

**DHS' Fragmented
Approach to
Immigration Enforcement
and Poor Planning
Resulted in Extended
Migrant Detention during
the 2019 Surge**





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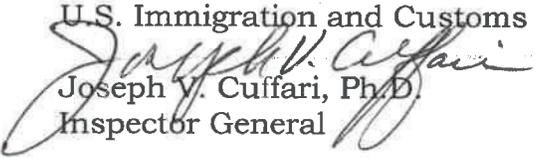
March 18, 2021

MEMORANDUM FOR: The Honorable Alejandro N. Mayorkas
Secretary
Department of Homeland Security

Troy Miller
Acting Commissioner
U.S. Customs and Border Protection

Tae Johnson
Acting Director
U.S. Immigration and Customs Enforcement

FROM:


Joseph V. Cuffari, Ph.D.
Inspector General

SUBJECT:

*DHS' Fragmented Approach to Immigration Enforcement
and Poor Planning Resulted in Extended Migrant
Detention during the 2019 Surge*

Attached for your information is our final report, *DHS' Fragmented Approach to Immigration Enforcement and Poor Planning Resulted in Extended Migrant Detention during the 2019 Surge*. We incorporated the formal comments from the Department in the final report.

The report contains six recommendations aimed at improving the Department's response to future migrant surges. The Department concurred with all six recommendations. Based on information provided in the response to the draft report, we consider all six recommendations resolved and open. Once your office has fully implemented the recommendations, please submit a formal closeout letter to us within 30 days so that we may close the recommendations. The memorandum should be accompanied by evidence of completion of agreed-upon corrective actions. Please send your response or closure request to OIGSREFollowup@oig.dhs.gov.

Consistent with our responsibility under the *Inspector General Act*, we will provide copies of our report to congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. We will post the report on our website for public dissemination.



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Please call me with any questions, or your staff may contact Thomas Kait, Assistant Inspector General for Special Reviews and Evaluations, at 202-981-6000.

Attachment



DHS OIG HIGHLIGHTS

DHS' Fragmented Approach to

Immigration Enforcement and Poor Planning

Resulted in Extended Migrant Detention during the 2019 Surge

March 18, 2021

Why We Did This Evaluation

We conducted this evaluation to identify issues CBP faced complying with the requirement to hold detainees in its custody for no longer than 72 hours during the 2019 migrant surge.

What We Recommend

We made six recommendations for ICE, CBP, and DHS to plan for surge detention capacity; standardize alien processing paperwork; inventory best practices and surge infrastructure; and identify thresholds for DHS intervention in future surges.

For Further Information:

Contact our Office of Public Affairs at (202) 981-6000, or email us at DHS-OIG.OfficePublicAffairs@oig.dhs.gov

What We Found

A key issue preventing U.S. Customs and Border Protection (CBP) from transferring detainees out of its facilities within 72 hours was insufficient Immigration and Customs Enforcement, Enforcement and Removal Operations' (ICE ERO) bed space. ICE ERO also could not increase capacity quickly enough to keep pace with CBP's apprehensions, and available bed space was not always appropriate for the aliens in need of placement. As a result, CBP's Border Patrol faced rapidly increasing numbers of detainees — especially single adults — who remained in CBP's holding facilities intended for short-term custody.

Despite worsening conditions, Border Patrol generally did not exercise its authority to release single adults from its custody. Border Patrol sectors created ad-hoc solutions to manage the growing detainee populations in its facilities, because their local response plans did not adequately account for ICE ERO's detention limitations. Furthermore, longstanding fragmentation in immigration enforcement operations between CBP and ICE ERO further exacerbated these challenges.

DHS was aware of a potential land migration surge and the challenges it would pose. DHS had both a multi-component task force in place at the border and a plan for land migration surges, but used neither during the 2019 surge. In May 2019, DHS created a headquarters coordination group to advise leadership and help manage future emergencies, like a migrant surge. However, if the Department does not develop a DHS-wide framework for surges and address day-to-day fragmentation, CBP and ICE ERO will face the same challenges in future surges.

Management Response

DHS concurred with all recommendations, which are resolved and open.



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Abbreviations

ADP	average daily population
CBP	U.S. Customs and Border Protection
C.F.R.	Code of Federal Regulations
E3	ENFORCE 3
EARM	Enforce Alien Removal Module
ERO	Enforcement and Removal Operations
GAO	U.S. Government Accountability Office
HHS	Department of Health and Human Services
IBEC	Interagency Border Emergency Cell
ICE	U.S. Immigration and Customs Enforcement
IPT	Interagency Planning Team
JIAG	Joint Incident Advisory Group
JTF-West	Joint Task Force - West
OFO	Office of Field Operations
OPS	Office of Operations
PBNS	Performance-Based National Detention Standards
SIGMA	Secured Integrated Government Mainframe Access
TEDS	National Standards on Transport, Escort, Detention, and Search
UAC	unaccompanied alien children
UCG SWB	Unified Coordination Group Southwest Border
U.S.C.	United States Code



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Background

The Department of Homeland Security is responsible for securing U.S. borders from illegal activity and regulating travel and legal trade. Within DHS, U.S. Customs and Border Protection (CBP) enforces immigration laws and safeguards approximately 6,000 miles of U.S. border, including 2,000 miles on the Southwest border. CBP's Office of Field Operations (OFO) officers manage which people and goods enter and exit the United States at the ports of entry. CBP's U.S. Border Patrol (Border Patrol) agents apprehend individuals illegally crossing the border between ports of entry. DHS' Immigration and Customs Enforcement (ICE) manages the custody of aliens in various types of detention facilities nationwide and repatriates individuals present in the country illegally.

When CBP encounters individuals without valid documents for entry into the United States either between or at ports of entry, Border Patrol agents and OFO officers apprehend them and determine whether the apprehended individuals are admissible into the United States (through a practice known as "processing").¹ If the individual is determined to be inadmissible, he or she is processed for appropriate removal proceedings and may be detained during those proceedings.² Individuals who assert they intend to apply for asylum are also subject to detention.³ CBP is responsible for short-term detention of aliens at Border Patrol stations and checkpoints and OFO ports of entry while they are being processed. If CBP determines the apprehended individuals are inadmissible,⁴ they then are referred for appropriate immigration processing, which may include removal proceedings under section 1229a⁵ (including applying for asylum),⁶ or expedited removal proceedings,⁷ consistent with the

¹ Processing includes collecting biographical and biometric information, performing immigration and criminal history checks, verifying the individual's claimed identity, and screening for acute or emergent medical issues.

² See 8 United States Code (U.S.C.) § 1225(b)(2)(A) and 8 Code of Federal Regulations (C.F.R.) § 235.3(b)(2)(iii), (b)(4)(ii), (c); see also 8 U.S.C. § 1226(a)(1). However, certain inadmissible aliens from contiguous countries (i.e., Mexico and Canada) can be returned to their country instead of being detained. See 8 U.S.C. § 1225(b)(2)(C).

³ See 8 U.S.C. § 1225(b)(1)(B)(iii)(IV); 8 C.F.R. § 235.3(b)(4)(ii). Initially, an inadmissible alien placed in expedited removal proceedings would assert a credible fear of persecution. An asylum officer would then determine whether there is a significant possibility, taking into account the credibility of the alien's statements and other information available to the officer, that the alien could establish eligibility for asylum.

⁴ Inadmissible aliens are persons who are not U.S. citizens or nationals and are determined to be inadmissible on one of several statutory grounds. See 8 U.S.C. §§ 1101(a)(3), 1182(a).

⁵ 8 U.S.C. § 1229a.

⁶ During removal proceedings under section 1229a, individuals can present evidence to an immigration judge to challenge their removal from the United States and apply for relief or protection, including asylum. *Actions Needed to Improve DHS Processing of Families and Coordination between DHS and HHS*, GAO-20-245, p. 7, Feb. 2020. See 8 U.S.C. § 1229a.

⁷ In expedited removal proceedings, the Government can order individuals removed from the United States without further hearings before an immigration judge if they either lack valid



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*Immigration and Nationality Act.*⁸ They may also be referred for prosecution⁹ in some cases, if appropriate. Generally, these proceedings for detained individuals can take anywhere from days to years from apprehension to resolution. For example, an expedited removal case with no claims of fear of returning to a contiguous country could be resolved relatively quickly. In contrast, it could take years to resolve a case where an inadmissible alien applies for asylum and undergoes removal proceedings under 1229a, including any afforded appeals.

In the instances where immigration proceedings are not resolved quickly, ICE Enforcement and Removal Operations (ERO) is responsible for the longer-term detention of inadmissible family units¹⁰ and single adults,¹¹ while the Department of Health and Human Services (HHS) Office of Refugee Resettlement arranges for the housing of unaccompanied alien children (UAC).¹² If inadmissible aliens are ultimately ordered removed, ICE ERO is also responsible for returning them to their home country. Appendix C describes the immigration process as it applies to apprehended aliens.

Border security and immigration enforcement require coordination, not only among CBP, ICE ERO, and HHS, but also with DHS' U.S. Citizenship and Immigration Services¹³ and other Federal Government stakeholders that play a role in the administration of immigration law, including:

- the Department of Justice, which prosecutes aliens, detains aliens serving sentences for immigration offenses, and adjudicates immigration cases;

entry documents or attempted to gain admission through fraud or misrepresentation unless they indicate an intention to apply for asylum, a fear of persecution or torture, or a fear of return to their home country. *Actions Needed to Improve DHS Processing of Families and Coordination between DHS and HHS*, GAO-20-245, pp. 7–8, Feb. 2020. See 8 U.S.C. § 1225(b)(1)(A)(i).

⁸ See 8 U.S.C. § 1182.

⁹ CBP may refer the alien for criminal violations, often related to attempting to evade inspection (under 8 U.S.C. § 1325), which is followed by the inadmissible alien's transfer to Department of Justice custody.

¹⁰ When CBP apprehends a child younger than 18 years with his or her parent or legal guardian, the child and parent or guardian are classified as a family unit.

¹¹ Individuals older than 18 years who are not part of a family unit are classified as "single adults."

¹² UACs are aliens younger than 18 years of age with no lawful immigration status in the United States and without a parent or legal guardian in the United States available to take physical custody of, and to provide care for, them. See 6 U.S.C. § 279(g)(2).

¹³ U.S. Citizenship and Immigration Services officials interview individuals placed in expedited removal proceedings and detained by CBP and ICE who indicate they will apply for asylum. These interviews, also called credible fear interviews, determine whether there is a possibility the detained individual would be subject to persecution or torture upon returning to his or her home country.



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- U.S. Courts, where aliens are prosecuted for charges such as illegal entry or re-entry, and if convicted receive sentences for these offenses; and
- the Department of Defense, which assists with border security operations.

Appendix D outlines the general roles of Federal agencies in border security and immigration enforcement.

CBP and ICE ERO Facilities

CBP's holding facilities are designed for short-term custody. Most CBP facilities hold detainees in locked cinderblock cells that have a metal combined toilet and sink. Facilities generally do not have beds and only some have showers. CBP's *National Standards on Transport, Escort, Detention, and Search* (TEDS), which govern the treatment of aliens in its custody, require they be segregated by age and gender, and that the capacity of CBP holding areas not be exceeded.¹⁴ TEDS standards also generally limit detention in CBP facilities to 72 hours, with the expectation that CBP will transfer family units and single adults to ICE ERO custody¹⁵ and UACs to HHS within that timeframe.¹⁶

In fiscal year 2019, ICE ERO maintained a nationwide network of more than 200 detention facilities designed for longer-term custody—i.e., detention for longer than 72 hours (see Appendix E). In contrast to CBP's short-term holding facilities, the facilities ICE ERO uses for long-term detention have medical units, and generally have kitchen and dining spaces; residential sleeping areas with showers; visitation and legal services areas, including law libraries; recreational facilities; and barber shops. Most of the facilities in ICE ERO's network receive Federal funds to hold ICE detainees, but are owned and operated by state and local governments or private companies. These facilities must adhere to the *National Detention Standards* issued in 2000 and revised in 2019, *2008 Performance-Based National Detention Standards* (PBNDS), the *2011 PBNDS (Revised in 2016)*, or the *Family Residential Standards*, issued in 2007 and revised in 2020. According to ICE, the PBNDS establish consistent conditions of confinement, program operations, and management expectations within ICE's varied detention system.

¹⁴ TEDS 4.7 *Hold Room Standards* state "under no circumstances should the maximum occupancy rate, as set by the fire marshal, be exceeded."

¹⁵ Under TEDS 4.1 *Duration of Detention*, "[d]etainees should generally not be held for longer than 72 hours in CBP hold rooms or holding facilities. Every effort must be made to hold detainees for the least amount of time required for their processing, transfer, release, or repatriation as appropriate and as operationally feasible." For DHS authority to detain individuals, see 6 U.S.C. § 211(c)(8)(B) and DHS Delegation 7030.2, *Delegation of Authority to the Assistant Secretary for U.S. Immigration and Customs Enforcement*.

¹⁶ HHS Office of Refugee Resettlement is responsible for custody of UACs. See 6 U.S.C. § 279(a).



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Although ICE ERO has bed space for approximately 40,000 detainees in its network, the availability of a bed for any given detainee is limited by certain factors. Namely, each facility is classified to hold specific types of detainees, based on demographics and security risk to protect general safety, security, and order in the facilities and the welfare of all detainees. Consistent with its detention standards, ICE ERO considers detainees' nationality, age, gender, criminal history, gang affiliation, language(s) fluency, medical history, and legal and immigration status to arrange for placement in its facilities. Detention classification includes an assessment of any factors that could raise the risk of vulnerability, victimization, or assault, for detained individuals. ICE ERO does not accept inadmissible aliens unless it can identify a vacancy at a facility aligned with that individual's classification.

