United States General Accounting Office

GAO

Testimony

Before the Subcommittee on Immigration, Border Security and Claims, Committee on the Judiciary, House of Representatives

For Release on Delivery
Expected at 10:00 a.m. EDT
Thursday, April 10, 2003

HOMELAND SECURITY

Challenges to Implementing the Immigration Interior Enforcement Strategy

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Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss the Department of Homeland Security's (DHS) Immigration Interior Enforcement Strategy, whose implementation is now the responsibility of the Bureau of Immigration and Customs Enforcement (BICE). As you know, this strategy was originally created by the Immigration and Naturalization Service (INS). This statement discusses the interior enforcement strategy and selected issues pertaining to its implementation and management.

In the 1990s, INS developed a strategy to control illegal immigration across the U.S. border and a strategy to address enforcement priorities within the country's interior. In 1994, INS's Border Patrol issued a strategy to deter illegal entry. The strategy called for "prevention through deterrence"; that is, to raise the risk of being apprehended for illegal aliens to a point where they would consider it futile to try to enter. The plan called for targeting resources in a phased approach, starting first with the areas of greatest illegal activity. In 1999, the INS issued its interior enforcement strategy designed to deter illegal immigration, prevent immigration-related crimes, and remove those illegally in the United States. Historically, Congress and INS have devoted over five times more resources in terms of staff and budget on border enforcement than on interior enforcement.

In my statement today, I make the following points:

- INS's interior enforcement strategy was designed to address (1) the detention and removal of criminal aliens, (2) the dismantling and diminishing of alien smuggling operations, (3) community complaints about illegal immigration, (4) immigration benefit and document fraud, and (5) employers' access to undocumented workers. These components remain in the BICE strategy.

- INS faced numerous challenges in implementing the strategy. For example, INS lacked reliable data to determine staff needs, reliable information technology, clear and consistent guidelines and procedures for working-level staff, effective collaboration and coordination within INS and with other agencies, and appropriate performance measures to help assess program results. As BICE assumes responsibility for strategy implementation, it should consider how to address these challenges by improving resource allocation, information technology, program guidance, and performance measurement.

- The creation of DHS has focused attention on other challenges to implementing the strategy. For example, BICE needs to coordinate and collaborate with the Bureau of Citizenship and Immigration Services (BCIS) for the timely and proper adjudication of benefit applications, and with the Bureau of Customs and Border Protection (BCBP) to assist in antismuggling investigations and sharing intelligence. In addition, BICE needs to assure that training and internal controls are sufficient to govern investigators' antiterrorism activities when dealing with citizens and aliens.

My testimony today is based primarily on the results of work that we have completed in recent years, namely, our February 1999 testimony on INS's efforts to identify and remove criminal aliens,[1] our April 1999 report on INS's worksite enforcement program,[2] our May 2000 report on alien smuggling,[3] our May 2001 report on the processing of immigration benefits,[4] our January 2002 report on immigration benefit fraud,[5] our March 2002 report on INS' Forensic Document Laboratory,[6] our November 2002 report on INS's alien address information[7], and our January 2003

[1]U.S. General Accounting Office, *Criminal Aliens: INS' Efforts to Identify and Remove Imprisoned Aliens Continue to Need Improvement*, GAO/T-GGD-99-47 (Washington, D.C.: Feb. 25, 1999).

[2]U.S. General Accounting Office, *Illegal Aliens: Significant Obstacles to Reducing Unauthorized Alien Employment Exist*, GAO/GGD-99-33 (Washington, D.C.: Apr. 2, 1999).

[3]U.S. General Accounting Office, *Alien Smuggling: Management and Operational Improvements Needed to Address Growing Problem*, GAO/GGD-00-103 (Washington, D.C.: May 1, 2000).

[4]U.S. General Accounting Office, *Immigration Benefits: Several Factors Impede the Timeliness of Application Processing*, GAO-01-488 (Washington, D.C.: May 4, 2001).

[5]U.S. General Accounting Office, *Immigration Benefit Fraud: Focused Approach Is Needed to Address Problems*, GAO-02-66 (Washington, D.C.: Jan. 31, 2002).

[6]U.S. General Accounting Office, *INS Forensic Document Laboratory: Several Factors Impeded Timeliness of Case Processing*, GAO-02-410 (Washington, D.C.: Mar. 13, 2002)

[7]U.S. General Accounting Office, *Homeland Security: INS Cannot Locate Many Aliens Because It Lacks Reliable Address Information*, GAO-03-188 (Washington, D.C., Nov. 21, 2002).

reports on major management challenges and program risks at the Departments of Homeland Security and Justice.[8]

In these reports we made many recommendations to improve INS operations. INS had implemented or was in the process of implementing some of these recommendations. We plan to follow up on DHS plans to improve the various programs.

