants on August 27, 2001, and a telephone interview with their current immediate supervisor, [name], and former immediate supervisor, [name], on November 16. On October 31 we conducted a telephone interview with [name], Deputy Chief, OCTU, [acronym], as requested by the appellants. We conducted telephone interviews with two Federal Bureau of Investigation (FBI) Supervisory Special Agents knowledgeable of the appellants' case work; [name] on November 29 and [name] on December 7. We conducted telephone interviews with [name], INS Regional VGTF Coordinator, on December 29, and [name], Assistant Regional Director of Investigations, on January 10, 2002. We conducted telephone interviews with [name], INS National VGTF Coordinator on January 17 and February 1, and with [name], National Anti-Smuggling Coordinator, on January 25.

To reach a conclusion, we reviewed the audit findings and all information of record furnished by the appellants and their agency, including their official position description (PD) of record (#[number]) and program directives and documents provided at our request. On June 4, 2001, the appellant's supervisor certified the accuracy of the PD, but stated that the appellants routinely exceed the duties and responsibilities described in the PD. In his letter of May 25, 2001, the appellants' representative stated that the PD was accurate, but that the duties assigned routinely exceed the responsibilities indicated in their PD. Our audit and additional fact-finding confirmed that the PD of record contains the major duties and responsibilities of the appellants' position and we incorporate it by reference into this decision.

### **Series, title, and standard determination**

The agency has allocated the position to the Criminal Investigating Series, GS-1811, and the appellants do not disagree. We concur with the allocation. Accordingly, the appellants' position is allocated properly as Criminal Investigator, GS-1811. The Grade-Level Guides for Classifying Investigator Positions, GS-1810/1811 (Guide) is used to evaluate the grade level worth of GS-1811 positions.

### **Grade determination**

The Guide uses two factors to distinguish between grade levels: Complexity of Assignments and Level of Responsibility. The Guide provides for the classification of positions based on assignments that are typical and representative of the cases for which the investigator has primary responsibility over a period of time, i.e., only the case agent position may be credited with performing the full grade level of the cases.

The Guide recognizes that besides work individually assigned to investigators, at any grade level, from time to time, they work on particular investigative tasks associated with cases assigned to other investigators. Similarly, from time to time, investigators may lead or coordinate the work of other investigators who are temporarily assigned to work on cases for which they have primary responsibility. Typical coordinative work occurs when additional staff is needed to maintain surveillance in several places on a 24-hour basis, or when a large number of separate leads must be tracked down in a short amount of time; or when an investigation is centered in one geographic area but involves issues that require inquiries in other geographic areas. These temporary conditions are a normal part of completing investigative assignments

and have no particular impact with respect to determining the grade level worth of an investigator's position. There is no particular relationship between the grade level of the investigator who has primary responsibility for a case and the grade levels of the positions of the other investigators who are temporarily called upon to help with particular investigative tasks. Thus, the grade level worth of coordinative responsibilities is wholly dependent upon the grade level worth of the cases for which they are performed.

As part of their appeal, the appellants submitted affidavits describing several investigations. [name] was conducted from March 1994 through July 1998, [name] from March 1995 through June 1999, and [name] from December 1996 through April 1999. Established OPM guidance requires that a representative work cycle be determined to establish what work is characteristic of a position for classification evaluation. OPM has found that sometimes, e.g., long-term criminal investigations, work cycles beyond one year, are appropriate. The "cycle of work" representative of the position can vary from agency to agency, or even within a given agency. The representative period for determining the nature of duties and responsibilities for classification purposes is not fixed because some cases are protracted, sometimes requiring more than a year, and many of these require substantially full-time effort. As a result, it is not uncommon for one or two cases to occupy virtually all of an investigator's work time for several months, a year, or even more. A work cycle ending almost two years before this case was accepted for adjudication cannot be considered the appellants' current duties and responsibilities. The earlier investigations provide useful historical background. However, our adjudication must focus on the more recent work performed by the appellants provided at our request constituting the current work cycle within the meaning of the classification process; i.e., within the past two to three years given the extended period of time over which complex criminal investigations frequently evolve. Following are synopses of the appellants' description of their most complex current representative cases.

*[name]*

This case grew out of [name] that focused on a scheme to smuggle illegal aliens from China to the United States using a fishing vessel. One hundred and five aliens were held captive in the United States until friends or relatives paid money to the smugglers. The investigation revealed that the defendant, [name], sponsored the boat and stood to collect the bulk of the profits. The appellants described [name] as head of one of the most lucrative and sophisticated smuggling organizations in the world and the financier behind numerous boat loads of Chinese nationals smuggled into the United States. [name] and members of her organization are directly involved in narcotics trafficking and are closely connected to numerous drug traffickers around the world. The appellants used a variety of techniques to lure [name] to Hong Kong and other countries with which the United States has extradition treaties. They worked with Hong Kong and other United States agencies leading to [name]'s arrest in Hong Kong in April 2000.

