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ALIEN SMUGGLING

DHS Needs to Better Leverage Investigative Resources and Measure Program Performance along the Southwest Border



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Highlights of [GAO-10-328](#), a report to congressional requesters

Why GAO Did This Study

Alien smuggling along the southwest border is a threat to the security of the United States and Mexico. Within the Department of Homeland Security (DHS), the Office of Investigations (OI)—part of U.S. Immigration and Customs Enforcement (ICE)—is the primary federal agency responsible for investigating alien smuggling along the southwest border. As requested, this report addresses, for the southwest border, (1) OI's efforts to counter alien smuggling since 2005, and opportunities, if any, for ICE to use its resources more effectively; (2) the progress DHS has made in seizing alien smugglers' assets since fiscal year 2005 and any promising techniques that could be applied to seize smugglers' assets; and (3) the extent to which ICE has objectives related to alien smuggling and measures to assess progress. GAO interviewed officials in all four OI offices along the southwest border and analyzed data on OI's cases and seizures, from fiscal years 2005 through 2009.

What GAO Recommends

GAO recommends, among other things, that DHS evaluate the feasibility of expanding the LEAR program, assess the Arizona Attorney General's investigations strategy, and develop performance measures for MIRP. DHS agreed with four of five recommendations in this report directed to DHS but disagreed with establishing MIRP performance measures because it did not believe such action was appropriate. GAO believes this recommendation is consistent with the program's intent.

[View GAO-10-328](#) or [key components](#).

For more information, contact Rich Stana at (202) 512-8777 or stanar@gao.gov.

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DHS Needs to Better Leverage Investigative Resources and Measure Program Performance along the Southwest Border

What GAO Found

OI work years spent investigating alien smuggling increased from 190 to 197 from fiscal years 2005 through 2009, and an opportunity exists to better leverage resources. Officials from two of the four OI offices GAO visited said that in addition to conducting criminal investigations, OI has been tasked to respond to calls from state and local law enforcement to process and transport aliens for possible removal, which diverts OI resources from conducting alien smuggling and other investigations. In 2006, the Office of Detention and Removal Operations (DRO), another ICE subcomponent, took over responsibility for responding to state and local law enforcement calls in the Phoenix metropolitan area, through the Law Enforcement Agency Response (LEAR) program. For this program, officials from DRO, not OI, transport and process aliens for removal. From October 1, 2008, to May 24, 2009, the LEAR program processed 3,776 aliens, aliens who OI would have otherwise had to process. By studying the feasibility of expanding the LEAR program, ICE would be in a better position to determine if it could more efficiently direct its OI resources toward alien smuggling and other investigations.

OI's alien smuggling asset seizures have decreased since 2005; however, opportunities exist to leverage additional seizure and financial investigative techniques. According to OI data, alien smuggling seizures nationwide increased in value from about \$11.2 million in 2005 to about \$17.4 million in 2007, but declined to about \$12.2 million in fiscal year 2008 and to about \$7.6 million in fiscal year 2009. One opportunity to leverage financial techniques to disrupt alien smuggling and seize assets involves assessing the financial investigative techniques used by an Arizona task force. The task force seized millions of dollars and disrupted alien smuggling operations by following cash transactions flowing through money transmitters that serve as the primary method of payment to those individuals responsible for smuggling aliens. An overall assessment of whether and how these techniques may be applied in the context of disrupting alien smuggling could help ensure that ICE is not missing opportunities to take additional actions and leverage resources to support the common goal of countering alien smuggling.

ICE has established objectives for its alien smuggling-related enforcement programs, but could do more to better measure progress toward achieving program objectives. For example, one of its components, DRO, has defined the objective of the Mexican Interior Repatriation Program (MIRP) as to remove aliens who are apprehended during the hot and dangerous summer months from the United States to the interior of Mexico to deter them from returning in order to reduce loss of life and to help disrupt alien smuggling operations; however, DRO has not established performance measures to evaluate its progress in meeting its objective consistent with internal control standards. Thus, ICE does not know the effectiveness of its efforts related to MIRP at deterring individuals from illegally returning to the United States.

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Abbreviations

| | |
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| ATEP | Alien Transfer Exit Program |
| ATM | automated teller machine |
| AUSA | Assistant U.S. Attorney |
| BEST | Border Enforcement Security Task Forces |
| BSA | Bank Secrecy Act |
| CBP | U.S. Customs and Border Protection |
| CTR | currency transaction report |
| DHS | Department of Homeland Security |
| DRO | Office of Detention and Removal Operations |
| EOUSA | Executive Office for U.S. Attorneys |
| FinCEN | Financial Crimes Enforcement Network |
| GTO | geographic targeting order |
| HSTC | Human Smuggling and Trafficking Center |
| ICE | U.S. Immigration and Customs Enforcement |
| IEA | immigration enforcement agent |
| INS | Immigration and Naturalization Service |
| LEAR | Law Enforcement Agency Response |
| MIRP | Mexican Interior Repatriation Program |
| MOU | memorandum of understanding |
| MSB | money services business |
| NDIC | National Drug Intelligence Center |
| OASISS | Operation Against Smugglers Initiative on Safety and Security |
| OI | Office of Investigations |
| OIA | Office of International Affairs |
| SAC | special agent-in-charge |
| SAR | suspicious activity report |

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United States Government Accountability Office
Washington, DC 20548

May 24, 2010

The Honorable Bennie G. Thompson
Chairman
Committee on Homeland Security
House of Representatives

The Honorable Harry Mitchell
House of Representatives

Alien smuggling along the southwest border is an increasing threat to the security of the United States and Mexico as well as to the safety of both law enforcement and smuggled aliens. One reason for this increased threat is the involvement of drug trafficking organizations in alien smuggling. According to the National Drug Intelligence Center's (NDIC) National Drug Threat Assessment 2008, the southwest border region is the principal entry point for smuggled aliens from Mexico, Central America, and South America.¹ Aliens from countries of special interest to the United States such as Afghanistan, Iran, Iraq, and Pakistan (known as special interest aliens) also illegally enter the United States through the region. According to the NDIC assessment, Mexican drug trafficking organizations have become increasingly involved in alien smuggling. These organizations collect fees from alien smuggling organizations for the use of specific smuggling routes, and available reporting indicates that some Mexican drug trafficking organizations specialize in smuggling special-interest aliens into the United States. As a result, these organizations now have alien smuggling as an additional source of funding to counter U.S. and Mexican government law enforcement efforts against them.

Violence associated with alien smuggling has also increased in recent years, particularly in Arizona. According to the NDIC assessment, expanding border security initiatives and additional U.S. Border Patrol resources are likely obstructing regularly used smuggling routes and fueling this increase in violence, particularly violence directed at law enforcement officers. Alien smugglers and guides are more likely than in past years to use violence against U.S. law enforcement officers in order to smuggle groups of aliens across the southwest border. In July 2009, a

¹ U.S. Department of Justice, National Drug Intelligence Center, *National Drug Threat Assessment 2008* (Johnstown, Pa., October 2007).

border patrol agent was killed while patrolling the border by aliens illegally crossing the border, the first shooting death of an agent in more than 10 years. Conflicts are also emerging among rival alien smuggling organizations. Assaults, kidnappings, and hostage situations attributed to this conflict are increasing, particularly in Tucson and Phoenix, Arizona. Communities across the country are at risk since among those individuals illegally crossing the border are criminal aliens and gang members who pose public safety concerns for communities throughout the country.

Within the Department of Homeland Security (DHS), the Office of Investigations (OI)—part of U.S. Immigration and Customs Enforcement (ICE)—is responsible for investigating violations of a myriad of immigration and customs-related laws and is the primary federal agency responsible for investigating alien smuggling along the southwest border. In 2005, we reported that the creation of DHS in March 2003 provided new opportunities to more effectively combat alien smuggling, particularly in reference to using financial investigative techniques to target and seize the monetary assets of smuggling and that ICE officials expected asset seizures to increase.² Also within ICE, the Office of Detention and Removal Operations (DRO) is responsible for detaining aliens who are subject to removal, including those smuggled into the country, and enforcing their removal from the United States. The Border Patrol within DHS's U.S. Customs and Border Protection (CBP) is responsible for interdicting smuggled aliens as illegal border-crossing attempts are made between the ports of entry. CBP maintains several programs that address alien smuggling and the Border Patrol also collaborates with OI in providing information for alien smuggling investigations obtained during interdictions. The Department of Justice (Justice) and its 93 U.S. Attorney's offices located throughout the United States are responsible for prosecuting individuals charged with violations of federal law, including alien smuggling. Five U.S. Attorney's offices are located in the southwest border region.

In light of the increasing threat of alien smuggling along the southwest border, you asked us to assess DHS's efforts to address alien smuggling. Thus, this report addresses the following questions:

² GAO, *Combating Alien Smuggling: Opportunities Exist to Improve the Federal Response*, [GAO-05-305](#) (Washington, D.C.: May 27, 2005).

-
- Since fiscal year 2005, what has been the trend regarding the amount of investigative effort OI has devoted to alien smuggling along the southwest border, what have been the results, and is there an opportunity for ICE to use its investigative resources more effectively?
 - What progress has DHS made in seizing assets related to alien smuggling since fiscal year 2005 and what, if any, promising financial investigative techniques could be applied along the southwest border to target and seize the monetary assets of smuggling organizations?
 - To what extent do ICE/OI and CBP have objectives related to alien smuggling along the southwest border and to what extent have they implemented internal controls to measure progress toward these objectives?

To address these questions, we conducted site visits and interviews with officials in all four of the OI special agent-in-charge (SAC) offices along the southwest border: San Diego, Phoenix, El Paso, and San Antonio.³ We also interviewed officials with six of the nine Border Patrol sectors along the southwest border—San Diego and El Centro, California; Yuma and Tucson, Arizona; and El Paso and Laredo, Texas. The six Border Patrol sectors were selected based on their proximity to OI SAC offices we visited and their varying volumes of removable alien apprehensions. While the officials' perspectives that we obtained from the sectors cannot be generalized to all Border Patrol officials along the southwest border, they provided us with an overview of how their enforcement programs operate within and across sectors. We also interviewed officials in all five U.S. Attorney's districts along the southwest border.

In addition, to address OI's use of investigative resources, we analyzed data from fiscal years 2005 (the date of our last report) through 2009 from TECS, the system OI uses to manage its cases. To identify possible opportunities for ICE to use its investigative resources more effectively, we analyzed self-reported investigation data from OI's case management system from fiscal years 2005 through 2009 to determine the extent to which investigative resources were spent on OI's main mission of conducting criminal investigations. To address the results of OI investigations, we analyzed data from Justice's Executive Office of U.S. Attorneys for the period from fiscal years 2005 through 2009. To address progress in seizing assets related to alien smuggling, we analyzed OI and

³ SACs are the lead OI investigators who manage designated geographic regions of responsibility throughout the United States. Twenty-six SACs are stationed throughout the United States.

Border Patrol data on seizures made from fiscal years 2005 through 2009. To determine what, if any, promising financial investigative techniques could be applied along the southwest border to target and seize the monetary assets of smuggling organizations we analyzed the federal interagency 2007 National Money Laundering Strategy and its accompanying 2005 U.S. Money Laundering Threat Assessment and an OI report on the results of financial investigations, and interviewed OI officials and Assistant U.S. Attorneys along the southwest border. In addition, we interviewed the Arizona Attorney General and officials with the Arizona Attorney General's Financial Crimes Task Force and analyzed relevant court affidavits to obtain information on the results of their efforts to address alien smuggling in Arizona. To address OI's alien smuggling objectives and internal controls to measure progress toward these objectives, we analyzed ICE's interim strategic plan and performance data from fiscal years 2005 through 2009 and Justice sentencing data on those convicted of alien smuggling from fiscal years 2005 through 2009. To address CBP's alien smuggling objectives and internal controls to measure progress toward these objectives, we analyzed program documents related to three CBP programs designed to address alien smuggling, one former CBP program now managed by ICE, CBP data on program results for various periods from 2005 to 2009, and one Homeland Security Institute evaluation of one of these programs.⁴

To assess the reliability of data collected by ICE, Justice, and Border Patrol, we conducted interviews with agency officials about data integrity procedures and the methods by which data are checked and reviewed internally for accuracy. We determined that despite limitations in certain data collection and oversight processes discussed later in this report, the data recorded in selected data fields were sufficiently reliable for the purposes of this report. To assess the reliability of the Homeland Security Institute evaluation, we reviewed the scope, methodology and findings of the evaluation with the lead researcher from the institute. We determined that the scope and methodology of the institute's evaluation were sufficient for us to rely on for our purposes in this report.

⁴ The Homeland Security Institute, now referred to as the Homeland Security Studies and Analysis Institute, is a federally funded research and development center that provides independent analysis of homeland security issues. Analytic Services Inc. operates the institute under contract with DHS.

We conducted this performance audit from September 2008 through May 2010 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Appendix I contains more detailed information about our scope and methodology.

Results in Brief

OI work years devoted to investigating alien smuggling increased from about 190 work years in fiscal year 2005 to about 197 work years in fiscal year 2009, an overall increase of 4 percent with hundreds of arrests, indictments, and convictions resulting, and an opportunity exists to better leverage resources. The overall number of work years decreased from about 190 work years in fiscal year 2005 to 174 in fiscal year 2008, but increased 23 work years from fiscal years 2008 to 2009. DHS's Human Capital Accountability Plan states that DHS is committed to ensuring that human capital resources are aligned with mission accomplishments and are deployed efficiently and effectively. However, in some cases OI investigators are conducting immigration-related activities that are not consistent with OI's primary mission of conducting criminal investigations. Officials from two of the four SAC offices we visited told us that OI has been tasked to respond to calls from state and local law enforcement agencies to transport and process apprehended aliens who may be subject to removal. For example, according to officials in one SAC office, the equivalent of two full-time investigators each week spent their time responding to non-investigation-related calls during fiscal year 2009. In 2006, in the Phoenix metropolitan area, ICE's DRO developed the Law Enforcement Agency Response (LEAR) program, in which DRO took over responsibility from OI for transporting and processing apprehended aliens. DRO processed 3,776 aliens from October 1, 2008, to May 24, 2009, who otherwise OI would have had to process, thus enabling OI agents to spend more time on investigations. DRO headquarters officials stated that they have discussed expanding the LEAR program beyond Phoenix but have yet to conduct an evaluation to identify the best locations for expanding the program. By studying the feasibility of expanding the LEAR program, and expanding the program if feasible, ICE would be in a better position to help ensure that its resources are more efficiently directed toward alien smuggling and other priority investigations.

The value of OI alien smuggling asset seizures has decreased since fiscal year 2005, and two promising financial investigative techniques exist that

could be applied to target and seize the monetary assets of smuggling organizations, estimated to generate illicit revenues of billions of dollars annually. According to OI data, the value of alien smuggling seizures nationwide increased from about \$11.2 million in 2005 to about \$17.4 million in 2007, but declined to \$12.1 million in fiscal year 2008 and to about \$7.6 million in fiscal year 2009. One opportunity to leverage additional seizure techniques involves civil asset forfeiture authority, which allows federal authorities to seize property used to facilitate a crime without first having to convict the property owner of a crime. OI investigators indicated that lack of such authority makes it difficult to seize real estate involved in alien smuggling activity. In 2005, we recommended that the Attorney General, in collaboration with the Secretary of Homeland Security, consider submitting to Congress a legislative proposal, with appropriate justification, for amending the civil forfeiture authority for alien smuggling. Justice prepared such a proposal and it was incorporated into several larger bills addressing immigration enforcement or reform since 2005, but none of these bills had been enacted into law as of March 2010. According to Justice officials, the current administration has not yet taken a position on civil asset forfeiture authority for alien smuggling cases. We continue to believe it is important for Justice to seek the civil asset forfeiture authority it has identified as necessary to seize property used to facilitate alien smuggling. A second opportunity to leverage financial techniques to disrupt alien smuggling and seize assets involves assessing the financial investigative techniques used by an Arizona Attorney General task force. The task force seized millions of dollars and disrupted alien smuggling operations by following cash transactions flowing through money transmitters that serve as the primary method of payment to those individuals responsible for smuggling aliens. ICE officials stated that a fuller examination of Arizona's financial investigative techniques and their potential to be used at the federal level would be useful. An overall assessment of whether and how these techniques may be applied in the context of disrupting alien smuggling could help ensure that ICE is not missing opportunities to take additional actions and leverage resources to support the common goal of countering alien smuggling.

OI and CBP have established objectives for their alien smuggling-related programs, but can do more to better measure progress toward achieving program objectives. ICE's April 2005 interim strategic plan states that OI's overall objective is to use its authorities to identify, locate, disrupt, and prosecute alien smuggling organizations. CBP and DRO have also defined objectives for their alien smuggling programs; for example, the objective of the Mexican Interior Repatriation Program (MIRP) is to remove aliens

from the United States—apprehended during the summer months, generally the hottest and most dangerous time of year for border crossings— to the interior of Mexico to deter them from returning in order to reduce loss of life and to help disrupt alien smuggling operations. However, ICE and CBP have not fully evaluated progress in meeting alien smuggling objectives. Federal standards for internal control call for agencies to establish performance measures and indicators in order to evaluate the effectiveness of their efforts. Although one of the major objectives of OI's alien smuggling investigations is to seize smugglers' assets, OI does not have performance measures for asset seizures related to alien smuggling cases. Tracking the use of asset seizures in alien smuggling investigations as a performance measure could help OI monitor its progress toward its goal of denying smuggling organizations the profit from criminal acts. In addition, ICE does not know the effectiveness of MIRP at saving lives or disrupting alien smuggling operations because it lacks performance measures for the program. Lack of accurate and consistent data has limited CBP's ability to evaluate its alien smuggling-related programs. CBP is in preliminary discussions to establish systematic program evaluations, but has not established a plan, with time frames, for their completion. Standard practices in project management for defining, designing, and executing programs include developing a program plan to establish an order for executing specific projects needed to obtain defined results within a specified time frame. Developing a plan with time frames could help CBP ensure that the necessary mechanisms are put in place so that it can conduct the desired program evaluations.

To enhance ICE's ability to address alien smuggling, we are recommending that the Assistant Secretary for ICE (1) study the feasibility of expanding the LEAR program, and if found feasible, expand the program; (2) conduct an assessment of the Arizona Attorney General's financial investigations strategy to identify any promising investigative techniques for federal use; (3) develop a performance measure for asset seizures; and (4) develop performance measures for MIRP. Further, we are recommending that the Attorney General assess whether amending the civil asset forfeiture authority remains necessary, and if so, develop and submit to Congress a legislative proposal. We are also recommending that the Commissioner of CBP establish a plan, including performance measures, with time frames, for evaluating CBP's alien smuggling-related enforcement programs.