Components of the Interior Enforcement Strategy

In January 1999, INS issued its Interior Enforcement Strategy. This strategy focused resources on areas that would have the greatest impact on reducing the size and annual growth of the illegal resident population. Certain criteria were used to develop the priorities and activities of the strategy. The criteria focused on potential risks to U.S. communities and persons, costs, capacity to be effective, impact on communities, potential impact on reducing the size of the problem, and potential value for prevention and deterrence. The strategy established the following five areas in priority order:

1. Identify and remove criminal aliens and minimize recidivism. Under this strategic priority, INS was to identify and remove criminal aliens as they come out of the federal and state prison systems and those convicted of aggravated felonies currently in probation and parole status.

2. Deter, dismantle, and diminish smuggling or trafficking of aliens. This strategic priority called for INS to disrupt and dismantle the criminal infrastructure that encourages and benefits from illegal migration. INS efforts were to start in source and transit countries and continue inside the United States, focusing on smugglers, counterfeit document producers, transporters, and employers who exploit and benefit from illegal migration.

3. Respond to community reports and complaints about illegal immigration. In addition to responding to local law enforcement issues and needs, this strategic priority emphasizes working with local

[8]U.S. General Accounting Office, *Major Management Challenges and Program Risks: Department of Homeland Security*, GAO-03-102 (Washington, D.C., Jan. 2003); and *Major Management Challenges and Program Risks: Department of Justice*, GAO-03-105 (Washington, D.C., Jan. 2003).

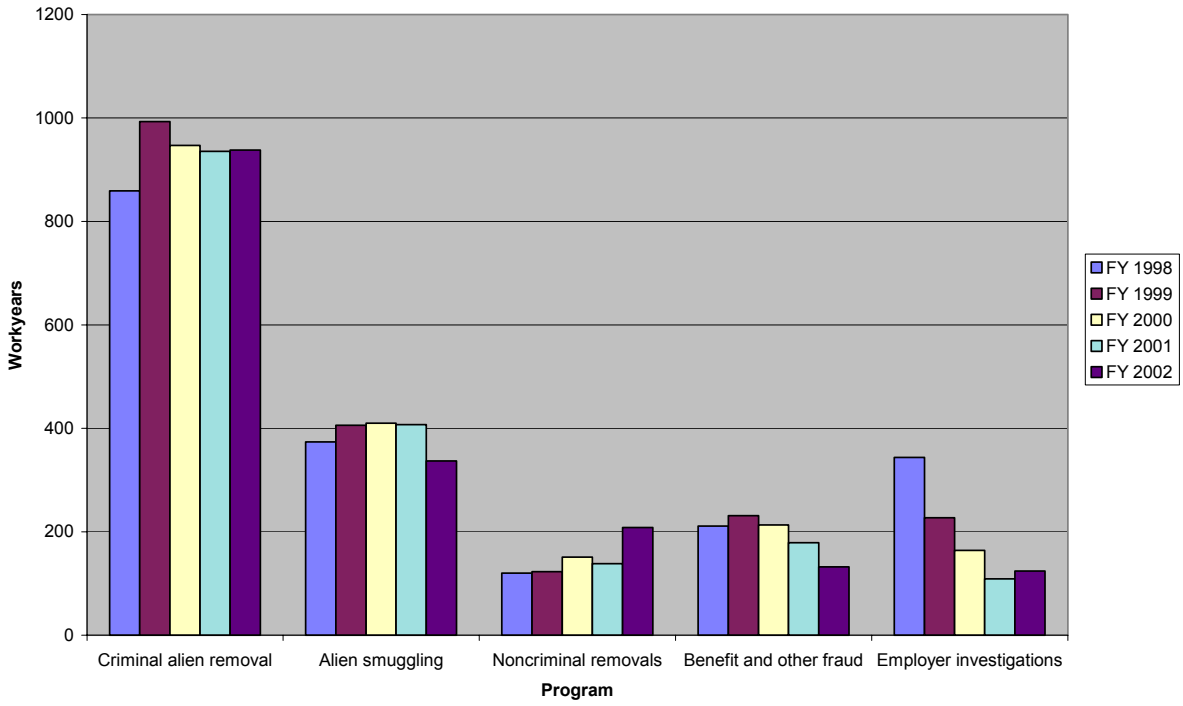
communities to identify and address problems that arise from the impact of illegal immigration, based on local threat assessments.