The appellants continue to work with the U.S. Attorney's Office to dismantle [name]'s organization. They said that it has well-defined horizontally structured leadership. The absence of a permanent vertical structure makes it inherently resilient and complicates attempts to identify key individuals. The appellants said that the organization uses stolen or forged documents and bribes government officials, enabling members to create and change identities to travel abroad and forge links with counterparts in other countries and foster ties with potential

allies. They state that in many cases members themselves do not know the true identity of the individuals with whom they deal on a daily basis. The organization relies on family ties and close personal relationships. It is difficult to penetrate due to distrust of outsiders, mistrust of police, fear of deportation, and fear of the organization's retaliation against family members. They describe using an informant who is unaware that the appellants know that the informant is a high-ranking member of the [name] organization.

The appellants said that many of the [name] organization's key members are narcotics traffickers and are members of or are connected to Chinese triads and other organized crime groups. Business people in legitimate Chinese associations assist the organization by controlling or financing some individuals. Members of these groups have provided funds for heroin deals and have allowed association facilities to be used to house illegal immigrants and store weapons. The organization subcontracts some aspects of its alien smuggling operations to members of other ethnic groups, e.g., transportation and acquiring fraudulent documents. The appellants stated that the organization is closely associated with or directly involved with members of a Taiwan-based heroin and alien trafficking organization with military and political connections in Taiwan and the United States, a Mexico-based alien smuggling organization, and a Thailand-based heroin and alien smuggling organization. The organization has similar relations with a drug and alien smuggling organization based in Belize with a network stretching from Hong Kong to [location], a drug and alien smuggling organization based in Bolivia and Peru, and an alien smuggling organization based in Guatemala. Aliens are recruited to carry drugs by reducing or waiving their transit fees, and contracts with vessel captains often include provisions for the captain's family if the captain is incarcerated.

The appellants stated that [name] and her organization fund numerous projects in China's Fujian Province so those local officials do not challenge alien smuggling activities. The organization uses a network of immigration and other Government officials in the United States and other countries, making the investigation of these officials sensitive and difficult. The appellants described [name]'s partner as under investigation by numerous agencies, and suspected of having intimate relationships with law enforcement officials. The organization uses sophisticated technical equipment and uses security countermeasures against law enforcement operations.

During the [name] investigation, the appellants found that an individual whose identity was stolen was being investigated by another INS office for large-scale alien smuggling, creating jurisdictional problems and expanding the scope of the [name] investigation. The appellants found that [name] has become a major supplier of fraudulent documents that they believe has serious national and international security implications. [name] uses fictitious companies as fronts to launder money, and operates a large illegal wire transfer business making it difficult to trace funds. The organization uses the Chinese underground banking system to launder money.

*[name]*

The case grew out of [name]'s investigation into the criminal activities of the [name] gang. They are involved in extortion, fraud, alien smuggling, loan sharking, alien smuggling, drug trafficking, kidnapping, money laundering, prostitution, home invasion robberies, and murder for hire. Organization members have opened and operate legitimate businesses, and the organization is involved in partnerships with numerous restaurants, restaurant supply companies, and

construction companies. [name] led to the successful prosecution of over 100 members and the identification and indictment of its leader, [name], who fled to China after a corrupt interpreter advised [name] of the Government's evidence. [name] has sent representatives to the United States and recruited new members to maintain his interest and control. [name] continues to receive a percentage of the proceeds using such methods as currency smuggling, conversion of assets, and the Chinese underground banking system.

The appellants estimated that the organization has over 150 members. They stated that although the various crimes fall under the traditional jurisdiction of other agencies, the U.S. Attorney's Office requested that the appellants serve as case agents. They have secured a provisional arrest warrant and are attempting to lure [name] to a country with which the United States has an extradition treaty. The appellants said that they are working with Chinese officials on [name]'s extradition, the first time that the Chinese Government has pursued the extradition/expulsion of an individual from China to the United States.

The appellants stated that the organization is attempting to monopolize the transportation of ethnic Chinese between [location], [location] and other areas of the United States. The organization opened a transportation business and attempted to force existing businesses to close. The appellants convinced an existing business owner to cooperate and received approval for undercover operations and consensual monitoring. In November 2000, they directed a confidential source to meet with organization members in [location] and learned of the organization's extorting businesses in both [location] and [location]. One business owner was cooperating with the FBI in [location], while another business owner was cooperating with the [location] and [location] police departments. The appellants planned and executed efforts from these and three other law enforcement agencies that led to the arrest of five organization members who will be prosecuted by [acronym].