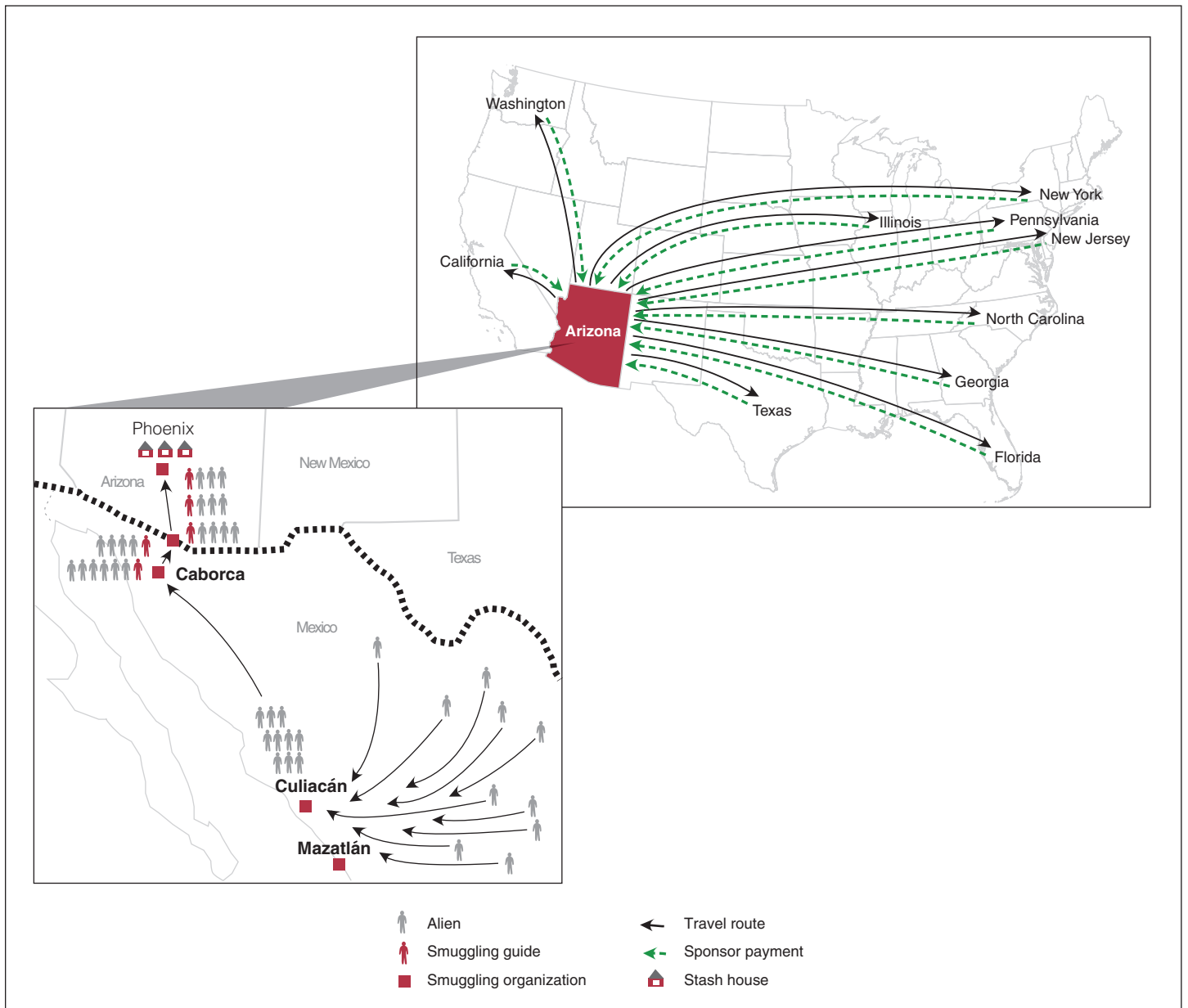
DHS stated that department officials concurred with four of five recommendations directed to DHS and discussed actions planned or under way to implement them. However, it is not clear to what extent the actions will fully address the intent of three of the recommendations. Moreover,

DHS stated that it did not concur with the recommendation to measure the performance of DRO's MIRP because it believes that doing so would shift its focus away from the program's original lifesaving intent. However, we continue to believe that developing performance measures for MIRP is consistent with the memorandum of understanding (MOU) underlying the program and is necessary to determine whether the program is meeting its objectives. Justice agreed with our recommendation to the Attorney General. DHS and the Arizona Attorney General also provided technical comments, which we considered and incorporated as appropriate.

Background

Alien smuggling is the facilitation, transportation, or attempted transportation of a person, with his or her consent, across an international border, in violation of one or more countries' laws. Often, alien smuggling is conducted in order to obtain a financial or other material benefit for the smuggler. The alien smuggling process from Mexico into the United States along the southwest border using the services of a smuggling organization is generally the same regardless of entry point. For instance, when individuals travel to populated areas in Mexico just south of the border, a smuggler representative will market smuggling services in that populated area, and then the individuals will be moved across the international border in some fashion (such as crossing a desert area or the Rio Grande river), usually with a group of other smuggled aliens. Once across the border, the smuggled aliens typically will be moved to a "stash house" where they arrange for payment. In general, smuggled aliens do not carry large amounts of cash when crossing the border for fear of being robbed. For many smuggled aliens their final destination is a city in the interior of the United States. To pay for their crossing these smuggled aliens have arranged in advance for a family member or friend, called a "sponsor," in the interior city to send the payment to the smuggler, most commonly via a wire transfer company. Once payment is received, the aliens are moved to their final destination by the smuggling organization. Figure 1 illustrates how the alien smuggling process works for those aliens smuggled through Arizona.

Figure 1: Alien Smuggling Process through Arizona



Sources: GAO (analysis); Map Resources (map); law enforcement views, court affidavits (data).

Department of Homeland Security Components That Address Alien Smuggling along the Southwest Border

DHS ICE is responsible for investigating alien smuggling as well as detaining and removing aliens who are subject to removal from the United States. ICE focuses on enforcement of immigration and customs laws within the United States, and its mission is to detect and prevent terrorist and criminal acts by targeting the people, money, and materials that support terrorists and criminal networks. OI, among other things, is responsible for investigating alien smuggling violations at the border and beyond. In fiscal year 2010, OI had a budget of about \$1.7 billion and as of November 2009 had a staff of about 8,600, which includes investigators and support staff responsible for all of OI's investigative areas nationwide. The types of alien smuggling cases handled by OI can range from reactive cases, resulting from a particular incident or referrals from other law enforcement agencies, to proactive cases, resulting from intelligence gathering or use of financial investigative techniques. According to OI officials we interviewed, the majority of OI's alien smuggling investigations are reactive cases initiated based on referrals from the Border Patrol or local law enforcement as a result of alien smuggling interdictions made by these agencies. Responding to these referrals leaves less investigative resources to initiate proactive investigations. In addition, investigations can vary in their complexity. For instance, some cases do not require extensive investigation and investigation is limited to prosecuting the alien smuggler caught in the act of smuggling aliens. Conversely, a recent investigation conducted by OI in El Paso led to the indictment of a hotel owner who devised a plan to smuggle hundreds of aliens into the country from Mexico and harbor them using his hotel and other locations until their families or "sponsors" paid a fee, usually through a wire transfer company such as Western Union or MoneyGram. This investigation took over 5 years and required the assistance of various federal and state agencies as well as private businesses.

Also within ICE, DRO is responsible for detaining aliens who are subject to removal, including those smuggled into the country, and enforcing their removal from the United States. DRO's mission is to ensure the departure of all removable aliens from the United States through enforcement of the nation's immigration laws. In fiscal year 2010, DRO had a budget of about \$2.6 billion and as of November 2009 had a staff of about 7,000.

With the aid of CBP's Office of Border Patrol and ICE's Office of International Affairs (OIA), DRO operates and funds MIRP, which the former Immigration and Naturalization Service (INS) began in 1996 in Southern California. MIRP was operated and funded by CBP in fiscal years 2004 and 2005. MIRP is a coordinated humanitarian effort between the governments of Mexico and the United States to return removable aliens

who are citizens of Mexico further into the interior of Mexico in hopes of deterring them from again attempting illegal entry into the United States. As a voluntary humanitarian program with no prosecutorial consequence, candidates for MIRP include those who are identified as “high risk” when crossing the border illegally, such as women and children and the elderly or infirm, as these populations are particularly vulnerable to heat or risk of victimization by criminals operating in border regions. Aliens convicted of violent crimes are ineligible to participate in MIRP.

Within CBP, the Border Patrol is responsible for the enforcement of federal immigration laws between official ports of entry.⁵ CBP’s National Border Patrol Strategy outlines two goals in regard to alien smuggling: (1) deter illegal entries through improved enforcement and (2) detect, apprehend, and deter smugglers of humans and drugs and other contraband. In fiscal year 2010, the Border Patrol’s budget was about \$3.6 billion, and as of November 2009, the Border Patrol had about 20,000 agents nationwide with about 17,000 agents deployed along the southwest border.

In order to deter aliens from repeatedly crossing the border illegally and to deter alien smuggling, CBP implemented a number of enforcement programs from 2004 through 2008. CBP has two prosecutorial enforcement programs—Operation Against Smugglers Initiative on Safety and Security (OASISS) and Operation Streamline. The OASISS program, implemented in August 2005, is a bilateral agreement between Mexico and the United States that allows CBP to transfer selected alien smugglers that a U.S. Attorney’s office has declined to prosecute to Mexico for prosecution. Operation Streamline, started in December 2005, prosecutes selected aliens apprehended by the Border Patrol for illegal entry under federal law. Those convicted face up to 180 days of incarceration.

Another enforcement program the Border Patrol operates is the Alien Transfer Exit Program (ATEP) in which removable aliens are bused from their original apprehension location to another Border Patrol location for removal. ATEP is designed to disrupt the ability of alien smuggling organizations to operate by deterring aliens from repeatedly crossing the border illegally and from seeking the assistance of smuggling organizations. Under ATEP, removable aliens must meet certain criteria in

⁵ A port of entry is any location in the United States or its territories that is designated as a point of entry for aliens and U.S. citizens.

order to participate in the program. For example, an alien must be a male from the ages of 20 to 60 with no medical conditions or criminal history. Appendix II provides additional information regarding CBP's and DRO's alien smuggling-related enforcement programs.

Other Federal Agencies Involved in Combating Alien Smuggling along the Southwest Border

Outside of DHS, Justice and the Department of the Treasury (Treasury) play significant roles in addressing alien smuggling. In particular, Justice's U.S. Attorney's offices collaborate with OI during the course of alien smuggling investigations by obtaining grand jury subpoenas, warrants, and wire taps. If an alien smuggling case meets certain thresholds established by the relevant U.S. Attorney, such as a minimum number of aliens smuggled, the U.S. Attorney is to ultimately prosecute the case. Of the 93 U.S. Attorneys stationed throughout the United States and its territories, those in the five southwest border districts prosecuted 85 percent of all alien smuggling cases nationwide in fiscal year 2009.⁶ Within Treasury, the Financial Crimes Enforcement Network (FinCEN) serves as a central resource for financial intelligence information and analysis that law enforcement agencies use to conduct alien smuggling investigations. FinCEN administers the largest financial transaction reporting system in the world, which is based on reporting requirements mandated or authorized under the Bank Secrecy Act (BSA).⁷ OI has access to BSA data for its alien smuggling investigations through a database maintained by FinCEN. OI investigators can use this database to trace financial transactions associated with a suspected alien smuggler to assist in determining the identity of other individuals involved in alien smuggling and to locate funds that could be subject to seizure if tied to alien smuggling.

In 2004, the Intelligence Reform and Terrorism Prevention Act established the Human Smuggling and Trafficking Center (HSTC) in order to achieve

⁶ According to Justice data, of the 3,493 cases prosecuted in fiscal year 2009 under the federal alien smuggling statute, 2,980 cases (85 percent) were prosecuted by the U.S. attorney districts in Southern California, Arizona, New Mexico, Southern Texas, and Western Texas.

⁷ Pub. L. No. 91-508, tits. I, II, 84 Stat. 1114, 1114-24 (codified as amended at 12 U.S.C. §§ 1829b, 1951-1959 and 31 U.S.C. §§ 5311-5332). Enacted in 1970, the BSA provides the U.S. government's framework for preventing, detecting, and investigating money laundering. Two purposes of the BSA are to prevent financial institutions from being used as intermediaries for the transfer or deposit of money derived from criminal activity and to provide a paper trail for law enforcement agencies to use in their investigations.

greater integration and overall effectiveness in the U.S. government's law enforcement efforts, and to work with other nations to address the issues of alien smuggling and human trafficking.⁸ According to its charter, the center's role is supportive rather than directive in nature and consists primarily of facilitating the dissemination of intelligence, preparing strategic assessments, identifying issues that would benefit from enhanced interagency coordination or attention, and coordinating or otherwise supporting agency or interagency efforts in appropriate cases. HSTC is guided by a steering group comprising senior representatives from DHS, Justice, and the Department of State and relies on full-time detailees from its participating departments to function. HSTC is housed within the Department of State and is currently managed by ICE officials.

Federal Laws Applied in Alien Smuggling Prosecutions

To prosecute alien smugglers, federal officials generally use section 274 of the Immigration and Nationality Act, which is codified and most frequently referred to by federal law enforcement as 8 U.S.C. § 1324. This statute provides criminal penalties for several types of conduct related to alien smuggling, including bringing an unauthorized alien into the United States in any manner whatsoever; bringing an alien into the United States at a place other than a port of entry, regardless of whether the alien has received prior authorization to enter the country; domestic transport of an alien who has entered or remains in the United States in violation of law, in furtherance of such violation; concealing or harboring such an alien; and encouraging or inducing an alien to enter or reside in the United States in violation of law. To convict a defendant under 8 U.S.C. § 1324, there generally must be proof that the defendant knew or recklessly disregarded that the alien had not received prior authorization to enter the United States or had entered or remained in the country illegally.⁹

Other federal statutes used to prosecute alien smuggling cases are 8 U.S.C. § 1325, which provides penalties for, among other things, entering or attempting to enter the United States illegally, and 8 U.S.C. § 1326, which penalizes reentry into the United States after a denial of admission, removal, or departure while subject to an order of removal. Additional

⁸ Pub. L. No. 108-458, § 7202, 118 Stat. 3638, 3813 (codified at 8 U.S.C. § 1777).

⁹ The main exception is prosecution for bringing an alien to the United States at a place other than a port of entry, which requires evidence that the defendant actually knew the individual was an alien. *See* 8 U.S.C. § 1324(a)(1)(A)(i).

federal statutes that can be used in alien smuggling-related cases are outlined in table 1.

Table 1: Additional Federal Laws Used to Prosecute Alien Smuggling Cases

| Statute | Title | Examples of prohibited conduct |
|----------------------------|--|---|
| 18 U.S.C. § 1543 | Forgery or false use of passport | Counterfeiting or altering a passport, as well as using or attempting to use such a passport. |
| 18 U.S.C. § 1544 | Misuse of passport | Use of someone else’s passport or providing a passport for use by someone other than the person to whom it was issued. |
| 18 U.S.C. § 1546 | Fraud and misuse of visas, permits, and other documents | Forging or altering immigration documents; obtaining, possessing, or using such documents; possessing or selling materials to forge or alter documents; and making a false statement or impersonating someone else when applying for an immigration document or for admission to the United States. |
| 18 U.S.C. §§ 1956 and 1957 | Money laundering | Conducting a transaction involving, or transmitting into or out of the United States, proceeds of unlawful activity with the intent to promote the unlawful activity, conceal the source or owner of the proceeds, or avoid a transaction reporting requirement. |
| 18 U.S.C. § 1028 | Fraud and related activity in connection with identification documents, authentication features, and information | Knowingly and without lawful authority producing an identification document, authentication feature (such as a hologram or watermark), or false identification document; knowingly transferring such a document or feature knowing it was stolen or produced illegally; and knowingly possessing five or more such documents or features with the intent to use or transfer them unlawfully |
| 18 U.S.C. § 201 | Bribery of public officials | Corruptly giving or promising anything of value to a U.S. government official to influence an official act or to induce the official to violate his or her lawful duty or to defraud the United States; also prohibits U.S. government officials from seeking or receiving anything of value in similar circumstances. |
| 18 U.S.C. § 1962 | Racketeering activity | Using income derived from racketeering activity or collection of an unlawful debt for any enterprise engaged in or affecting interstate or foreign commerce; controlling or maintaining an interest in such an enterprise through racketeering activity or collection of an unlawful debt. “Racketeering activity” includes, among other things, alien smuggling; bribery; money laundering; and fraud in relation to and misuse of passports, immigration documents, and identification documents. |
| 18 U.S.C. § 2 | Principals (aiding and abetting) | Makes anyone who aids and abets an offense against the United States subject to the same punishment as the principal offender. |

Source: GAO, based on discussions with federal officials and review of statutes.

The maximum penalties outlined in 8 U.S.C. § 1324 generally include a 1-, 5-, or 10-year prison sentence for each alien in regard to whom a violation occurred and depend on the nature of the offense. The 1-year statutory maximum only applies to cases where the defendant’s purpose in bringing an unauthorized alien to the United States was not for commercial advantage or private financial gain and the unauthorized alien

was immediately presented to an immigration officer at a port of entry after being brought into the country. Otherwise, there is a mandatory minimum penalty of 3 years per alien under certain circumstances and a maximum penalty of 10 years per unauthorized alien brought into the country.¹⁰ Domestic transportation, harboring, encouraging or inducing, or aiding or abetting unauthorized aliens incurs a maximum of 5 years per alien, unless the offense was committed for commercial advantage or private financial gain, in which case the maximum is 10 years per alien. Bringing an alien (whether authorized or not) into the United States in any place other than a port of entry is punishable by up to 10 years imprisonment per alien.¹¹ Appendix III contains more detail on the disposition of alien smuggling cases along the southwest border.

Use of State Law to Combat Alien Smuggling in Southwest Border States

Arizona, the only southwest border state with an alien smuggling law, enacted a statute in 2005 that prohibits intentionally engaging in the smuggling of human beings for profit or commercial purpose.¹² The statute defines the smuggling of human beings to include transporting, procuring transportation, or using property or real property, knowing or having reason to know that the individual transported or to be transported is not a U.S. citizen, permanent resident alien, or person otherwise lawfully in the state of Arizona. Arizona courts have also interpreted this provision in conjunction with Arizona's conspiracy statute to allow prosecution of smuggled aliens for conspiracy to commit human smuggling. A violation of the Arizona statute is a felony, punishable by a minimum of 1 to 3.75 years in prison, with significantly higher sentencing ranges for dangerous conduct or repeat offenses. Passage by the Arizona state legislature of an alien smuggling law occurred in the context of heightened violence in

¹⁰ Third or subsequent violations are punishable by a minimum of 5 years and a maximum of 15 years.