Mandatory Detention and Releases

Detention of inadmissible aliens is generally required,¹⁷ but CBP and ICE also have the authority to release inadmissible aliens into the United States from their custody with a Notice to Appear¹⁸ in court at a future date.¹⁹ Aliens who are pregnant, elderly, or seriously ill may be released for humanitarian reasons. CBP and ICE also have discretion for other types of releases. However, some individuals must be detained, such as those connected with criminal activity or terrorism.²⁰ The practice of releasing inadmissible aliens into the United States after their apprehension is sometimes referred to as "catch and release." In January 2017, Executive Order 13767 directed DHS to end this practice and ensure aliens apprehended for violations of immigration law were detained pending the outcome of their immigration proceedings.²¹ To

¹⁷ Aliens who arrive in, attempt to enter, or have entered the United States without having been admitted or paroled following inspection by an immigration officer at a designated port of entry are subject to detention pending determination of their admissibility or removal. See 8 U.S.C. §§ 1225(b)(2)(A), 1226(a)(1) and 8 C.F.R. § 235.3(b)(2)(iii), (b)(4)(ii), (c).

¹⁸ A Notice to Appear is a document ICE, CBP, or U.S. Citizenship and Immigration Services issues to an inadmissible or removable alien instructing the individual to appear before an immigration judge on a certain date. The issuance of a Notice to Appear is written notice required to be given to a person in 1229a proceedings informing the individual of the nature of the proceedings, the legal authority under which the proceedings are conducted, the acts or conduct alleged to be in violation of law, the charges against the person and the statutory provisions alleged to have been violated, the person's ability to secure counsel, and other aspects of the immigration court system. See 8 U.S.C. § 1229(a).

¹⁹ In this context, release means parole. Parole allows the inadmissible alien to enter and temporarily remain in the United States pending the outcome of his or her immigration proceeding. See 8 U.S.C. §§ 1182(d)(5)(A), 1226(a)(2) and 8 C.F.R. § 212.5(b).

²⁰ See 8 U.S.C. § 1226(c).

²¹ *Border Security and Immigration Enforcement Improvements*, Exec. Order No. 13,767, 82 Fed. Reg. 8793 (Jan. 25, 2017).



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comply with this order, Border Patrol leadership set forth guidelines limiting releases in most circumstances.²²

2019 Southwest Border Surge

In 2019, DHS faced one of the largest surges of migrants crossing the Southwest border, stretching CBP operations, and straining other DHS and Federal partners.²³ As early as October 2018, CBP was monitoring large groups of migrants crossing Mexico en route to the U.S. border. As Table 1 shows, in FY 2019, CBP’s apprehensions approached 1 million, exceeding the apprehensions in the two previous FYs combined. This included approximately 527,000 people traveling as family units; 81,000 UACs; and 369,000 single adults.

Table 1. CBP Southwest Border Total Apprehensions by Year, FYs 2015 – 2019

FY	Total Apprehensions
2019	977,509
2018	521,090
2017	415,517
2016	553,378
2015	444,859

Source: Office of Inspector General (OIG) analysis of publicly available CBP apprehension data

This surge significantly impacted CBP’s border security operations. CBP described having to divert between 40 and 60 percent of its staff away from the border security mission to provide humanitarian care to families and children, impacting its ability to prevent drugs and criminals from entering the United States even though Border Patrol worked with local, state, and Federal law enforcement partners to try to address enforcement gaps. Furthermore, CBP temporarily shifted more than 700 OFO officers from ports of entry to help Border Patrol, forcing some ports of entry to close travel lanes, creating delays for pedestrians, passenger vehicles, and commercial trucks trying to cross the

²² Memorandum from Ronald Vitiello, Chief, U.S. Border Patrol to all Chief Patrol Agents and Directorate Chiefs, “Executive Orders 13767 and 13768 and the Secretary’s Implementation Directions of February 20, 2017,” Feb. 21, 2017.

²³ As of March 21, 2020, CBP has been enforcing a Centers for Disease Control and Prevention order, which has limited its processing of inadmissible aliens encountered at or between ports of entry, and has instead resulted in it immediately returning most persons to the country they entered from or to their country of origin. See “Fact Sheet: DHS Measures on the Border to Limit the Further Spread of Coronavirus,” Oct. 19, 2020, <https://www.dhs.gov/news/2020/06/16/fact-sheet-dhs-measures-border-limit-further-spread-coronavirus>.



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border.²⁴ During this time, we documented severe overcrowding and prolonged migrant detention at CBP holding facilities.²⁵

In addition to the volume of apprehensions, the location of these apprehensions posed additional strains on CBP resources. Along the Southwest border, Border Patrol agents apprehend and transport aliens from remote desert locations hundreds of miles away from Border Patrol facilities. To illustrate, the El Paso Sector has 13 stations and 6 checkpoints but is responsible for apprehensions dispersed across 125,500 square miles, including 268 miles of international border (Figure 1).

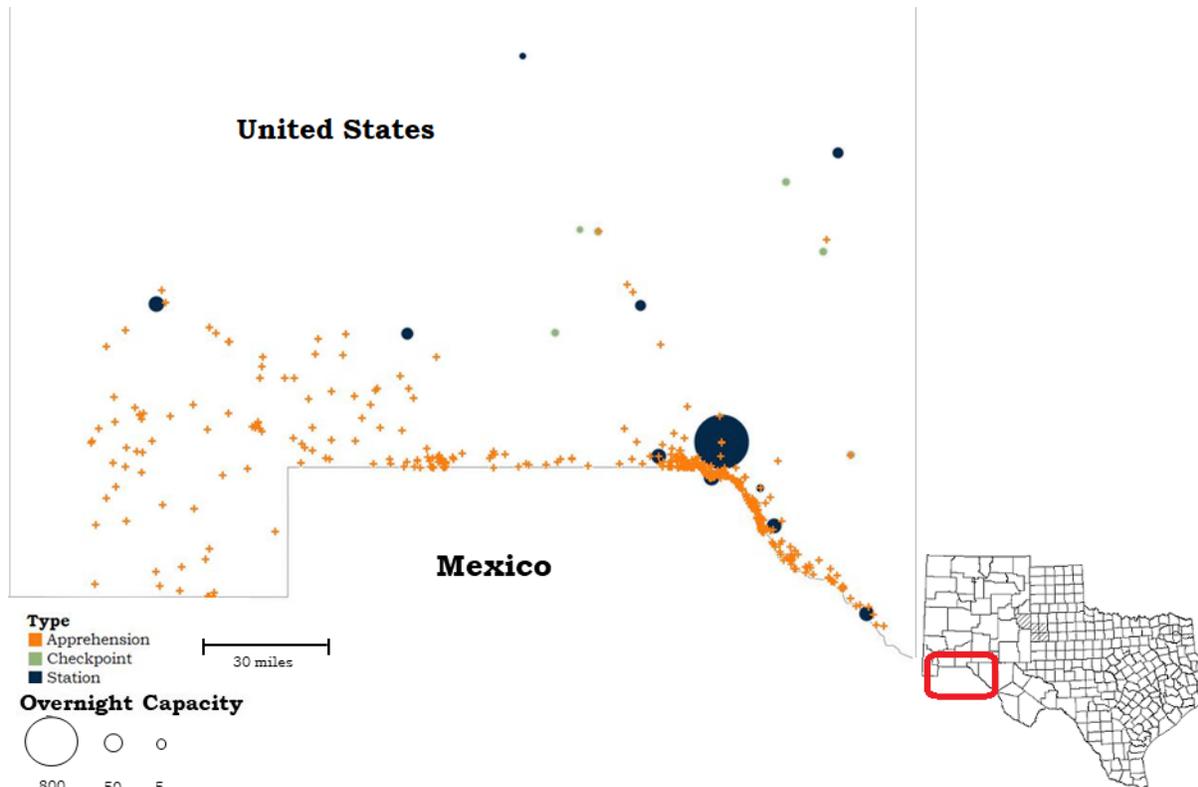
²⁴ Testimony of Brian S. Hastings, Chief of Law Enforcement Operations, U.S. Border Patrol before the U.S. House of Representatives Committee on the Judiciary on “Oversight of Family Separation and CBP Short-Term Custody Under the Trump Administration,” p. 3, July 25, 2019.

²⁵ *Management Alert – DHS Needs to Address Dangerous Overcrowding Among Single Adults at El Paso Del Norte Processing Center*, OIG-19-46, May 2019; *Management Alert – DHS Needs to Address Dangerous Overcrowding and Prolonged Detention of Children and Adults in the Rio Grande Valley*, OIG-19-51, July 2019; and *Capping Report: CBP Struggled to Provide Adequate Detention Conditions During 2019 Migrant Surge*, OIG-20-38, June 2020. OIG issues management alerts to notify senior DHS officials about conditions posing an immediate and serious threat of waste, fraud, and abuse in Department or component programs and operations.



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Figure 1. Map of El Paso Border Patrol Sector and Apprehension Locations, May 2019



Source: OIG analysis of CBP data

Prolonged Detention of Single Adults during the 2019 Surge

Despite the order to detain individuals until their immigration proceedings were complete, in accordance with several different legal requirements, DHS must generally release or transfer family units out of its custody in an expeditious manner. According to the *Flores Settlement Agreement of 1997 (Flores Settlement Agreement)*,²⁶ all minors, including minors in family units, generally must be transferred out of CBP custody within 3 to 5 days. Family units may be released, or may be transferred to non-secure, state-licensed facilities. The *Trafficking Victims Protection Reauthorization Act* introduced more stringent requirements for UACs, who generally must be transferred to

²⁶ The *Flores Settlement Agreement* establishes a nationwide policy for the detention, release, and treatment of minors in immigration custody. It favors the release of alien minors and requires those in Government custody be housed in non-secure, state-licensed facilities within 3 to 5 days. The U.S. Court of Appeals for the Ninth Circuit has held the *Flores Agreement* applies to both accompanied and unaccompanied minors in immigration custody. *The “Flores Settlement” and Alien Families Apprehended at the U.S. Border: Frequently Asked Questions* (R45297), Congressional Research Service, updated Sept. 17, 2018.



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HHS custody within 3 days.²⁷ HHS may hold UACs in non-secure, state-licensed facilities or release them to the care of adult sponsors or foster families. Family unit detention is governed by both the *Flores Settlement Agreement* and ongoing litigation related to family separation.²⁸ Specifically, minors traveling as a family unit apprehended between or at ports of entry generally cannot be held in ICE family residential centers for more than 20 days.²⁹ Furthermore, ICE ERO has limited space in its family residential centers. Across all the facilities, there are approximately 2,500 detention beds for family units. However, in May 2019 alone, during the height of the surge, CBP apprehended more than 88,000 individuals traveling as family units. Therefore, although individuals traveling as family units made up significant apprehension volume, most were released from CBP facilities relatively quickly. These restrictions do not apply to CBP's detention of single adults.

As border apprehensions increased, so did detention times among different demographic groups. In particular, single adults were detained in CBP facilities the longest. Figure 2 shows the difference in lengths of time individuals apprehended in May 2019 remained in Border Patrol facilities before being released, removed, or transferred to ICE ERO detention facilities.

²⁷ William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457.

²⁸ The *Ms. L.* class action litigation, filed by two asylum seekers who were separated from their children, created a class of adult aliens entering at or between ports of entry who are or will be detained by DHS and who are or will be separated from their minor children. A preliminary injunction in the *Ms. L.* case required all class members be reunited with their children. *The "Flores Settlement" and Alien Families Apprehended at the U.S. Border: Frequently Asked Questions* (R45297), Congressional Research Service, updated Sept. 17, 2018.

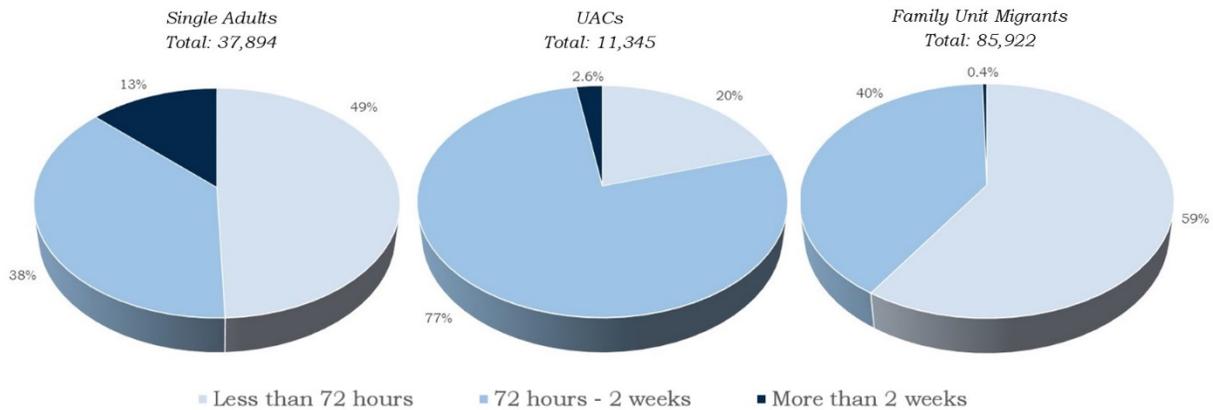
²⁹ The *Flores Settlement Agreement* generally requires minors to be released in an expeditious fashion. The timeframe can be extended up to 20 days in the event of an influx of minors. In addition, the court has determined that, for those accompanied minors held in ICE family residential centers, detention for approximately 20 days is consistent with this requirement, if the government is exercising due diligence to screen family members for reasonable or credible fear. *The "Flores Settlement" and Alien Families Apprehended at the U.S. Border: Frequently Asked Questions* (R45297), Congressional Research Service, updated Sept. 17, 2018.



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Figure 2. Length of Time in Border Patrol Custody for Different Demographic Groups Apprehended on Southwest Border, May 2019



Source: OIG analysis of CBP data

Forty percent of migrants in family units remained in Border Patrol custody between 72 hours and 2 weeks, but less than 1 percent remained longer than 2 weeks. In contrast, a similar percentage — 38 percent — of single adults were held between 72 hours and 2 weeks, but 13 percent remained in Border Patrol facilities longer than 2 weeks. That month, more than 4,900 single adults were held between 2 weeks and 100 days in CBP facilities.

Because the transfer of single adults out of CBP custody took the longest to resolve compared with other demographic groups during the surge, this report focuses on the reasons CBP held single adults in its custody longer than 72 hours. Without DHS understanding and addressing the underlying reasons for its inability to manage the migrant surge in 2019, such conditions could occur again.