*[name]*

The case grew out of death threats received by one appellant in October 2000 that were traced to a telephone of an individual ([name]) in Philadelphia whom the appellants did not know. When interviewed, [name] claimed that he had obtained a cellular phone for a friend, [name]. A week after the initial meeting, [name] advised the appellants that [name] had requested they open a joint safe deposit box. [name] permitted the appellants to search the box where they found documents that were original, altered, genuine and/or counterfeit. [name] identified a photograph of [name] that appeared on numerous pieces of identification with fictitious names from various entities. [name] was arrested in December 2000 and pled guilty to interfering/intimidating a Federal Agent. Through directly verifiable evidence, the appellants linked [name] to the extortionists and the three victimized companies in [name].

Documents from the safe deposit box identified several Vietnamese individuals and businesses previously unknown to law enforcement that may be involved in criminal activities. Under the guise of investigating [name], several individuals agreed to cooperate, but are unaware that they are also under investigation. The appellants are investigating an allegation that one of the companies is attempting to monopolize the transportation of ethnic Vietnamese from [location], [location], [location], and [state] to the [location] casinos with estimated annual profits of \$6 million. [name] ([name]) may have a financial interest in the company. [name]'s potential role

also is under investigation, including his alleged family connection to a defendant arrested in connection with [name].

The evidence uncovered links [name] to a previously undetected alien smuggling ring operating in [location], [location], [location], Belize and Hong Kong, and shows that it is a major supplier of fraudulent documents obtained through contacts with corrupt officials. The organization has ties to black market gambling rings engaged in extortion and robbery in [location], [location], [location] and [location]. A close family unit that controls the organization also operates legitimate businesses. Seventeen of its principals are under investigation. Several are cooperating with the appellants but are unaware that they are also under investigation. The investigation disclosed that high-ranking members of this ring were involved in another case in which the appellants had been asked to assist the Hong Kong Police Department in conducting interviews of a family filing charges against an INS employee in Hong Kong.

*[name]/[name]*

Both investigations target the [name] gang, identified since the 1980's by the National Drug Intelligence Center, as a nationally significant criminal organization. The gang is associated with the [name] triad and the [name] Association, registered as a nonprofit corporation in New York since 1923. The gang split into Cantonese and Fukinese factions after a dispute between two of its leaders. [acronym] and the [name] District of [state] ([acronym]) each agreed to prosecute one faction of the gang. [name] falls under [acronym] and [name] under [acronym].

The [name] case, which remained active beyond April 1999, was initiated when a member of the rival faction killed a gang member in a dispute over collection of protection money. In retaliation, two members of the Cantonese faction were implicated in the killing and arrested by the [name] Police Department ([acronym]). A business owner contacted the appellants claiming they were being extorted for the funeral expenses of the deceased. The appellants' undercover operation led to the arrest of three people for extortion who also were witnesses to the local murder prosecution. The appellants subsequently discovered that the three witnesses had lied about the murder on orders of the gang leader to weaken the control of the other faction. Investigating the homicide, the appellants were able to arrest three gang members, including the shooter, for murder in aid of racketeering violations; all three pled guilty. Additional investigations have resulted in the indictment of more than 30 gang members for racketeering violations and prosecution of more than 60 for their criminal participation in the organization.

In [name], the appellants' investigation led to the indictment and arrest of three gang members for the murder of a rival gang member in [location], [state] because of a dispute over the operation of a brothel in [name], [state]. The appellants developed lead information from a cooperating defendant that led to a guilty plea from two defendants on charges of participating in a kidnapping during which a murder took place. A third individual remains a fugitive and is believed to be in China. The investigation required coordination with the [name] PD, [acronym], [name] State Police and the [location] INS and FBI field offices.

*[name]*

This is an investigation of criminal activities associated with the [name] American Association. Members who operate legitimate businesses contract with the [name] and other criminal organizations to collect debts, rob competitors, and threaten rivals. In turn, these criminal organizations use their relationship with the Association to legitimize their criminal activities in the community. One cooperating witness described being pistol whipped and shot when he resisted during a robbery at a gambling parlor. Another cooperating witness was threatened at gun point and ordered by the [name] to pay \$3,800 for problems he had caused by going to the police after the robbery.

The appellants obtained a court order to tap and trace, and emergency permission to conduct consensual monitoring and undercover operations. Using more than 15 law enforcement personnel, the appellants arrested two suspects and recovered the gun used to shoot the first witness. The second witness was placed in protective custody after he and his family were threatened with harm if he did not drop the charges. The appellants are also investigating allegations that several attorneys receive illegal kickbacks from the criminal organization for representing the organization's members.