¹¹ If the defendant causes serious bodily injury or places any person's life in jeopardy during or in relation to a violation, then the maximum penalty per alien smuggled is 20 years; and if the offense results in the death of any person, life imprisonment or the death penalty can be applied. The U.S. Federal Sentencing Guidelines applicable to section 1324 offenses provide guidance for the sentencing judge on base penalties below the statutory maximums and suggest penalty enhancements to apply according to specific factors of a case, such as the number of aliens smuggled or the use of a firearm or other dangerous weapon. A recent amendment to the guidelines effective November 1, 2009, increases penalties for defendants convicted of alien harboring for the purpose of prostitution, with an even greater increase if the alien engaged in prostitution is under 18.

¹² Ariz. Rev. Stat. § 13-2319.

Arizona associated with alien smuggling. For example, alien smugglers engaged in a shootout on an Arizona Interstate highway in 2003 in which four people were killed and five were wounded. One set of smugglers was attempting to steal the other smugglers' cargo of undocumented aliens, resulting in the gun battle.

In Texas, state and federal law enforcement are using existing Texas transportation law to revoke the licenses of truck drivers who are caught committing a felony, including alien smuggling, while driving any motor vehicle, including a commercial vehicle. Under the Texas Commercial Driver's License Act, the first felony conviction leads to a 1-year suspension of a commercial driver's license, with lifetime suspensions if convicted two or more times of committing a felony (or if convicted of multiple felonies arising from two or more separate incidents). In addition, lifetime suspensions apply to first instances of using a motor vehicle to commit an offense under 8 U.S.C. § 1324 that involves the transportation, concealment, or harboring of an alien. The Border Patrol in Laredo and the Texas Department of Public Safety established a joint initiative based on this state transportation statute, which includes a media campaign and public outreach to proactively inform commercial truck drivers of the legal consequences if caught smuggling aliens.

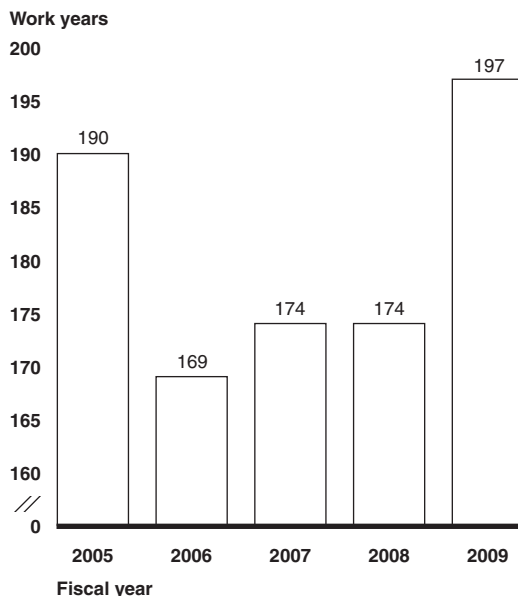
OI Work Years Spent Investigating Alien Smuggling Recently Increased; Opportunity Exists to Better Leverage Resources

Along the southwest border, OI work years devoted to investigating alien smuggling increased from about 190 work years in fiscal year 2005 to about 197 work years in fiscal year 2009, an overall increase of 4 percent.¹³ As shown in figure 2, the overall number of work years decreased from about 190 work years in fiscal year 2005 to 174 in fiscal year 2008, but increased by 23 work years from 2008 to 2009. This net increase was the result of an increase of 39 work years in Arizona and a corresponding decrease of 16 work years devoted to alien smuggling by the other three SAC offices. According to the Arizona SAC, a large number of investigators were detailed to Arizona in 2009 to deal with an ongoing investigation. The work years OI devoted to investigating all types of immigration and customs violations along the southwest border have also increased since fiscal year 2005. For fiscal years 2005 to 2009, the total number of

¹³ In its case management system, OI tracks the number of investigative hours spent on various criminal investigative activities. To determine the number of work years, we divided the number of hours by 2,080—the number of hours equivalent to 1 work year.

investigative work years for all investigations increased from about 1,122 work years to about 1,190 work years, an increase of about 6 percent.

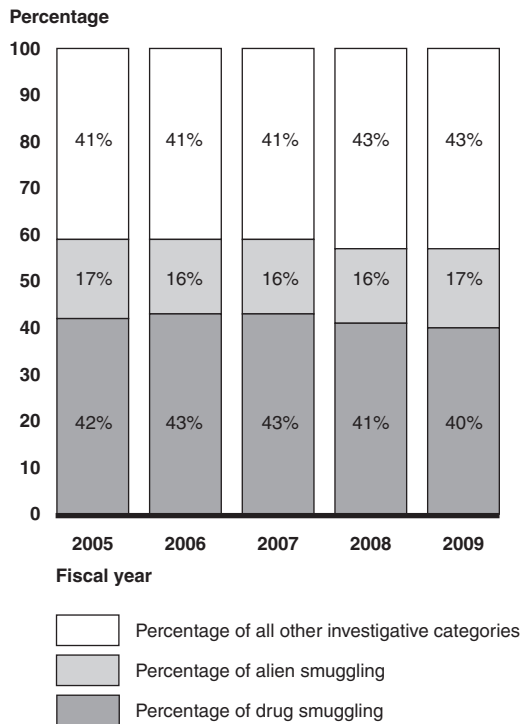
Figure 2: OI Investigator Work Years Spent Addressing Alien Smuggling on the Southwest Border (Fiscal Years 2005 through 2009)



Source: GAO analysis of OI TECS data.

From fiscal years 2005 through 2009 the proportion of all reported investigative hours spent on alien smuggling relative to all other reported investigative areas along the southwest border remained relatively constant, ranging from an average of 16 percent to 17 percent, as shown in figure 3. During these same fiscal years, OI reports working about 42 percent of its total investigative hours on drug smuggling. The remaining proportion of hours were divided among 14 other program areas OI investigates, such as enforcing immigration laws in workplaces.

Figure 3: Percentage of Total Investigative Program Hours Expended by OI SAC Offices along the Southwest Border (Fiscal Years 2005 through 2009)



Source: GAO analysis of OI TECS self-reported investigation data.

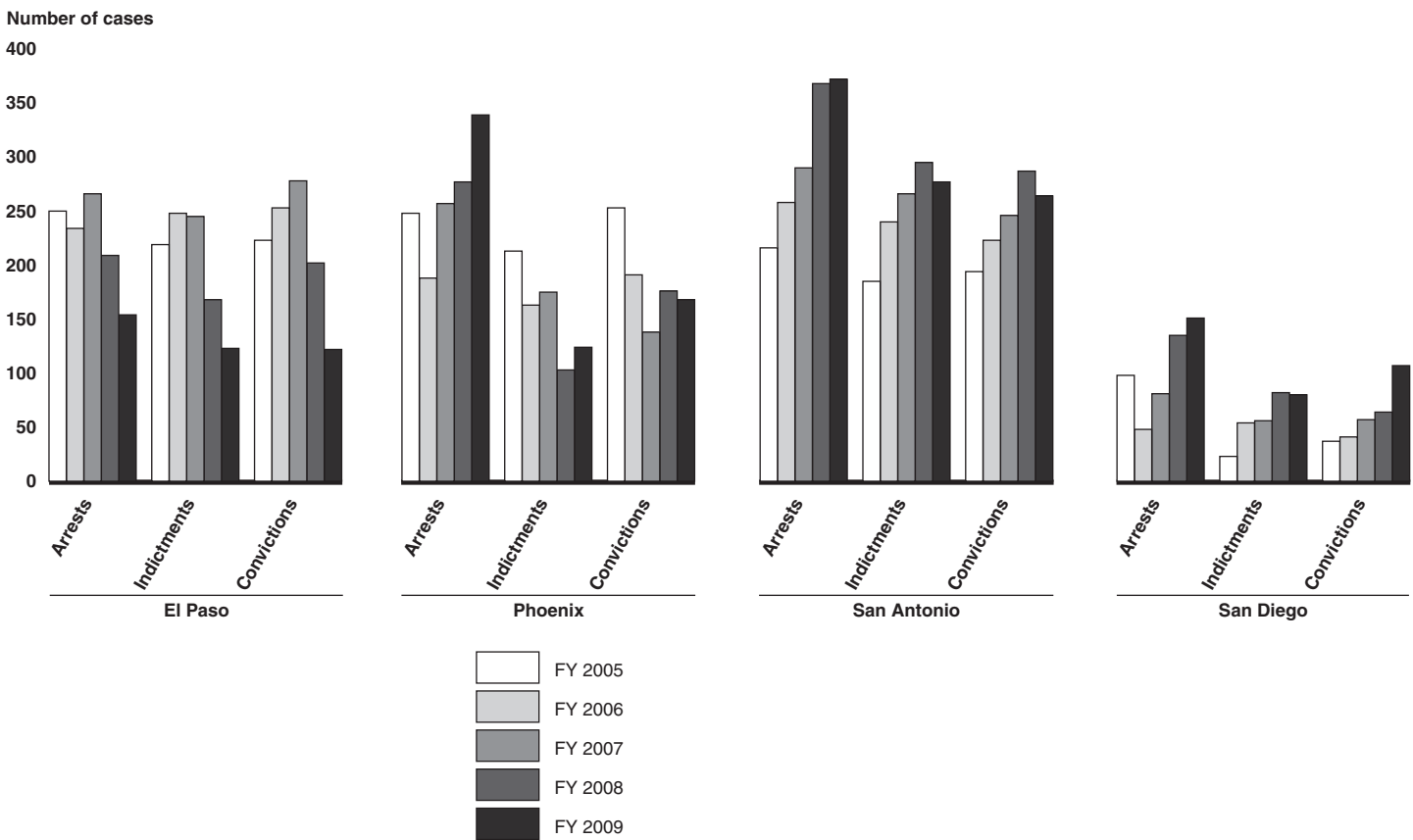
Note: In fiscal years 2008 and 2009, data for two additional investigative areas (cybercrimes and gangs) were added to TECS. These additions caused “all other investigative areas” section of the graph to increase slightly. The “all other investigative areas” section includes financial, general and criminal alien, strategic, general smuggling, commercial fraud, counterterrorism, human trafficking, worksite enforcement, identity and benefit fraud, child pornography, cybercrimes, gangs, and miscellaneous administrative duties.

SAC offices along the southwest border account for nearly half of OI hours spent on alien smuggling nationwide. From fiscal year 2005 through fiscal year 2009, the four SAC offices along the southwest border accounted for, on average, 43 percent of all alien smuggling hours nationwide.

OI investigations resulted in hundreds of arrests, indictments, and convictions each year from fiscal year 2005 through fiscal year 2009. As shown in figure 4, the results varied by SAC office. For example, in the El Paso office arrests, indictments, and convictions increased from fiscal years 2005 through 2007 but then decreased in fiscal years 2008 and 2009. In Phoenix, arrests, indictments, and convictions fluctuated greatly during this period for all categories. For example, in fiscal year 2006, 188 cases

resulted in criminal arrests; however, that number increased to 339 cases resulting in arrests in fiscal year 2009. In addition, convictions decreased by 34 percent from fiscal years 2005 through 2009. In San Antonio arrests, indictments, and convictions all increased from 2005 through 2008, but indictments and convictions decreased slightly in 2009. In San Diego, convictions went from 37 in fiscal year 2005 to 57 in fiscal year 2007 to 107 in fiscal year 2009.

Figure 4: Number of Alien Smuggling Cases with Arrests, Indictments, and Convictions in Southwest Border SAC Locations (Fiscal Years 2005 through 2009)



Source: GAO analysis of OI TECS self-reported investigation data.

According to a 2008 ICE report, the increase in CBP border patrol agents and field operations officers along the southwest border has increased the

number of CBP investigative referrals.¹⁴ According to the report, the number of OI agents decreased from fiscal years 2004 through 2007, straining OI's ability to respond to the increasing number of referrals. As a result, all southwest border SAC offices, where alien smuggling is the second highest resource-intensive investigative area, relied on overtime to meet workload demands, which is supposed to be limited to 480 hours of overtime per agent per year. According to the report, in fiscal year 2007, all of the southwest border SACs reported agents working more than 480 hours of overtime per year. For example, OI investigators in the San Diego SAC office worked on average 640 hours of overtime in fiscal year 2007, 160 hours over the 480-hour limit.

DHS and our previous work have recognized the importance of implementing human capital policies in order for an organization to be effective at addressing its mission and programmatic goals.¹⁵ According to DHS's Human Capital Accountability Plan, DHS is committed to ensuring that human capital resources are aligned with mission accomplishments and are deployed efficiently and effectively. In addition, GAO's *Standards for Internal Control in the Federal Government* states that effective management of an organization's workforce—its human capital—is essential to achieving results and ensuring that workforce skills match organizational objectives.¹⁶

Although OI has reported that its investigative resources are strained, in some cases OI investigators are conducting immigration-related activities that are not consistent with OI's primary mission of conducting criminal investigations or the job description of a criminal investigator.¹⁷ Officials from two of the four SAC offices we visited (San Antonio and El Paso) told us that OI has been tasked to respond to calls from state and local law enforcement agencies that have apprehended aliens who may be subject

¹⁴ U.S. Immigration and Customs Enforcement, *Securing the Border: Resource Implications for Immigration and Customs Enforcement* (Washington, D.C., March 2008).

¹⁵ GAO, *Human Capital: Key Principles for Effective Strategic Workforce Planning*, [GAO-04-39](#) (Washington, D.C.: Dec. 11, 2003).

¹⁶ GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington, D.C.: November 1999).

¹⁷ According to the Office of Personnel Management's position description for a criminal investigator, applicable to OI investigators, investigators are to focus primarily on investigating large-scale criminal networks.

to removal, a task that is not aligned with its main mission of conducting criminal investigations.¹⁸ These responses result in little or no investigative work and instead involve transporting and processing aliens for possible removal. According to ICE, OI is the lead unit for responding to local police calls regarding aliens who may be subject to removal. Prior to 2003, the former INS was responsible for responding to local police calls for assistance related to encounters with aliens.¹⁹ With the creation of ICE and the formation of OI and DRO in 2003, the responsibility of responding to such calls fell upon OI investigators, as this duty carried over with them from INS. According to ICE officials, OI has continued to perform this function.

The amount of time spent on the non-investigation-related calls by the two offices varied. OI officials reported that in the San Antonio SAC office, investigators spent approximately the hours of the equivalent of two full-time investigators each week responding to non-investigation-related calls from different police departments during fiscal year 2009. For the El Paso SAC office, OI officials estimated spending 17 staff hours per week responding to an average of 20 calls per week from local police departments that are noninvestigative in nature. Officials in the two offices stated that responding to noninvestigative calls from local police departments left less time available for investigators to focus on investigations of alien smuggling and other customs and immigration-related crimes. According to OI officials, to respond to a noninvestigative police call, investigators need to travel to the location where the aliens are being detained, which could involve traveling to locations that are several hours away. OI investigators need to then transport the aliens back to their office and prepare the paperwork related to the aliens' arrest and removal, which in some cases can take up to 4 hours per alien.

ICE's DRO is the DHS component primarily responsible for removing aliens who are subject to removal and has positions for both deportation

¹⁸ OI officials in the two remaining SAC offices either were benefiting from a program established to alleviate responses to local police calls or were operating in a region where the Border Patrol responds to such calls, rather than OI.

¹⁹ The Homeland Security Act of 2002 created DHS, bringing together 22 agencies and programs responsible for key aspects of homeland security, including immigration enforcement and service-related functions. A legacy agency—the former INS—was among the 22 agencies brought together within DHS. As a result of this merger, responsibility for immigration enforcement, inspection, and service-related functions was transferred to three components within DHS—ICE, U.S. Citizenship and Immigration Services, and CBP.

officers and immigration enforcement agents that are commensurate with this responsibility. In 2006, to respond to immigration-related calls for assistance from state and local law enforcement agencies in the Phoenix metropolitan area, DRO developed the LEAR program. OI was previously the primary ICE office providing assistance to state and local law enforcement agencies in the Phoenix area. From October 1, 2008, to May 24, 2009, the LEAR program processed 3,776 aliens, aliens who OI would have had to process in the absence of the LEAR program.

According to the Phoenix SAC, the LEAR program has been highly successful. For example, the program has allowed his office to focus more agents and technical resources on the proactive investigation of alien smuggling cases rather than responding to local police calls. According to TECS's self-reported investigation data, Phoenix increased the amount of work hours on alien smuggling by 11 percent from fiscal year 2007 to fiscal year 2008, the period subsequent to the implementation of the LEAR program.

According to DRO officials, the LEAR program is highly successful in the Phoenix region because it offers local law enforcement agencies a mechanism for an immediate federal response for handling aliens who may be subject to removal. DRO headquarters officials stated that they have discussed expanding the LEAR program beyond Phoenix but have yet to conduct an evaluation to identify the best locations for expanding the program. By studying the feasibility of expanding the LEAR program, and expanding the program if feasible, ICE would be in a better position to evaluate alternatives for aligning staff responsibilities to its subcomponent agency missions and helping ensure that its resources are more efficiently directed toward alien smuggling and other priority investigations. According to ICE headquarters officials, OI investigators in the Southwest would likely work on more alien smuggling cases if the LEAR program expanded beyond the Phoenix area since alien smuggling is the second most worked investigative area in all four southwestern SAC locations. DRO officials estimate the cost of a LEAR program unit to be \$7 million per year for a fully staffed unit in one metropolitan area.

In addition to its own investigations, OI has taken steps over the last 4 years to participate in or develop coordination efforts, working groups, or task forces that address alien smuggling. These activities have been primarily focused on regional border activities where OI has historically encountered the greatest proportion of alien smuggling violations. Appendix IV contains more detail on these coordination efforts.

Alien Smuggling Asset Seizures Have Decreased since 2005; Opportunities Exist to Leverage Additional Financial Investigative and Seizure Techniques

The Value of OI Alien Smuggling Asset Seizures Has Decreased since 2005

In 2005 we reported that OI and Treasury's Executive Office for Asset Forfeiture anticipated that in fiscal year 2005 and in future years alien smuggling investigations would result in increasing volumes of asset seizures as OI applied its financial and money laundering expertise, which it acquired when elements of legacy INS components and U.S. Customs merged to form OI in 2003.^{20,21} For alien smuggling asset seizures, OI collaborates with U.S. Attorney's office officials, who are responsible for litigating any contested seizures and CBP, as the agency responsible for processing seizures. According to data provided by OI, and shown in table 2, the value of alien smuggling seizures nationwide increased from about \$11.2 million in fiscal year 2005 to \$17.4 million in fiscal year 2007, but declined to \$7.6 million in fiscal year 2009. According to ICE, alien smuggling generates illicit revenues estimated to reach billions of dollars annually.²² Seizures of currency; means of transporting smuggled aliens, such as automobiles and boats; and real estate make up the bulk of OI's asset seizures. The remainder of seizures is made up of drugs, counterfeit goods, weapons, and other items, such as computers.

²⁰ Treasury's Executive Office for Asset Forfeiture maintains the Treasury Forfeiture Fund, which is the receipt account for the deposit of nontax forfeitures made by OI.

²¹ [GAO-05-305](#), 15, 22.