Results of Evaluation

A key issue preventing CBP from transferring detainees out of its facilities within 72 hours was insufficient ICE ERO bed space. ICE ERO also could not increase capacity quickly enough to keep pace with CBP's apprehensions. Furthermore, ICE ERO's available bed space was not always appropriate for the aliens needing placement. In some instances, ICE ERO officials exercised discretion not to accept all detainees even when bed space was available. Consequently, CBP's Border Patrol faced rapidly increasing numbers of detainees — especially single adults — who remained in its holding facilities intended for short-term custody.

Despite worsening conditions, with very limited exceptions, Border Patrol did not exercise its authority to release single adults from its custody, for fear they would “lose control of the border” by inducing additional migration surges. Border Patrol created ad-hoc solutions to manage the rising detainee



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populations in its facilities because, despite its dependence on ICE ERO to accept detainees, Border Patrol's response plans did not account for ICE ERO's detention limitations. Longstanding fragmentation in immigration enforcement operations between CBP and ICE ERO further exacerbated the challenges in transferring detainees in a timely manner.

DHS was aware of a potential land migration surge and the challenges it would pose. As early as November 2018, DHS was publicly discussing the large number of migrants, at least half of which were single adults, heading to the U.S. border with Mexico. DHS had both a multi-component task force in place at the border and a plan for land migration surges, but used neither during the 2019 surge. Instead, DHS created and dissolved various interagency groups at its headquarters. We remain concerned that, if the Department does not develop a DHS-wide framework for surges and address day-to-day fragmentation, CBP and ICE ERO will face the same challenges in future surges.

Insufficient ICE ERO Resources Led to Prolonged Detention of Single Adults in CBP Facilities

ICE ERO's difficulty placing detainees in its facilities contributed to aliens remaining in CBP custody for more than 72 hours. Before ICE ERO can place a detainee in a facility, it must have funding for a bed. However, at the beginning of the 2019 migrant surge, ICE ERO was already housing more detainees than its funding permitted. When ICE ERO identified additional funding, it could not add bed space quickly enough to accept CBP's inadmissible aliens, contributing to significant overcrowding in CBP facilities. Furthermore, detainees' gender, risk classification, and medical concerns created challenges identifying bed space in appropriate facilities.

ICE ERO Did Not Have Sufficient Funding to Meet the Demand for More Detention Capacity

ICE ERO's detention capacity is determined on an annual basis. Each fiscal year, ICE ERO submits to Congress a projection of how many beds it will need, the average daily cost of a detention bed,³⁰ and the overall budget requirement for detention. For FY19, ICE ERO projected a need for 44,500 adult beds at an

³⁰ Detention bed costs include costs directly attributable to an alien in ICE custody. These costs include detention bed and guard contracts; healthcare; and other costs directly tied to implementing the detention program such as clothing; food, beverages, and meal preparation materials; detainee pay; utilities and telecommunication services; operation and maintenance of facilities; supplies and equipment; postage; and miscellaneous contractual services such as inspection contracts. *ICE FY20 Congressional Budget Justification*.



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average daily cost of \$123.86 per bed, requiring an appropriation of \$2.011 billion.

Congress then provides ICE a dollar amount for detention funding through appropriations, which generally is less than ICE's request. Congress allows ICE to supplement detention funding in two ways: 1) internally, with limited reprogramming from other ICE programs; and 2) externally, with DHS transferring funds to ICE from other DHS programs.³¹ ICE ERO's funded detention capacity can be calculated by dividing the appropriated detention funding by its average daily cost for a detention bed. ICE ERO monitors its bed usage by tracking its average daily population (ADP).³² Until February 2019,³³ ICE ERO's congressionally authorized detention capacity for single adults was 38,020. In FY 2018 adult detention funding level was \$1.9 billion. With the enactment of the FY 2019 budget on February 15, 2019,³⁴ ICE ERO's single adult detention funding was set at \$2.0 billion, increasing its congressionally authorized detention capacity for single adults to 42,775.

However, even before the increase in detention capacity in February 2019, ICE ERO was already housing more detainees than its congressionally authorized capacity allowed by reallocating funds from other ICE programs. Figure 3 shows the congressionally authorized, funded single adult detention capacity and the additional ADP for each month in FY 2019. In the first month of the fiscal year, ICE ERO averaged a single adult ADP of 43,502, exceeding its funded capacity, and its ADP kept increasing.³⁵ In fact, by the end of FY19,

³¹ Under section 503 of the *Consolidated Appropriations Act of 2019*, DHS generally was allowed to transfer up to 5 percent of any of its appropriations if it provided Congress 30 days' notice. However, any transfer could not increase ICE's Operations and Support appropriation, which includes Custody Operations, by more than 10 percent. See *Consolidated Appropriations Act of 2019*, Pub. L. No. 116-6, § 503. A transfer is the movement of appropriated funds from one account to another.

³² Average daily population measures the number of individuals in ICE custody on an average day. It can be used to describe any period (such as a week, month, or year) by dividing the number of detainees present for a facility's midnight population count during the period being measured by the number of days in the period being measured.

³³ A series of three continuing resolutions provided funding through February 15, 2019, with a 35-day appropriations lapse between December 21, 2018 and January 25, 2019. See Pub. L. No. 115-245 (October 1, 2018 through December 7, 2018); Pub. L. No. 115-298 (December 7, 2018 through December 21, 2018); and Pub. L. No. 116-5 (January 25, 2019 through February 15, 2019).

³⁴ *Consolidated Appropriations Act of 2019*, Pub. L. No. 116-6.

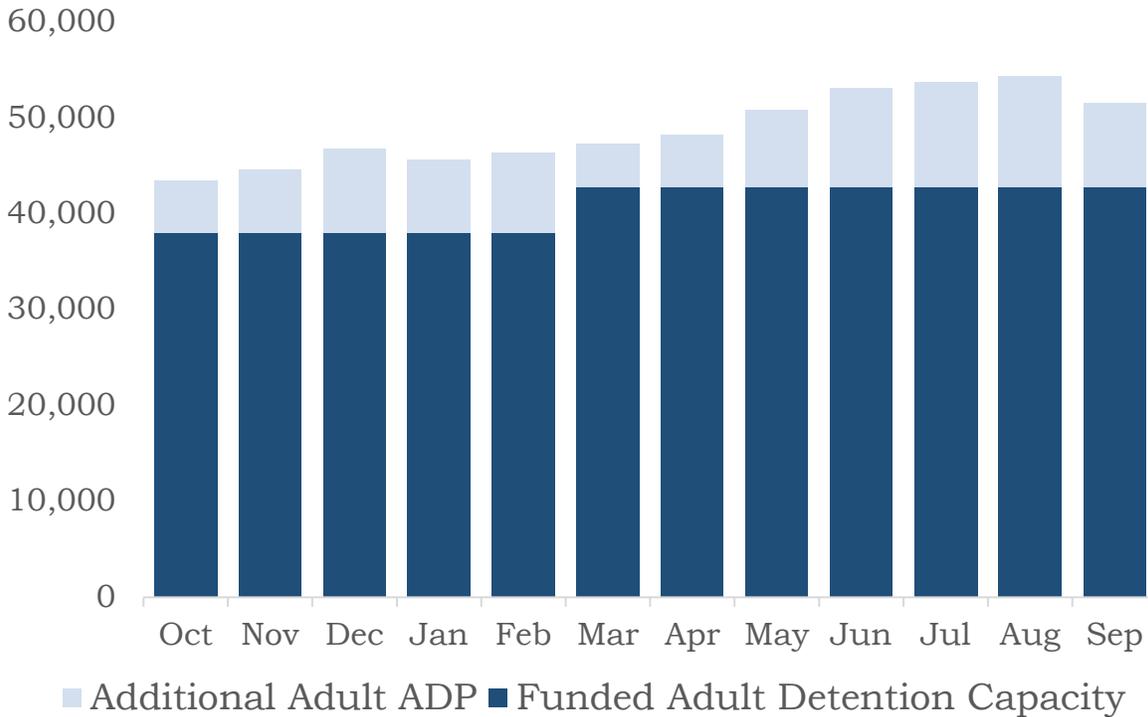
³⁵ As of November 6, 2020, the ICE detainee population was 17,163, a reduced number from normal detention levels. In March 2020, due to the COVID-19 pandemic, ICE evaluated its detainee population levels based upon the Centers for Disease Control and Prevention guidance for individuals at higher risk from COVID-19, and released more than 900 of these individuals after evaluating their immigration history, criminal record, potential threat to public safety, flight risk, and national security concerns. ICE continues to apply this assessment and, combined with continued repatriations of illegal aliens, has reduced its existing and incoming detainee population. See <https://www.ice.gov/coronavirus>.



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ICE ERO’s average adult ADP for the year was 48,850 and it had spent approximately \$2.3 billion on single adult detention, exceeding the enacted 2019 budget and authorized detention capacity for single adults.

Figure 3. Single Adult Average Daily Population in ICE ERO Facilities Compared with Its Funded Detention Capacity, by Month, FY 2019



Source: OIG analysis of ICE data

When ICE had no more funds it could transfer internally, ICE ERO could not acquire additional bed space to respond to CBP’s needs, but instead needed DHS to reallocate funds from other DHS mission areas. While this process took place, detainees continued to remain in CBP custody.

ICE ERO Added Substantial Bed Space during FY 2019 but Not Quickly Enough to Meet CBP Demand

By January 2019, following a 35-day partial government shutdown, ICE ERO recognized it needed more capacity to meet the demand for single adult detention space resulting from the surge in apprehensions at the Southwest border. At that time, ICE ERO estimated it needed to add more than 1,900 beds; these additional beds would require DHS to reallocate \$65.6 million from other programs. ICE ERO received DHS’ permission later that month and began the acquisition process to add bed space.

However, as explained by an ICE acquisition official, the process for the most common detention bed space contract typically takes 2 to 3 months to



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complete. This process includes conducting research into the location's access to medical services, determining transportation needs, and ascertaining ICE ERO staffing levels. The additional bed space is also vetted internally to verify the need is supported and the costs are in line with the market. Additionally, it can take 6 to 8 weeks to complete contractor personnel security requirements. Although ICE ERO officials explained they were able to get the contracts in place quickly — in about 6 weeks — and were placing detainees in newly acquired bed space by March 2019, this speed could not match CBP's need for detainee transfers to ICE ERO. Between the first week of January and the first week of March 2019, CBP's single adult detainee population rose by about 1,200 people, from 2,094 to 3,304.

As the surge progressed, ICE ERO continued adding bed space. Ultimately, during FY 2019, ICE ERO added 14,574 beds to its detention capacity. However, the majority of these beds — 9,884, or more than 67 percent — were added between June and September, after the height of CBP apprehensions in May. With insufficient bed space during the peak of CBP apprehensions in the spring of 2019, ICE ERO continued to reject CBP bed space requests. For example, in March 2019, ICE ERO rejected 2,632 (13 percent) of CBP's 19,520 bed space requests. By May 2019, although CBP's bed space requests increased by 33 percent (25,945 requests), ICE ERO's rejections increased by almost 150 percent to 6,531. These rejected bed space requests again resulted in detainees remaining in CBP's short-term holding facilities for longer periods.

During the surge, ICE's ongoing interior immigration enforcement mission also required using some of its detention capacity.³⁶ ICE had to balance its interior enforcement detention needs with providing detention capacity for CBP's apprehended inadmissible aliens. Even though ICE was rejecting many of CBP's requests for bed space, ICE was using an increasing majority of its detention capacity to place CBP's apprehended inadmissible aliens. To illustrate, in FY 2018, 61 percent of ICE ERO detention facility placements resulted from CBP apprehensions while 39 percent were from ICE ERO enforcement actions. However, in FY 2019, placements from CBP apprehensions increased to 73 percent of ICE ERO detention facility placements. In contrast, ICE ERO's placement of its own apprehended individuals decreased to 27 percent of detention placements.³⁷

³⁶ Interior enforcement involves ICE ERO arresting aliens within the United States for violations of U.S. immigration law. These arrests include at-large arrests based on leads, and custodial arrests when ICE ERO works with jails to identify removable aliens arrested by state and local authorities for criminal activity.

³⁷ *U.S. Immigration and Customs Enforcement Fiscal Year 2019 Enforcement and Removal Operations Report*.
www.ice.gov/sites/default/files/documents/Document/2019/eroReportFY2019.pdf



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ICE ERO Struggled to Match CBP Detainees with, and Transport Them to, Appropriate and Available Detention Space

Compounding ICE ERO's difficulty acquiring additional detention space to meet the extraordinary demands of surging CBP apprehensions, was the need for it to align the demographics, security risks, and medical concerns of inadmissible aliens with available space at the existing facilities. These criteria for placement further complicated ICE ERO's ability to find appropriate bed space for detainees. Specifically, we found ICE ERO struggled to find available beds by:

- *Gender.* ICE ERO detention standards require male and female populations be housed separately, and outline gender-specific standards for care. Starting in 2008, standards began instituting certain requirements for same-gendered staff to conduct hands-on searches of detainees and specifying certain medical care for female detainees. Facilities are designated to hold specific genders, and the contracts for these facilities are written to meet these standards. Facility designations, therefore, cannot easily be changed to meet surges in demand. For example, an official in El Paso told us that changing the designation of beds in his facilities from male to female required several steps, including hiring new contractors, changing medical capabilities, and altering the schedules of existing staff. Therefore, the facilities chose not to change their designations, even as it became more difficult to place female detainees in beds during the surge.

In May 2019 alone, at the height of the surge, CBP apprehended 6,789 single adult females. However, in FY19, ICE ERO had 6,462 detention beds assigned for single adult females across the country, most of which would have already been occupied. Furthermore, some of those beds were in facilities located far from the Southwest border, such as in Washington (with 230 beds) and New Jersey (with 109 beds). Insufficient space for females at ICE ERO facilities contributed to 65 percent of the single adult females CBP apprehended in May 2019 remaining in CBP custody more than 72 hours.

- *Security risk.* Both the NDS and the PBNDS require detainees be classified and housed according to security risk. This risk is based, in part, on criminal history. Detainees who have a history of felonies or violent crimes such as assaults are considered high risk and cannot be housed with detainees with no criminal history or a history of non-violent crimes. Changing the risk classification mix of detainees could require facilities to change employee work schedules or hire new staff because higher risk detainees require additional supervision. In a few instances, ICE ERO was able to rearrange bed spaces within facilities already



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designated for certain mixes of risk classification. For example, in the El Paso Processing Center, ICE ERO started placing aggravated felons in smaller barracks to leave more beds available in the larger barracks for non-criminal detainees. However, this solution could not be applied on a broad scale.

