



Department of Homeland Security Office of Inspector General

Supervision of Aliens Commensurate with Risk





Homeland
Security

December 23, 2011

Preface

The Department of Homeland Security (DHS) Office of Inspector General (OIG) was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*. This is one of a series of audit, inspection, and special reports prepared as part of our oversight responsibilities to promote economy, efficiency, and effectiveness within the department.

This report addresses the effectiveness of Immigration and Customs Enforcement's decisionmaking process on whether to detain aliens in an Immigration and Customs Enforcement facility or place them in supervised release. It is based on interviews with employees and officials of relevant agencies and institutions, direct observations, and a review of applicable documents.

The recommendations herein have been developed to the best knowledge available to our office, and have been discussed in draft with those responsible for implementation. We trust this report will result in more effective, efficient, and economical operations. We express our appreciation to all of those who contributed to the preparation of this report.

A handwritten signature in cursive script that reads "Anne L. Richards".

Anne L. Richards
Assistant Inspector General for Audits

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Acronyms and Abbreviations

ATD	Alternatives to Detention
CAP	Criminal Alien Program
CBP	Customs and Border Protection
DHS	Department of Homeland Security
DQ&I	Data Quality and Integrity Unit
EARM	ENFORCE Alien Removal Module
ENFORCE	Enforcement Case Tracking System
ERO	Enforcement and Removal Operations
FY	fiscal year
ICE	Immigration and Customs Enforcement
INA	<i>Immigration and Nationality Act</i>
NCIC	National Crime Information Center
SC	Secure Communities
SDC	Specially designated country
TAC	Third Agency Check

OIG

*Department of Homeland Security
Office of Inspector General*

Executive Summary

Immigration and Customs Enforcement's mission is to protect the security of the American people by enforcing the nation's immigration and customs laws. This includes the identification, apprehension, detention, and removal of deportable aliens from the United States. Aliens undergoing removal proceedings are either held in an Immigration and Customs Enforcement detention facility or placed in one of five supervised release options. On September 30, 2009, 31,306 aliens were in detention facilities, an estimated 153,000 were incarcerated in federal prisons or state and local jails, and 1.5 million were released through a variety of supervision options. Our audit objective was to assess the effectiveness of Immigration and Customs Enforcement's decisionmaking process on whether to detain aliens in an Immigration and Customs Enforcement facility or place them in supervised release.

Immigration and Customs Enforcement generally has an effectively designed decisionmaking process for determining whether to detain or release aliens. In most of the cases we assessed, officers made reasonable decisions and complied with requirements of the *Immigration and Nationality Act*, Supreme Court decisions, and prescribed policies and procedures. However, personnel could not always provide evidence that all aliens were screened against the Terrorist Watchlist; current policy for screening aliens from specially designated countries is not effective; and personnel did not always maintain accurate and up-to-date information in the case management system. The agency has taken action to correct deficiencies in its data quality.

Immigration and Customs Enforcement officials concurred with two of our three recommendations. Appendix B contains written responses to the recommendations from Immigration and Customs Enforcement.

Background

The Immigration and Customs Enforcement's (ICE) Enforcement and Removal Operations (ERO) is responsible for the detention and removal of deportable aliens from the United States. Aliens enter the United States legally or illegally, for leisure or temporary work, or to seek lawful permanent residence. ERO has 24 field offices and 186 subfield offices, as well as the Deport Center in Chicago, Illinois.¹ ERO's operating budget for fiscal year (FY) 2009 was approximately \$2.5 billion. (See Appendix C for the allocation of ERO's budget by program.)

ERO identifies and apprehends aliens through a variety of programs and offices. The Criminal Alien Program (CAP) focuses on identifying criminal aliens incarcerated in federal, state, and local facilities and places a detainer² on criminal aliens to process them for removal before the termination of their sentences. The National Fugitive Operations Program apprehends aliens who fail to surrender for removal or comply with a removal order.

Like CAP, ICE's Secure Communities (SC) Initiative identifies aliens serving sentences in jails. SC uses fingerprint and biometric identification technologies to identify incarcerated aliens. SC categorizes crimes into three levels according to severity (see Appendix E for a list of crimes by level). ICE's Office of Investigations identifies aliens while investigating issues such as immigration crime, human rights violations, and human and other types of smuggling. In addition, Customs and Border Protection (CBP) apprehends aliens at and between ports of entry and along the nation's borders. When CBP cannot secure immediate return of an alien, it turns custody of the alien over to ERO.

Once ICE takes custody of an alien, processing agents conduct research to determine if the alien has a criminal or immigration history that would require ICE to detain the alien, and to determine if the alien is on the Terrorist Watchlist or wanted by another law enforcement agency.