²² U.S. Immigration and Customs Enforcement, *Press Release: Accused Alien Smuggling Kingpin and Financier Faces U.S. Prosecution* (July 2003).

Table 2: OI Alien Smuggling Assets Seized in Fiscal Years 2005 through 2009 Nationwide

Dollars in thousands

| Fiscal year | Value of currency seized | Value of vehicles seized | Value of vessels (e.g., boats) seized | Value of real estate seized | Total value of currency, vehicles, and real estate seized | Value of all assets seized | Value of currency, vehicle, vessel and real estate seized as a percentage of total assets seized |
|-------------|--------------------------|--------------------------|---------------------------------------|-----------------------------|---|----------------------------|--|
| 2005 | \$4,197 | \$3,433 | \$2,427 | \$691 | \$10,748 | \$11,212 | 96 |
| 2006 | 3,720 | 3,710 | 2,055 | 4,034 | 13,519 | 14,220 | 95 |
| 2007 | 3,432 | 5,957 | 4,118 | 3,433 | 16,940 | 17,396 | 97 |
| 2008 | 1,836 | 5,275 | 3,618 | 818 | 11,547 | 12,169 | 95 |
| 2009 | 1,679 | 3,280 | 2,013 | 140 | 7,112 | 7,613 | 93 |

Source: GAO analysis of OI data.

Note: Values have been adjusted to account for inflation.

OI officials attributed the decline in alien smuggling asset seizures from fiscal years 2007 through 2009 to several factors. First, the declining real estate market throughout the United States has made homes used as stash houses for smuggled aliens less attractive for seizure because the homes generally have little or no equity available. Second, enhanced border security during this period, according to OI officials, and a corresponding decrease in alien smuggling activity, may also have led to a decline in assets seized. For example, the amount of currency seized by OI may be affected if increased enforcement on the border results in a larger percentage of alien smuggling loads being interdicted before making their way to the interior of the United States. These interdictions reduce criminal alien smuggling proceeds subject to seizure because the smuggled alien has not had the opportunity to pay the smuggler before being apprehended. Third, OI officials also cite the declining U.S. economy as leading to a general decline in alien smuggling activity. According to the officials, most smuggled aliens are drawn to the United States for economic reasons. The lack of opportunity for employment during this period may have affected the decision of aliens to illegally enter the United States using the services of alien smuggling organizations.

According to OI officials in all four SAC offices we visited, OI had increased its efforts to identify and seize assets related to alien smuggling. Each of the four SAC offices had an asset forfeiture unit that supported OI investigations, including alien smuggling investigations. This unit, for example, reviews financial data such as bank records that OI investigators obtain through a subpoena, to identify potential assets, such as bank accounts, vehicles, or real estate, that can be seized and also to identify

other individuals who may be involved in the alien smuggling organization. According to ICE headquarters officials, all OI investigators receive basic training on financial investigative techniques, which includes the various resources that are available to investigators. All OI investigators also have access via their computers to financial information available through a FinCEN financial transactions database. According to FinCEN officials, the database allows OI investigators to directly query BSA data such as suspicious activity reports (SAR) and currency transaction reports (CTR). FinCEN officials stated that the BSA data housed in this database represent millions of financial transactions from banks, money transmitters, insurance companies, and other industries that report information to FinCEN.

FinCEN also provides financial analyses upon request by law enforcement agencies, including OI. These analyses provide FinCEN's evaluation of financial records that span various types of financial institutions and can connect multiple individuals with illicit transactions. Approximately 60 such analysis requests were made of FinCEN by OI investigators related to alien smuggling cases from August 2004 to April 2009. FinCEN also acts as a liaison between domestic law enforcement agencies that make requests for financial information from abroad and foreign entities that maintain financial information. According to OI officials, OI investigators do not extensively rely upon FinCEN for this service because the process can take 45- to 60 days before financial information is returned to the investigator subsequent to the initial request. According to FinCEN officials, this 45 to 60-day time period is due to the time it takes for foreign financial entities to respond, which is beyond FinCEN's control. Instead, OI investigators rely upon ICE's OIA attachés, stationed in most foreign countries, who are able to retrieve financial information needed for investigations within several days.²³

In addition to using financial information to track and seize assets, OI investigators can use financial information to help convict someone under those provisions of the alien smuggling statute that carry higher penalties. When prosecuting an alien smuggling case, evidence that the suspected smuggler was engaging in the activity for financial gain is necessary in order to obtain enhanced penalties for alien smuggling convictions. Such

²³ For more information on the extent to which the law enforcement community finds FinCEN's support useful in its efforts to investigate and prosecute financial crimes, see GAO, *Anti-Money Laundering: Improved Communication Could Enhance the Support FinCEN Provides to Law Enforcement*, [GAO-10-141](#) (Washington, D.C.: Dec. 14, 2009).

financial information helps connect an alleged smuggler with the crime of smuggling and also can support enhanced penalties should the smuggler be convicted.

OI investigators we interviewed reported that they rely upon a variety of information sources when tracking financial information associated with alien smuggling, ranging in level of sophistication. One investigator described how documents, such as transaction slips from a bank or wire transfer company that demonstrate that a smuggler received payment for smuggling services, can be among the most successful pieces of financial evidence used against smugglers. The investigator also described logs that list smuggled alien names and payment amounts, often found in stash houses, as strong financial evidence to use against alien smugglers. Financial analysis, whereby OI analysts evaluate smugglers' incomes and expenses and are able to identify illicit funds (usually in the form of unexplained income), is also a useful technique, according to another investigator. An investigator working in another southwest border office stated that tracking multiple money service bank transactions to one smuggler's identity is often the strongest type of evidence that the investigator can provide for an alien smuggling prosecution. Other investigators we interviewed stated that much of this information is gathered through the use of subpoenas, obtained by the U.S. Attorney's offices. Table 3 summarizes several OI alien smuggling investigations.

Table 3: Examples of OI Alien Smuggling Financial Investigations

According to court documents and OI investigators and Assistant U.S. Attorneys (AUSA) we interviewed, in June 2009, El Paso OI investigators arrested 25 individuals on alien smuggling and other charges. Prior to their arrests, a federal grand jury in El Paso returned a 51-count indictment against the individuals, which included a \$1 million monetary judgment against the owner of a hotel as well as criminal forfeiture to the government of the hotel. According to AUSAs we interviewed in El Paso, through repeated arrests at the hotel of known alien smugglers OI investigators were able to develop a case against the individuals that was also based upon subpoenaed hotel financial information, including bank statements, tax records, and accounting records. Through review of the hotel's financial data, OI investigators were able to determine that the owner was structuring his deposits into his bank accounts to avoid the \$10,000 BSA reporting requirement. By collaborating with Western Union and MoneyGram, OI investigators were also able to link smuggling payments that were made by sponsors of smuggled aliens to hotel bank deposits. Tracking these funds allowed OI to determine where the funds were coming from and going to in order to ultimately identify the key participants in the smuggling organization. While the investigation resulted in numerous arrests and indictments, AUSAs we interviewed indicated that the case took over 4 years to compile.

According to an OI press release and OI investigators we interviewed, San Diego OI investigators were able to dismantle an entire alien smuggling network in 2008, including the financial scheme the smugglers relied on to make their illicit profits. The defendants allegedly made arrangements to have the aliens brought to the United States through the southwest border from Mexico. The defendants allegedly sheltered the smuggled aliens in a two-bedroom house near San Diego before the sponsors wired money to various members of the alien smuggling organization to pay the alien smuggling fees. The indictment also alleges that defendants instructed the sponsors of the smuggled aliens to break down the smuggling fees and send wire transfers in small amounts to multiple recipients. The indictment charges that the defendants filed materially false U.S. Individual Income Tax Returns (Forms 1040) for multiple tax years. To obtain evidence of these activities, OI investigators reviewed subpoenaed bank financial records and income tax statements to identify illicit income tied to alien smuggling activities.

According to an ICE report on the use of SARs in OI investigations, in June 2005, OI agents arrested three individuals on money laundering and alien smuggling charges.^a Through leads developed from a SAR, OI agents identified and arrested the perpetrators of a large-scale money laundering and alien smuggling ring that smuggled South American nationals through the southwest border into the United States. According to the ICE report, this case demonstrated that SARs not only assist law enforcement in the identification of currency violators, but also in the identification of perpetrators of other serious crimes, such as alien smuggling.

Source: GAO analysis of court documents, ICE press releases, and ICE documents on SARs use.

^aU.S. Immigration and Customs Enforcement, *The Cornerstone Report*, vol. II, no. 2 (2005).

The Number of Border Patrol Alien Smuggling Asset Seizures Has Declined since 2005

In addition to OI's seizure activity, the Border Patrol seizes assets during the course of its interdictions of alien smugglers along the southwest border. According to Border Patrol officials, the Border Patrol has the legal authority (as do all agencies with enforcement authority under Title 8) to seize vehicles, vessels, aircraft, or other commercial conveyances that are involved in criminal activity. After a seizure and forfeiture, the Border Patrol has the option to keep the property or to auction it off and release the proceeds to the Treasury Forfeiture Fund. Border Patrol officials in each of the sectors we visited stated that a primary benefit of seizing alien smuggler assets is that it disrupts their smuggling activities. For example, Border Patrol officials in one sector stated that when an expensive vehicle, such as a tractor trailer, is seized, alien smugglers must expend new resources to replace the vehicle in order to continue operating. The seizure therefore increases costs to the alien smuggling business and disrupts the operation until a replacement vehicle is purchased.

As shown in table 4, 90 percent of all Border Patrol seizures made during alien smuggling apprehensions are vehicles. While the volume of vehicles seized remained relatively constant from fiscal years 2005 through 2006, the number of vehicles seized declined from fiscal years 2007 through 2009. Border Patrol headquarters officials attribute the decline in alien smuggling asset seizures to the decline in overall apprehensions since 2006. The officials also stated that the El Paso and Tucson Border Patrol sectors account for the majority of the decrease in alien smuggling seizures; both sectors have seen steady declines in removable alien apprehensions since fiscal year 2006.

Table 4: Number and Types of Border Patrol Seizures Related to Alien Smuggling along the Southwest Border for Fiscal Years 2005 through 2009

| Fiscal year | Ammunition | Vehicles | Documents | Firearms | Money | Controlled substances | Other property | Real estate | Total number |
|----------------------------|------------|---------------|--------------|------------|------------|-----------------------|----------------|-------------|---------------|
| 2005 | 13 | 13,536 | 55 | 35 | 133 | 223 | 288 | 0 | 14,283 |
| 2006 | 5 | 12,993 | 32 | 32 | 123 | 276 | 246 | 0 | 13,707 |
| 2007 | 21 | 10,207 | 16 | 33 | 170 | 275 | 258 | 0 | 10,980 |
| 2008 | 26 | 8,855 | 447 | 58 | 232 | 250 | 315 | 0 | 10,183 |
| 2009 | 45 | 6,180 | 622 | 32 | 130 | 342 | 240 | 1 | 7,592 |
| Total | 110 | 51,771 | 1,172 | 190 | 788 | 1,366 | 1,347 | 1 | 56,745 |
| Percentage of total | 0.2 | 91.2 | 2.1 | 0.3 | 1.4 | 2.4 | 2.4 | 0.0 | 100 |

Source: GAO analysis of Border Patrol data.

Note: The Border Patrol does not have complete information for the value of assets seized because the asset value is not a mandatory data entry field. Therefore, the Border Patrol was only able to provide us with the number of assets seized during incidents that involved alien smuggling. One incident could involve multiple seizures.

Lack of Civil Asset Forfeiture Authority Makes Seizing Real Property Difficult

We previously reported on the limitations presented by a lack of civil asset forfeiture authority for real property used to facilitate alien smuggling, which makes seizing real property (such as real estate) infrequent and difficult in alien smuggling cases.²⁴ Civil asset forfeiture authority allows federal authorities to seize property used to facilitate a crime without first having to convict the property owner of a crime.²⁵ We reported in 2005 that Justice and ICE headquarters officials said that a concern for investigators was the lack of adequate statutory civil forfeiture authority for seizing real property—particularly stash houses used by smugglers that were not owned by the smugglers. According to Justice, in 2005 analysis of civil and criminal forfeiture statutes generally led the department to conclude that a statute that provides only for criminal and not civil forfeiture of facilitating property will be inadequate in such cases. We recommended that the

²⁴ GAO-05-305, 25.

²⁵ Civil asset forfeiture authority allows the government to seize real property and initiate a civil action to forfeit the property. It does not require that the owner of the property be charged with a federal offense. Rather, the action is against the property, and the government must demonstrate that the property is subject to forfeiture under the applicable civil forfeiture statute for the underlying offense. If the government is able to do so, the burden shifts to the property owner to prove by a preponderance of the evidence that he or she was an innocent owner. This defense is not available to someone who intentionally turned a blind eye to the illegal use of his or her property, although such an individual most likely could not be convicted of the offense involved.

Attorney General, in collaboration with the Secretary of Homeland Security, consider developing and submitting to Congress a legislative proposal, with appropriate justification, for amending the civil forfeiture authority for alien smuggling. Justice agreed with our recommendation. In response to this recommendation, civil asset forfeiture authority for real property used to facilitate alien smuggling was sought by Justice and incorporated into several larger bills addressing immigration enforcement or reform since 2005, but none of these bills had been enacted into law as of March 2010. According to Justice officials, the current administration has not yet taken a position on civil asset forfeiture authority for alien smuggling cases.

We continue to believe it is important for Justice to submit its views to Congress as to whether it needs civil asset forfeiture authority to seize real property used to facilitate alien smuggling in order to combat this crime effectively. During our site visits along the southwest border, OI investigators indicated that lack of such authority makes it difficult to seize real estate involved in alien smuggling activity. For example, in one OI office, officials pointed to a graphic depiction of over 300 stash houses the investigators were aware of over the past several years in one metropolitan area. The officials stated that they were able to seize only one of those houses and that civil asset forfeiture authority would have made it easier to seize far more. As we reported in 2005, civil asset forfeiture laws are designed to strike a balance between the law enforcement and property interests involved, and a proposal to expand civil forfeiture for alien smuggling to correspond with that permitted for drug trafficking or money laundering would need to take this context into account.²⁶

²⁶ As we noted in our 2005 report, civil forfeiture statutes applicable to drug trafficking, child pornography, and money laundering offenses provide for civil forfeiture of real property used to facilitate the offenses. See [GAO-05-305](#).

**Arizona Attorney General
Has Disrupted Alien
Smuggling Operations and
Seized Assets by Focusing
on Money Services
Businesses; Opportunities
Exist to Leverage These
Resources**

According to Arizona law enforcement officials and court affidavits we reviewed, wire transfers through money services businesses (MSB) are a primary method of payment for smuggled aliens in the southwest border region.²⁷ The federal interagency 2007 National Money Laundering Strategy and its accompanying 2005 U.S. Money Laundering Threat Assessment identify MSBs as an increasing threat for laundering illicit proceeds. According to the strategy, MSBs are becoming increasingly attractive to criminal groups for several reasons. The majority of wire transfers at MSBs are paid for with cash and therefore MSBs provide excellent camouflage for the initial introduction of the illicit proceeds into the financial system. The sheer volume of legitimate cash transactions also provides an excellent camouflage for money laundering activity in this placement stage. MSBs offer inexpensive services and often impose less rigorous anti-money laundering programs and compliance than traditional financial institutions. Lastly, with offices in thousands of cities around the world, MSBs allow customers to move funds from nearly any location directly to any other location. The strategy states that law enforcement believes that large amounts of funds sent to the southwest border via MSBs are related to alien smuggling.

In order to address the threat posed by alien smugglers' use of MSBs, in 2000 the Arizona Financial Crimes Task Force (the Task Force), composed of investigators from the Arizona Department of Public Safety, the Arizona Attorney General's Office, the Phoenix Police Department, and the former U.S. Customs Service, implemented a strategy that focused on following the money flowing through MSBs in Arizona to identify suspected alien smugglers and those MSBs that may be complicit in laundering proceeds from alien smuggling. The Task Force's strategy contained the following major investigative techniques:

²⁷ MSBs include money transmitters, check cashers, and currency exchangers. Examples of MSBs include Western Union and MoneyGram.

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- CTRs and SARs. The Task Force began analyzing CTRs in 1999 prior to the initiation of SAR reporting for MSBs in 2001.²⁸ Under Arizona law as well as federal law, an MSB is required to file a SAR if the MSB suspects, for example, that the transaction is related to a possible violation of law or regulation. Task Force investigators analyzed these SARs to identify potential smugglers.
 - Geographic targeting orders (GTO). Beginning in June 2003, Arizona issued a GTO that allows the state to require additional identification or reporting requirements for certain financial transactions in a geographic area. Under the GTO, for all person-to-person transactions arriving in high-volume MSB locations in the southern one-third of the state in amounts over \$500, Arizona required MSBs to obtain the receivers' fingerprints and signatures.
 - Transaction data. According to Task Force officials, the foundation to their strategy has been their ability to obtain and analyze data from individual MSB transactions. Each transaction has a unique money transfer control number and contains, for example, the sender's name and address, the amount sent, the sending MSB's unique identification number, the receiver's name and address, the amount received, as well as the receiving MSB's unique identification number. Using the Arizona Attorney General's subpoena power, the Task Force initially obtained data on all transactions greater than \$750 (in 2003 the threshold changed to \$500) entering or leaving Arizona from all major MSBs in the Phoenix area. Using computer analytics software, the Task Force searched for data anomalies that based upon Task Force officials' experience, could indicate laundering of alien smuggling proceeds. For example:
 - Individuals who and MSBs that conducted more transactions and received larger dollar amounts than the norm.
 - Individuals who received the same dollar amount consistent with the going rate for smuggling an alien from numerous senders in different states.

²⁸ The BSA requires that each financial institution (including MSBs) file currency transaction reports in accordance with Treasury implementing regulations (31 C.F.R. pt. 103). See 31 U.S.C. §§ 5313(a), 5312(a)(2)(R); 31 C.F.R. § 103.11(n)(3). These regulations require a financial institution to file a CTR (FinCEN Form 104) whenever a currency transaction exceeds \$10,000. See 31 C.F.R. § 103.22(b)(1). An MSB must file a SAR for transactions of at least \$2,000 when it knows, suspects, or has reason to suspect that (1) the funds come from illegal activity or the transaction is intended to disguise funds from illegal activity, (2) the transaction is designed to evade BSA requirements or appears to serve no known business or apparent lawful purpose, or (3) the MSB is being used to facilitate criminal activity. Beginning in 2002, MSBs were required to file SARs. See *id.* § 103.20.

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- MSBs that had a higher ratio of large to normal transactions than the norm.
 - Repetitive wire transfers in large amounts sent to the same receiver names within a few days.
 - Patterns of false information appearing in MSB transaction records, such as a receiver providing multiple addresses, Social Security numbers, or telephone numbers for wire transfers received over a short time (such as a few months).
 - Patterns of imbalance in the volume of wire transfers sent to Arizona from corridor states (states most preferred by smuggled aliens as final destinations) compared to the volume of wire transfers sent from Arizona to those corridor states.