4. Minimize immigration benefit fraud and other document abuse. Under this strategic priority, INS was to aggressively investigate and prosecute benefit fraud and document abuse to promote integrity of the legal immigration system.

5. Block and remove employers' access to undocumented workers. The strategy emphasizes denying employers access to unauthorized workers by checking their compliance with the employment verification requirements in the Immigration Reform and Control Act of 1986. Coupled with its efforts to control smuggling activity, this effort could have a multiplier effect on access of employers to illegal workers and on the overall number of illegal residents in the country.

Figure 1 shows that INS had generally allocated its interior enforcement resources consistent with these priorities and that the workyears devoted to several of INS's interior enforcement efforts had either declined or stayed about the same between fiscal years 1998 and 2002.

Figure 1: INS Investigations Workyears



Source: GAO's analysis of INS's data.

Note: Workyear totals do not include administrative time.

Challenges to Implementing the Interior Enforcement Programs

Our work has shown that INS faced numerous daunting enforcement issues, as will BICE as it assumes responsibility for the strategy. For example, the potential pool of removable criminal aliens and fugitives numbers in the hundreds of thousands. Many are incarcerated in hundreds of federal, state, and local facilities, while others are fugitives at large across the country. The number of individuals smuggled into the United States has increased dramatically, and alien smuggling has become more sophisticated, complex, organized, and flexible. Thousands of aliens annually illegally seek immigration benefits, such as work authorization and change of status, and some of these aliens use these benefits to enable them to conduct criminal activities. Hundreds of thousands of aliens unauthorized to work in the United States have used fraudulent

documents to circumvent the process designed to prevent employers from hiring them. In many instances, employers are complicit in this activity.

Given the nature, scope, and magnitude of these activities, BICE needs to ensure that it is making the best use of its limited enforcement resources. We found that fundamental management challenges exist in several of the interior enforcement programs and that addressing them will require the high-level attention and concerted efforts of BICE.

Need for Better Staff Levels and Allocations

In several reports we noted that INS did not believe it had sufficient staff to reach its program goals. Having data on how to effectively allocate staff and placing sufficient staff in the right locations is important if BICE is to achieve program goals. Staff shortages had contributed to INS's inability to promptly remove the majority of criminal aliens after they have completed their prison sentences. In 1997 INS did not place into removal proceedings 50 percent of potentially deportable criminal aliens who were released from federal prisons and state prisons from 5 states. In 1999 we reported that, although the removal of criminal aliens was an INS management priority, INS faced the same staff shortage issues in 1997 as it had in 1995. In particular, agent attrition – about one-third of the workforce - continued to impede INS's ability to meet its program goals. INS had told us that since 1997, the attrition rates of agents in this program has stabilized and that, in fiscal year 2003, the agents from this program would be reclassified as detention removal officers, which INS believed should further help reduce attrition.

Even if INS had additional staff working in these program areas, it lacked good management information to determine how many staff it needed to meet its program goals and how best to allocate staff given the limited resources it did have. With respect to its program for removing incarcerated criminal aliens, INS told us that beginning in fiscal year 2002, the agency implemented our recommendation to use a workload analysis model. This was to help identify the resources the agency needed for its criminal alien program in order to achieve overall program goals and support its funding and staffing requests. We have not reviewed this new model to ascertain its usefulness.

With respect to alien smuggling, INS lacked field intelligence staff to collect and analyze information. Both 1998 and 1999 INS Annual Performance Plan reports stated that the lack of intelligence personnel hampered the collection, reporting, and analysis of intelligence information. Although INS's Intelligence Program proposed that each

district office have an intelligence unit, as of January 2000, 21 of INS's 33 districts did not have anyone assigned full-time to intelligence-related duties. Our ongoing work at land ports of entry shows this to be a continuing problem.

The worksite enforcement program received a relatively small portion of INS's staffing and budget. In fiscal year 1998, INS completed a total of 6,500 worksite investigations, which equated to about 3 percent of the estimated number of employers of unauthorized aliens. Given limited enforcement resources, BICE needs to assure that it targets those industries where employment of illegal aliens poses the greatest potential risk to national security. The program now has several initiatives underway that target sensitive industries.

Need for Better Information Technology

INS had long-standing difficulty developing and fielding information systems to support its program operations, and effectively using information technology continued to remain a challenge. For example, in 2002 we reported that benefit fraud investigations had been hampered by a lack of integrated information systems. The operations units at the four INS service centers that investigate benefit fraud operate different information systems that did not interface with each other or with the units that investigate benefit fraud at INS district offices. As a result, sharing information about benefit applicants is difficult. The INS staff who adjudicate applications did not have routine access to INS's National Automated Immigration Lookout System (NAILS). Not having access to or not using NAILS essentially means that officers may be making decisions without access to or using significant information and that benefits may be granted to individuals not entitled to receive them. Thus, INS was not in the best position to review numerous applications and detect patterns, trends, and potential schemes for benefit fraud.