ICE ERO bed space was further constrained by the need to separate known gang members from one another. For example, in El Paso, staff told us that they separated gang members to avoid conflict or organized disruptions. Therefore, even if a facility had space for a certain risk classification of detainees, introducing detainees with the same risk classification, but from rival gangs of those already housed would create security problems at the facility.

- *Medical concerns.* The PBNDS require facilities to isolate detainees who have contracted contagious diseases. Disease outbreaks among detainees posed considerable constraints on bed space availability since it resulted in beds becoming unavailable if an infectious disease quarantine was in effect. Also, according to ICE ERO medical staff we interviewed, when a detainee has a serious medical condition, ICE ERO needs to ensure that a particular facility with an available bed can provide appropriate treatment. Therefore, before ICE ERO accepts a detainee from CBP, the alien has to be medically “screened,” meaning ICE ERO sought to identify any infectious diseases or serious medical or mental health conditions. While ICE ERO’s caution in accepting ill detainees prevented the medical services in its facilities from being overburdened, it contributed to aliens remaining in CBP facilities, which were considerably less equipped to provide adequate medical treatment or quarantine sick individuals. Additionally, Border Patrol staff told us that agents were required to stay with aliens at local hospitals, reducing Border Patrol’s manpower at stations.

ICE ERO Exercised Discretion When Accepting Certain Detainee Groups, Leaving Other Groups in CBP Custody for Longer Periods

Adding to this challenge, ICE ERO personnel also used discretion when deciding whether to accept certain groups of aliens into their facilities, even if there was available bed space. As described in the Background, ICE ERO had the authority not to detain certain inadmissible aliens. According to ICE ERO, because it has limited detention capacity, which it has to balance between interior immigration enforcement and CBP’s apprehensions, it focused its resources on aliens “who represent a threat to public safety, for whom



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detention is mandatory by law, or who may be a flight risk.”³⁸ ICE ERO used its authority to prioritize which of CBP’s apprehended aliens it placed in its detention facilities, preferring to accept those whom it believed would be moved quickly or posed less risk. Examples we heard of ICE ERO exercising this discretion included:

- ICE ERO prioritized placing Guatemalan, Honduran, and Salvadorian aliens since they could be enrolled in programs that made their repatriation easier.³⁹ Our analysis of CBP apprehension data from May 2019 determined detainees from these countries spent, on average, 100 hours in Border Patrol custody. In contrast, other non-Mexican detainees⁴⁰ spent an average of 215 hours in CBP custody — more than twice as long.
- An ICE ERO field office rejected any alien younger than 25 years because of previous errors in incorrectly identifying juvenile aliens as adults and exposing ICE ERO to liability for holding a juvenile in an adult facility. Our analysis of May 2019 CBP apprehension data revealed, on average, detainees 17 years old and younger spent less than 86 hours in Border Patrol custody; individuals 25 years and older spent, on average, 110 hours in custody. However, individuals between the ages of 18 and 24 spent, on average, 141 hours in custody — almost 30 to 64 percent longer than other groups.
- ICE ERO personnel limited the numbers of aliens from certain countries in facilities to avoid creating a security risk. Our analysis of length of time in custody in May 2019 showed Cuban nationals spent almost four times longer in CBP custody (388 hours) than Guatemalan (94 hours) or Honduran detainees (100 hours).

ICE ERO’s inability to quickly increase its detention capacity to accommodate the large volume of aliens CBP was apprehending played a major role in CBP keeping single adult detainees in custody for more than 72 hours. As the crisis was unfolding, ICE ERO did not have a surge plan to increase additional detention capacity quickly. A senior ICE ERO official explained ICE ERO did not have any formal surge plan because, in the past, ICE ERO has been able to identify extra beds when needed with local partners, but has never had to acquire 10,000 beds in a short period of time as happened during the 2019

³⁸ *U.S. Immigration and Customs Enforcement Fiscal Year 2019 Enforcement and Removal Operations Report.*

www.ice.gov/sites/default/files/documents/Document/2019/eroReportFY2019.pdf

³⁹ Under these programs, source country consulates issue electronic travel documents so ICE could repatriate detainees who did not have physical travel documentation.

⁴⁰ Mexican nationals can be repatriated quickly because their removals do not generally require flights.



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surge. Without a pre-existing capacity for surge bed space, delays caused by ICE ERO's funding shortages, the lengthy acquisition process, and inherent difficulties involved with placing different demographics of aliens in appropriate beds at this scale would most likely occur again if ICE ERO has to acquire bed space for large numbers of inadmissible aliens on short notice.

CBP's Border Patrol Detained Single Adults for Extended Times in Crowded Conditions Despite Having the Authority to Release Them Due to Border Security Concerns

With apprehensions continuing to rise, and ICE ERO increasingly refusing CBP detainees due to insufficient bed space, CBP faced the extraordinary challenge of managing unsustainable numbers of detainees in its short-term facilities across the Southwest border. This rise in apprehensions affected Border Patrol more acutely than OFO. Despite worsening conditions, Border Patrol generally did not exercise its authority to release single adults from its custody, for fear they would "lose control of the border." This resulted in Border Patrol detaining single adults in short-term facilities well in excess of the 72 hours generally allowed by TEDS standards.

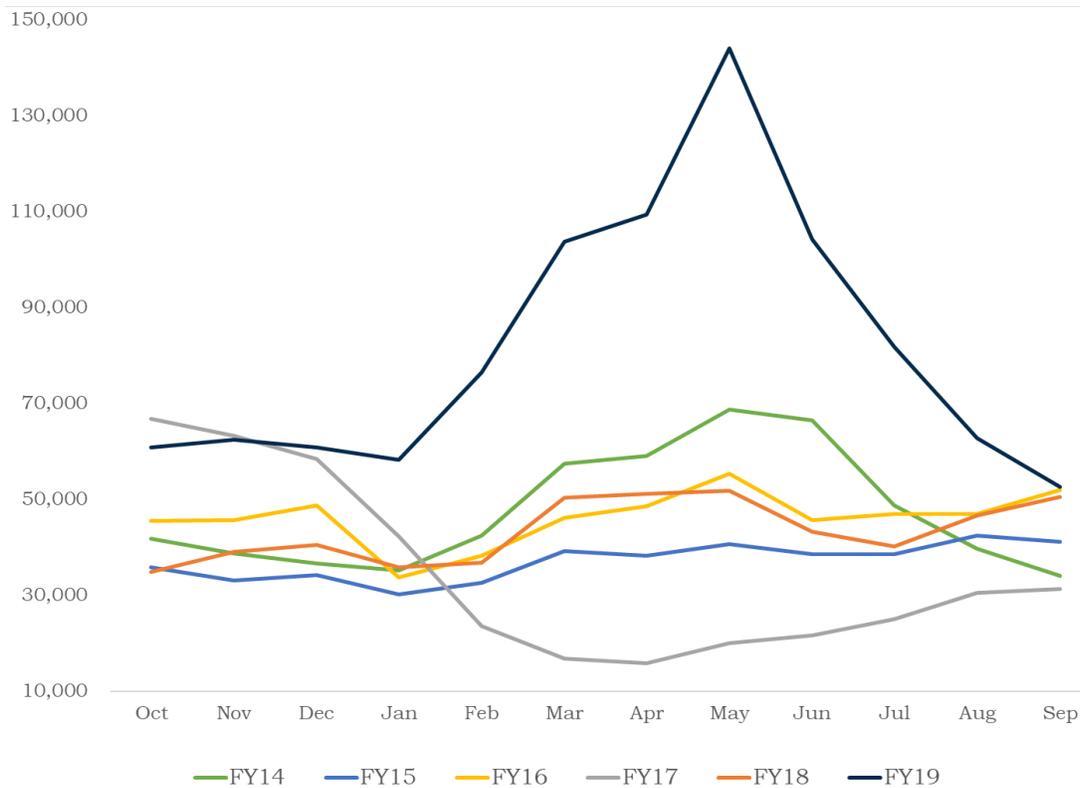
Border Patrol Faced an Extraordinary Challenge with Increasing Numbers of Detainees, while OFO Was Less Affected

During the surge, CBP's apprehensions rose to unprecedented levels. As Figure 4 shows, in January 2019 the number of migrants attempting to cross the Southwest border both through and between ports of entry without proper documentation began to increase compared to previous years' levels. At the height of the surge in May 2019, CBP apprehended more than 144,000 migrants, almost triple the number apprehended in May 2018.



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Figure 4. CBP Apprehensions along the Southwest Border, FY19 Compared with the FY14 through FY18 Average



Source: OIG analysis of CBP publicly available data

After sustained increases in apprehensions for months, by June 2019, CBP held more than 19,000 individuals in its custody. For context, CBP facilities across the Southwest border have an estimated capacity of 16,000 for short-term holding, based on providing 7 square feet of space per detainee. If longer-term holding and sleeping space are required, the space required for each detainee increases to 50 square feet, reducing the estimated capacity to less than 5,000.

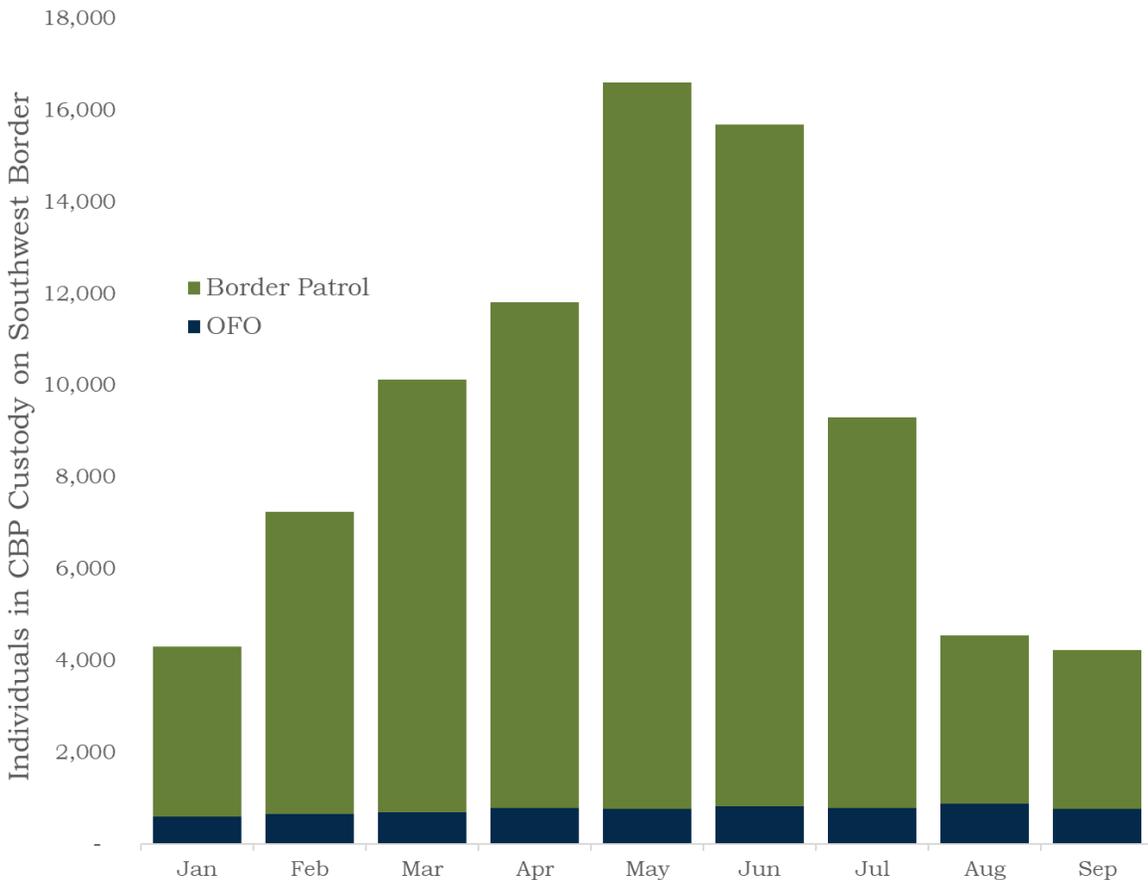
Within CBP, this increase in inadmissible alien custody levels affected Border Patrol more acutely than OFO. Border Patrol, which cannot control the number of individuals its agents encounter crossing illegally between ports of entry, made the majority of these apprehensions. In contrast, OFO limits the number of individuals entering through the port with a practice known as “queue management.”⁴¹ As Figure 5 shows, the result was an increase of detainees in custody, overwhelmingly in Border Patrol facilities.

⁴¹ During queue management, an OFO officer stands at the international boundary line of a pedestrian footbridge, such as those between the United States and Mexico, and intercepts migrants before they can cross into U.S. territory. If an individual does not have facially valid



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Figure 5. Comparison of Border Patrol and OFO Average Weekly Custody Numbers on the Southwest Border during the 2019 Surge



Source: OIG analysis of CBP data

Border Patrol Did Not Exercise Its Authority to Release Single Adults Due to Concerns of Losing Control of the Border

As described in the Background, by law CBP has the discretion to release single adult detainees from its custody.⁴² However, to comply with Executive Order 13767 and supplemental direction from Border Patrol leadership, with very limited exceptions, Border Patrol did not release single adults during the

travel documentation, the OFO officer checks with the port of entry staff to determine if they are accepting more individuals for processing before allowing the individual to proceed. We describe this practice in more detail in *Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy*, OIG-18-84, Sept. 2018, as well as our recently issued report *CBP Has Taken Steps to Limit Processing of Undocumented Aliens at Ports of Entry*, OIG-21-02, Oct. 2020.

⁴² Aliens may be released pending a decision on whether they are to be removed from the United States. Releases are generally justified on a case-by-case basis if there is no security risk or risk of absconding for aliens with serious medical conditions, pregnant women, and aliens “whose continued detention is not in the public interest.” 8 C.F.R. § 212.5(b).