These anomalies were occurring during the time of year when most alien smuggling was believed to be occurring, what the Task Force called the “seasonal coyote pattern.”²⁹ Using criteria such as these, the Task Force selected a random sample of transactions to determine the extent to which the criteria could be relied upon to identify potential smugglers, MSBs involved in alien smuggling, or both. According to a court affidavit filed by a Task Force investigator, over 90 percent of the transactions selected in the various samples taken since the Task Force began analyzing these data were related to alien smuggling, including in some cases those for other criminal activity, such as drug trafficking. Since the Task Force began analyzing these data, it has refined its criteria based upon evidence obtained during its investigations and additional data analysis. According to Task Force officials, the Task Force has a database containing millions of transactions and continues to receive transaction data on a weekly basis from some of the major MSBs in Arizona.

- Seizure warrants. Based upon the above analysis of MSB transaction data as well as other evidence gathered through traditional law enforcement actions, the Task Force obtained approximately 20 court-ordered warrants from the summer of 2001 through 2006 to seize wire transfers it believed were for the payment of alien smuggling or narcotics trafficking. Under the warrant, the MSB was ordered to electronically divert into a holding account wire transfers sent to or from Arizona that matched specifically targeted names or criteria. When the receiving individuals tried to obtain the funds, they were told that the funds had been seized by the state and

²⁹ “Coyote” is a term used by law enforcement and smugglers alike as a synonym for an alien smuggler. The seasonal coyote pattern is the surge in smuggling activity typically seen during the first 3 to 4 months of the calendar year.

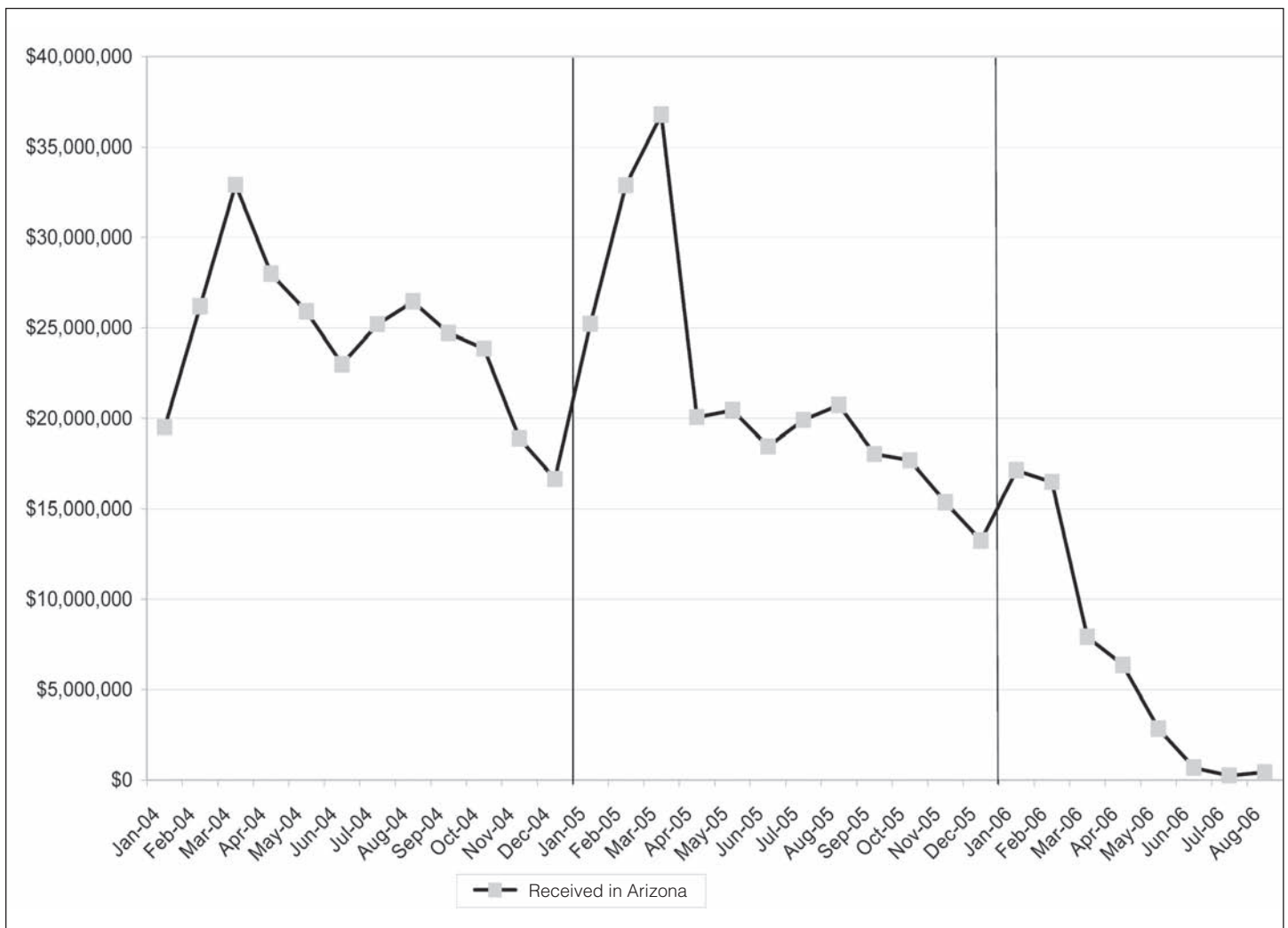
that they could call a dedicated 1-800 number if they believed the state erred in seizing their funds. According to Task Force officials, most of the seizures were not contested.

According to Arizona law enforcement officials, while alien smuggling into Arizona has not been eliminated, the above strategy has significantly disrupted alien smuggling operations in Arizona and has largely eliminated the ability of MSBs in Arizona to receive smuggling payments. According to Arizona law enforcement officials, since 2001 they seized about \$17 million in funds transacted through MSBs, arrested over 300 alien smugglers, and seized 8 car dealerships and 9 travel agencies involved in alien smuggling. They also shut down approximately 35 MSB outlets in Arizona for facilitating illicit transactions. Arizona law enforcement investigators described how their strategy of targeting MSBs led to disruptions of alien smuggler activities. For example, surveillance of MSBs suspected to be involved in laundering alien smuggling payments identified suspected smugglers who were then followed, enabling Task Force investigators to locate previously unknown stash houses holding undocumented aliens. In one instance, evidence found at one such stash house led investigators to identify and eventually prosecute owners of a travel agency that provided airline tickets to move undocumented aliens from the border area to the interior to the United States. The evidence led to the seizure of 6 travel agencies engaged in alien smuggling. According to Task Force officials, analysis of wire transfer data has resulted in identifying other criminal activity as well, including narcotics trafficking, off-shore gambling, criminal activity by members of the Russian Mafia, and identity theft.

As shown in figure 5, the dollar amount of wire transfers over \$500 declined from a high of over \$35 million per month in March 2005 to less than \$10 million by March 2006, and to nearly zero by August 2006. According to an Arizona Attorney General senior litigation counsel, the declines in March to April of 2005 and February to March of 2006 coincided with seizure warrants conducted by the Task Force during these time periods. In June 2006, Western Union, the largest MSB in Arizona and whose agents were the target of several Task Force investigations, imposed a limit of \$450 on the amount of funds that could be wired into Arizona from any location, in effect, inhibiting smugglers' ability to use Western Union agents since the smuggling fee at that time was at least \$1,800 per person. In addition, in 2008 Western Union was fined \$2 million for, among other things, failure to comply with the Arizona Attorney General's GTO, failure to record required customer identification, and failure to comply with a previous 2006 order that it comply with the

Arizona Attorney General's GTO and record required customer identification. In 2006 Western Union was also fined \$5 million for failing to comply with the Arizona Attorney General's GTO and record required customer identification.³⁰

Figure 5: Dollar Value of Western Union Wire Transfers over \$500 Received in Arizona (January 2004 through August 2006)



Source: Affidavit submitted to the Arizona Superior Court by the Arizona Department of Public Safety, November 2006.

³⁰ In the Matter of the Money Transmitter License of Western Union Financial Services, Inc., No. 07F-BD020-SBD, entered August 17, 2006.

As a result of Arizona's enforcement efforts and the \$450 Western Union limit on wire transfers to Arizona, alien smugglers have adjusted their way of receiving smuggling payments. According to Task Force officials and court affidavits, payments for aliens smuggled into Arizona are now wired to smuggler contacts in Mexico or to contacts in other U.S. states, such as Nevada. The contacts then notify the smuggler once payment has been received. Arizona law enforcement officials attempted to obtain a warrant to seize certain wire transfers sent from other states to Mexico. However, the Arizona Supreme Court eventually ruled that the state court did not have jurisdiction to issue such a warrant.³¹ According to federal law enforcement officials in Arizona, alien smugglers also now use "funnel accounts," which are deposit accounts established at traditional banks for the purpose of holding payments for smuggling services. The officials provided the example of a large U.S. bank, with a nationwide branch and automated teller machine (ATM) network. A deposit account would be opened in Arizona with this bank and sponsors of smuggled aliens could then deposit payment for smuggling services directly into this account through an ATM or bank office from anywhere in the United States. The alien smuggler could then withdraw money from this account.

According to both OI and Arizona law enforcement officials, one of OI's predecessors (the U.S. Customs Service) began as a partner in Arizona's seizure activity, and OI continued that role until it withdrew in 2005 after concerns about alien safety and the legality of the seizure warrants used by Arizona law enforcement officials. According to OI officials, there was a concern that alien smugglers might harm or hold hostage the smuggled aliens once payments for smuggling services were seized. In addition, OI and Justice officials told us that they had concerns that Arizona's seizure warrants that focused on seizing wire transfers based upon their characteristics (e.g., dollar amount, coming from a specific state, or being picked up at a specific MSB location) rather than a specific individual known to be a smuggler may not be allowed under federal law. OI is not currently targeting MSBs for alien smuggling investigations southwest border-wide. However, the OI's Phoenix SAC has assigned one investigator to the Task Force.

³¹ *State v. Western Union Fin. Servs., Inc.*, 208 P.3d 218 (Ariz. 2009). Because the Arizona Supreme Court's ruling on the lack of jurisdiction resolved the case, the court did not review the lower court's finding of probable cause to issue the warrant or other grounds for upholding the warrant in response to Western Union's challenge. See *State v. Western Union Fin. Servs., Inc.*, 199 P.3d 592 (App. 2008) (vacated on other grounds).

According to OI headquarters officials, OI does not have a position on the effectiveness of the Arizona Attorney General's efforts to disrupt alien smuggling. The officials cite lack of sufficient information regarding Arizona's alien smuggling initiatives—such as the targeting methodology employed to identify suspect remittances, the underlying legal theory and framework upon which the initiative was based, an explanation of the state statutory authority permitting the use of the seizure warrants in this context absent particularized probable cause connecting a specific remittance to an alien smuggling incident, analysis of any performance measures or results produced by the Arizona Attorney General, and information on the civil litigation that resulted from this initiative—that would permit a thorough analysis and evaluation of the effectiveness of these efforts.³² The officials acknowledge that it may be useful to have an assessment of these issues completed so that any effective and applicable techniques can be shared and used by OI field offices as part of their alien smuggling investigations. OI headquarters officials also told us that a fuller examination of Arizona's financial investigative techniques and their potential to be used at the federal level would be useful and that they would be willing to facilitate meetings or exchanges of information necessary to evaluate the effectiveness of Arizona's financial strategy to disrupt alien smuggling.

³² At least one lawsuit was filed challenging the legality of the seizure warrants by individuals who alleged that their transactions were legitimate and that they tried unsuccessfully to claim their seized funds. As mentioned previously, one MSB successfully challenged the seizure of wire transfer funds sent from outside Arizona to Mexico, and the State of Arizona has brought several actions against Western Union for failure to comply with its GTOs. On February 11, 2010, the Arizona Attorney General's Office announced a \$94 million settlement agreement with Western Union intended to resolve all outstanding issues between Western Union and the State of Arizona. According to an Arizona Attorney General senior litigation counsel, in addition to its payments totaling \$94 million Western Union agreed to obey a court-appointed monitor's recommendations to improve its anti-money laundering program in the entire southwest border area, including northern Mexico, and agreed to supply borderwide transaction data.

Assessing Arizona Financial Investigative Techniques and Approach Could Identify Opportunities for Leveraging Resources to Counter Alien Smuggling across the Southwest Border

Arizona's financial investigative techniques and resources offer the potential to enhance efforts to counter alien smuggling as well as advance other federal anti-money laundering goals and objectives. For example, Task Force investigators have developed analytical capabilities that when applied to MSB transaction data can, according to Task Force investigators, identify with a high degree of certainty transactions and related individuals and MSBs involved in laundering alien smuggling proceeds. OI's ability to obtain MSB transaction data from other states along the southwest border, when warranted, might be leveraged with Arizona's analytical capabilities to identify money laundering related to alien smuggling in locations across the southwest border other than Arizona. Identifying MSBs involved in alien smuggling might support the federal government's goal of identifying and prosecuting MSBs that facilitate money laundering, as stated in the National Money Laundering Strategy. Arizona used GTOs that imposed additional reporting requirements on MSBs located in certain geographic areas in Arizona. Federal BSA regulations also allow for the use of GTOs in geographic regions for which there is evidence of heightened risk for the evasion of BSA requirements. The June 2009 National Southwest Border Counternarcotics Strategy states that Treasury is to work with federal law enforcement agencies to determine whether the use of GTOs could help to disrupt money laundering networks that utilize MSBs. According to FinCEN, imposition of additional reporting requirements through a GTO may assist in disrupting alien smuggling.

As discussed earlier in this report, HSTC was created to achieve greater integration and overall effectiveness in the U.S. government's law enforcement efforts related to issues of alien smuggling and human trafficking. One of HSTC's responsibilities is to prepare strategic assessments related to aspects of human smuggling, such as proven law enforcement and other approaches for countering alien smuggling, in order to provide policymakers with accurate, objective analysis about threats, vulnerabilities, and opportunities for action. An assessment, by HSTC or another ICE-designated entity, could identify how resources might be leveraged and also address federal concerns regarding the use of seizure warrants. An overall assessment of whether and how these techniques may be applied in the context of disrupting alien smuggling could help ensure that ICE is not missing opportunities to take additional actions and leverage resources to support the common goal of countering alien smuggling.

OI and CBP Have
Established
Objectives for Their
Alien Smuggling-
Related Programs, but
Can Do More to
Better Measure
Progress toward
Achieving Program
Objectives

Program-Related
Documents Identify OI and
CBP Objectives for
Addressing Alien
Smuggling

Standards for internal control in the federal government state that federal programs should have clear objectives.³³ Consistent with these standards, both OI and CBP have established objectives for their alien smuggling programs. With regard to alien smuggling, ICE's April 2005 interim strategic plan states that OI's overall objective is to use its combined customs and immigration authorities to more effectively prevent trafficking and smuggling of people, weapons, and other contraband into the United States by identifying, locating, disrupting, and prosecuting the organizations that commit these crimes. The plan identified several strategies to accomplish this objective, including denying smuggling organizations the profit from criminal acts, tracking financial information to identify additional targets and further OI investigations, and applying asset forfeiture to disrupt and dismantle smuggling organizations.³⁴ Further, according to an ICE report, OI enhances ICE's role as the lead investigative entity for alien smuggling by identifying and targeting illicit organizations' ill-gotten proceeds for forfeiture.³⁵ OI officials in the four

³³ GAO/AIMD-00-21.3.1.

³⁴ According to OI officials, ICE strategic plans drafted in 2005 and 2008 have not been approved by ICE management and no time frame had been established for when a final strategic plan might be issued.

³⁵ U.S. Immigration and Customs Enforcement, *ICE Investigations: Mission Roles in Multi-Agency Areas of Responsibility* (August 2007).

SAC offices we visited also told us that tracking and attempting to seize alien smuggling funds was a part of any alien smuggling investigation.

CBP and DRO have also defined the objectives of their enforcement programs with a nexus to alien smuggling. For the OASISS program, which targets alien smugglers for prosecution in Mexico, CBP has documented the objectives and goals of the OASISS program in training materials. For example, according to OASISS-related training documents, OASISS objectives include performing cross-border investigations, facilitating binational information exchange, coordinating binational law enforcement efforts, and conducting binational prosecutions in an effort to dismantle smuggling organizations in Mexico and the United States. Further, all of the Border Patrol OASISS program officials we interviewed stated that a key objective of the OASISS program is to reduce the numbers of alien smugglers who recidivate by apprehending them and transferring them to Mexico for prosecution. According to CBP officials, the objective of ATEP is to transport removable aliens out of the apprehending sector for subsequent removal to Mexico through an adjacent sector in order to disrupt alien smuggling organizations operating in the participating Border Patrol sectors. For the Operation Streamline program, which prosecutes removable aliens for illegal entry into the United States, CBP officials told us that one of the goals of the program is to deter aliens from crossing into the United States illegally again, thereby reducing the number of individuals seeking assistance from alien smuggling organizations. Regarding MIRP, in accordance with the 2004 MIRP MOU between the United States and Mexico the objectives are to remove aliens from the United States—apprehended during the summer months, generally the hottest and most dangerous time of year for border crossings—to the interior of Mexico to deter them from returning in order to reduce loss of life and to combat organized crime linked to the smuggling, trafficking, and exploitation of persons.

ICE and CBP Have Not Fully Evaluated Progress in Meeting Alien Smuggling Objectives

Taking Actions to Fully Measure Progress toward Achieving Objectives Would Help ICE and CBP to Evaluate Their Effectiveness along the Southwest Border

Federal internal control standards call for agencies to establish performance measures and indicators in order to evaluate the effectiveness of their efforts.³⁶ Measuring performance allows organizations to track the progress they are making toward their goals and gives managers critical information on which to base decisions for improving their programs. We have previously reported on some of the most important attributes of successful performance measures, including that performance measures should (1) be linked to an agency's mission and goals, (2) be clearly stated, and (3) have quantifiable targets or other measurable values.³⁷

Until fiscal year 2009, OI measured its performance by calculating the percentage of closed investigative cases that had an enforcement consequence (defined as an arrest, indictment, conviction, seizure, fine, or penalty) for all investigative areas combined. OI performance in addressing alien smuggling was not specifically assessed. According to OI officials, beginning in fiscal year 2009, OI measured the percentage of closed human trafficking and human smuggling investigative cases that have an enforcement consequence. The goal for fiscal year 2009 was 50 percent. OI plans to implement a similar performance measure for all of its other investigative areas in future years.

Although it did not establish a performance measure for alien smuggling enforcement consequences until fiscal year 2009, OI provided us with such data for the period from fiscal years 2005 through 2009. These data do not include human trafficking cases, which OI plans to include in the future metric. As shown in table 5, in fiscal year 2009, two of the four SAC offices met the 50 percent goal.