The Enforcement Case Tracking System (ENFORCE), which includes the ENFORCE Alien Removal Module (EARM), is ERO's primary administrative case management system. EARM

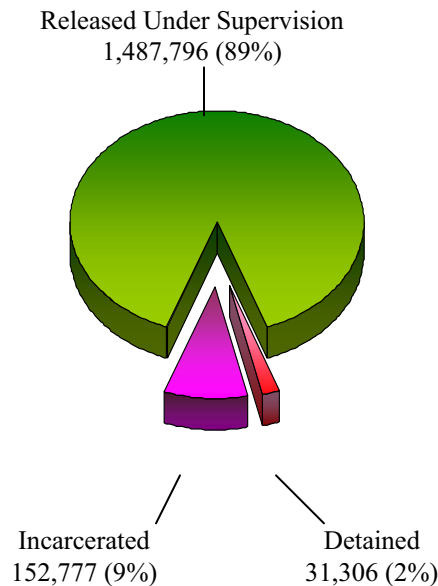
¹ The ICE Deport Center processes deportation dispositions resulting from the Bureau of Prisons, the Indiana and Illinois Departments of Corrections, and jails in the Chicago metropolitan area.

² A detainer is a document ERO uses to request that a correctional facility contact ERO prior to releasing an alien so that ERO may assume custody and begin a removal proceeding.

contains information such as the alien identification number, country of origin, criminal history, status of adjudication proceedings, and type of supervision. On September 30, 2009, ERO reported that it had 1,671,879 active alien cases classified as either detained or nondetained. Detained aliens are those held in ICE detention facilities, while nondetained aliens are criminal aliens incarcerated in federal, state, or local jails and aliens released on a form of ERO supervision. Every case, whether detained or nondetained, remains part of ERO's caseload, and ERO processes and monitors cases as they move through immigration court proceedings to conclusion.

According to EARM, ERO released the majority of these aliens to one of five supervision options: (1) Alternatives to Detention program (ATD); (2) order of supervision; (3) parole; (4) bond; or (5) order of recognizance. Figure 1 illustrates the distribution of ERO's alien population.

Figure 1: Distribution of ERO's Alien Population*
As of September 30, 2009



** ERO provided this information; we did not verify its accuracy.*

ERO's operating procedures require levels of supervision based on an alien's stage in the removal process, flight risk, or danger to the public. According to ERO, aliens in immigration proceedings but not subject to a final order of removal generally require less supervision than aliens who are subject to a final order of removal and are awaiting their actual removal. The strictest forms of released supervision are ICE's ATD programs, which use

electronic devices to monitor aliens, and orders of supervision, which require aliens to report periodically to ERO. ICE may choose to release aliens who pose a minimal risk to the community or risk of fleeing on parole, bond, or order of recognizance.

The primary law governing detention or release of aliens is the *Immigration and Nationality Act* (INA) of 1965, as amended. The INA grants aliens the right to a removal proceeding before an immigration judge and mandates that ICE detain certain aliens while the removal proceedings are in progress. The INA also defines which aliens are subject to mandatory detention during immigration proceedings. Aliens who are subject to mandatory detention include those convicted of crimes such as the following:

- Terrorism
- Aggravated felonies
- Human trafficking
- Controlled substance violations
- Money laundering

We assessed the effectiveness of ERO's decisionmaking process on whether to detain aliens in an ERO facility or place them in supervised release.

Results of Audit

ICE generally has an effectively designed decisionmaking process for determining whether to detain or release aliens. In most of the cases we assessed, ICE officers made reasonable decisions and complied with requirements of the INA, Supreme Court decisions, and prescribed policies and procedures. However, personnel could not always provide evidence that all aliens were screened against the Terrorist Watchlist; current policy for screening aliens from designated countries is not effective; and personnel did not always maintain accurate and up-to-date information in the case management system.

Screening of Aliens Prior to Release

Terrorist Watchlist

In 2005, ICE issued a policy memorandum requiring officers to conduct a search of the National Crime Information Center (NCIC) database immediately upon taking custody of any alien to determine whether the alien is a known or suspected terrorist. ICE officers perform a "wants and warrants" search through the NCIC

database to identify aliens who are wanted by another law enforcement agency and aliens who are on the Terrorist Watchlist.