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surge despite increasingly dangerous overcrowding conditions in its facilities. Border Patrol officials believed the ability to control the border depended on penalties for individuals violating immigration laws. Because family units can only be detained for short periods of time before generally being released into the United States while they await the outcomes of immigration proceedings, and UACs must be transferred to HHS, Border Patrol considered single adults the only group for whom it could sufficiently enforce the law. In May 2019, the Chief of the Border Patrol testified that, of the three demographic groups — UACs, family units, and single adults — single adults were the demographic group to whom it could have the “greatest ability to deliver consequences” for violating immigration laws.⁴³ The Chief further explained that with ICE ERO running out of room to detain single adults during immigration proceedings, the greatest concern was that Border Patrol would have to begin releasing single adults. DHS also expressed these concerns in its requests to Congress for assistance for addressing the migrant crisis, stating the Department was “witnessing the real-time dissolution of the immigration system.”⁴⁴

We must maintain the ability to deliver consequences or we will lose control of the border.

- Chief, Border Patrol

Despite public pronouncements of concern that single adult releases would undermine immigration laws, Border Patrol was willing to accept such releases — so long as they were performed by ICE ERO. CBP senior officials, both in the field and at headquarters, told us detention and removal decisions were ICE ERO’s responsibility. Border Patrol wanted ICE ERO to accept the single adults from its facilities and make decisions on whether to detain or release them. However, as previously discussed, ICE ERO does not accept physical custody of detainees from CBP for whom it does not have bed space. In some locations, ICE ERO released detainees directly from Border Patrol facilities by accepting custody of the detainee on paper and processing the release.

ICE ERO also questioned why CBP could not perform the releases since CBP had the same legal authority to release single adults into the United States as ICE did. ICE ERO officials explained to us that Border Patrol was better equipped to release detainees because of its additional manpower, compared to ICE ERO’s limited staffing, which was already stretched due to the surge. For

⁴³ Testimony of Carla Provost, Chief, U.S. Border Patrol, *At the Breaking Point: the Humanitarian and Security Crisis at our Southern Border*, Hearing before the Subcommittee on Border Security and Immigration of the Senate Committee on the Judiciary, May 8, 2019.

⁴⁴ Letter from DHS Secretary Nielsen to the House Committee on Homeland Security, March 28, 2019.



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example, according to its FY 2019 enforcement reporting, ICE ERO's interior immigration enforcement activities decreased by 10 percent due to reallocating resources, including approximately 350 ICE ERO officers, to assist with responding to the migrant surge on the southwest border. An ICE official explained ICE ERO's entire El Paso jurisdiction had only 149 positions, some of them vacant, which were fewer personnel than the number of staff at just one of Border Patrol's 11 stations in El Paso.⁴⁵ With such limited staff, ICE ERO asserted it could not manage the additional workload for releases during the surge, not even for family units.

My point is not to badmouth, just note there has been mission creep...we do what used to be ERO's job.

- CBP Division Chief

DHS Headquarters was aware of the increasingly unsustainable number of single adults in Border Patrol facilities, as well as the dispute regarding whether ICE ERO or Border Patrol should perform the releases. Nevertheless, DHS did not make any decisions or direct either party to take any actions to alleviate the situation.

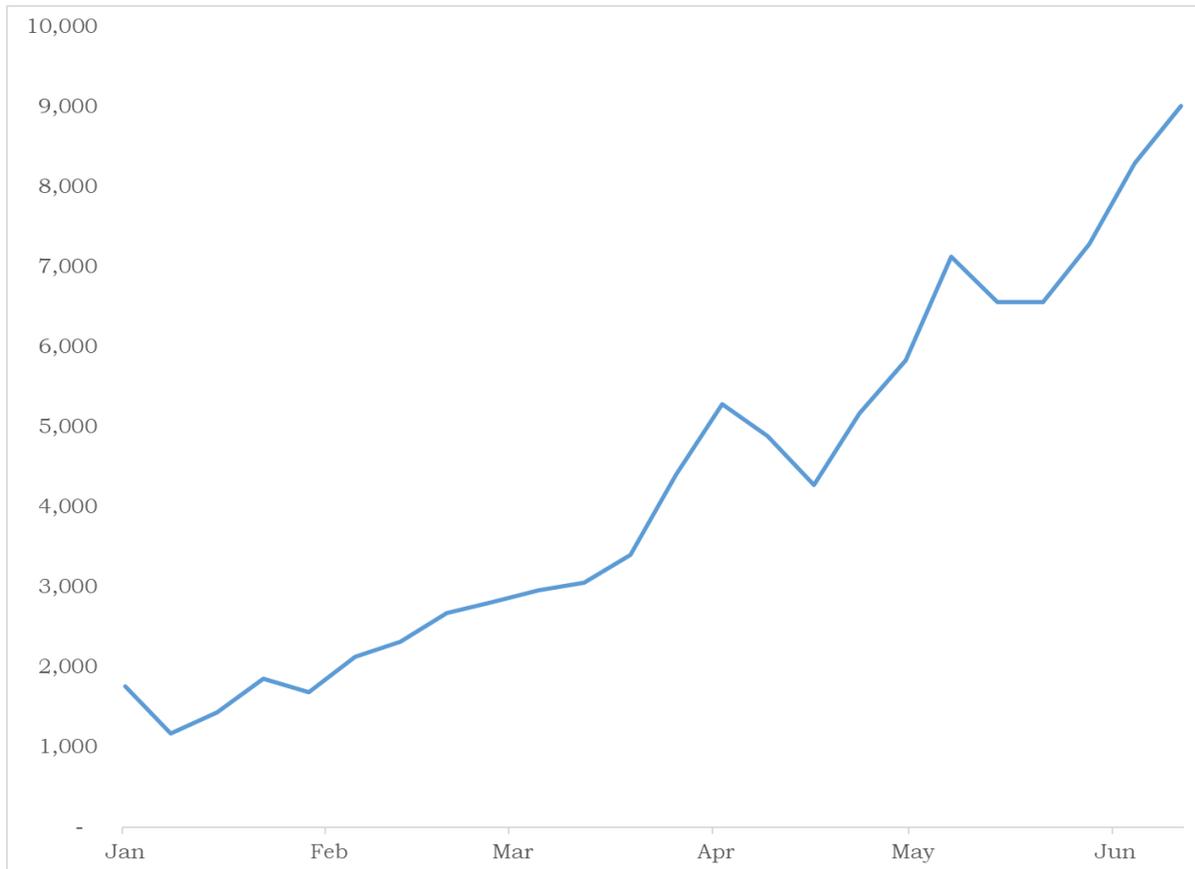
In very limited cases, Border Patrol released single adults from its custody without first transferring them to ICE ERO, and, except during the height of the surge, these releases were individually approved by Border Patrol headquarters. Of the 30,172 single adults it apprehended in June 2019, Border Patrol released 217, and only 99 of these releases were for reasons related to lack of space as opposed to humanitarian or law enforcement reasons. With ICE ERO unable to accept single adults it had no room for, and Border Patrol not releasing them, the result was a steady increase in the number of single adults in Border Patrol custody, as shown in Figure 6.

⁴⁵ The Border Patrol Sector in El Paso has 11 stations and 7 checkpoints.



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Figure 6. Number of Single Adults in Border Patrol Custody on the Southwest Border during the 2019 Surge



Source: OIG analysis of CBP data

Border Patrol had a responsibility to enforce immigration laws, but was still required to make every effort to transfer single adults out of its short-term detention facilities within 72 hours. Border Patrol facilities are not properly resourced for longer term detention, and these migrants were denied or delayed access to services mandated during long-term detention under applicable ICE standards, such as beds, regular hot meals, showers, access to legal materials, and routine medical care. Given that long-term detention of single adults is not CBP’s area of responsibility, CBP and ICE must actively coordinate plans on accepting detainees during future surges, and DHS has to provide greater leadership and assistance to CBP in such crisis situations.



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Border Patrol Sectors Created Ad-Hoc Solutions to Manage Detainees ICE ERO Could Not Accept

With ICE ERO not accepting many of the apprehended aliens, Border Patrol had limited options to quickly respond to rising custody numbers in its facilities. To manage the populations in custody, Border Patrol:

- Set up temporary staging spaces outside its stations as holding and processing shelters. For example, during the height of the surge, the McAllen Station’s apprehensions peaked at nearly 2,000 a day. McAllen Station’s capacity is 382; in May 2019, it had 3,000 people on the grounds. The station closed off its garage, and eventually set up four 20-foot by 65-foot tents in the parking area with fencing around the tents. Each tent was air conditioned and contained portable toilets. As seen in Figure 7, the station also added plumbing to its parking area to service the toileting facilities.

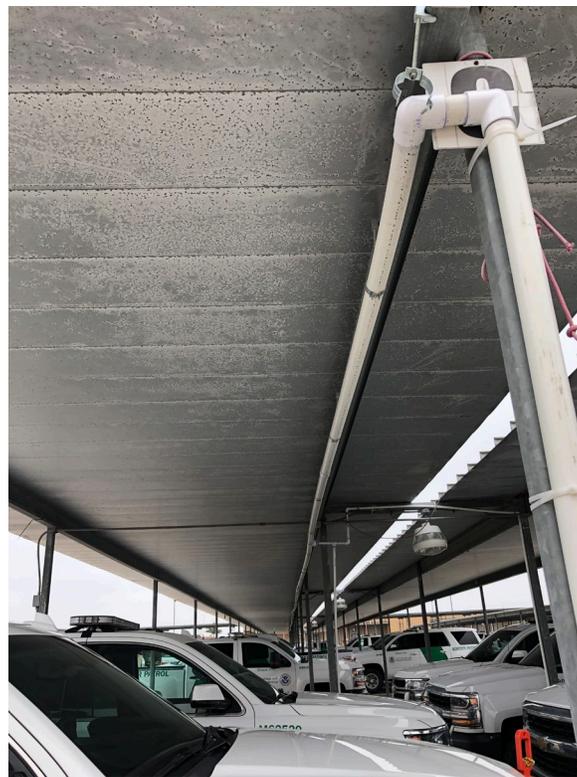


Figure 7. Plumbing Added to McAllen Station Parking Structure during 2019 Surge

Source: OIG

Sector personnel created mobile carts that allowed processing in the tents outside of the stations (see Figure 8). They also created mobile processing units for the backs of vehicles, which allowed agents



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encountering large groups of migrants far away from stations to start processing individuals while waiting for transportation. This reduced processing times, and helped provide a more accurate assessment of detention space needs.



Figure 8. Mobile Processing Cart at McAllen Station

Source: OIG

- Moved sick individuals to one location to allow other stations to maximize their holding spaces. Like ICE ERO, Border Patrol has to segregate sick detainees based on their illness. In Rio Grande Valley, Border Patrol turned its Weslaco Station into a “sick bay.” The station also developed an electronic system for stations in its sector to request bed space for sick individuals. The electronic system streamlined the process instead of sending emails back and forth, and ensured required information was included so Weslaco could prepare to accept the detainee. Collected information included the detainee’s demographics; any diagnoses made by the sending facility or a health care provider; whether the individual had his or her medicine and documents; and whether the detainee had already been processed.



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- Examined existing contracts for service and supplies and worked with local officials to secure or increase access to reusable tents, netting, water, paper shredding, increased trash pick-ups, toothbrushes, and other amenities. For example, the McAllen Station's contract for 2 portable toilets to be cleaned once a week was revised to allow for 30 portable toilets to be cleaned twice a day. In addition, Border Patrol used supplemental funds to purchase shower stalls, air conditioning units, and other temporary facilities to manage surge conditions. Border Patrol officials said, with the equipment on hand, they could recreate the footprint at their facility to manage future surge conditions within 24 to 48 hours.

In contrast to the quick changes that could be made with existing facilities, Border Patrol remained constrained in its ability to put up temporary facilities quickly to manage the populations. Border Patrol officials expressed frustration in their inability to contract for temporary facilities timely and use their existing facilities as needed. Specifically, in July 2019, Border Patrol received supplemental funding to address its operational needs for the surge, and contracted for a temporary soft-sided tent in Tornillo, TX, to hold single adults. The contract to build and run the facility for the first 3 months cost \$47 million, and it began holding adults in August 2019, but by this time the bulk of the surge had passed. The U.S. Government Accountability Office reported the facility never held more than 66 adults on any day, which was significantly less than the 2,500-person capacity it was contracted to hold.⁴⁶ One Border Patrol official told us the facility was 6 months too late to address overcrowding of single adults.

The use of other temporary facilities was not flexible, preventing Border Patrol from utilizing additional capacity in the most optimal way. During the surge, Border Patrol secured soft-sided tents to temporarily hold inadmissible alien family units. The first set of soft-sided tents cost \$37 million and opened in May 2019 in Donna and El Paso, TX. However, while family units were released from CBP custody in large numbers during the surge, the single adult population in custody continued to increase. A Border Patrol official told us when the family units' volume subsided, CBP was not allowed to use the soft-sided tents to move single adults out of overcrowded brick-and-mortar facilities because the contracts for the soft-sided tents were written specifically for families.⁴⁷

While the surge was overwhelming, Border Patrol sectors and stations created unique solutions to try to meet the challenge. During our fieldwork in

⁴⁶ *Border Security: U.S. Customs and Border Protection's Management of a Temporary Facility in Texas Raised Concerns about Resources Used*, GAO-20-321R, p. 4, Mar. 11, 2020.

⁴⁷ This is also possibly due to the facilities' open air design which limits the populations that can co-mingle.



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November 2019, we asked whether CBP had conducted a comprehensive review of the measures all the sectors and field offices had taken to manage the surge, including the various measures just described. A Border Patrol official told us that all the sectors were in the process of conducting a bottom-up review of training gaps, transportation issues, and methods to quickly expand capacity but the review was not yet complete. We also asked whether solutions, such as the mobile processing carts and the medical request system, had been shared with other sectors during the surge, and Border Patrol officials said they had not. Conducting after-action reviews to identify any successes and missteps is a best practice in incident management and should be done as soon as possible after an event.⁴⁸ Border Patrol must take stock of both the best practices and infrastructure it acquired during the 2019 surge, and incorporate these into planning and staging for the next migrant surge.