³⁶ GAO/AIMD-00-21.3.1.

³⁷ See GAO, *Tax Administration: IRS Needs to Further Refine Its Tax Filing Season Performance Measures*, GAO-03-143 (Washington, D.C.: Nov. 22, 2002), 2-3, 46-53.

Table 5: Percentage of Closed OI Southwest Border Alien Smuggling Cases with an Enforcement Consequence, Fiscal Years 2005 through 2009

| Southwest border SAC office | FY 2005 | FY 2006 | FY 2007 | FY 2008 | FY 2009 |
|-----------------------------|---------|---------|---------|---------|---------|
| El Paso | 49 | 61 | 71 | 71 | 64 |
| Phoenix | 39 | 51 | 37 | 46 | 42 |
| San Antonio | 36 | 47 | 56 | 65 | 74 |
| San Diego | 16 | 27 | 38 | 53 | 32 |

Source: GAO analysis of OI data.

Although one of the objectives of OI's alien smuggling investigations is to seize smugglers' assets, OI does not have performance measures for asset seizures related to alien smuggling cases. OI plans to track as a performance measure asset seizures across investigative areas and has implemented a new measure that tracks the dollar value of asset seizures derived from drug operations. Tracking the use of asset seizures in alien smuggling investigations as a performance measure could help OI monitor its progress toward its goal of denying smuggling organizations the profit from criminal acts. Alien smuggling is the second most resource-intensive investigative area (next to drug trafficking) in OI's southwest border locations. Monitoring the use of alien smuggling asset seizures could also help assess the worthiness of seizure techniques and help assess investigative resource needs.

Although DRO and CBP have defined the objectives of their alien smuggling-related enforcement programs, they have not yet established performance measures. For MIRP, while DRO does not currently have performance measures, the program has had performance measures in the past. When the former INS established MIRP as a pilot program in 1996, it established performance measures for the program. According to INS's operational plan for the program,³⁸ the recidivism rate for removable aliens processed through MIRP should not exceed 5 percent within the first 6 months and should not exceed 20 percent within the first year of initial processing. The plan noted that after the first year, the recidivism rate should not exceed 40 percent in order for the program to be considered successful.

³⁸ Immigration and Naturalization Service, *The Mexican Interior Repatriation Pilot Project Western Region Operational Plan* (1996).

Although DRO has not established any performance measures to measure MIRP's effectiveness, there is evidence that removable aliens processed through MIRP may be less likely to reenter the United States illegally. According to a 2005 Homeland Security Institute study, 7 percent of the removable aliens repatriated through the program were reapprehended during the following 2-½-month period while 28 percent of the removable aliens not repatriated through MIRP were reapprehended during the same period, as shown in table 6.

Table 6: Number of Aliens Processed through MIRP from June through August 2005

| Border Patrol sectors | Total apprehensions | Aliens processed through MIRP | Percentage of aliens processed through MIRP | Percentage of aliens processed through MIRP who were reapprehended | Percentage of aliens reapprehended who were not processed through MIRP |
|-------------------------|---------------------|-------------------------------|---|--|--|
| Yuma, Arizona, sector | 31,551 | 776 | 2 | 5 | 33 |
| Tucson, Arizona, sector | | | | | |
| West Desert area | 41,286 | 11,622 | 28 | 7 | 21 |
| Nogales area | 16,059 | 2,602 | 16 | 6 | 25 |
| Naco/Douglas | 24,219 | 29 | 0 | 7 | 36 |
| Total | 113,115 | 15,029 | 13 | 7 | 28 |

Source: Homeland Security Institute, *Measuring the Effects of the Arizona Border Control Initiative*, 2005.

Note: Aliens processed through MIRP were not randomly assigned to MIRP. Therefore, other factors aside from MIRP participation could affect reapprehension rates.

For the OASISS program, CBP officials told us that they are in the process of developing measures. According to CBP officials, the Border Patrol organized two 2-day workshops designed to foster the development of a Program Performance Framework for the OASISS program. The framework is to include objectives, performance measures, and data collection requirements for the program. CBP officials told us in January 2010 that the final approval of the framework and corresponding performance measures was pending and they expect to implement performance measures for the OASISS program during fiscal year 2010. CBP has not established performance measures for ATEP and Operation Streamline to assess progress toward achieving program goals. According to CBP officials, while they have not established ATEP performance measures for the entire southwest border, measures are in place at the Border Patrol sector level based upon reapprehensions. However, they acknowledged that because these measures are not assessing performance for the entire southwest border, the full effect of ATEP is unknown. Regarding Operation Streamline, CBP officials agree that there are no performance measures in place for the program. Without performance

CBP Officials Are in Preliminary Discussions to Establish Systematic Program Evaluations, but Have Not Established a Plan, with Time Frames, for Their Completion

measures for MIRP, the OASISS program, ATEP, and Operation Streamline, DRO and CBP program officials may lack critical information with which to track the progress they are making toward program goals.

The Homeland Security Institute evaluation of MIRP offers insight into possible performance measures that CBP could use to evaluate the effectiveness of ATEP and Operation Streamline. The study compared the recidivism rates of aliens processed through MIRP and those not processed through MIRP to evaluate the effectiveness of MIRP at deterring illegal reentry.

Program evaluations are systematic studies that are conducted periodically to assess how well a program is working while performance measures identify a program's progress toward a defined outcome.³⁹ Moreover, federal standards for internal control specify that promptly evaluating findings from audits and other reviews to determine proper actions is essential to monitoring the outcomes of agencies' performance.⁴⁰ However, CBP has not conducted program evaluations of the OASISS program, ATEP, and Operation Streamline to determine the extent to which these enforcement programs have been effective in helping to deter alien smuggling and meet its strategic goal of securing the border.

As a first step, in December 2008, CBP implemented a computer software application, called e3, to capture data that could be used to evaluate CBP enforcement programs. CBP officials told us that one of the reasons CBP developed e3 was to create an interface with the ENFORCE Integrated Database to improve CBP's information-gathering capabilities and streamline and improve the collection of complete, accurate, and consistent data from all Border Patrol sectors.⁴¹ The application is to interface with other agency databases, which should allow law enforcement agencies to exchange information.

CBP officials told us that e3 will provide a standardized method of data collection that will ease their ability to eventually perform program evaluations. In June 2009, program fields were added to e3 that allow

³⁹ GAO, *Performance Measurement and Evaluation: Definitions and Relationships*, GAO-05-739SP (Washington, D.C.: May 2005).

⁴⁰ GAO/AIMD-00-21.3.1.

⁴¹ The ENFORCE Integrated Database contains biographic and case information on aliens encountered and booked in ICE and other DHS component enforcement actions.

border patrol agents to select the specific enforcement program, such as ATEP, MIRP, or Operation Streamline, associated with the removable alien. Capturing these data should allow CBP to compare enforcement program results of removable aliens associated with specific enforcement programs with those of removable aliens not involved with specific programs as one way of measuring program effectiveness. Emphasizing the need to capture enforcement program data, the Chief of the Border Patrol issued a December 2009 memorandum noting that recent statistics show that program data within e3 had not been captured on a consistent basis. Further, the memo stated that in order to analyze the effectiveness of these programs, capturing data in e3 is of utmost importance and he directed agents to ensure that they are aware of correct data processing procedures, particularly with regard to tracking Border Patrol enforcement programs. The Border Patrol also provided guidance on the types of information that need to be collected, such as fingerprint identification number, name, age, and apprehension date[s] that are processed in e3.

Based on existing federal guidance, our prior work, and the work of others, standard practices in project management for defining, designing, and executing programs include developing a program plan to establish an order for executing specific projects needed to obtain defined programmatic results within a specified time frame.⁴² In October 2009, CBP officials told us that they have a project to develop systematic evaluation practices that will allow them to conduct program evaluations of the OASISS program, ATEP, and Operation Streamline. CBP officials told us that they were discussing what key elements to include in their evaluation practices, such as performance measures, improved data collection methods, agreed-upon data points, and universal operational definitions. However, CBP had not developed a project plan that outlined the time frames for the development of these key elements and what office would be responsible for conducting the program evaluations. As a result, CBP officials told us that they were unsure of a timeline or implementation date for the evaluation process. Developing a project plan could help CBP ensure that the necessary mechanisms are put into place as it intended so that it can conduct the desired program evaluations.

According to CBP officials, while the agency has not conducted evaluations of its enforcement programs, they partially attribute the

⁴² The Project Management Institute, *The Standard for Program Management* (2006).

decreased number of apprehensions and deaths in recent years along the southwest border to these programs. CBP officials said that the programs have benefited the surrounding border communities by reducing illicit cross-border traffic, thereby reducing crimes directly related to the actions of criminal smuggling organizations and illegal border crossers. Program evaluations using comprehensive and reliable data could help determine the effectiveness of these programs in such things as reducing illicit cross-border traffic.

Conclusions

Alien smuggling is a growing problem along the southwest border; it has brought increasing violence to area communities and the potential for smuggling aliens from special interest countries into the United States. Both ICE and CBP have made significant antismuggling efforts, but opportunities exist to leverage resources to further combat the problem and better evaluate progress toward accomplishing their respective missions. By studying the feasibility of expanding the LEAR program along the southwest border, ICE would be in a better position to evaluate alternatives for aligning the duties of its OI staff with OI's investigative mission and helping ensure more efficient use of its resources. Assessing whether the Arizona Attorney General's financial investigative techniques could be used and would be useful in disrupting alien smuggling would better position OI in determining whether it could take advantage of an opportunity to further its mission. Developing performance measures for alien smuggling asset seizures would allow ICE to assess progress toward this particular goal. Reassessing the prior proposal to Congress for civil asset forfeiture authority in view of current circumstances would help determine whether amending the civil forfeiture authority for real property used to facilitate the smuggling of aliens remains necessary. Further, DRO and CBP manage programs that counter alien smuggling, but have not developed performance measures for some of their programs. Also, CBP has not established a plan with time frames for program evaluation using e3 data. Completing these tasks would help DRO and CBP assess progress toward achieving their goals.

Recommendations for Executive Action

In order to improve federal efforts to address alien smuggling, we are making six recommendations to DHS and Justice. We recommend that the Assistant Secretary for ICE take the following four actions:

- To better align agency staff responsibilities with their agency missions and improve efficiency, study the feasibility of expanding the LEAR program

along the southwest border and, if it is found to be feasible, expand the program.

- To determine whether ICE could utilize Arizona’s financial investigative techniques to address alien smuggling, direct HSTC or another ICE-designated entity to conduct an assessment of the Arizona Attorney General’s financial investigations strategy to identify any promising investigative techniques for federal use.
- To better assess OI’s progress toward its investigative goals, develop performance measures for asset seizures related to alien smuggling investigations.
- To help ensure that DRO’s MIRP achieves the results intended, develop performance measures for the program.

To help ensure that CBP’s alien smuggling-related enforcement programs achieve the results intended, we recommend that the Commissioner of CBP establish a plan, including performance measures, with time frames for evaluating CBP’s enforcement programs.

To enhance the ability of the federal government to seize real property associated with alien smuggling activities, we recommend that the Attorney General assess whether amending the civil forfeiture authority for real property used to facilitate the smuggling of aliens remains necessary and, if it remains necessary, develop and submit to Congress such an amendment with appropriate justification.

Agency Comments, Third-Party Views, and Our Evaluation

We requested comments on a draft of this report from DHS, Justice, Treasury, and the Arizona Attorney General. On May 11, 2010, DHS provided written comments, which are reprinted in appendix V. DHS also provided technical comments, which we incorporated as appropriate. Justice did not provide written comments to include in our report. However, in an e-mail received May 3, 2010, the Justice liaison stated that Justice concurred with our recommendation that the Attorney General assess whether amending the civil forfeiture authority for real property used to facilitate the smuggling of aliens remains necessary and, if it remains necessary, develop and submit to Congress such an amendment with appropriate justification. In an e-mail received April 26, 2010, the Treasury liaison indicated that Treasury had no comments on the report. The Arizona Attorney General provided technical comments, which we incorporated as appropriate.

In commenting on the draft report, DHS stated that department officials concurred with four of the five recommendations directed to DHS and

discussed actions planned or under way to implement them. However, it is not clear to what extent these actions will fully address the intent of three of the recommendations. Moreover, DHS stated that it did not concur with our fourth recommendation to measure the performance of DRO's MIRP.

ICE concurred with the first recommendation, to study the feasibility of expanding the LEAR program and stated that expanding the program would continue to improve ICE's efficiency by aligning the responsibilities of OI and DRO in a more effective manner. DHS also stated that ICE has studied the feasibility of expanding the LEAR program to other areas, such as Los Angeles. Subsequent to receiving DHS's comments, we followed up with ICE to obtain a copy of the feasibility study. A DRO official clarified that DRO and OI have continued to discuss expanding the LEAR program beyond Phoenix, but ICE has not conducted and documented a feasibility study of expanding the LEAR program along the entire southwest border. By conducting a more complete study of the feasibility of expanding the program throughout the southwest border region and expanding the program if it deems it feasible, ICE would be in a better position to help ensure that its resources are more efficiently directed toward alien smuggling and other priority investigations. As a first step in potentially expanding the program nationwide, DHS stated that DRO's Criminal Alien Division prepared and submitted a resource allocation plan proposal for its fiscal year 2012 budget.

Regarding the second recommendation, to assess the Arizona Attorney General's financial investigative techniques, DHS stated that ICE concurred and reported that during the week of April 12, 2010, ICE participated in the inaugural meeting of the Southwest Border Anti-Money Laundering Alliance, a body consisting of federal, state, and local law enforcement agencies all along the southwest border. The main purpose of the meeting was to synchronize enforcement priorities and investigative techniques along the southwest border. While synchronizing enforcement priorities and investigative techniques are positive steps toward combating money laundering along the southwest border, it is not clear to what extent these actions will result in ICE evaluating the use of the Arizona Attorney General's financial investigative techniques. An overall assessment of whether and how these techniques may be applied in the context of disrupting alien smuggling could help ensure that ICE is not missing opportunities to leverage resources to support the common goal of countering alien smuggling.

DHS also stated that ICE concurred with the third recommendation related to performance measures for asset seizures and stated that ICE is

in the process of assessing all of its performance measures and creating a performance plan. While these efforts have yet to result in the establishment of performance measures for asset seizures related to alien smuggling investigations, developing such measures could help ICE to better monitor its progress toward achieving its seizure goals.

ICE did not agree with the fourth recommendation to develop performance measures for MIRP because ICE believed that performance measures for this program would not be appropriate. According to ICE, any attempt to implement performance measures for MIRP to emphasize the number of Mexican nationals returned or the cost-effectiveness of the program would shift its focus away from the program's original lifesaving intent and diminish and possibly endanger cooperation with the Government of Mexico. In its letter, DHS states that MIRP was developed in accordance with the February 20, 2004, MOU on the Safe, Orderly, Dignified and Humane Repatriation of Mexican Nationals. One of the principles in the MOU is to establish mechanisms to repatriate Mexican nationals to their place of origin from high-risk zones of the United States. Specifically, the MOU states that

"In order to ensure efficiency in the implementation of arrangements for repatriation and to agree on whatever individual and joint measures are necessary to improve their effectiveness, the principles set forth in this Memorandum of Understanding should be evaluated by the appropriate officials of the Participating Agencies at least annually or at any mutually acceptable time."

Thus, we believe that measuring MIRP's program performance would be consistent with the MOU's intent that the principles be periodically evaluated. In addition, our recommendation does not specify a particular performance measure to be used; measuring numbers of Mexican nationals returned or the cost-effectiveness of the program may not be necessary for assessing MIRP's performance. However, we continue to believe that developing performance measures for MIRP is necessary to determine whether the program is meeting its objectives of reducing the loss of human life and combating organized crime linked to the smuggling, trafficking, and exploitation of persons.

DHS stated that CBP concurred with the fifth recommendation for establishing a plan, including performance measures, with time frames, for evaluating CBP's enforcement programs. Moreover, DHS stated that CBP is developing a plan that will include program mission statements, goals, objectives, and performance measures. However, it is not clear to what extent this plan will include time frames for evaluating CBP's enforcement

efforts. For some of its enforcement programs, CBP has begun gathering data and holding workshops with subject matter experts to begin developing performance measures. These efforts are a positive step toward implementing performance measures for CBP enforcement programs, but we continue to believe that including time frames in its plan for evaluating these programs could help CBP ensure that the necessary mechanisms are put in place within time frames management intended for conducting the desired program evaluations.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the Secretary of Homeland Security, the Attorney General, the Secretary of the Treasury, the Arizona Attorney General, appropriate congressional committees, and other interested parties. This report also will be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you have any further questions about this report, please contact me at (202) 512-8777 or stanar@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix VI.



Richard M. Stana
Director, Homeland Security and Justice Issues

Appendix I: Objectives, Scope, and Methodology

Objectives

To provide insights concerning the federal government's efforts to address alien smuggling along the southwest border, the Chairman of the House Committee on Homeland Security and Congressman Harry Mitchell requested that we examine the efforts made by the Department of Homeland Security (DHS) and its largest investigative component, U.S. Immigration and Customs Enforcement (ICE). Accordingly, this report addresses the following three questions:

- Since fiscal year 2005, what has been the trend regarding the amount of investigative effort ICE's Office of Investigations (OI) has devoted to alien smuggling along the southwest border, what have been the results, and is there an opportunity for ICE to use its investigative resources more effectively?
- What progress has OI made in seizing assets related to alien smuggling since fiscal year 2005 and what, if any, promising financial investigative techniques could be applied along the southwest border to target and seize the monetary assets of smuggling organizations?
- To what extent do ICE OI and U.S. Customs and Border Protection (CBP) have objectives related to alien smuggling along the southwest border and to what extent have they implemented internal controls to measure progress toward these objectives?