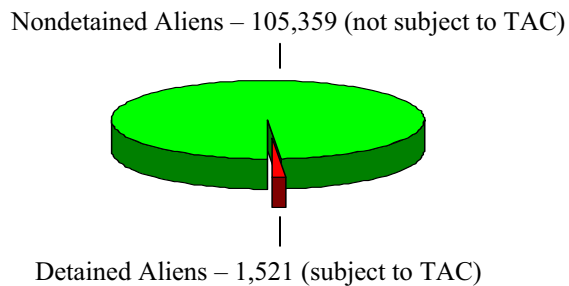
We reviewed 59 case files for aliens whom ICE released from custody to determine whether ICE screened them against the NCIC database for terrorist ties. According to NCIC records and ERO case files, ICE did not perform an NCIC check for 2 (3%) of the 59 aliens. We contacted NCIC and obtained records confirming that the aliens were not known or suspected terrorists.

Although we found only two cases in which ICE officers did not properly screen aliens, releasing a single known or suspected terrorist could have serious ramifications.

Screening Aliens From Specially Designated Countries

In addition to the Terrorist Watchlist screening, ICE uses a Third Agency Check (TAC) to screen aliens from specially designated countries (SDCs) that have shown a tendency to promote, produce, or protect terrorist organizations or their members (see appendix D for a list of SDCs). The purpose of the additional screening is to determine whether other agencies have an interest in the alien. ICE's policy requires officers to conduct TAC screenings only for aliens from SDCs if the aliens are in ICE custody. As a result, ICE does not perform a TAC for the majority of its population of aliens, which includes those incarcerated or released under supervision. Figure 2 shows the portion of aliens from SDCs who ICE held in detention.

Figure 2: Population of Aliens From SDCs³
As of September 30, 2009



We reviewed 116 case files of aliens from SDCs to determine whether ICE performed the TAC in all instances where ICE policy

³ As of September 30, 2009, ICE's database contained records for 105,359 nondetained aliens from SDCs. ICE performed a TAC screening for some of these aliens because they were in ICE custody before that date. Other Department of Homeland Security components may have screened other nondetained aliens.

requires it. ICE officers did not always adhere to the TAC policy for screening detained aliens from SDCs. ICE should have performed a TAC prior to the alien's release in 56 (48%) of these cases. ICE did not screen 4 of the 56 aliens requiring a TAC.

ICE does not have an effective policy in place to ensure that all detained aliens from SDCs undergo a TAC screening. ICE did not screen the remaining 60 (52%) aliens in our sample because ICE did not detain the aliens in custody (51), because the Department of Justice granted the aliens relief from removal proceedings (7), or because ICE apprehended them before the date the policy went into effect (2). ICE risks releasing an alien with ties to terrorist organizations if officers do not perform a TAC on all detained and nondetained aliens from SDCs.

Decisions to Detain or Release Aliens

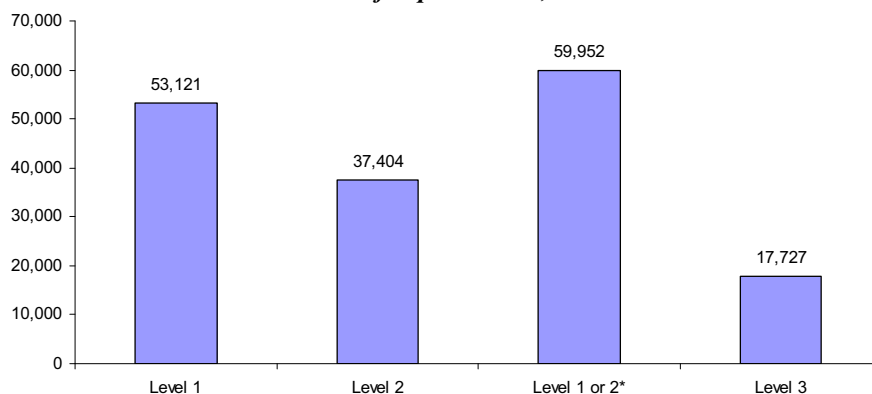
The INA grants ERO the authority to detain or release and monitor aliens who are not subject to mandatory detention. Once ERO encounters an alien, officers should screen the alien to evaluate the alien's criminal and prior immigration history and to determine if the alien is on the Terrorist Watchlist. Officers also evaluate humanitarian factors and have the option to release aliens for extenuating circumstances. For example, ICE may release aliens who are nursing mothers, sole providers, young or elderly, or have medical conditions affecting the alien or the alien's family. ERO supervisors review and approve all decisions to detain or release aliens.

In addition to the 175 cases we reviewed to assess ERO's screening process, we assessed officer custody decisions in 732 active alien cases. We selected cases where ERO released criminal aliens or detained aliens who had no criminal convictions or convictions for minor crimes. In addition, we selected cases where ERO either detained or released fugitive aliens and suspected gang members. We determined whether ERO officers detained aliens who were subject to mandatory detention, posed a threat to the public, or were likely to abscond; or released aliens with supervision that was commensurate with the risk they posed (see detailed audit methodology in Appendix A).