CBP's and ICE ERO's Fragmented Approach to the Migrant Surge Hindered an Efficient Response

Agencies that conduct operations in a fragmented and uncoordinated way “waste scarce funds..., and limit the effectiveness of the [F]ederal effort.”⁴⁹ Despite interdependent mission sets, CBP and ICE ERO often operate independently of each other. Under normal conditions, the resulting inefficiencies and fragmentation are manageable and migrants are transferred timely. However, under surge conditions this disharmony exacerbated an already challenging situation and contributed to prolonged detention in CBP's short-term facilities. First, CBP and ICE ERO did not create response plans together. Second, other long-standing friction points such as different prioritization of detainees for transfer from CBP to ICE ERO; inconsistent standards for immigration paperwork and handling of property; separate transportation contracts; and disparate information systems added to the challenge.

CBP Plans Did Not Account for ICE ERO's Long-Term Detention Space Limitations

When planning responses to risk, agencies are expected to consider all significant interactions with external parties and changes within their external environment.⁵⁰ Border Patrol officials recognized the risks a land migration surge would pose; namely that the surge could overwhelm processing capabilities, affect available detention space, and divert critical personnel and

⁴⁸ G0402 - *National Incident Management System and Incident Command System Overview for Senior Officials (Executives, Elected, and Appointed)* - Resources for Senior Officials, Federal Emergency Management Agency, pp. 39–40, May 2019.

⁴⁹ *2013 Annual Report: Actions Needed to Reduce Fragmentation, Overlap, and Duplication and Achieve Other Financial Benefits*, GAO-13-279SP, pp. 9–10, Apr. 2013.

⁵⁰ *Standards for Internal Control in the Federal Government*, GAO-14-704G, p. 38, Sept. 2014.



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resources away from enforcement operations along the border. However, although Border Patrol officials developed surge response plans in early 2019, they focused only on CBP actions and did not include ICE ERO as an active partner in managing this problem.

Border Patrol sectors developed sector-specific response plans to the migrant surge, which included trigger points to induce certain operational responses within the sector. While most plans used the number of apprehensions as their trigger points (such as 1,000 apprehensions a day for 5 consecutive days), other plans included trigger points based on the size of groups amassing near the Southwest border; Border Patrol's holding space capacity; and aliens' time in custody. These plans detailed how Border Patrol stations in each sector would address the migrant surge, including:

- deploying Border Patrol personnel to different parts of the sectors;
- increasing transportation;
- reaching out to the Department of Defense for assistance;
- incorporating other CBP offices such as the intelligence unit and foreign relations branch; and
- using public relations and communications strategies.

However, these plans did not fully reflect Border Patrol's dependence on ICE ERO to accept detainees or detail the role ICE ERO would play in a response. We reviewed 18 planning documents from 9 Border Patrol sectors created to respond to the increasing numbers of apprehensions on the Southwest border. Only two of the nine sectors detailed their expectations of ICE ERO, while most made general references to coordination and requesting assistance. For example, in the El Centro Sector plan, Border Patrol only references ICE ERO as a "friendly-force" from whom it would request assistance with its holding facilities. It did not integrate ICE ERO as a major partner from the same department responsible for longer term detention. When outlining specific responsibilities, under "Detention" the plan stated the sector would use "Border Patrol stations to maximize detention capabilities. However, current detention capabilities...are substantially inadequate for 11,000+ migrants." In light of this limitation, instead of including enhanced outreach with ICE ERO to find detention solutions, the plan stated the sector would establish a temporary, large-scale detention facility, potentially in Calexico, CA,

ERO kept saying they had no beds, but neither do we and we are adjusting. What are you going to do to adjust operationally to deal with the situation?

*- Assistant Chief
Patrol Agent*



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and request resources such as cots, portable toilets, and shower trailers.

The sector plans also did not explicitly consider ICE ERO's resource limitations and how those limitations would affect Border Patrol. Only two sectors acknowledged detainee transfer to ICE ERO as a constraint or necessary for the success of their operations. For example, the San Diego Sector's plan explicitly recognized the sector's reliance on other agencies for an effective response to a mass migration event, stating "there is a need associated with partner agencies...to increase their logistical operations and overall operational tempo in direct support of our enforcement actions and humanitarian response to mass migration events. Tasks immediately associated with any...response(s) are intake, medical screening, and custody transfer operations for U.S. Marshalls [*sic*] (USMS)/Bureau of Prisons (BOP), Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO), Health and Human Services (HHS) Office of Refugee and Resettlement (ORR)." However, these were not explicitly considered in their plan as a serious risk to their operations. In fact, while eight of the nine sectors' plans, including San Diego, included explicit descriptions of the risks associated with the mass migration, none of them included the risk of ICE ERO potentially running out of detention space.

In another example, the Rio Grande Valley Sector's response plan assumed continuous transfers to both ICE ERO and HHS. Local CBP officials that we spoke to stated they attempted to incorporate ICE ERO's limited detention capacity as one of the trigger points instead of solely Border Patrol apprehensions. According to local Border Patrol officials in the Rio Grande Valley Sector, Border Patrol headquarters instructed them not to include ICE ERO, because ICE ERO is not under CBP control. The original sector-specific plan envisioned its maximum trigger point as 1,000 apprehensions a day for 10 consecutive days. However, by March 2019, Rio Grande Valley Sector surpassed this trigger point, apprehending a total of 33,763 individuals or an average of 1,089 a day, and the numbers kept rising, ultimately peaking at an average of 1,607 a day in May 2019. Furthermore, the sector had almost 5,000 individuals in its short-term holding facilities, which was 63 percent more than their designed capacity. Local CBP officials we interviewed said they updated the plan in May 2019, and again attempted to incorporate ICE ERO detention capacity as a trigger point to adjust Border Patrol's operations. They told us that Border Patrol headquarters again removed the language specifying ICE ERO detention capacity as a trigger point.

Fragmentation and Inefficiencies Further Exacerbated the Challenge

In addition to the inadequate planning, pre-existing internal friction points added another layer of difficulty to CBP and ICE ERO's response to the migrant surge. Disparities and inconsistencies in several aspects of immigration



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enforcement operations, navigable when apprehensions are low, were magnified during the surge.

- *Prioritization.* CBP officials told us they prioritize the transfer of detainees they have had in custody the longest. On the other hand, ICE ERO prioritizes which aliens it can accept based on the efficiency of movement and the impact on detention space. For example, ICE ERO may focus on placing detainees of similar ages and genders at specific locations based on their limitations on bed space. However, without an overarching prioritization strategy that both agencies agreed to, Border Patrol and ICE ERO adhered to their own philosophies and expressed frustration with each other during the surge.
- *Immigration Paperwork.* Both CBP and ICE ERO officials reported instances of delayed custody transfer because ICE ERO rejected CBP's paperwork as incorrect, incomplete, or missing. ICE ERO officials cited instances where CBP paperwork had an incorrect address for an immigration court, did not include information necessary to support the charge of inadmissibility, or was missing signatures. CBP officials noted no standard exists for what is included in an alien file;⁵¹ and so each Border Patrol sector has adapted its processing requirements to meet local ICE ERO field office standards. During the surge, this fragmented set of paperwork requirements became especially problematic as Border Patrol agents on detail from other sectors, including detailees from the Northern border, faced a steep learning curve meeting local ICE ERO immigration paperwork requirements.
- *Property.* Paperwork accounting for property was another challenge. In some instances, CBP discarded property such as backpacks and luggage, and in others, property was misplaced when detainees were transferred to and from court for prosecution. ICE ERO officials said that under its detention standards and the requirements of ICE ERO's charter repatriation flights, ICE ERO must account for detainee property. During the surge, ICE ERO was reluctant to accept detainees who were missing property or a property inventory, further slowing down the transfers from CBP to ICE ERO.

We are not all on the same page, even if we are on the same team.

- ICE Assistant Field Office Director

⁵¹ Alien files contain records of aliens as they move through the immigration process. The files may contain visas, photographs, affidavits, immigration forms, and correspondence.



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- *Transportation.* Both CBP and ICE ERO use separate contracts and vendors⁵² to transport detainees. CBP did not have sufficient transportation capacity in its contract to meet its needs during the surge, and did not have the flexibility to increase that capacity — such as increasing the number of buses and drivers — due to overtime limits and background check timeliness. Furthermore, CBP could not generally rely on ICE ERO to assist with transportation issues because of their separate contracts and arrangements. CBP officials explained that, in some instances, at the local level, Border Patrol and ICE ERO would work around these constraints by making “handshake agreements,” but these were informal and inconsistent arrangements.
- *Information systems.* DHS’ challenges with streamlining its existing information systems are not new. In November 2019, OIG recommended improvements to DHS information technology systems.⁵³ These challenges were apparent during the surge as transferring detainees from CBP custody to ICE ERO or HHS custody involved agents and officers using four distinct data management systems whose interconnectivity varied:
 - Border Patrol agents processed aliens using ENFORCE 3 (e3).
 - Border Patrol agents also used the HHS Unaccompanied Alien Children Portal (UAC Portal) for requests for UAC bed space.
 - CBP officers processed inadmissible aliens through a different system, the Secured Integrated Government Mainframe Access (SIGMA).
 - ICE ERO field officers used the Enforce Alien Removal Module (EARM) to track ICE custody decisions, detention, and release or removal. Some information from e3, SIGMA, and EARM, such as biographical and biometric information, and apprehension and case processing dates, transferred to ICE’s centralized Enforcement Integrated Database.

⁵² For alien transportation services, CBP utilizes G4S while ICE separately contracted with Trailboss Enterprises and MVM Incorporated.

⁵³ In *DHS Lacked Technology Needed to Successfully Account for Separated Migrant Families*, OIG-20-06, Nov. 2019, DHS OIG recommended the DHS Chief Information Officer work with ICE and CBP to ensure system interoperability to improve cross-component information sharing and coordination on border security operations. DHS concurred with this recommendation, and agreed to implement corrective actions by July 31, 2020.



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Compounding the difficulty of using multiple data systems to track movement of detainees in the immigration process, key communication between the various responsible parties still required extensive emails and numerous phone calls. For example, CBP requested custody transfers to ICE by email. To do so, CBP generated manifests (lists of detainees ready for transfer), and sent them by email to ICE ERO. Similarly, OFO's SIGMA was not connected to the HHS UAC Portal, and requests for bed space were made by email. ICE ERO, which facilitated UAC transfers to HHS, had read-only access to the UAC Portal, and tracked UACs separately in EARM. Questions about detainee bed space requirements and medical conditions were resolved by email or telephone. As ICE ERO officials explained, key documents, including alien files, detainee travel and identity documents, and property receipts, were transferred in hard copy, and some documents were lost in transfer.

Usually...it's stations making phone calls or emails to ICE for bed space. It is a back and forth approval process. However, at scale it becomes a nightmare.

- CBP Chief Patrol Agent

One area where CBP and ICE appeared to have worked together effectively is in their coordination with consulates to repatriate aliens without travel documents. During the surge, CBP and ICE initiated a pilot program with Northern Triangle countries⁵⁴ to repatriate aliens without travel documents based on electronic nationality verification.⁵⁵ Under the program, aliens in expedited removal proceedings and with no medical concerns were repatriated directly from Border Patrol custody to their native countries. ICE Air Operations provided charter flights scheduled daily based on need and availability. The first flights to El Salvador and Guatemala were on July 25 and 26, 2019, respectively; the first flight to Honduras was scheduled in September 2019. Between July 25 and September 30, 2019, CBP and ICE repatriated 8,618 inadmissible aliens under this program. Multiple CBP and ICE ERO officials in the field considered the program, as well as other initiatives such as the Migrant Protection Protocols,⁵⁶ key to reducing the numbers of aliens in their custody.

⁵⁴ The Northern Triangle of Central America includes El Salvador, Guatemala, and Honduras.

⁵⁵ CBP and ICE already had agreements with these countries to repatriate aliens lacking physical travel documents. Under the previous initiatives, consulate officials would interview the aliens and issue electronic travel documents within 24 hours. Under the new initiative, aliens were allowed to travel without any travel documents.

⁵⁶ DHS announced the implementation of the Migrant Protection Protocols on December 20, 2018. Under the program, certain applicants for admission arriving on land to the United



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The fragmented day-to-day operations between CBP and ICE ERO and their effects on immigration enforcement are not new. In 2005, our office reported that:

- ICE ERO prepared detention capacity and staffing without insight or forecasts from CBP on apprehensions;
- CBP developed apprehension initiatives without insight into whether ICE ERO had the detention and repatriation capacity to manage the apprehended aliens; and
- any productive relationships are local in nature.⁵⁷

Furthermore, in 2018, at least two of CBP's internal working groups noted the day-to-day inefficiencies in paperwork, technology, and transportation we outlined previously.⁵⁸ The 2019 migration surge highlighted the continued need for DHS' unity of effort and the breakdowns that still occur when, despite the best efforts of personnel on the ground, policies, plans, and processes are not coordinated. CBP and ICE ERO need to reduce their fragmented approach at the border during normal operations so that the system does not break down during a surge.

DHS Did Not Implement a 2015 Plan Created to Respond to Migrant Surges and Did Not Develop New Department-level Operational Solutions

Although the increase in apprehensions during the 2019 surge was significant, migrant surges at the Southwest border are not unprecedented. In 2014, the United States experienced a surge of migrants crossing its Southwest border, including approximately 60,000 UACs. In response, DHS created a multi-component task force and a land migration plan to guide a whole-of-DHS response to such an event. However, during the 2019 migrant surge, DHS used neither the task force nor the land migration plan and did not adopt a new plan. Instead, as conditions worsened at the border, DHS leadership created and dissolved a series of multi-component groups at headquarters, none of which exerted command or control over CBP or ICE. Although DHS has since created a coordination group to advise leadership and to help manage homeland security emergencies, it is unclear whether a headquarters

States from Mexico — illegally or without proper documentation — may be returned to Mexico to wait there for the duration of their removal proceedings. Memorandum from Secretary Kirstjen Nielsen, "Policy Guidance for Implementation of the Migrant Protection Protocols," Jan. 25, 2019.

⁵⁷ *An Assessment of the Proposal to Merge Customs and Border Protection with Immigration and Customs Enforcement*, OIG-06-04, Nov. 2005.

⁵⁸ *Rio Grande Valley Sector Centralized Processing Center (CPC) Evaluation*, July 2018; *CBP – ICE Joint Facilitated Offsite Session Output Briefing*, Oct. 2018.



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group, as opposed to an integrated multi-component operational team at the border, would best address future migrant surges.