*[name]*

The appellants are investigating a murder committed by a faction of the [name] that is being prosecuted by the OCTU [acronym] as a racketeering enterprise. The investigation indicates that a high ranking member of the [name] American Association invited an immigrant smuggler ("snakehead") to dinner to help the [name] force him to disclose the location of aliens he had smuggled into the United States. The [name] then kidnapped approximately 30 aliens. All were beaten and one died. One principal, arrested by the appellants, pled guilty. Twelve others have been indicted for their participation, and the investigation continues.

*[name]*

Based on intelligence information, the appellants began investigating a reported trend of Chinese immigrant smuggling into the United States via Guatemala. The Chief of the [location] District Attorney's Asian Gang Unit requested assistance in a kidnapping investigation. Conducting interviews, the appellants learned that the victim was a passenger on a boat that had landed in Guatemala with more than 200 Chinese nationals.

Using telephone records; INS files; and rental car, hotel, and credit card receipts, the appellants tracked the victims' journey and identified many of the individuals responsible. Evidence indicates that immigrant smuggling was part of a larger and more diverse criminal enterprise. The appellants stated that the Chief, OCTU, [acronym] asked the appellants to lead an investigation to be prosecuted by his unit. They are uncovering evidence that implicates law enforcement officials in China, Guatemala, Mexico and El Salvador, and obtaining assistance may be "an arduous task." The organization's contacts facilitate and provide security during the smuggling operations in these countries, and organization members purchase passports and other identity documents from many of the governments. After receiving a tip from an informant, the appellants recently coordinated with INS officials in Mexico to arrest a fugitive organization member and have him expelled to the United States.

The appellants are investigating several subjects who remain in Guatemala. The smuggling scheme involves auctioning aliens whose families are unable to pay the smuggling debt. The organization's brokers in Canada and the United States frequently purchase the victims at discount rates, and sell them to restaurant owners, garment factories and construction firms where they are forced to work to pay off the debt. Females frequently are sold into prostitution.

They received information that a law firm with offices in [location] and [location] has bailed out numerous illegal aliens arrested and detained by the INS, and preliminary information shows possible criminal involvement by three law firm members and a bail bond firm. Once an alien is released, the attorney or a member of the firm transports the alien to members of the criminal organization. The alien is held until the smuggling debt is paid, and the firm receives compensation from the criminal organization.

### *Complexity of Assignments*

This factor measures the scope, complexity and sensitivity of investigative assignments in terms of six elements. The classification standard notes that for this factor to be evaluated at a particular grade level, most or all of the six elements must be at that particular grade level. We will apply the standards for each element to the current cases submitted by the appellants as part of their appeal.

Element 1 - This element is concerned with the level of difficulty involved in resolving conflicting facts or evidence.

At the GS-12 grade level, cases typically involve several principals for whom suspicion is initially aroused by circumstantial evidence, e.g., word of mouth, tips, observations, rather than by directly verifiable evidence, e.g., paid bills, passports, licenses, testimony. Evidence is fragmentary or cold. Improper development of the case could cause significant repercussions, e.g., cause public embarrassment for the agency involved or the principals under investigation.

In contrast, GS-13 grade level cases are of extreme complexity and scope. For example, the assignments involve investigations of legal or illegal organizations that are very complex in structure with a large number of primary and secondary activities, e.g., several principals of organized crime or subversive groups that are officially recognized in law enforcement as national threats to the peace and stability of the nation. Investigations are of major interregional dimensions or are nationwide in origin or coverage with occasional international implications. There are typically actual or potential threats or challenges to major segments of the national welfare or security, e.g., threats to the fabric of society caused by the previously described large scale drug or other illegal items distribution conspiracies; and the potential threat of large scale terrorist or other multi-cell integrated organizations. The results, effects, or consequences of the investigation, to a major degree, constitute deterrents to crimes or violations, and may often influence changes in laws or future court actions.

The GS-13 investigator typically must piece together evidence that comes from other investigators stationed throughout several States or the nation. From this evidence, the investigator must recognize the suspect's pattern of operation to anticipate or even influence events as they unfold by instructing separate investigators or units of investigators working on

segments of the case. This complicates the case because the investigator must at the same time avoid entrapment of the suspects, who are prominent and numerous and engage in more complex and serious activities. Similarly, the GS-13 investigator must be more aware of the implications of precedent court decisions over a broader area, i.e., in more judicial and law enforcement jurisdictions.