Criminal Aliens Not in ERO Custody

According to ERO records, on September 30, 2009, the nondetained alien population included 168,204 aliens convicted of SC Level 1, 2, or 3 crimes. Figure 3 illustrates the distribution of crime levels for released or incarcerated aliens in ERO's database.

Figure 3: Distribution of Secure Communities Crime Levels
As of September 30, 2009



* The length of a sentence determines whether the offense is a Level 1 or Level 2 crime. We did not determine the lengths of sentences in these cases.

ERO uses the SC crime levels to prioritize enforcement actions and focuses immigration enforcement on the most dangerous criminal aliens. The most dangerous criminal aliens are those charged with or convicted of a Level 1 offense, including homicide, kidnapping, and sexual assault (see Appendix E for a list of crimes by level). According to ERO records, 8,278 aliens had homicide convictions, 8,146 had sexual assault convictions, and 2,124 had kidnapping convictions. The INA mandates that ERO detain aliens convicted of these crimes during the removal process.

We reviewed 284 cases involving aliens convicted of Level 1 crimes to determine why ERO did not detain them. We also determined whether ERO provided a level of supervision commensurate with the risk the alien posed to the public. According to our analysis, 217 (76%) criminal aliens were not in ERO's custody but were in federal prisons or state or local jails serving sentences for their crimes. For example, ICE encountered an alien serving a 25-year sentence in an Arizona prison for multiple convictions, including murder, attempted murder, and weapons violations. ICE placed a detainer on the alien, requesting the prison to notify ICE before releasing the alien.⁴

⁴ While we did not assess whether ERO placed detainers on all incarcerated aliens eligible for removal, our office issued an audit report that addresses the effectiveness of ICE's identification process, which includes determining whether the alien is removable and placing a detainer when applicable. See *U.S. Immigration and Custom's Identification of Criminal Aliens in Federal and State Custody Eligible for Removal from the United States* (OIG-11-26), January 2011.

ICE released 53 (19%) criminal aliens under supervision because their countries of origin did not issue the necessary travel documents, such as a passport, within the 90-day statutory initial removal period. Although the INA mandates that ERO detain these criminal aliens during the removal process, ICE cannot detain aliens indefinitely. According to the 2001 Supreme Court decision *Zadvydas v. Davis*, ICE generally can only detain an alien beyond the initial removal period if it determines that the alien is likely to abscond if released, poses a danger to the public, or is likely to obtain travel documents in the near future. Even then, ICE may not normally detain an alien for more than 180 days if there is no significant likelihood of removal in the reasonable foreseeable future⁵.

The governments of Cambodia, Cuba, Iran, Laos, Pakistan, and Vietnam are generally uncooperative and will not issue travel documents when ERO tries to repatriate aliens to these countries (see Appendix F for a list of uncooperative countries). Since it is unlikely that aliens from these countries will obtain travel documents, ERO must eventually release most of them. For example, ERO encountered a Cambodian who had multiple convictions for child abuse and sexual assault. ERO detained the alien in 1999 after he completed his prison sentence and an immigration judge ordered his removal. However, because Cambodia did not issue the necessary travel documents, ERO released the alien into an ATD program in 2001.

The remaining 14 (5%) of the 284 cases were not in ICE's custody or under its supervision at the time of our review. For example, ICE removed an alien from the United States in July 2008, but the case was still active in ICE's case management system. ICE officers did not update information in EARM to show that the alien was deported.

Noncriminal Aliens Held in Detention

ERO has limited detention resources and prioritizes cases to detain aliens subject to mandatory detention before other aliens. ERO has the discretion to release aliens who are not subject to mandatory detention into other, less restrictive methods of supervision, such as the ATD program or bond. According to ERO records, on September 30, 2009, 15,908 noncriminal aliens were held in detention facilities. We defined noncriminal aliens as those who

⁵ The INA contains a provision permitting extended detention for "terrorist aliens." 8 U.S.C § 1226a.

did not have an NCIC⁶ code associated with their cases. An NCIC code indicates that the alien was convicted of, or charged with, a crime. We reviewed 280 cases involving aliens who, according to ICE data, did not have criminal convictions. For each case, we determined the reasons why ERO detained the alien.

According to our analysis, ERO officers exercised discretion and detained 72 (26%) noncriminal aliens in accordance with the INA, agency priorities, and prescribed policy and procedures. For example, ERO detained an alien because the alien would not comply with ICE officers and was a threat to the community. In addition, 36 (13%) detainees were unaccompanied juvenile aliens. During removal proceedings, ERO turns custody of these aliens over to the Department of Health and Human Services, which detains unaccompanied juvenile aliens in approved facilities and tries to reunite them with their parents or legal guardians.