Before 2019, DHS Had a Task Force and a Plan to Address Land Migration Surges

In the wake of the 2014 surge, DHS took two notable steps toward managing future migration emergencies. The Department:

Created Joint Task Forces. In November 2014, then-Secretary Jeh Johnson created three pilot Joint Task Forces (JTF)—JTF-East, JTF-West, and JTF-Investigations.⁵⁹ The JTFs were established to enhance DHS’ “unity of effort” in securing the Southwest border and maritime approaches, and drew permanent and rotational staff from multiple DHS components, including Border Patrol, ICE ERO, the U.S. Coast Guard, and the U.S. Citizenship and Immigration Services.⁶⁰ Of the three, JTF-West was responsible for securing the southern land border between the United States and Mexico. JTF-West conducted activities through four corridors: (1) the South Texas Corridor; (2) the New Mexico/West Texas Corridor; (3) the Arizona Corridor; and (4) the California Corridor. This model was meant to enable components to execute targeted border security operations in each corridor. In 2016, Congress authorized DHS to formally establish the JTFs.⁶¹

Created a Land Migration Plan. In August 2015, Secretary Johnson signed the *DHS Southwest Border Land Migration Contingency Plan* (“Plan”). The Plan was created “to ensure DHS has a comprehensive and synchronized approach to prevent and respond to an attempted land migration surge.” The Plan provided a framework for DHS to recognize and respond to increased migration through a cycle of five phases (Figure 9). Key elements of the Plan included:

- JTF-West leading and coordinating DHS activities during a land migration surge along the Southwest border;
- roles and responsibilities for DHS entities, including CBP, ICE, and the Executive Staff of the DHS Secretary;

⁵⁹ Per the September 2020, *DHS Joint Task Force Modernization Plan*, JTF-West and JTF-Investigations were dissolved effective October 1, 2020. All resources, including personnel, funds, equipment and facilities, were returned to the source components.

⁶⁰ JTF-West also had staff from CBP’s OFO, Air and Marine Operations, and Office of Intelligence; ICE’s Homeland Security Investigations; DHS’ Office of Intelligence and Analysis and Countering Weapons of Mass Destruction Office; and the Department of Defense. The Federal Emergency Management Agency also had a billet but was not staffed.

⁶¹ *National Defense Authorization Act for FY 2017*, Pub. L. No. 114–328, § 1901 (2016).



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- phases defined by requirements for increased oversight, direction, and sheltering capacity with trigger points based on the number of migrants in custody;⁶² and
- phase changes directed by the DHS Secretary or Deputy Secretary but informed by recommendation of the JTF-West and component leadership.

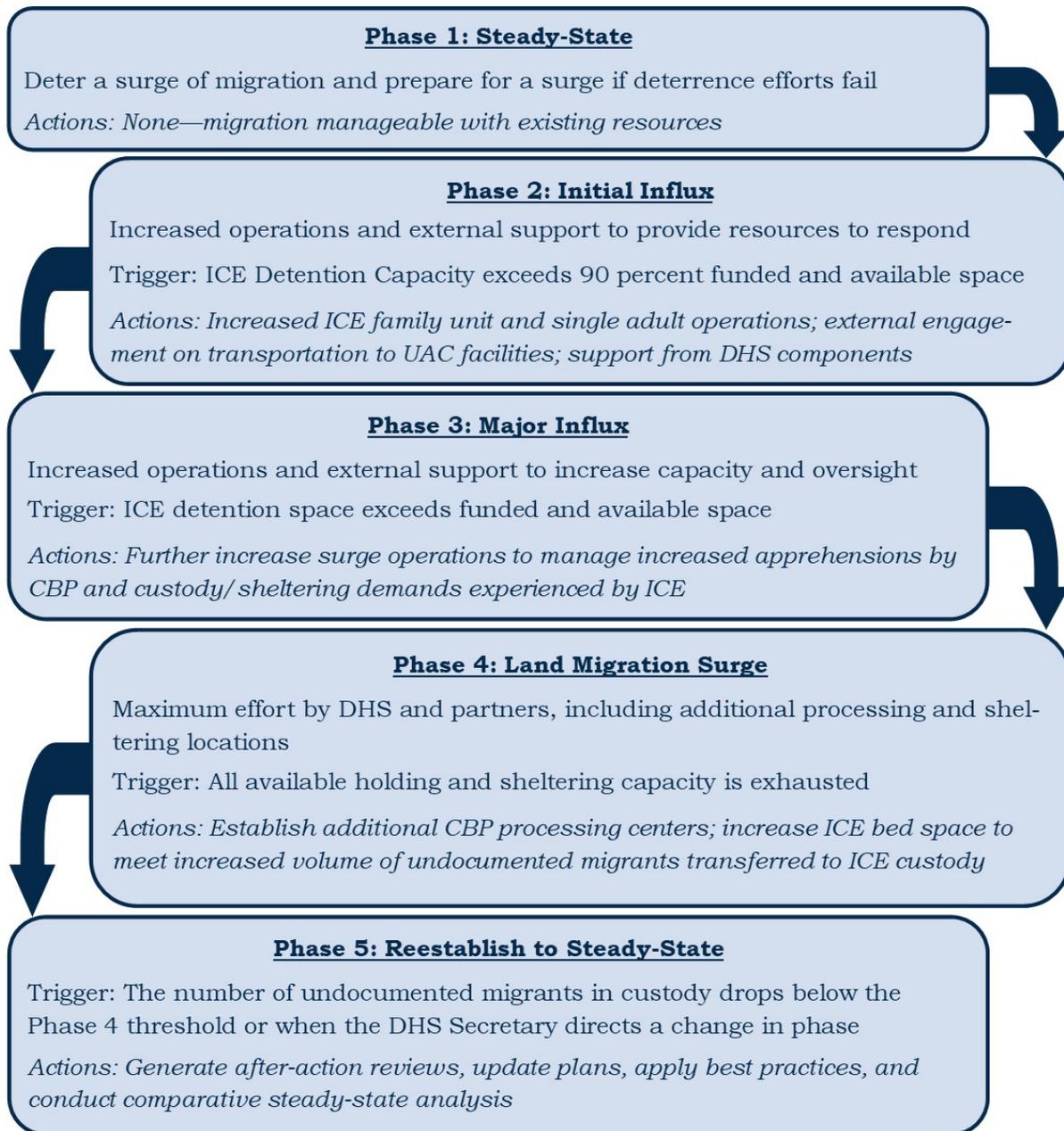
The Plan also contained an intelligence assessment for FY 2015, and discussed other trends affecting processing.

⁶² The Plan established weekly reporting for other potential indications of increased migration, including changes in economic and political stability; crime and violence; environmental conditions; migration route activity; smuggler tactics; and U.S. socio-economic opportunities.



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Figure 9. Phases of the 2015 Plan and Relevant Single Adult Population Triggers and Actions



Source: OIG analysis of DHS information

DHS Did Not Use the Plan during the 2019 Surge

Despite DHS creating the Plan in 2015, it did not use the Plan to respond to a surge event that started slightly more than 3 years later. As previously discussed, DHS entered FY 2019 with ICE ERO already exceeding funded detention capacity and struggling to identify and acquire more bed space.



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Although detention capacity is not the only factor the Plan uses to define phases, under the terms of the Plan, DHS likely was in phase 3 — major influx — status as early as December 2018. At this point, had DHS followed the 2015 Plan, ICE would already have been working with the JTF-West to increase its single adult operations and obtain support from other DHS components and external partners (per phase 2) and would have begun to intensify these efforts. DHS' surge operations would have intensified to support ICE in managing increased detention capacity demands.

There are a lot of plans out there. A lot of them are overtaken by events.

- DHS Headquarters Official

By the end of March 2019, in addition to ICE being over capacity, Border Patrol facilities, on average, exceeded their capacity across the Southwest Border, with the most severely affected sectors reporting numbers almost two to three times their capacity. This would have likely indicated DHS was in phase 4 — land migration surge status — characterized by all available holding and sheltering capacity being exhausted. At this point, ICE would be expected to increase bed space to meet the demands of increased CBP apprehensions. Yet, as described earlier in this report, while ICE began to add bed space in March, the majority of these beds did not become available until June 2019 or later.

The DHS Office of Strategy, Policy, and Plans, which is responsible for DHS' operational planning, did not implement the 2015 Plan or create a new framework when the number of migrants in detention increased. According to these officials, their role during the crisis was limited to connecting DHS to the White House, Department of Defense, and sometimes to coordinating with the components' policy offices. We could not identify an official within the Office of Strategy, Policy, and Plans who would acknowledge the office's responsibility for DHS-level operational planning for migrant surges. Instead we were told to consider component plans, and that DHS develops plans to provide coherent information to the Secretary, but execution rests with the components.

DHS Headquarters officials we spoke with were familiar with the 2015 Plan at the time of the surge, but unable to provide satisfactory information about why DHS did not implement it. Although multiple officials indicated the Plan remained an active or “working” plan, one official told us DHS did not necessarily use a certain plan even when circumstances suggested the plan be used. Another DHS official suggested the Plan was “overtaken by events,” and that the 2019 surge presented an unprecedented number of migrants and a demographic mix that was not contemplated by existing plans.



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Yet the Plan, by definition, includes high numbers of migrants as one of its considerations. The Plan also included specific triggers for the three broad demographic groups of migrants — UACs, family units, and single adults. DHS officials also often cited a shift in source countries for migration — from Mexico in prior surges to Northern Triangle countries in the 2019 surge — as a factor that made the surge difficult to manage and a reason for not implementing the Plan. Specifically, DHS officials testified undocumented migrants from Mexico can be repatriated quickly; however, undocumented migrants from non-contiguous countries cannot and put a strain on detention resources. Nevertheless, one of the critical assumptions in the Plan was that the primary source countries would be Northern Triangle countries. Therefore, this shift in source countries was not unforeseen. Finally, the Plan called for its review within 2 years. This review would have allowed DHS to amend the Plan in 2017 if DHS believed the Plan was obsolete. Based on our review of subsequent plans and on discussions with Office of Policy officials, DHS has not reviewed or amended the Plan since its signing in 2015.

DHS Did Not Use the JTF Structure to Coordinate a Unified DHS Response to the 2019 Surge

The 2015 Plan established a significant role for JTF-West in responding to migrant surges.⁶³ In the event of a land migration surge, the JTF-West would be responsible for coordinating:

- component operations aimed at prevention and response to a land migration surge;
- response efforts to the phases triggered by indicators and warnings;
- air transportation efforts to expeditiously repatriate migrants to countries of origins; and
- ground transportation resources to transfer aliens from short-term temporary holding facilities to long-term detention facilities.

During the 2019 surge, DHS did not use JTF-West's existing structure to respond to the crisis although JTF-West was already positioned in the field near the border and had representatives of responsible agencies. JTF-West instead, according to the officials we interviewed, focused on human trafficking and other law enforcement activities during the surge while the Secretary recalled the JTF-West's Director to DHS headquarters to coordinate a response using a different, newly created, emergency response group. When we asked why the JTF-West did not take a leading role in addressing extended migrant holding during the surge, DHS officials said activities associated with leading the response to a surge, such as directing resource movements, were a better fit for headquarters offices. However, another DHS official suggested that CBP

⁶³ JTF-West's responsibilities were not limited to responding to migrant surges.



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and ICE have little incentive to cooperate under a DHS-created structure such as the JTF-West. DHS officials explained the Department has limited control over CBP and ICE's funding or operations. Rather, the components report directly to Congress on these matters. Therefore, although senior leaders know coordination leads to better results, CBP and ICE choose to protect their own resources instead of working together with DHS on operational planning or needs.

One of the critical assumptions outlined in the Plan was that the JTF-West and the operational components would possess the capability to execute the responsibilities outlined in the Plan. In 2017, our office published initial observations that the JTFs were a step forward for DHS but that relying on components for funding and staff was a challenge.⁶⁴ DHS officials explained that when the JTFs were initiated, there was a direct relationship between their directors and the Secretary and this relationship facilitated coordination activities between components. However, the JTF-West Director is a CBP employee who reports to the CBP Commissioner⁶⁵ and any management of a DHS-wide response would be influenced by this chain of command. DHS officials also said by the time of the 2019 surge, JTF-West was not resourced or empowered to direct a multi-component response at the border. Furthermore, JTF-West officials confirmed that the JTF structure was not being routinely used to address border surge emergencies as envisioned when the JTFs were created.

Instead of using the JTF-West to manage the surge, DHS created and dissolved various interagency groups at its headquarters as conditions in CBP facilities worsened. All had similar missions as the JTF-West, yet none exerted meaningful influence, coordination, command, or control over CBP or ICE. Our review of emails indicated some officials were confused as to the actual purpose of these headquarters groups. To illustrate, in January 2019, DHS created the Unified Coordination Group Southwest Border (UCG SWB) to “ensure that Southwest Border operations are unified, including assessing the necessary personnel, equipment, supplies, facilities [and] interagency support....” However, emails indicated UCG SWB officials believed JTF-West was the proper agency to conduct this coordination. Shortly thereafter, in April 2019, then-Secretary Kirstjen Nielsen dissolved the UCG SWB in favor of an Interagency Border Emergency Cell (IBEC), and recalled the Director of JTF-West to DHS headquarters to lead this new group.

⁶⁴ *DHS' Joint Task Forces*, OIG-17-100, Aug. 2017. In a more recent report, our office describes DHS' inefficient management of JTFs, including not providing clear, consistent guidance and direction, and not identifying optimal staffing and resources for the JTFs. *DHS Cannot Determine the Total Cost, Effectiveness, and Value of Its Joint Task Forces*, OIG-20-80, Sept. 2020.

⁶⁵ While the head of the JTF-West was presidentially appointed, he or she reported directly to the CBP Commissioner.



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In May 2019, then-Acting Secretary Kevin McAleenan⁶⁶ dissolved the IBEC, using some of its staff and resources to create a joint Department of Defense/DHS Southwest Border Interagency Planning Team (IPT). The IPT was tasked with creating a plan for responding to migration surges, and was led by senior officials from the Department of Defense and the Border Patrol. The team’s planning was led by a senior official detailed from the Office of Policy. The team was augmented by six Department of Defense planners and a new DHS headquarters coordination group — the Joint Incident Advisory Group (JIAG) — formed “to create better operational outcomes during multi-component contingencies.”⁶⁷ Between July and August 2019, when their planning tasks were complete, former IBEC staff returned to their DHS components or transitioned to the JIAG, and the Department of Defense officials returned to their parent organizations. The detailed official from the Office of Policy became the Director of the JIAG. Figure 10 shows how the number of single adults in CBP custody increased while DHS created and dissolved these coordination and planning groups.

