



Highlights of [GAO-08-67](#), a report to congressional requesters

## Why GAO Did This Study

Officers with U.S. Immigration and Customs Enforcement (ICE) within the Department of Homeland Security (DHS) investigate violations of immigration laws and identify aliens who are removable from the United States. ICE officers exercise discretion to achieve its operational goals of removing any aliens subject to removal while prioritizing those who pose a threat to national security or public safety and safeguarding aliens' rights in the removal process. GAO was asked to examine how ICE ensures that discretion is used in the most fair, reasoned, and efficient manner possible. GAO reviewed (1) when and how ICE officers and attorneys exercise discretion and what internal controls ICE has designed to (2) guide decision making and (3) oversee and monitor officers' decisions. To conduct this work, GAO reviewed ICE manuals, memorandums, and removal data, interviewed ICE officials, and visited 21 of 75 ICE field offices.

## What GAO Recommends

GAO recommends that ICE update guidance to include factors officers should consider when making apprehension and removal decisions and establish time frames for this task; ensure that officers are provided timely information on legal developments affecting their decisions; and evaluate the costs and alternatives for developing a mechanism to systematically analyze officer decision making. DHS agreed and identified actions ICE plans to take to implement GAO's recommendations.

To view the full product, including the scope and methodology, click on [GAO-08-67](#). For more information, contact Richard M. Stana at (202) 512-8777 or [StanaR@gao.gov](mailto:StanaR@gao.gov).

# IMMIGRATION ENFORCEMENT

## ICE Could Improve Controls to Help Guide Alien Removal Decision Making

### What GAO Found

ICE officers exercise discretion throughout the alien apprehension and removal process, but primarily during the initial phases of the process when deciding to initiate removals, apprehend aliens, issue removal documents, and detain aliens. Officers GAO interviewed at ICE field offices said that ICE policies and procedures limit their discretion when encountering the targets of their investigations—typically criminal or fugitive aliens, but that they can exercise more discretion for other aliens they encounter. Officers also said that they consider humanitarian circumstances, such as sole caregiver responsibilities or medical reasons, when making these decisions. Attorneys, who generally enter later in the process, and officers told GAO that once removal proceedings have begun, discretion is limited to specific circumstances, such as if the alien is awaiting approval of lawful permanent resident status.

Consistent with internal control standards, ICE has begun to update and enhance training curricula to better support officer decision making. However, ICE has not taken steps to ensure that written guidance designed to promote the appropriate exercise of discretion during alien apprehension and removal is comprehensive and up to date and has not established time frames for updating guidance. For example, field operational manuals have not been updated to provide information about the appropriate exercise of discretion in light of a recent expansion of ICE worksite enforcement and fugitive operations, in which officers are more likely to encounter aliens with humanitarian issues or who are not targets of investigations. Also, ICE does not have a mechanism to ensure the timely dissemination of legal developments to help ensure that officers make decisions in line with the most recent interpretations of immigration law. As a result, ICE officers are at risk of taking actions that do not support operational objectives and making removal decisions that do not reflect the most recent legal developments.

Consistent with internal control standards, ICE relies on supervisory reviews to ensure that officers exercise appropriate discretion and has instituted an inspection program designed to ensure that field offices comply with established policies and procedures. However, ICE lacks other controls to help monitor performance across the 75 field offices responsible for making apprehension and removal decisions. A comprehensive mechanism for reviewing officers' decision making could provide ICE with meaningful information to analyze trends to identify areas that may need corrective action and to identify best practices. ICE officials acknowledged they do not collect the data necessary for such a mechanism and said doing so may be costly. Without assessing costs and alternatives, ICE is not in a position to select an approach that will help identify best practices and areas needing corrective action.