Of the 280 cases, 170 (61%) aliens actually had criminal histories that required detention. The data that ERO provided did not contain the NCIC code indicating that these aliens were criminals. In some cases, there was a delay from the time of our data request to when officers entered the criminal history. In other cases, officers documented the criminal history in physical case files but not in EARM. For example, an alien had multiple convictions dating back to 1978. The convictions included homicide, a weapons offense, larceny, and burglary. ERO apprehended and deported the alien on six separate occasions since 1986. However, ERO did not record the criminal history until May 2010, when an officer entered 13 convictions or charges into EARM.

The remaining two cases were not in ICE custody at the time of our review. For example, ICE released an alien on bond in March 2009, but the alien still appeared in ICE's detained population on September 30, 2009.

Actions ICE Has Taken to Improve Data Quality

ICE has taken several steps to improve the quality of the data in EARM. ICE established a Data Quality and Integrity Unit (DQ&I) in 2008. The purpose of the DQ&I is to ensure that data in EARM are accurate, reliable, and timely. The DQ&I initiated efforts to identify and correct errors in EARM, and developed a guide for officers to use when processing aliens. In addition, ICE made data

⁶ The National Crime Information Center maintains a law enforcement database that defines codes representing types of crimes.

quality a priority by including it in performance evaluations for field office directors.

Low-Level Criminal Aliens Held in Detention

According to ERO records, on September 30, 2009, ERO was detaining 1,504 aliens convicted of SC Level 3 crimes. These include crimes such as immigration violations, property damage, commercialized sex offenses, and extortion (see Appendix E for a full list of SC Level 3 crimes). Although these crimes are not as egregious as Level 1 or 2 crimes, the INA requires detention for some Level 3 crimes, such as commercialized sex offenses.

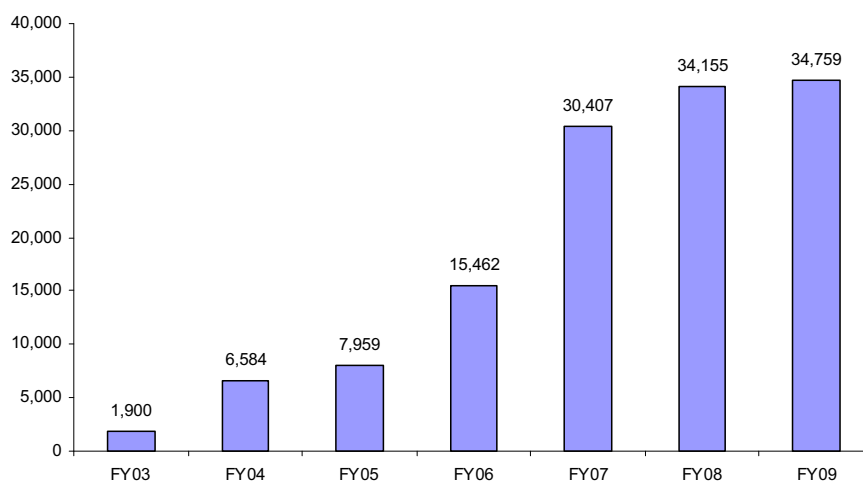
We analyzed 57 Level 3 criminal alien cases. For each case, we determined the reasons why ERO detained Level 3 criminals. According to our analysis, 45 (79%) aliens were subject to mandatory detention pursuant to requirements in the INA.

For the remaining 12 (21%) cases, the aliens were not mandatory detainees; however, officers decided to detain the aliens on the basis of risk, and in accordance with INA requirements, ICE priorities, and prescribed policies and procedures. For example, ICE detained a suspected gang member because he posed a risk to the public. According to EARM, the alien's only convictions were violation of immigration law and falsifying documents. Neither conviction required mandatory detention.

National Fugitive Operations Program

The National Fugitive Operations Program's primary mission is to locate and apprehend fugitive aliens within the United States. Fugitive aliens are those who have failed to leave after receiving a final order of removal, deportation, or exclusion; or who have failed to report to ERO after receiving a notice to appear. Arresting and removing fugitive aliens is one of ICE's priorities. The number of arrests increased from FYs 2003 through 2009, as illustrated in Figure 4.

Figure 4: Increase in Fugitive Alien Arrests
FYs 2003–2009



We reviewed 59 fugitive alien arrests made during FY 2009. For each case, we determined whether ICE detained fugitive aliens pursuant to requirements of the INA. ICE detained 47 (80%) fugitive aliens apprehended in FY 2009 and released the remaining 12 (20%). Officers exercised their discretion and released the aliens for humanitarian reasons. The following examples illustrate cases where officers exercised discretion and released fugitive aliens on an order of supervision.