Further, in 2002 we reported that another INS database, the Forensic Automated Case and Evidence Tracking System (FACETS), did not contain sufficient data for managers to know the exact size and status of the laboratory's pending workload or how much time is spent on each forensic case by priority category. As a result, managers were not in the best position to make fact-based decisions about case priorities, staffing, and budgetary resource needs.

With respect to the criminal alien program, in 1999 we reported that INS lacked a nationwide data system containing the universe of foreign-born inmates for tracking the hearing status of each inmate. In response to our

recommendation, INS developed a nationwide automated tracking system for the Bureau of Prisons and deployed the system to all federal institutional hearing program sites. INS said that it was working with the Florida Department of Corrections to integrate that state's system with INS's automated tracking system. INS also said that it planned to begin working with New York, New Jersey, and Texas to integrate their systems and then work with California, Illinois, and Massachusetts. We have not examined these new systems to determine whether they were completed as planned or to ascertain their effectiveness.

In 2000 we reported that INS lacked an agencywide automated case tracking and management system that prevented antismuggling program managers from being able to monitor their ongoing investigations, determine if other antismuggling units were investigating the same target, or know if previous investigations had been conducted on a particular target. In response to our recommendation, INS deployed an automated case tracking and management system for all of its criminal investigations, including alien smuggling investigations. Again, we have not examined the new system to ascertain its effectiveness.

Need for Better Guidance to Program Staff

Our review of the various program components of the interior enforcement strategy found that working-level guidance was sometimes lacking or nonexistent. INS had not established guidance for opening benefit fraud investigations or for prioritizing investigative leads. Without such criteria, INS could not be ensured that the highest-priority cases were investigated and resources were used optimally.

INS's interior enforcement strategy did not define the criteria for opening investigations of employers suspected of criminal activities. In response to our recommendation, INS clarified the types of employer-related criminal activities that should be the focus of INS investigations.

INS's alien smuggling intelligence program had been impeded by a lack of understanding among field staff about how to report intelligence information. Staff were unclear about guidelines, procedures, and effective techniques for gathering, analyzing, and disseminating intelligence information. They said that training in this area was critically needed.

Need for Better Performance Measures

INS had not established outcome-based performance measures that would have helped it assess the results of its interior enforcement strategy. For example, in 2000 we reported that while INS had met its numeric goals for

the number of smuggling cases presented for prosecution in its antismuggling program, it had not yet developed outcome-based measures that would indicate progress toward the strategy's objective of identifying, deterring, disrupting, and dismantling alien smuggling. This was also the case for the INS intelligence program. INS had not developed outcome-based performance measures to gauge the success of the intelligence program to optimize the collection, analysis, and dissemination of intelligence information.

In 2002 we reported that INS had not yet established outcome-based performance measures that would help it assess the results of its benefit fraud investigations. Additionally, INS had not established goals or measurement criteria for the service center operations units that conduct fraud investigation activities. INS's interior enforcement strategy did not clearly describe the specific measures INS would use to gauge its performance in worksite enforcement. For example, in 1999 we reported that the strategy stated that INS would evaluate its performance on the basis of such things as changes in the behavior or business practices of persons and organizations, but did not explain how they expected the behavior and practices to change. And although INS indicated that it would gauge effectiveness in the worksite area by measuring change in the wage scales of certain targeted industries, it left unclear a number of questions related to how it would do this. For example, INS did not specify how wage scales would be measured; what constituted a targeted industry; and how it would relate any changes found to its enforcement efforts or other immigration-related causes. The strategy stated that specific performance measurements would be developed in the annual performance plans required by the Government Performance and Results Act.

According to INS's fiscal year 2003 budget submission, the events of September 11th required INS to reexamine strategies and approaches to ensure that INS efforts fully addressed threats to the United States by organizations engaging in national security crime. As a result, with regard to investigating employers who may be hiring undocumented workers, INS planned to target investigations of industries and businesses where there is a threat of harm to the public interest. However, INS had not set any performance measures for these types of worksite investigations.