For the purposes of this report, we use the term alien smuggling to mean the procurement of illegal entry into a country of which the smuggled person is neither a citizen nor a lawful permanent resident. Alien smuggling usually involves a person who has consented to be transported to another country, and the activity generally produces a short-term profit for the smugglers. We also define removable alien as an alien who can be removed from the United States because he or she has violated U.S. immigration law or has committed a criminal act that renders him or her removable from the country.¹

Scope and Methodology

To address these questions, we conducted site visits and interviews with officials from CBP's U.S. Border Patrol, ICE's OI and Office of Detention and Removal Operations (DRO), and the Department of Justice's Executive Office for U.S. Attorneys (EOUSA). We interviewed officials

¹ See 8 U.S.C. § 1227 for the various classes of deportable aliens and 8 U.S.C. § 1182 for the various classes of inadmissible aliens, all of whom are subject to removal from the United States under 8 U.S.C. § 1229a.

from these offices because collectively these offices are responsible for interdicting and removing smuggled aliens and investigating and prosecuting alien smugglers. We interviewed officials from each of the four OI special agent-in-charge (SAC) offices along the southwest border: San Diego, California; Phoenix, Arizona; El Paso, Texas; and San Antonio, Texas.² We also interviewed Border Patrol officials located in six of the nine southwest border Border Patrol sectors: San Diego and El Centro, California; Yuma and Tucson, Arizona; and El Paso and Laredo, Texas. We selected these six Border Patrol sectors based on their proximity to the OI SAC offices we visited and their varying volumes of alien apprehensions. The Tucson and San Diego sectors had the highest levels of apprehensions during fiscal year 2008, approximately 320,000 and 160,000 apprehensions, respectively. In contrast, the Yuma sector had relatively few apprehensions in fiscal year 2008 after experiencing declines from approximately 120,000 apprehensions in fiscal year 2006 to about 8,400 in fiscal year 2008. While the perspectives we obtained from officials of the sectors cannot be generalized to all Border Patrol officials along the southwest border, they provided us with an overview of how their enforcement programs operate within and across sectors. We also spoke with officials from all five U.S. Attorney district offices along the southwest border: Southern California, Arizona, New Mexico, Western Texas, and Southern Texas. Also, to address these questions, we reviewed OI and CBP documentation related to alien smuggling investigation and interdiction efforts. For example, we reviewed ICE's 2005 interim strategic plan, the Human Smuggling and Trafficking Center's briefing document on its operations, and court documents related to OI alien smuggling investigations. Similarly, we reviewed program documentation for CBP efforts to address alien smuggling along the southwest border, such as the Operation Against Smugglers Initiative on Safety and Security (OASISS) program training materials and an evaluation of the Mexican Interior Repatriation Program (MIRP) by the Homeland Security Institute³ as well as materials on the operations and costs of the program. We reviewed the scope, methodology, and findings of the MIRP evaluation with the lead researcher from the institute and determined that the scope and methodology of the institute's evaluation was sufficient for us to rely on it

² SACs are the lead OI investigators who manage designated geographic regions of responsibility throughout the United States. Twenty-six SACs are stationed throughout the United States.

³ The Homeland Security Institute evaluation of MIRP was conducted before DRO began managing the program in 2006.

as an example for how a performance evaluation of MIRP could be conducted. Finally, we attended an interagency conference in Phoenix on alien smuggling in February 2009 sponsored by the U.S. Attorney for Arizona. Participants in the conference included OI officials as well as Arizona state and local investigators.

To provide supplementary perspectives on federal efforts to address alien smuggling, particularly in coordinating with state and local law enforcement agencies, we also interviewed state and local law enforcement officials in Laredo, Texas; Phoenix, Arizona; and El Paso, Texas.

In addition to the above, we performed the following work.

OI Resources Devoted to Alien Smuggling on the Southwest Border

To address OI's use of investigative resources, we analyzed data from TECS, the system OI uses to manage its cases. Using TECS data, we analyzed OI self-reported investigator hours worked nationwide by SAC location and alien smuggling case arrests, indictments, and convictions achieved each fiscal year from 2005 through 2009. We compared human capital policies for using resources effectively and the position descriptions for OI criminal investigator and DRO immigration enforcement agent (IEA) to analyze to what extent OI investigators and DRO IEAs along the southwest border performed their duties as defined in the position descriptions. We reviewed Law Enforcement Agency Response program data gathered for Arizona to analyze the volume of removable aliens processed through the program. We supplemented these data analyses with interviews of OI and DRO program officials, both in OI and DRO headquarters and in OI field locations.

Progress in Seizing Alien Smuggler Assets and Identifying Promising Investigative Financial Techniques

To address progress in seizing assets related to alien smuggling, we analyzed OI asset seizure data from TECS and Border Patrol asset seizure data from the ENFORCE Integrated Database from fiscal years 2005 (the date of our last report) through 2009. We evaluated the data to determine increases or decreases in the value of alien smuggling seizures by OI and the volume of Border Patrol seizures during these time periods. To supplement these quantitative data, we interviewed OI and Border Patrol officials to better understand financial investigative techniques used in alien smuggling investigations and methods for seizing assets. We also interviewed officials from the Department of the Treasury's Financial Crimes Enforcement Network to determine how they collaborate with OI investigators in alien smuggling cases. To identify potentially promising

financial investigative techniques for federal use along the southwest border, we analyzed the federal interagency 2007 National Money Laundering Strategy and its accompanying 2005 U.S. Money Laundering Threat Assessment and an OI report on the results of financial investigations and interviewed OI officials and Assistant U.S. Attorneys along the southwest border. In addition, we interviewed the Arizona Attorney General and officials with the Arizona Attorney General's Financial Crimes Task Force (Task Force), and analyzed relevant court affidavits prepared by Task Force investigators to obtain information on the results of their efforts to address alien smuggling in Arizona. We also analyzed data provided by the Arizona Attorney General's Office on assets seized from 2001 through September 2009 as a result of its alien smuggling investigations.

OI and CBP Objectives and Performance Measures for Addressing Alien Smuggling

To address the extent to which OI and CBP have objectives related to alien smuggling along the southwest border and have implemented internal controls to measure progress toward these objectives, we reviewed ICE's 2005 interim strategic plan, an OI document describing OI's role in alien smuggling investigations, documented plans for future OI performance measures, CBP's 2005–2010 Strategic Plan, and CBP's National Border Patrol Strategy. In addition, we reviewed CBP program-related documents on the operations for MIRP, the OASISS program, the Alien Transfer Exit Program (ATEP), and Operation Streamline. Specifically, we reviewed a legacy Immigration and Naturalization Service MIRP operations plan; the Border Patrol El Paso, Texas, sector's briefing slides describing its OASISS program operations; and the DHS/CBP OASISS program training manual. We supplemented this documentation by obtaining written responses from ICE and CBP regarding documented program objectives, performance measures, and assessments for MIRP, the OASISS program, ATEP, and Operation Streamline. We analyzed TECS data on the proportion of closed OI alien smuggling cases that resulted in an enforcement consequence and the value of OI asset seizures related to alien smuggling investigations from fiscal years 2005 through 2009. In addition, we interviewed OI officials both in headquarters and in SAC locations to determine the extent to which they had established alien smuggling goals and related performance measures. We also analyzed CBP OASISS program data to determine the number of alien smugglers processed through the program, the number accepted for prosecution by the Mexican government, and the number turned over to Mexican authorities. In addition, we analyzed CBP ENFORCE Integrated Database data from fiscal year 2005 through May 2009 to determine the extent to which alien smugglers were

reapprehended by CBP after being processed through the OASISS program.

Data Reliability

To assess the reliability of data used for this report, we conducted interviews with agency officials about data integrity processes and the methods by which data are checked and reviewed internally for accuracy. For each set of data relied upon for the report, we also replicated selected calculations used by agency officials to ensure accuracy. As discussed earlier in this report, the data recorded in selected data fields used in our analyses are sufficiently reliable for the purposes of this report.

We conducted this performance audit from September 2008 through May 2010 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: DRO and CBP Programs That Address Alien Smuggling

DRO and CBP have implemented several programs designed to deter aliens from entering the country illegally and thereby indirectly disrupting alien smuggling. One program is specifically aimed at alien smugglers. Not all programs are in all locations along the southwest border and not all aliens or alien smugglers apprehended are eligible for all programs. Table 7 summarizes the purpose of each program, when it was established, and the Border Patrol sectors that have implemented the program.

Table 7: CBP and DRO Programs That Address Alien Smuggling

| Program | Year established | Purpose | Sectors in which the program operates |
|---|---|---|---|
| Mexican Interior Repatriation Program | 2004 ^a | Remove women, children, and the elderly from high-risk areas of the Sonora Desert during the peak summer months and repatriate these participants to the interior of Mexico | Tucson and Yuma |
| Operation Against Smugglers Initiative on Safety and Security program | 2005 | Prosecute alien smugglers who endanger smuggled aliens' lives along the southwest border | Del Rio, Yuma, Tucson, Laredo, Marfa, San Diego, and El Paso ^b |
| Operation Streamline | Varies based on sector; first started in Del Rio sector in 2005 | Prosecute aliens for illegally entering the United States | Del Rio, Yuma, Tucson, Laredo, and Rio Grande Valley |
| Alien Transfer Exit Program | 2008 | Disrupt alien smuggling organizations' operations by transporting aliens out of the apprehending sector for subsequent removal to Mexico through an adjacent sector | San Diego, Yuma, El Centro, and Tucson |

Source: GAO analysis DRO and CBP program documents and interviews with program officials.

^aMIRP was originally piloted in 1996 in the San Diego Border Patrol sector. However, it is unknown whether the program was in continuous operation from 1996 through 2003. From 2004 to 2006, MIRP was operated by the Border Patrol; however, in 2006 ICE's DRO took over the operations of the program while CBP still provided initial processing for MIRP participants.

^bThe OASISS program also includes alien smugglers caught at the land ports of entry in Laredo, El Paso, Tucson, and San Diego.

In fiscal year 2008, over 95 percent of the aliens apprehended entering the country illegally along the southwest border were Mexican nationals. According to Border Patrol officials, most are allowed to return voluntarily to Mexico after being processed for removal. As a result, many try to enter illegally again, sometimes on the same day. Some individuals arrested for smuggling aliens are not prosecuted by the U.S. Attorney's Office and are also voluntarily removed. According to Border Patrol officials, the major goal of these programs is to remove voluntary return as an option and impose a consequence for illegal entry or alien smuggling in those

situations where no consequence would have been imposed. The goal is to deter these individuals from illegally reentering the United States.

MIRP

MIRP was designed in 2004 as a bilateral effort between the United States and Mexico to reduce the loss of human life and combat organized crime linked to the smuggling, trafficking, and exploitation of persons by returning noncriminal aliens—apprehended during the summer months, generally the hottest and most dangerous time of year for border crossings—to the interior of Mexico. From 2004 to 2006, the Border Patrol operated the program; however, in 2006 DRO took over the operations of MIRP while CBP still provided initial processing for MIRP participants. In November 2009, the Assistant Secretary for ICE testified that from August 22, 2009, through September 28, 2009, 10,560 Mexican nationals were voluntarily returned through the MIRP initiative. During this time, ICE detailed 52 officers to the Phoenix areas to support the MIRP operations and conducted 73 flights from Tucson to Mexico City facilitating the return of the Mexican nationals to the interior of Mexico. According to Border Patrol officials we interviewed, once aliens are flown to the interior part of Mexico, they are bused back to their communities of origin. Further, Border Patrol officials stated that most do not have the funding to make the trip back to United States to try another illegal reentry either within the same week or even the same year, which keeps reapprehension rates low. According to the Assistant Secretary's testimony, more than 93,000 Mexican nationals have been returned to Mexico through MIRP over the 5 years it has been in operation. Border Patrol officials told us that by reducing the number of aliens seeking the assistance of alien smugglers, the Border Patrol has disrupted smugglers' operations. In addition, Border Patrol officials attribute to MIRP the reduced number of rescue missions into the deserts of Yuma and Tucson where the program operates because those at greater risk when crossing the desert are returned to the interior of Mexico and are therefore less likely to try again.

OASISS Program

Our analysis of the OASISS program's data indicated that most reapprehensions of OASISS program participants occur in two of seven sectors in which the program operates. Across all of the sectors where the program operates, San Diego and Tucson account for over 80 percent of the OASISS program reapprehensions. Because of OASISS program data limitations, we were unable to determine the original Border Patrol OASISS processing sector in order to compare whether smugglers were changing locations or continuing to operate in the same locations despite

operation of the program. In light of these factors, officials we interviewed cited a several possible reasons for reaprehension after initial OASISS processing: (1) Mexican authorities may release alien smugglers received from the Border Patrol when Mexican judges have not signed arrest warrants for the smugglers; (2) Mexican judges may require material witnesses to testify or be deposed within 72 hours or the smugglers are released; or (3) there may have been corruption or bribery of Mexican authorities. Nonetheless, five of the six Border Patrol officials we interviewed agreed that the OASISS program has helped disrupt alien smuggling within their areas of responsibility. Additionally, officials cited increased coordination with Mexican authorities as a benefit of the OASISS program.

Operation Streamline

As of August 2009, the Del Rio and Yuma Border Patrol sectors implemented Operation Streamline for all aliens apprehended along the border. In other sectors that had Operation Streamline, only aliens apprehended along a certain portion of the border were processed under the program. For example, in the Rio Grande Valley sector, only aliens apprehended along a 45-mile stretch of the sector's border were processed under Operation Streamline. The five sectors that have Operation Streamline process relatively few apprehended aliens under the program. In fiscal year 2008, CBP estimated that 465,951 aliens were apprehended in the five sectors where Operation Streamline operated and 36,179, or about 8 percent, were processed through the program. Border Patrol officials we interviewed told us that the aliens processed through the program spent anywhere from 10 to 45 days in jail or in a detention facility. These officials believed that the greatest result of the program is that it deters aliens from illegally trying to reenter the United States.

ATEP

ATEP operates within the San Diego and El Centro, California, sectors and Yuma and Tucson, Arizona, sectors. CBP reported that during fiscal year 2008, the Tucson Border Patrol sector returned 5,830 removable aliens through ports of entry in California. CBP is unsure how many removable aliens have been processed through this program since its inception in February 2008.¹ While data on the results of the program are limited,

¹ CBP provided us with conflicting data regarding the number of individuals processed through ATEP. We determined that the numbers were unreliable and hence could only report 2008 data that were publicly reported by CBP in press releases.

Border Patrol officials we interviewed believed that the program helped them to disrupt or even remove alien smuggling organizations from their sectors since smuggled aliens cannot easily return to their original locations to try and reenter the United States with the help of the smuggling organizations.

Appendix III: Disposition of Alien Smuggling Cases along the Southwest Border

Evaluation of data provided by the Department of Justice (Justice) provides additional information regarding enforcement consequences for alien smuggling cases. While OI's current data system does not capture the number of cases under a particular statute that are referred to and prosecuted by U.S. Attorneys, sentencing data provided by Justice contain information on the overall number of cases received, filed, acquitted, dismissed, terminated, and sentenced under 8 U.S.C. § 1324 from fiscal year 2005 through fiscal year 2009. Table 8 shows that U.S. Attorneys in the southwest border region received over 3,400 cases from federal law enforcement agencies under 8 U.S.C. § 1324 in fiscal year 2009. U.S. Attorneys also convicted nearly 3,000 defendants under 8 U.S.C. § 1324 in fiscal year 2009. According to EOUSA, almost all alien smuggling cases in the southwest border region are submitted to U.S. Attorneys by either OI or the Border Patrol.

Table 8: Number of Defendants Processed under 8 U.S.C. § 1324 along the Southwest Border in Fiscal Year 2009

| U.S. Attorney district (FY 2009) | Cases received ^a | Cases prosecuted | Cases acquitted, dismissed, or terminated | Convictions |
|----------------------------------|-----------------------------|------------------|---|--------------|
| Arizona | 493 | 337 | 37 | 351 |
| California Southern | 942 | 896 | 53 | 1,110 |
| New Mexico | 96 | 73 | 3 | 86 |
| Texas Southern | 1,423 | 1,198 | 72 | 1,033 |
| Texas Western | 462 | 416 | 20 | 400 |
| Total | 3,416 | 2,920 | 185 | 2,980 |

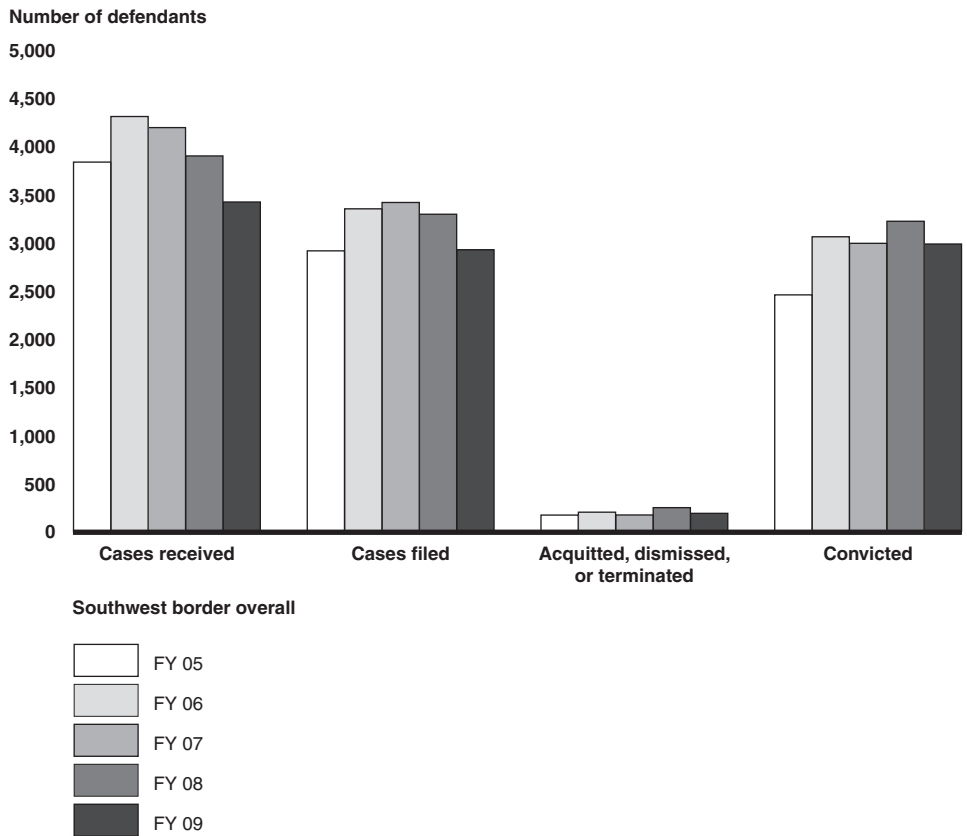
Source: GAO analysis of Justice data.

Note: Not all cases received are cases filed within the same fiscal year, according to Justice officials. Some cases received may remain pending for an indefinite period of time and then are closed or terminated without ever being filed in court. Justice does not track cases received, filed, acquitted, dismissed, terminated, or convicted by defendant, which means the same individuals whose cases were filed in fiscal year 2009 may not be those who were acquitted, dismissed, terminated, or convicted in fiscal year 2009.

^aReferred by federal law enforcement agency.

As shown in figure 6, the number of alien smuggling cases referred by law enforcement agencies to U.S. Attorney's offices along the southwest border peaked in 2006 and has declined each year since then. The number of cases filed by U.S. Attorneys and the number of individuals convicted generally increased from fiscal years 2005 through 2008, but declined slightly in fiscal year 2009.

Figure 6: Number of Defendants Processed under 8 U.S.C. § 1324 in Southwest Border U.S. Attorney Districts from Fiscal Years 2005 through 2009



Source: GAO analysis of Justice data.

In fiscal year 2009, the majority of alien smuggling convictions resulted in a prison term of 2 years or less or no prison at all. Table 9 illustrates that of the 2,980 alien smugglers convicted in one of the southwest border districts, 14 percent did not go to prison, 71 percent were sentenced to 1 to 24 months, and 15 percent were sentenced to more than 24 months of jail time. Conviction statistics from previous years show that since 2005 the majority of alien smugglers received prison terms of 2 years or less or no prison at all.