- A mother who was the sole provider for two minor children
- A 71-year-old alien
- A criminal alien who suffered a broken neck in a car accident

ICE's Office of Investigations—Operation Community Shield

ICE's Office of Investigations arrested 1,785 gang members and associates, criminals, and other aliens during its 2009 Gang Surge Operation. The operation was part of the larger, nationwide Operation Community Shield, which targeted transnational street gangs involved in human smuggling and trafficking, narcotics smuggling and distribution, weapons smuggling and arms trafficking, and other crimes. According to ICE's Office of Investigations, violent transnational criminal street gangs represent a threat to public safety in neighborhoods across the United States. ICE's Office of Investigations generally recommends that ERO detain gang members to protect the public.

We reviewed 52 gang member arrests during the Gang Surge Operation in 2009. Upon arrest, ICE turned the alien gang members over to ERO custody for removal. For each case, we determined whether ERO overturned ICE's initial custody recommendations and released the aliens. Of the 52 arrests, 47 (90%) aliens were subject to mandatory detention or ICE detained them because they posed a danger to the public. ICE's Office of Investigations recommended that ERO release three (6%) aliens because they were juveniles (two) or participating in an ongoing ICE investigation (one). The remaining two (4%) aliens were incarcerated in federal prisons or local jails. We did not identify cases where ERO overturned ICE's initial custody recommendations. However, we determined that immigration judges later released six of the aliens from detention, and ERO released one into an ATD program.

Conclusion

In most of the cases we assessed, ICE officers made reasonable decisions regarding the appropriate levels of supervision and complied with requirements of the INA, Supreme Court decisions, and prescribed policies and procedures. ICE's process and procedures to screen aliens to determine the appropriate levels of supervision are generally well designed and being followed. ICE needs to enforce the requirement to screen aliens against the Terrorist Watchlist and improve its policies and procedures regarding screening aliens from SDCs and updating the information in its case management system.

Recommendations

We recommend that the ICE ERO Director:

Recommendation #1: Enforce current policy and procedures for screening aliens against the NCIC prior to release, and develop procedures to ensure that personnel comply with the policy.

Recommendation #2: Revise ICE's current policy to require officers to conduct TAC screenings for all aliens from SDCs, not just those held in ICE detention facilities.

Recommendation #3: Develop procedures to ensure that officers comply with requirements to maintain accurate and up-to-date information in EARM.

Management Comments and OIG Analysis

We obtained written comments on the draft report from ICE's Chief Financial Officer. We included a copy of the management comments in their entirety in Appendix B. The following is an evaluation of ICE's official response.

Management Response on Recommendation #1

ICE concurred with this recommendation, and will disseminate a broadcast message on April 15, 2011, to the Field Office Directors and Deputy Field Office Directors reinforcing the importance of conducting NCIC checks prior to release or removal of aliens.

OIG Analysis: We consider ICE's proposed action responsive to the recommendation and consider the recommendation resolved, but it will remain open until ICE releases this message.

Management Response on Recommendation #2

ICE did not concur with this recommendation, indicating that the agency does not have sufficient resources to screen all aliens from SDCs.

OIG Analysis: ICE's current TAC policy is ineffective because ICE does not perform a TAC for 99% of the population of aliens from SDCs. Conducting TACs is additional measure that can assist ICE in identifying individuals who may pose a threat to the United States. According to ICE, TACs have resulted in high-profile prosecutions of suspected terrorists. We consider this recommendation unresolved and open.

Management Response on Recommendation #3

ICE concurred with this recommendation and implemented two initiatives that should improve the accuracy of information in EARM. ICE updated the Alien Booking Module of the ENFORCE system to improve ICE's capability capture and track an alien's criminal history. Additionally, the ERO DQ&I implemented ongoing processes to monitor and validate data in EARM.

OIG Analysis: We consider ICE's proposed action responsive to the recommendation and consider this recommendation closed and resolved.