Challenges Faced by DHS Relating to Interior Enforcement

Since the attacks of September 11, 2001, and with the formation of DHS, a number of management challenges are evident. Some of the challenges discussed above carry over from the INS, such as the need for sound intelligence information, efficient use of resources and management of workloads, information systems that generate timely and reliable information, clear and current guidance, and appropriate performance measures. Other challenges are emerging. These include creating appropriate cooperation and collaboration mechanisms to assure effective program management, and reinforcing training and management controls to help assure compliance with DHS policies and procedures and the proper treatment of citizens and aliens.

Need for Program Collaboration/ Coordination

BICE will need to assure that appropriate cooperation and collaboration occurs between it and other DHS bureaus. For example, both the Border Patrol, now located in the Bureau of Customs and Border Protection (BCBP), and BICE's immigration investigations program conducted alien smuggling investigations prior to the merger into DHS. These units operated through different chains of command with different reporting structures. As a result, INS's antismuggling program lacked coordination, resulting in multiple antismuggling units overlapping in their jurisdictions, making inconsistent decisions about which cases to open, and functioning autonomously and without a single chain of command. It's unclear at this time how the anti-smuggling program will operate under DHS. Should both BCBP's Border Patrol and BICE's Investigations program continue to conduct alien smuggling investigations, Under Secretary Hutchinson will need to assure that coordination and collaboration exists to overcome previous program deficiencies.

The Bureau of Citizenship and Immigration Services (BCIS) is responsible for administering services such as immigrant and nonimmigrant sponsorship, work authorization, naturalization of qualified applicants for U.S. citizenship, and asylum. Processing benefit applications is an important DHS function that should be done in a timely and consistent manner. Those who are eligible should receive benefits in a reasonable period of time. However, some try to obtain these benefits through fraud, and investigating fraud is the responsibility of BICE's Immigration Investigations program. INS' approach to addressing benefit fraud was fragmented and unfocused. INS' interior enforcement strategy did not address how the different INS components that conducted benefit fraud investigations were to coordinate their investigations. Also, INS had not established guidance to ensure the highest-priority cases are investigated. Secretary Ridge will need to ensure the two bureaus work closely to

assure timely adjudication for eligible applicants while identifying and investigating potential immigration benefit fraud cases.

BICE's Intelligence Program is responsible for collecting, analyzing, and disseminating immigration-related intelligence. Immigration-related intelligence is needed by other DHS components such as Border Patrol agents and inspectors within BCBP and personnel within BCIS adjudicating immigration benefits. BICE will need to develop an intelligence program structure to ensure intelligence information is disseminated to the appropriate components within DHS's other bureaus.

Need to Reinforce Training and Internal Controls

Since the attacks of September 11, 2001, and with the formation of DHS, the linkages between immigration enforcement and national security have been brought to the fore. Immigration personnel have been tapped to perform many duties that previously were not part of their normal routine. For example, as part of a special registration program for visitors from selected foreign countries, immigration investigators have been fingerprinting, photographing, and interviewing aliens upon entry to the U.S. Immigration investigators have also participated in anti-terrorism task forces across the country and helped interview thousands of non-immigrant aliens to determine what knowledge they may have had about terrorists and terrorist activities. As part of its investigation of the attacks of September 11, the Justice Department detained aliens on immigration charges while investigating their potential connection with terrorism. An integrated Entry/Exit System, intended to enable the government to determine which aliens have entered and left the country, and which have overstayed their visas, is currently under development and will rely on BICE investigators to locate those who violate the terms of their entry visas.

All of these efforts attest to the pivotal role of immigration interior enforcement in national security and expanded roles of investigators in the fight against terrorism. It is important that BICE investigators receive training to perform these expanded duties and help assure that they effectively enforce immigration laws while recognizing the rights of citizens and aliens. It is also important that DHS reinforce its management controls to help assure compliance with DHS policies and procedures.

Concluding Observations

Having an effective interior enforcement strategy is an essential complement to having an effective border strategy. To be sure, BICE's tasks with regard to interior enforcement are considerable given the nature, scope, and magnitude of illegal activity. INS faced significant challenges in appropriately staffing program areas, providing reliable information for program management, establishing clear and consistent guidance for working-level staff to do their jobs consistent with the goals of the program, and developing outcome-based measures that would indicate progress toward the strategy's objectives. With the creation of DHS, immigration functions are now in several different bureaus that will require enhanced coordination. Addressing these issues are important if BICE is to achieve full program potential.

Mr. Chairman, this concludes my prepared statement, I would be pleased to answer any questions that you or other members of the subcommittees may have.

Contacts and Acknowledgments

For further information regarding this testimony, please contact Richard M. Stana at (202) 512-8777. Individuals making key contributions to this testimony included Evi L. Rezmovic and Michael P. Dino.