The appellants describe the criminal enterprises that they investigate as organized horizontally, with a large number of primary and secondary activities based on their links to a variety of legitimate retail and wholesale businesses, and immigrant associations and societies. The cases have international implications since immigrant smuggling activity is a typical activity of the violent gangs that they investigate and is directly linked to the violent crimes that they investigate, e.g., holding illegal aliens until their smuggling costs have been paid. The appellants describe the work as nationwide because raids have been conducted and arrests made outside the [location] metropolitan area. They cite the [name] gang as being recognized as a nationally significant criminal organization. The appellants' initial appeal rationale cites the large number of suspects indicted as a result of their investigations as evidence of case complexity.

The appellants' investigations present the full range of GS-12 grade level characteristics. Their investigations focus on violent Chinese gangs that are engaged in a variety of illegal activities. Typical of that level, they work from fragmentary and other limited evidence to locate leads and sources necessary to develop their cases. While the gangs and their associates threaten the social fabric of a portion of the metropolitan Chinese immigrant community, their activities are not so complex and pervasive that they constitute a threat to the peace or stability of the nation as described at the GS-13 grade level. As horizontal connected organizations, they use cooperative relationships with similarly organized criminal enterprises to achieve operating synergy. For example, immigrant smuggling transportation enterprise is available for use by parallel organizations that specialize in document forgery. The preponderance of the appellants' activities stops street level crimes. Working with victims and/or their relatives, they identify and arrest the perpetrators of these predicate acts. As they described in their supplementary case information, arresting these people disrupts gang operations until other principals establish new horizontal relationships. While their case write-ups describe suspected gang relationships with Chinese business and fraternal organizations, the record does not show that these organizations are integrated parts of the large and complex criminal enterprises found at the GS-13 grade level. The information provided shows that members of the legitimate organizations use gang services for their own purposes.

While the Chinese gangs use violence, graft and corruption to protect and further their interests, the FBI has primary Federal responsibility for racketeer influenced and corrupt organization violations. The appellant's routinely work parallel investigations with that agency. Although VGTF members are used to investigate immigrant smuggling, primary responsibility for those investigations fall under the jurisdiction of other INS components. Thus, the appellants are not case agents as defined in the Guide for these shared investigations. For example, while the appellants were able to establish sufficient predicate acts to indict [name] and secure her arrest in Hong Kong, the case file shows that other agencies and INS components were engaged in long-term investigations of this internationally recognized "snakehead" who was engaged in large scale immigrant smuggling. Notwithstanding this success, the appellants cannot be credited as if they managed and controlled the long-term investigation of her criminal enterprise. While their

investigations frequently result in arrests outside the [location] metropolitan area, they do not exercise case agent control over their counterparts. These cooperating agents and law enforcement agencies primarily assist in such case activities as surveillance and arrests. They do not conduct significant investigative activity under the appellants' control as part of a major investigation with GS-13 grade level characteristics. The number of people indicted or arrested does not automatically affect case complexity as stated in the appellants' rationale. For example, criminal enterprises that use large numbers of people to conduct their activities are not automatically sophisticated in organizational or financial structure. This element is credited at the GS-12 grade level.

Element 2 - This element is concerned with the difficulty and complexity imposed by the subjects of the investigation.

At the GS-12 grade level, difficulties or complexities imposed by the prominence or characteristics of the subjects investigated include: (1) a suspected or known racketeer, gambler, smuggler, etc., who is known through their associates, behavior or background as a prominent figure in organized crime or subversion; (2) the principal or financial backer in an organization consisting of separate manufacturers, distributors, and transporters of illegal goods, drugs, alcohol, counterfeit money, fraudulent documents, explosives or weapons (normally the separate parties do not know each other or the overall backer); (3) a figure with financial interests overlapping several activities both legal and illegal, e.g., funds from a legal concern are diverted and used to finance illegal activity; and/or (4) the head of an organization involved in legitimate business who is suspected of fraudulent use of invoices, operating fraudulent marriage rings, etc., which are carried out under the cover of the legitimate organization, and the suspected violation requires assistance from several accomplices, e.g., attorneys or accountants who are themselves in positions of public trust.

In contrast, at the GS-13 grade level, subjects are involved in the range and variety of such interrelated activities as: (1) a suspected foreign agent who, with several associates, is planning acts extremely harmful to national security, e.g., theft of national defense documents for benefit of a foreign government, or compromise of persons who have access to highly classified information concerning national defense; and/or (2) the organization under investigation has an extremely complex structure with diversified interests, e.g., the manufacture, distribution and sale of legal or illegal goods in a national market involving a complex network of widespread distribution and sales outlets.