Appendix A

Purpose, Scope, and Methodology

This report provides the results of our work to determine the effectiveness of ICE's decisionmaking process on whether to detain aliens in a detention facility or place them in supervised release. To achieve our objectives, we conducted fieldwork at six ICE field offices (Atlanta, Chicago, Denver, Houston, Miami, and Phoenix); reviewed 907 cases; interviewed ICE headquarters officials, deportation officers, and Office of Investigations agents regarding decisions to detain or release aliens; reviewed relevant laws, regulations, standard operating procedures, and policy; identified all active cases in ICE's EARM database on September 30, 2009; reviewed prior audit reports regarding the release or detention of aliens and ICE's decisionmaking process; assessed the reliability and validity of data provided by ICE by comparing ERO Field Office documentation with data maintained in ICE's EARM; and identified and analyzed active cases where ICE—

- Screened aliens against the Terrorist Watchlist;
- Screened aliens from specially designated countries;
- Released aliens convicted of aggravated felonies;
- Detained aliens who did not have criminal convictions;
- Detained aliens convicted of lesser crimes;
- Arrested and detained or released fugitive aliens; and
- Arrested and detained or released aliens who were suspected gang members.

We conducted our audit between March and December 2010 under the authority of the *Inspector General Act of 1978*, as amended, and according to 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.

Appendix B
Management Comments to the Draft Report

Office of the Chief Financial Officer

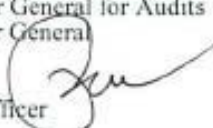
U.S. Department of Homeland Security
500 12th Street, SW
Washington, DC 20536



**U.S. Immigration
and Customs
Enforcement**

March 18, 2011

MEMORANDUM FOR: Anne L. Richards
Assistant Inspector General for Audits
Office of Inspector General

FROM: Radha C. Sekar 
Chief Financial Officer

SUBJECT: Management Response to OIG Draft, "Supervision of Aliens
Commensurate with Risk" - FOR OFFICIAL USE ONLY
(FOUO) - OIG Project No: 10-092-AUD-ICE, dated January 7,
2011

U.S. Immigration and Customs Enforcement (ICE) appreciates the opportunity to comment on the draft report. Attached is our response to each recommendation.

Recommendation #1: Enforce current policy and procedures for screening aliens against the NCIC prior to release, and develop procedures to ensure that personnel comply with the policy.

ICE Response: ICE concurs. ICE's Enforcement and Removal Operations (ERO) Headquarters Field Operations Division will disseminate a broadcast message to the Field Office Directors and Deputy Field Office Directors reinforcing the importance of our current policy regarding NCIC checks prior to release or removal. A copy of the current policy will be distributed with the broadcast message. Supervisory Detention and Deportation Officers will be responsible for ensuring that NCIC checks are completed before the aliens' release or removal. The message will be sent to the field no later than April 15, 2011.

ICE requests this recommendation be considered resolved and open pending release of the broadcast message specified above.

Recommendation #2: Revise ICE's current policy to require officers to conduct Third Agency Checks for all aliens from specially designated countries, not just those held in ICE detention facilities

ICE does not concur with this recommendation and requests it be considered closed. As ICE implements its Immigration enforcement initiatives, it must prioritize the use of its limited resources. While desirable, conducting Third Agency Checks (TACs) on the current non-detained population of more than 105,000 aliens from Specially Designated Countries (SDCs) cannot be justified in light of other workload demands. Pursuant to current ICE policy, a TAC

Appendix B

Management Comments to the Draft Report

check will be completed on these aliens prior to removal. In addition, it is current ICE policy to conduct TAC checks as appropriate on all aliens coming into ICE custody. ICE will conduct periodic reviews to ensure existing policy is being enforced.”

Recommendation #3: Develop procedures to ensure that officers comply with requirements to maintain accurate and up-to-date information in EARM.

ICE Response: ICE concurs. In a recent update to the Enforce Alien Booking Module (EABM), a Crime Entry Screen has been implemented. The mandatory screen allows officers in the field to capture the subject’s criminality at the time of apprehension. In the report, OIG cited an example where an alien had multiple convictions, including a homicide, dating back to 1978. ICE deported the alien six times since 1986, but the criminal history was not entered into the Enforce Alien Removal Module (EARM) until May 2010. The new Crime Entry Screen (CES) facilitates crime data capture and has been added to both the Enforce Alien Booking Module and the Enforce Alien Removal Module to track the crimes associated with an alien as they move through the enforcement and removal processes. These new fields will provide greater uniformity of reporting and clarity of information across ICE operational units. This new CES capability allows the users to enter crimes at the time of encounter, thus enabling ICE to track a subject’s criminality throughout the removals process and resulting in more robust reporting.

ICE’s ERO Data Quality & Integrity (DQ&I) Tiger Teams are assisting each field office with the establishment of local DQ&I teams. The ERO DQ&I teams train and provide the field DQ&I teams with the educational resources and tools necessary to monitor their own data and to prevent and correct errors. Crime Entry Screen training is a part of this effort.