**Appendix III: Disposition of Alien Smuggling
Cases along the Southwest Border**

Table 9: Number of Defendants Convicted and Sentenced under 8 U.S.C. § 1324 along the Southwest Border for Fiscal Year 2009

| U.S. Attorney districts | Arizona | Southern California | New Mexico | Southern Texas | Western Texas | Total | Percentage of total |
|--------------------------------|----------------|----------------------------|-------------------|-----------------------|----------------------|--------------|----------------------------|
| Not imprisoned | 39 | 129 | 9 | 141 | 104 | 422 | 14 |
| One to 12 months | 98 | 443 | 61 | 377 | 170 | 1,149 | 39 |
| Thirteen to 24 months | 134 | 406 | 13 | 309 | 83 | 945 | 32 |
| Twenty-five to 36 months | 34 | 95 | 1 | 123 | 21 | 274 | 9 |
| Thirty-seven to 60 months | 37 | 34 | 1 | 59 | 17 | 148 | 5 |
| Sixty-one + months | 9 | 3 | 1 | 24 | 5 | 42 | 1 |
| Total | 351 | 1,110 | 86 | 1,033 | 400 | 2,980 | 100 |

Source: GAO analysis of EOUSA data.

According to OI, many of these convictions are CBP cases that involve low-level participants in alien smuggling schemes and these individuals generally receive lower sentences based on current federal sentencing guidelines. Also, defendants convicted of alien smuggling under 8 U.S.C. § 1324 may also have been convicted of other charges, which could have resulted in higher prison sentences.

Appendix IV: Immigration and Customs Enforcement Office of Investigations Alien Smuggling Coordination Efforts

ICE's OI has taken steps over the last 4 years to participate in or develop coordination efforts, working groups, or task forces that address alien smuggling. These activities have been primarily focused on regional border activities where OI has historically encountered the greatest proportion of alien smuggling violations. The objectives of these activities and working groups have been to share intelligence and resources and identify and remove vulnerabilities on the southwest border. Table 10 summarizes the various OI coordination efforts that involve alien smuggling.

Table 10: OI's Coordination Efforts That Involve Alien Smuggling

| Coordination efforts | Members | Focus |
|--|--|--|
| Southwest Border Initiative 2009 | ICE OI, Border Patrol, and Mexican officials | To stop contraband, firearms, ammunition, undeclared U.S. currency, stolen vehicles, and human smuggling violations at ports of entry and between ports of entry along the U.S.-Mexico border. To do so, ICE OI temporarily detailed 99 special agents along the southwest border and in Mexico City. |
| 287(g) Program | ICE and various state and local law enforcement agencies | To delegate the authority to enforce federal immigration laws to state and local law enforcement agencies. |
| Interagency Working Group on Alien Smuggling and Trafficking Leverage Subgroup | ICE, Human Smuggling and Trafficking Center, CBP, U.S. Coast Guard, Departments of Justice and State, and U.S. intelligence community agencies | To target criminal travel networks that are deemed to present a national security threat or whose operations pose a significant humanitarian concern for concerted law enforcement, diplomatic, or other action. |
| Extraterritorial Criminal Travel Strike Force | ICE and Justice's Criminal Division | To systematically disrupt and dismantle the international and domestic operations of criminal travel networks, identify and seize assets and illicit proceeds, and eliminate identified systemic vulnerabilities exploited by criminal elements to undermine immigration and border controls through proactive transnational investigations. |
| Joint Terrorism Task Forces | ICE, Federal Bureau of Investigation, and a number of other law enforcement agencies across the federal government | To coordinate federal resources in order to gather evidence, make arrests, provide security for special events, conduct training, collect and share intelligence, and respond to threats and incidents. |
| Human Smuggling and Trafficking Center | ICE, CBP, State, Justice, and other federal law enforcement agencies | To provide information in support of the U.S. strategy to counter alien smuggling. |

Source: GAO analysis of ICE documents.

ICE established the Border Enforcement Security Task Forces (BEST) to investigate any cross-border criminal activity along the southwest border, including alien smuggling. The BESTs are tasked with leveraging federal, state, local, tribal, and foreign law enforcement and intelligence resources in an effort to identify, disrupt, and dismantle organizations that seek to exploit vulnerabilities in the border. The task forces include personnel from ICE; CBP; the Drug Enforcement Administration; the Bureau of

Alcohol, Tobacco, Firearms and Explosives; the Federal Bureau of Investigation; the U.S. Coast Guard; and U.S. Attorney's Offices along with relevant state, local, and foreign law enforcement agencies. There are currently 10 BESTs along the southwest border out of the 15 around the country.

The BEST effort has resulted in a number of cases initiated and convictions. From 2004 through June 2009, the BESTs initiated 515 cases related to alien smuggling and obtained 395 alien smuggling convictions. While it is unknown whether these results would have been achieved without the BESTs, ICE and Border Patrol officials from the locations we visited cited other benefits to BEST coordination. For example, ICE officials indicated that prior to the BEST effort, they had limited coordination on alien smuggling investigations across the law enforcement agencies involved. However, since the BEST effort began, the officials stated that they are better able to learn from one another and to understand the methods used by the various agencies in performing their missions. Moreover, officials from ICE and Border Patrol offices we visited told us that agents assigned to the BESTs are usually colocated, which has facilitated information sharing and assisted in building working relationships between the two components. Border Patrol officials also noted that the BESTs allow them to coordinate on a more formal level, thereby also serving as a built-in conflict resolving mechanism between the components. Another benefit of the BESTs is having clearly defined roles and responsibilities among all of the BEST members, according to ICE officials. This has, in turn, helped ICE decrease chances for mission creep or performing duplicative efforts. In addition, ICE and Border Patrol officials told us that they have been able to share staff from each other's agencies. For example, officials stated that ICE and the Border Patrol have each provided staff to augment the other's operations, allowing for seamless BEST operations.

Appendix V: Comments from the Department of Homeland Security

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

May 11, 2010

Mr. Richard M. Stana
Director, Homeland Security and Justice Issues
441 G Street, NW
U.S. Government Accountability Office
Washington, DC 20548

Dear Mr. Stana:

RE: Draft Report GAO-10-328, Alien Smuggling: DHS Needs to Better Leverage Investigative Resources and Measure Program Performance Along the Southwest Border (Engagement 440757)

The Department of Homeland Security (DHS/Department) appreciates the opportunity to review and comment on the draft report referenced above. The U.S. Government Accountability Office (GAO) made six recommendations, five of which are directed to DHS, specifically U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection.

Department officials appreciate that GAO recognized the Department's significant anti-smuggling efforts and that programs have been established to impact alien smuggling. Opportunities exist to leverage resources to further combat the problem and better evaluate progress towards accomplishing our mission.

In order to improve federal efforts to address alien smuggling, GAO made four recommendations to the Assistant Secretary for Immigration and Customs Enforcement (ICE), a component within DHS.

Recommendation 1: To better align agency staff responsibilities with their agency missions and improve efficiency, study the feasibility of expanding the Law Enforcement Agency Response (LEAR) program along the Southwest border, and if it is found to be feasible, expand the program.

Response: ICE concurs. On September 4, 2006, the Phoenix Office of Detention and Removal Operations (DRO) assumed the role of first responder to requests for assistance from State and local law enforcement agencies with the creation of the LEAR Unit. The LEAR Unit is dedicated solely to providing 24/7 rapid response to other agency call-outs for ICE assistance in cases with an immigration nexus in the Phoenix metropolitan area. The LEAR Unit is a unified response by both DRO and the Office of Investigations (OI) in situations involving smuggling loads, violence, hostage situations and weapons.

ICE has studied the feasibility of expanding the LEAR program to other areas, such as Los Angeles. Expansion of the program to other areas would continue to improve ICE's efficiency by aligning the responsibilities of ICE components in the OI and the DRO in a more effective manner. The DRO resources could be directed to respond to immigration-related calls for assistance from State and local law enforcement agencies. The responsibility would include the processing of aliens that otherwise have to be processed by OI agents. Currently, OI is the primary ICE component in Los Angeles that responds to requests for assistance by State and local law enforcement agencies.

The development of a LEAR program in Los Angeles (as well as other areas) would provide state and local law enforcement agencies a mechanism for an immediate ICE response for handling and processing of aliens that are subject to removal while dedicating OI resources to the investigation of the crime in which the aliens were involved. The identification and arraignment of a suspect in a criminal investigation involving aliens that are smuggled into the U.S. must be accomplished in a timely manner. A LEAR program would allow OI special agents to be dedicated to conducting criminal investigations without having to spend valuable time processing the aliens. However, in order for the LEAR program to be effective, it must be developed and coordinated at the level of the Special Agent in Charge (SAC) and DRO Field Office Director (FOD) responsible for a specific geographic area.

As a first step in potentially expanding the LEAR program, the DRO Criminal Alien Division (CAD) has moved forward in requesting resources for an expansion of LEAR nationwide. CAD personnel prepared and submitted an FY 2012 Resource Allocation Plan (RAP) proposal in April 2010.

Recommendation 2: To determine whether ICE could utilize Arizona's financial investigative techniques to address alien smuggling, direct the Human Smuggling and Trafficking Center (HSTC) or another ICE-designated entity to conduct an assessment of the Arizona Attorney General's financial investigations strategy to identify any promising investigative techniques for federal use.

Response: ICE concurs. On February 11, 2010, the State of Arizona and Western Union signed a settlement to the long standing litigation stemming from Arizona's financial investigative strategy related to alien smuggling. As part of the settlement, Western Union will pay a fine of over \$70 million, \$50 million of which will be used to support anti-money laundering efforts along the Southwest border. During the week of April 12, 2010, ICE representatives from the field and headquarters participated in the inaugural meeting of the Southwest Border Anti-Money Laundering Alliance, a body that is made up of members of federal, state, and local law enforcement agencies all along the Southwest border. ICE was an integral part of the conference whose main purpose was to synchronize enforcement priorities and investigative techniques along the Southwest border. ICE is committed to being a significant contributor to this body.

The strategies used by the Arizona Attorney General's office were in fact developed by U.S. Customs, the US Attorney's Office and the Arizona Attorney General's office jointly just prior to the merger creating ICE. Some of the issues with using the techniques arose in the federal judicial system. Federal judges and prosecutors felt the use of "damming warrants" based on names of people transferring money was moving into racial profiling. The tying up of money was also creating increased violence in the alien smuggling trade. The Arizona Attorney General's office was able to take the money first and then give it back if it could be proven that it was obtained legally. The federal judges felt that if 10% of the money was legitimate they were uncomfortable seizing all of it and then giving back the money that was not alien smuggling related.

To continue the methods used by the Arizona Attorney General's office would require additional US Attorney and judicial support.

Recommendation 3: To better assess OI's progress towards its investigative goals, develop performance measures for asset seizures related to alien smuggling investigations.

Response: ICE concurs. ICE is in the process of assessing all of its performance measures and creating a comprehensive performance plan. The recently published Quadrennial Homeland Security Review (QHSR) and extensive work conducted under the Bottom-Up Review (BUR) will help provide the basis for strategic planning and management controls over investigative resources.

On March 25, 2010, the ICE Office of Investigations launched Project STAMP (Smugglers' and Traffickers' Assets, Monies & Proceeds), a new ICE enforcement initiative aimed at targeting the illicit proceeds earned by human smuggling and trafficking organizations. Human smuggling and human trafficking (HS/HT) are primarily motivated by profit and create substantial risks to the homeland security of the United States. In an effort to ensure ICE utilizes all the authorities granted to them as a result of the creation of the DHS, OI is launching Project STAMP to approach the problems of HS/HT from an aggressive anti-money laundering stance. Following the money trail will assist in the identification of a criminal organization and assets, monies, and proceeds derived from or used in support of criminal activity.

As part of Project STAMP, ICE OI is working with U.S. financial institutions to explore ways in which ICE can productively partner to better identify and report on the suspicious transaction activity related to HS/HT organizations. Trends and red flag indicators identified through the review of HS/HT investigations in coordination with the ICE Office of Intelligence will be shared with the financial sector to assist financial institutions in developing the typologies necessary to proactively target and report HS/HT organizations attempting to launder their illicit proceeds.

It is a standard goal of all ICE investigations to identify and seize the assets of the group responsible for the criminal activity, not just those engaged in alien smuggling. This is reflective

of the practice of using ICE's full investigative authority and expertise in every case to disrupt and dismantle the criminal enterprise.

However, ICE officials emphasize that development of these performance measures would need to take into account the differences between alien smuggling and other criminal activity investigated by ICE. Primary among these differences is the recognition that the amounts of money involved in the alien smuggling trade are much smaller than normally seen when investigating other financial crimes. Even a large scale alien smuggler will not have the financial footprint that could be compared with an average narcotics trafficking group. A secondary consideration would be reflective of the conveyances seized by ICE and its DHS partners as a result of alien smuggling investigations. These vehicles are normally far into their life cycle and hold very little residual value at the point of seizure.

ICE recognizes that performance measures are necessary to gauge the effectiveness of any program. However, any measure developed must adequately address the realities of the criminal activity, and not be part of a uniform standard that is applied to all types of illegal behavior investigated by ICE. It must also be acknowledged that ICE must adhere to equity guidelines as well as work with other agencies such as the Department of Justice and the Department's U.S. Customs and Border Protection (CBP) to make seizures and perfect the forfeitures.

Note that previous efforts have been made by DHS/ICE to obtain congressional approval to extend ICE's authority related to asset forfeitures.

Recommendation 4: To help ensure that DRO's Mexican Interior Repatriation Program (MIRP) achieves the results intended, develop performance measures for the program

Response: Neither ICE nor CBP concurs. Performance measures for this program would not be appropriate. The increased levels of illegal immigration in the Arizona-Sonora area led to its designation as a "high risk" area, and the high number of deaths of illegal aliens during fiscal year 2003, served as catalysts for the Interior Repatriation Program in 2004.

The MIRP program was developed in accordance with Article 5 of the Memorandum of Understanding (MOU) on the Safe, Orderly, Dignified and Humane Repatriation of Mexican Nationals signed by the government of the United States (USG) and Government of Mexico (GOM) on February 20, 2004.

In 2004 and 2005, Customs and Border Protection, Office of Border Patrol (OBP) conducted the first two iterations of the program. Subsequently, DHS leadership determined that oversight should be provided by ICE DRO because of its expertise in alien transportation. Since then, in FYs 2006, 2007, 2008 and 2009, ICE DRO has worked in conjunction with OBP to operate this DHS program.

The United States Government and the Government of Mexico discuss cooperation under MIRP within the context of humanitarian, life saving efforts and measure the MIRP's success by the reduction in the loss of human lives in the harsh desert environment, not in the number of migrants returned or how cost effective the program is. This bi-national program enables the safe return of non criminal Mexican migrants apprehended by OBP to their homes in the interior of Mexico. Any attempt to implement performance measures for MIRP to emphasize numbers returned would shift its focus away from the program's original life saving intent, diminish and possibly endanger cooperation from the Government of Mexico because it would appear to be "complicit" in the U.S. Government repatriation programs.

To help ensure that CBP alien smuggling related enforcement programs achieve the results intended, GAO made one recommendation to the Commissioner.

Recommendation: Establish a plan, including performance measures, with time frames, for evaluating CBP's enforcement programs.

Response: CBP concurs.

CBP has recently taken important steps towards putting such measurement tools in place, beginning with the development of a plan in 2009 to create a Program Performance Framework (PPF) for priority programs or areas. The PPF strategy will establish certain elements such as vision and mission statements, goals, objectives, and performance measures. Subject matter experts from field locations and Headquarters will collaborate to create the PPF elements, which in turn must be approved by the Office of Border Patrol (OBP). For at least a year, baseline data will be collected for all performance measures; after the conclusion of that time, targets will be set for the measures. A review of the PPF elements will occur annually to evaluate whether the program is meeting its goals, objectives and performance measure targets; and needs the addition of any new goals, objectives and performance measures or the removal of any goals, objectives and performance measures no longer needed for program management.

The PPF strategy was piloted in FY 2009 on both the Operation Against Smugglers Initiative on Safety and Security (OASISS) program and Operation Streamline. Both programs have developed PPF elements that are currently in the approval process. Plans are underway to form a workgroup to develop a pilot PPF for the Alien Transfer Exit Program (ATEP). The following is a description of progress made and future plans for each program.

In a proactive effort to establish performance measures, goals and objectives for OASISS, OBP hosted two separate workshops – one in Tucson, Arizona and one Casa Grande, Arizona, with object matter experts representing the Border Patrol sectors. The first workshop was held on July 8-9, 2009, with the second workshop on August 4-5, 2009. The result was the development of a vision statement, mission statement, primary goals, numerous supporting objectives, and performance measures for use in management of the program. The e3 OASISS database program was developed on October 1, 2009 to facilitate data collection in support of OASISS performance measures. Baseline data will be collected until the end of FY 2010 and

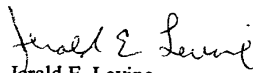
management approval of the OASISS program performance measures is also anticipated by December 31, 2010.

Following positive feedback from the OASISS workshops, OBP conducted workshops for Operation Streamline. Using Washington, DC as the venue, subject matter experts from the field participated in the first workshop held on February 3-4, 2010, and the second workshop held on March 2-4, 2010. The participants developed a vision statement, mission statement, primary goals, numerous supporting objectives, and performance measures for use in management of the program. OBP is in the process of collecting data to establish a baseline, which should be completed by April 30, 2011. It is anticipated that OBP management will approve the performance measures by September 30, 2010.

For ATEP, OBP will once again use the pilot PPF strategy to form work groups consisting of subject matter experts from each sector currently involved in the program. This group will create the vision and mission statements, along with primary goals, supportive objectives, performance measures, and a path forward or next step in the ATEP program. These activities will be accomplished and draft PPF elements will be submitted for OBP management approval by December 31, 2010.

The pilot PPF strategy will allow the Border Patrol to export this framework to other enforcement programs not mentioned in the GAO draft report. This framework will enable the Border Patrol to proactively determine what programs will benefit from this process and to initiate the development of performance measures for those programs. Although cost effective, the PPF strategy is still dependent on funds available, and the number of programs reviewed annually will depend on availability of funds.

Sincerely,



Jerald E. Levine
Director
Departmental GAO/OIG Liaison Office

Appendix VI: GAO Contact and Staff Acknowledgments

GAO Contact

Richard M. Stana, (202) 512-8777 or stanar@gao.gov

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In addition to the contact named above, Michael P. Dino, Assistant Director, and Ben Atwater, Analyst-in-Charge, managed this assignment. Laurie Choi, James Leonard, and Bintou Njie made significant contributions to the work. Michelle Fejfar, Amanda Miller and Minette Richardson assisted with the design, methodology, and data analysis. Katherine Davis provided assistance in report preparation, and Frances Cook and Christine Davis provided legal support.

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