The horizontal and cooperative structure of these criminal organizations and their clients meets the GS-12 grade level. For example, [name] and [name] are known as prominent figures in Chinese organized crime. They and their affiliates engage in a wide range of illegal activities in which the separate parties do not necessarily know each other or the overall backer. These criminal enterprises have financial interests overlapping several activities both legal and illegal, where funds from legal businesses are diverted and used to finance illegal activity and accomplices in positions of public trust. The subjects that the appellants investigate engage in a wide range of illegal activities, but not of the scope, on the scale, or in the context at the GS-13 grade level. While their investigations involve such issues as bribery of public officials, immigrant smuggling, kidnapping, hostage taking, harboring aliens, extortion, money laundering, drug trafficking, and murder for hire, they do not equate to the range of interrelated

activities characteristic of the GS-13 grade level as described previously. Gang relationships with other criminal enterprises and Chinese business and fraternal organizations are not equivalent to the complex, integrated structures found at the GS-13 grade level and do not reflect the pervasive and extensive reach of those organizations. This element is credited at the GS-12 grade level.

Element 3 - This element is concerned with the nature of separate investigative matters that grow from the original assignment.

At the GS-12 grade level, a substantial number of separate investigative matters typically grow from the original assignment. For example, an investigation beginning with the pusher or passer of stolen or illegal goods, e.g., drugs, counterfeit money, or fraudulent documents, is expanded by piecing together bits of evidence from interviews, surveillance, documentary examinations, informants, etc., proceeds through the intermediate distributor, and eventually involves the manufacturer, backer, organizer, importer, etc.

In contrast, at the GS-13 grade level, suspected violators are highly organized crime groups whose criminal activities are interwoven with legitimate business activities. For example, seemingly legitimate construction firms may have ostensibly legal contracts with States, and there is suspicion of bribery of State officials or fraud. The investigator develops leads from known criminal activities; finds that these leads cross to legitimate businesses; and suspicion is finally cast on seemingly respected legitimate political, business or professional leaders. Cases at the GS-13 grade level also often unfold to involve large-scale raids and seizures throughout several states, which normally require the GS-13 investigator to lead and coordinate several units of investigators from his or her own and other agencies in tracing leads and gathering information.

As at the GS-12 grade level, a substantial number of separate investigative matters typically grow from the appellants' original investigations. For example, the appellants' investigations expand by piecing together bits of evidence from interviews, surveillance, documentary examinations, informants, cooperating witnesses, etc., to the organizers of the criminal enterprise. However, unlike the subjects typical of GS-13 grade level investigations, the suspected violators are not highly organized crime groups as discussed previously. While the subjects are aware of and cooperate with each others' activities, they remain by and large independent organizations and operators. Like the GS-12 grade level, separate investigations that grow from accumulated evidence link [name], and other principals to criminal elements and activities outside their own organization and control. Raids are conducted in other jurisdictions, e.g., the [name]'s transportation business scheme that reached into [location] resulted in the arrest of five members. However, the appellants' investigations do not routinely involve large-scale raids and seizures throughout several states that require the appellants to lead and coordinate several units of investigators from INS and other agencies in tracing leads and gathering information. Instead, the appellants coordinate their activities with other law enforcement agencies as discussed previously. This element is credited at the GS-12 grade level.

Element 4 - This element is concerned with the difficulty involved in establishing the relationship of facts or evidence.

At the GS-12 grade level, investigations involve subjects who are suspected of major and complex criminal activity who are separated from the overt violation by an intermediary or organization, requiring the use of such techniques as surveillance, radio communication, toll-call checks, and scientific identification and matching of various specimens to establish a direct link between the suspect and other violators. At this grade level, the developing of defensible testimony is dependent upon such techniques as pitting one violator, criminal or witness against another, extensively checking the word of one against another, and the exercising of great care in establishing facts and evidence because of the prominence of the subject or the importance of the case.

In contrast, at the GS-13 grade level, the interrelationship between fact and evidence is extremely difficult to establish. For example, subjects use fictitious names or are otherwise clearly separated from each other and from the illegal activities under investigation. They deal exclusively through subsidiaries and holding companies that engage in diversified mixtures of legal and illegal activities throughout wide sections of the country, e.g., businesses throughout wide sections of the country run by organized crime families with subsidiaries engaged in a mixture of legal and illegal activities (e.g., legitimate enterprises that are multi-site in scope that obtain business through fraud or bribery). The work of other investigators or teams of investigators coordinated at the GS-13 grade level involve segments of cases that fully equate to cases themselves that are evaluable at the GS-12 grade level.