ICE is taking other measures to ensure that EARM is as current as possible. In October 2010, ERO DQ&I began a new cross-validation query. ERO DQ&I now processes a monthly query of all removal cases closed as non-criminals in EARM against NCIC/NLETS that show possible conviction indicators in their NCIC criminal record. ERO DQ&I sends the results of the query to the affected field offices and requires them to update each case in EARM. This ongoing process ensures that the criminal records are accurately reflected in EARM within one month of case resolution.

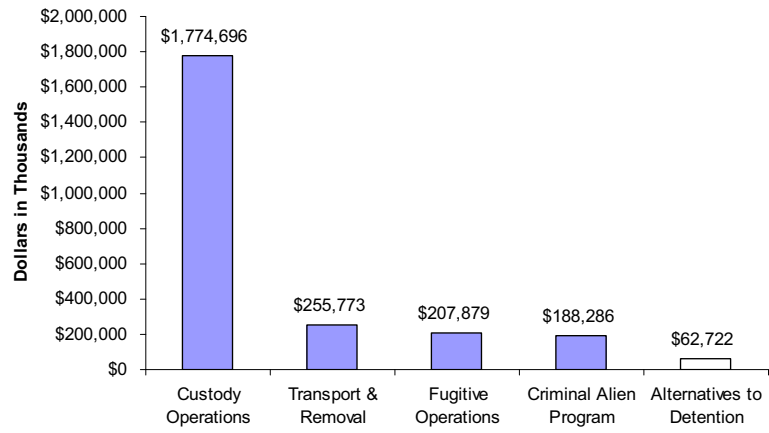
ICE believes these two initiatives will have a major impact on maintaining accurate and up-to-date information within EARM. ICE continues to seek innovative and cost-effective means to promote accuracy within EARM.

ICE requests this recommendation be considered resolved and closed.

Should you have any questions or concerns, please contact Michael Moy, OIG Portfolio Manager, at (202) 732-6263, or by e-mail at Michael.Moy@dhs.gov.

Appendix C
Allocation of ERO Resources

Allocation of ERO Resources for FY 2009



Appendix D

Specially Designated Countries (Removed)

In August of 2011, U.S. Immigration and Customs Enforcement issued a statement on its public website that said,

“The specially designated country list as described in Appendix D was created in 2003, is outdated and is being eliminated. The internal procedural guidance has been rescinded and the internal screening criteria and processes are being revised. The list was not based on any judgment that the states listed supported, sponsored or encouraged terrorism. Indeed, many of the states listed are important and committed partners of the United States in countering terrorism. As threats around the world evolve, the United States will continue to work closely with our international partners to ensure the safety and security of people around the globe”. (<http://www.ice.gov/about/offices/homeland-security-investigations/oia/screening.htm>)

In light of ICE’s statement and at ICE’s request, OIG is withdrawing Appendix D to prevent any confusion or misunderstanding.

Appendix E
Secure Communities Crime Levels

ICE uses the Secure Communities crime levels to prioritize enforcement actions and focuses immigration enforcement on the most dangerous criminal aliens. The most dangerous criminal aliens are those convicted of or charged with a Level 1 offense, including homicide, kidnapping, and sexual assault.

Level 1 Crimes	Level 2 Crimes	Level 3 Crimes
Homicide	Arson	Sovereignty
Kidnapping	Burglary	Military
Sexual Assault	Larceny	Immigration
Robbery	Stolen Vehicles	Extortion
Assault	Forgery	Damage Property
Threats	Fraud	Family Offenses
Extortion – Threat to Injure Person	Embezzlement	Gambling
Sex Offenses	Stolen Property	Commercialized Sex Offenses
Cruelty Toward Child, Wife	Damage Property w/Explosive	Liquor
Resisting an Officer	Traffic Offenses	Obstructing the Police
Weapon	Smuggling	Bribery
Hit and Run	Money Laundering	Health and Safety
Drugs (Sentence > 1 year)	Property Crimes	Civil Rights
	Drugs (Sentence < 1 year)	Invasion of Privacy
		Elections Laws
		Conservation
		Public Order Crimes

Appendix F

Uncooperative Countries

ICE provided the following list of the top 15 countries that generally will not issue travel documents when ERO tries to repatriate aliens to these countries. This list is not all-encompassing because there are other countries that pose obstacles in repatriating aliens.

- Bangladesh
- Cambodia
- Caribbean combined (Jamaica, St. Lucia, Dominica, St. Vincent and the Grenadines, St. Kitts and Nevis, Trinidad and Tobago, Antigua and Barbuda)
- China
- Cuba
- India
- Iran
- Laos
- Liberia
- Pakistan
- Republic of Congo
- Sierra Leone
- Somalia
- Vietnam
- Zimbabwe

Appendix G
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Appendix H
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