As at the GS-12 grade level, the appellants' most prominent subjects are suspected of major and complex criminal activities, but are separated from the overt violations by organizations and associates. While they fund and reap the benefits of the illegal activities, they do not run the day-to-day operations. The investigations require the use of such techniques as surveillance, pen registers, monitored calls, bank and other business records to establish a direct link between the suspects and other violators. Typical of this grade level, the appellants use violators, criminals and witnesses against one another, extensively checking the word of one against another, and exercise great care in establishing facts and evidence because of the importance of the case. For example, the appellants surfaced fictitious companies in the [name] case that were used as fronts to launder illegal profits, and fraudulent murder evidence in the [name] case. While the subjects use a variety of business fronts, they are not equivalent to subsidiaries and holding companies described at the GS-13 grade level. Because the FBI and other cooperating agencies lead their own portions of these investigations, the appellants are precluded from functioning in a GS-13 grade level coordinative capacity. The appellants' cases, as a whole, meet the GS-12 grade level. However, unlike the GS-13 grade level, each case segment that they coordinate does not meet the GS-12 grade level. This element is credited at the GS-12 grade level.

Element 5 - This element concerns the degree of sensitivity that the assigned cases involve.

At the GS-12 grade level, cases involve subjects so prominent that after the first witness is interviewed, word of the interview precedes the investigator so that subsequent witnesses are evasive because of reluctance to or fear of becoming involved in giving information which witnesses view as exploding into an important Federal case. The subject and their peers are very often the subject of major news media and, therefore, any investigation is likely to result in

publicity and to some degree cast suspicion on the reputation of the subject, prejudice the investigator's case in court, or implicate subsequent administrative decisions.

In contrast, at the GS-13 grade level investigations: (1) receive sustained and widespread coverage in the major news media because of the prominence of the suspects or victims of the crime or threat if the investigation became public knowledge prematurely which could, for example, severely hamper the speed of the investigator's progress and endanger lives of victims, e.g., investigation of a major member of an organized crime family that must be tightly controlled to prevent the elimination of witnesses, the protection of victims willing to testify, etc.; (2) have suspects whose financial involvements extending to enterprises that have a significant impact on the national economy, e.g., the transportation or banking industry; and/or (3) have suspects who are principals in financial or other enterprises that reach into State and Federal affairs, e.g., through attempted bribery, fraud, collusion or extortion of public officials.

As at the GS-11 grade level, most of the appellants' cases have the potential for local publicity and could cast suspicion on otherwise respected individuals. The record shows that only [name] has received the media attention found at the GS-12 grade level. Typical of the GS-11 grade level, investigative success depends on not disclosing the facts of the investigation which might shut off the possibility of leads necessary to prove the case. However, the appellants' work in developing witnesses involves difficulties consistent with the GS-12 grade level. Witnesses often are illegal aliens, are trying to protect relatives who are illegal aliens, or are fearful of cooperating because of potential gang revenge and their fear of Government officials. While witnesses may be reluctant to testify, the appellants' cases do not reflect the level of risk found at the GS-13 grade level. Their suspects do not have financial involvements extending to enterprises that have a significant impact on the national economy typical at that grade level. The more serious official bribery and corruption issues described in the appellants' case summaries entail the sensitivity and handling requirements found at the GS-12 grade level. However, they do not represent the widespread, serious corruption of public officials envisioned at the GS-13 grade level, where multiple levels of government are compromised through attempted bribery, fraud, collusion or extortion. Based on the preceding analysis, this element meets the threshold for crediting at the GS-12 grade level.

Element 6 - This element is concerned with the jurisdictional problems involved in case assignments.

At the GS-12 grade level, jurisdictional problems involve subjects engaged in activities that are the concern of several local, county, State and Federal agencies, e.g., drug use, traffic and smuggling; forgery; and alleged subversion. The cases involve a web of relationships that require a more extensive knowledge of the laws, rules and policies of these various jurisdictions because the investigator often plans and times raids and surveillance that involve use of local law enforcement agencies.

In contrast, at the GS-13 grade level, cases involve extremely difficult planning and coordination problems because of extensive jurisdictional problems. For example, evidence may warn the investigator that their contacts in other jurisdictions are themselves involved in wide-scale criminal conspiracies, which require the investigator to use such suspects in double or triple capacities, e.g., in getting and exchanging information without permitting such suspects to

realize how they are being used. Undercover and surveillance work involves serving as a key person or coordinator in assignments with complex, dangerous or delicate elements, e.g., penetration of closely knit groups on assignments of GS-13 grade level complexity, where discovery on assignment would not only result in great injury or death to the investigator, but would cut off information linking the evidence together and thus jeopardize or destroy a critical case that the Federal government had been developing for months or years, involving a network of local State, and other Federal agents and informers.

As at the GS-12 grade level, the appellants' jurisdictional problems involve subjects engaged in activities that are the concern of several local, county, State and Federal agencies, i.e., violent and related crimes of interest to the FBI, State and local law enforcement agencies, and foreign countries where the underlying criminal activities originate. As described in the case summaries, the appellants' cases routinely involve a web of relationships that require a more extensive knowledge of the laws, rules and policies of these various jurisdictions because the investigator often plans and times raids, conducts surveillance and conducts undercover operations using local and/or State law enforcement agencies. The appellants allude to the presence of wide-scale criminal conspiracies in other jurisdictions, e.g., in the People's Republic of China, Belize, and Malaysia, and describe getting information from cooperating witnesses who are suspects themselves without permitting such suspects to realize how they are being used. However, they do not have the direct and material impact on the appellants' work to prevent the violation of United States law as intended at the GS-13 grade level, e.g., using corrupt foreign officials allied with a major drug cartel in a double or triple capacity, or when local or State law enforcement agencies partnering in the investigation are themselves linked to wide-scale criminal conspiracies. Because the appellants' cases do not meet GS-13 grade level complexity, their surveillance work fails to meet that level as described in the Guide.

With all six elements credited at the GS-12 grade level, this factor is credited at the GS-12 grade level.

### *Level of Responsibility*

This factor measures the kind and extent of supervision given to investigators and the degree of resourcefulness required in finding and verifying information pertinent to the cases assigned.

At the GS-12 grade level, investigators receive or generate their own assignments. They receive few instructions on the technical aspects of the work, but are given mostly policy guidance, e.g., information on understandings of jurisdictional problems being worked out among agencies, or the fact that this is one of the first of a particular type of case since a new court decision, or authorization to follow a case into another district or region, if necessary. The GS-12 investigator is responsible for planning cases independently, and working out arrangements with other jurisdictions except in policy areas. For example, in setting up a joint raid involving Federal and local law enforcement, the investigator is responsible for planning and timing, but must work through superiors when coordinating the commitment of resources and staff.

In contrast, at the GS-13 grade level, investigators receive assignments through program discussions, such as conferences or written directives that outline broad objectives, e.g., to stop smuggling of a particular commodity at a given port. The GS-13 investigator outlines the

objectives and boundaries of the assignment, plans the resources needed, and includes plans for assuring coordination with other jurisdictions. Instructions are more generalized than at the GS-12 grade level, and review of work is typically in the form of discussions at certain critical points, e.g., suggestions on the commitment of resources in other domestic or foreign offices that are normally approved. Recommendations for extension, modification, or adoption of new lines of inquiry are normally accepted, although the sensitivity and importance of the cases must be cleared by the very highest individuals in the agency. GS-13 investigators devise methods, techniques and approaches to problems that often set patterns for subsequent investigations in similar areas and are often adopted for use by investigators at lower grades. GS-13 investigators are responsible for devising breakthroughs in investigative approaches, techniques, and policies. Investigations are planned and executed for the greatest possible deterrent impact. An extremely high degree of initiative and originality is required at the GS-13 grade level because of the various locations throughout a wide area under investigation, and suspected violators typically retain the best legal or accounting advice available; and investigations often establish important precedents, e.g., the first case of a particular type investigated under a new provision of law, the outcome of which may affect pending cases or influence the decision on such cases in the future.

Since the appellants' assignments fall short of the GS-13 grade level under *Complexity of Assignments*, credit under this factor is constrained. Typical of the GS-12 grade level, the appellants generate their own assignments, e.g., leads from informants and interviews of people referred to them from their community network. They receive guidance on any policy changes and authorization for actions requiring higher level approval, e.g., wire taps, consensual monitoring. As at the GS-12 grade level, their superiors are involved in coordinating the commitment of resources and staff for surveillance, raids and similar operations. The appellants' participation in extraditing [name] and expelling [name] represent involvement in a foreign policy process; this is not equivalent to developing breakthroughs in investigative approaches, techniques and policies, or the pursuing the first case of its kind under a new legal provision found at the GS-13 grade level. While the appellants operate independently, they do not exercise the higher level of responsibility associated with GS-13 grade level work.

The appellants state that they are the case agents who have sole responsibility for [name] and other ongoing investigations. Regional program records list [name] as a joint FBI, INS and [acronym] case; a lead agency is not listed. [name] lists participation by the FBI and [acronym]. INS policy on anti-smuggling cases provides for national designation as the responsible District and agents when a case requires extensive inter-regional coordination. National program records do not list any of the appellants' current cases as having that designation. National VGTF program records show the appellants received approval for consensual monitoring on [name]. Regional program records show approval for consensual monitoring for [name]. Program records do not list the other cases described in the appellants' supplementary information as designated VGTF 511 criminal organization investigations. Although 511 case designations may pertain to work at multiple grade levels, the appellants' locally controlled cases fail to reflect high level clearance requirements and interest typical of GS-13 grade level work. Accordingly, this factor is credited at the GS-12 grade level.

## **Decision**

The position is properly classified as Criminal Investigator, GS-1811-12.