⁶⁶ On August 14, 2020, the U.S. Government Accountability Office (GAO) issued a decision that concluded Kevin McAleenan had not been eligible to become Acting Secretary when Secretary Nielsen retired. GAO referred related issues to our office for further review. GAO B-331650, Aug. 14, 2020. After reviewing GAO’s report, we declined to take up the matter and instead left it to the courts to resolve this inter-branch disagreement.

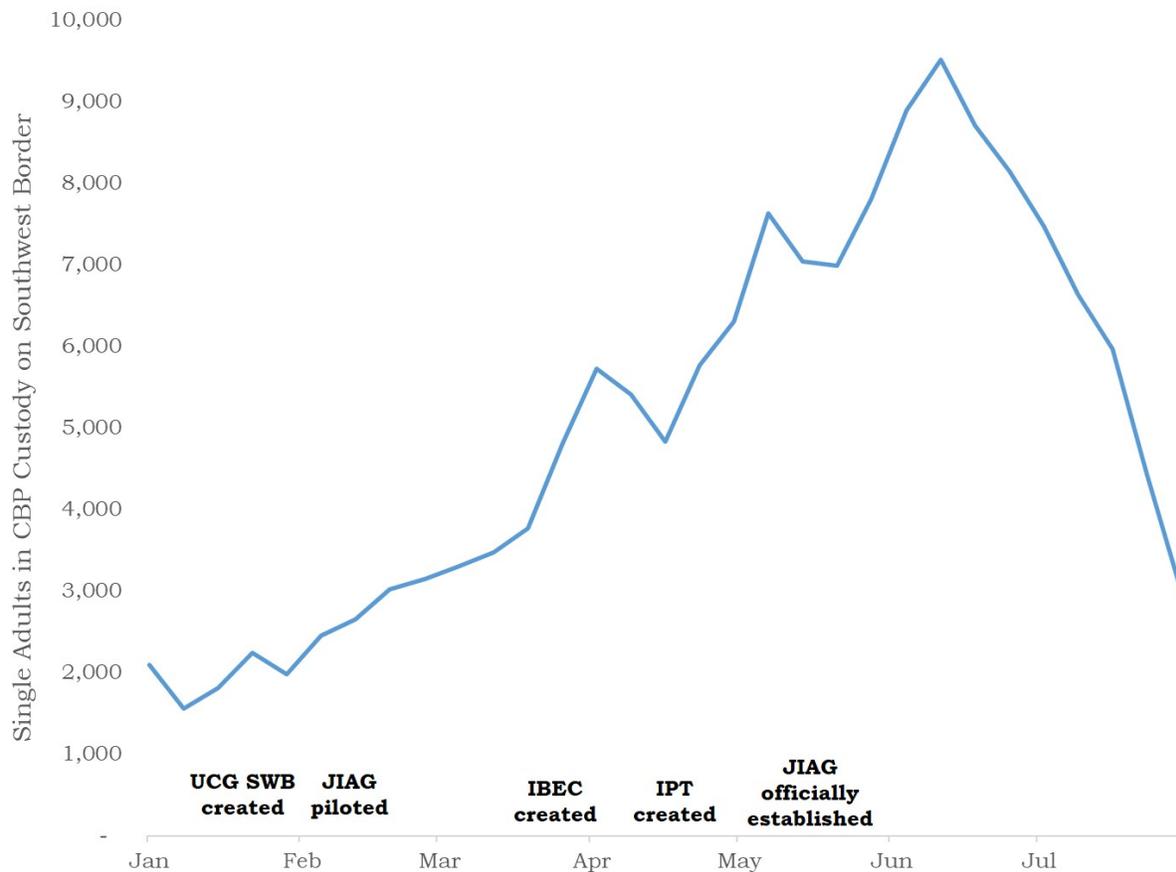
⁶⁷ JIAG conceptualization and development began in 2018. It officially began as a pilot in February 2019 and was transferred from the Office of Policy to the Office of Operations Coordination in April 2019.



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Figure 10. Evolution of DHS Coordination Groups during 2019 Land Migration Surge



Source: OIG analysis of CBP data and DHS documents

JTAG officials explained that, as a stable advisory group, they would provide leadership and continuity, and address DHS’ history of creating and dissolving small groups to react to crises. Per the September 2020, *DHS Joint Task Force Modernization Plan*, an Operational Deputies Board, supported by the JTAG, would provide a “headquarters level, joint operations coordination capability” to develop solutions when there are multi-component issues. The officials explained that while the JTFs relied upon the willingness of components to support and use them as intended, the JTAG is a DHS headquarters element where all the components are involved and can ensure the DHS Secretary and component leaders get “vetted options” to respond to crises. Furthermore, having well-connected individuals at the JTAG would make it easier to get information from various levels within components.

While JTAG officials asserted the group has been successful in providing the DHS Secretary with policy options related to other homeland security issues, we remain skeptical that it can direct CBP and ICE ERO to respond in a coordinated way to a future border crisis. For example, officials said during the



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surge, DHS headquarters coordination groups reached out to CBP and ICE ERO to assist with improving medical coverage, transportation, and detainee bed space. DHS officials that we spoke to told us these efforts were fruitless: the coordination groups were viewed as outsiders and their ideas and proposed solutions did not get traction.

We are also concerned about an over-reliance on connections and relationships to ensure the necessary information sharing to inform policy decisions during a crisis. If those relationships sour, or individuals are no longer part of the JIAG, the stability and value of the group as described would be jeopardized. Our office and others⁶⁸ have long noted disjointed operations, mismatched priorities, competition, insular perspectives, and an unwillingness to compromise between CBP and ICE ERO that have undercut DHS' apprehension, detention, and repatriation efforts. Poor coordination between CBP and ICE ERO during a surge is unlikely to be improved by an outside group, but requires a foundation of cooperation on daily operational matters.

Efforts to Update DHS-wide Plans for Migrant Surges Have Stalled

While the IPT existed in 2019, the members were tasked with developing a mass migration mitigation “campaign plan.”⁶⁹ The plan was drafted between April and August 2019, and distributed for comment in September 2019. The campaign plan was meant to inform component leadership about how DHS would sustainably secure and manage the Southwest border while deterring unlawful immigration, encouraging legal immigration, and facilitating trade and travel, with initiatives identified for the following 3 years.

The campaign plan included a list of “capability gaps” within DHS that hindered an effective response to the 2019 surge on the Southwest border. The plan noted DHS had:

- limited and fragmented transportation systems;
- inadequate detention space for migrant demographics;
- no consolidated immigration data system; and
- no surge capacity for transportation, case processing, medical evaluations, or detention.

⁶⁸ For example, *An Assessment of the Proposal to Merge Customs and Border Protection with Immigration and Customs Enforcement*, OIG-06-04, Nov. 2005; James J. Carafino and D. Heyman, *DHS 2.0: Rethinking the Department of Homeland Security* (SR-02), The Heritage Foundation and the Center for Strategic and International Studies, Dec. 13, 2004; and *BP and ICE: Does the Current Organizational Structure Best Serve U.S. Homeland Security Interests? Parts II and III*, Hearing before the Subcommittee on Management, Integration, and Oversight, House Committee on Homeland Security, November 15, 2005, and May 11, 2006.

⁶⁹ *DHS Southwest Border Mass Migration Mitigation Campaign Plan (Draft)*, Sept. 2019. In contrast to a contingency plan, which may be in force until it is replaced, a campaign plan is intended as a short-term response to a specific situation.



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Although most campaign plan recommendations would have required changes in legislation or actions from other Federal agencies, some recommendations required only internal DHS process improvements. For example, recommendations included streamlining immigration processing and reviewing ICE ERO staffing levels.

The IPT obtained and incorporated DHS component comments on the campaign plan and forwarded the consolidated document to the Office of Policy by early December 2019, but the campaign plan was not finalized. Although we observed the same capability gaps as causes of prolonged detention in CBP facilities during the 2019 surge, when we asked for a status update on the campaign plan, officials from the Office of Policy said the plan was “no longer being worked” because it was no longer seen as beneficial or having utility to the Department.

According to a senior CBP official, during the surge, “everyone was just trying to survive within their own mission set” and the entire system was overwhelmed. At the time of our fieldwork, the official suggested that since the apprehension volume had decreased, it was an opportune time to plan and consider DHS-wide challenges for future surges. It remains to be seen whether DHS will rise to the challenge and create a plan to address the friction points and capability gaps, identified at this point by multiple parties, before the next migrant surge.

Conclusion

While migrant surges require a whole-of-government approach, DHS manages a major part of the border security and immigration enforcement mission set. ICE ERO and CBP’s interdependencies meant the 2019 migrant surge required forethought, multi-component planning, and a coordinated response, which ultimately did not occur. The inefficiencies created by DHS’ fragmented approach to migrant processing are not new, and they will continue to recur without strong leadership and vision for truly unified operations within DHS. At almost 20 years old, DHS must mature past individual agreements and relationships created to accommodate systemic fragmentation, and truly approach its border mission as “one DHS.”



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Recommendations

We recommend the Director, Immigration and Customs Enforcement:

Recommendation 1: Create a comprehensive surge detention capacity contingency plan that considers Customs and Border Protection apprehension levels, and ensure a process exists for its implementation during future surges.

Recommendation 2: Standardize documentation required in alien files that Customs and Border Protection needs to include for transfer of aliens from Customs and Border Protection to Immigration and Customs Enforcement, Enforcement and Removal Operations custody that will apply to all field offices.

We recommend the Commissioner, Customs and Border Protection:

Recommendation 3: Identify strategies and solutions Customs and Border Protection's Border Patrol sectors and Office of Field Operations field offices used during the 2019 surge to manage delays in detainee transfers to partner agencies, determine the best practices that can be implemented during future surges, and communicate these best practices across the organization, and ensure a process exists for their implementation during future surges.

Recommendation 4: Conduct an inventory of infrastructure enhancements acquired during the 2019 surge and incorporate these into planning and staging for future migrant surges.

Recommendation 5: Provide guidance to Border Patrol sectors to incorporate Immigration and Customs Enforcement, Enforcement and Removal Operations and Health and Human Services capacity in risk assessments for future migrant surge planning.

We recommend the Secretary, Department of Homeland Security:

Recommendation 6: Ensure Customs and Border Protection and Immigration and Customs Enforcement establish, draft, and coordinate thresholds, in consultation with the DHS Office of Strategy, Policy, and Plans with approval from the Secretary, for when DHS will request a whole-of-government approach to address transportation, case processing, and detention gaps during migrant surges.



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Management Comments and OIG Analysis

We have included a copy of DHS' Management Response in its entirety in Appendix B. We also received technical comments to the draft report and revised the report where appropriate.

DHS concurred with our six recommendations, which are resolved and open. It also expressed concerns with our discussion of ICE's considerations when placing detainees in detention centers. Specifically, ICE stated that placement considerations are critical to promoting a safe and secure environment for both detainees and staff and should not, in anyway, be viewed as impediments. We agree that ICE's placement considerations are in place to ensure the safety of detainees and staff. We also acknowledge that addressing these considerations at the scale required during the surge was a challenge and resulted in placement delays. Our description of the challenges ICE faced was not a critique of the considerations, but a description of the context within which ICE had to find appropriate facilities for thousands of detainees in short order.

A summary of the Department's responses to our recommendations and our analysis follows.

DHS Comments to Recommendation 1: Concur. ICE ERO is developing a detention system that will more quickly adapt and respond to major surges in migrant populations. The current system, which requires a minimum of 90 to 120 days to activate new bed space, does not easily allow for immediate response to rapid increases in migration patterns at the Southwest Border.

Consequently ICE ERO worked with the ICE Office of Acquisition Management to negotiate and modify ten existing agreements to establish surge beds nationwide. These modifications were awarded between January 30, 2020 and May 19, 2020, and the additional beds are available for use when directed by ICE. ICE ERO field offices will also work with their local CBP counterparts, including Border Patrol and OFO, to review detention requirements and logistics needed for ICE to provide bed space for individuals in CBP custody at, or approaching, 72 hours. ICE expects these actions to be completed by December 31, 2021.

OIG Analysis: We consider these actions responsive to the intent of Recommendation 1, which is resolved and open. We will close this recommendation when we receive documentation showing that ICE has implemented a process whereby it can increase capacity rapidly in response to surges and that it considers CBP apprehensions during implementation.

DHS Comments to Recommendation 2: Concur. ICE ERO Field Operations will consult with Border Patrol and OFO, as well as the Department of Justice



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Executive Office for Immigration Review, and will develop and distribute guidance to all field offices standardizing the information required in an alien file in order to accept the transfer of an alien from CBP. ICE expects these actions to be completed by December 31, 2021.

OIG Analysis: We consider these actions responsive to the intent of Recommendation 2, which is resolved and open. We will close this recommendation when we receive documentation showing that ICE has standardized the information required in an alien file to accept the transfer of an alien from CBP, that this guidance has been distributed to all field offices, and that, in turn, this guidance has been provided to ICE's local CBP counterparts.

DHS Comments to Recommendation 3: Concur. Border Patrol and OFO are updating the CBP Surge Plan, and already established an incident command in November 2020 that is collaborating internally within DHS, as well as with other strategic partners, such as HHS, to increase communication and coordination in anticipation of future surges. Border Patrol established an Incident Command Structured Immigration Surge Team on November 19, 2020, to address multiple lines of efforts, including illegal migration and detention capacity-related matters in real time. Border Patrol leadership also engaged with ICE ERO and HHS during face-to-face meetings and as part of the Unified Command Group to further its whole-of-government approach that addresses migration surges in a unified manner.

Border Patrol and OFO are collaborating with CBP Office of Information Technology and ICE ERO on an integrated information system, the Unified Information Portal, which provides component-specific data across DHS and is shared with partners, such as HHS.

Further, Border Patrol and OFO participate in planning through the Unified Command Group that includes DHS, the Department of Defense, HHS, ICE ERO, and various other stakeholders. CBP expects these actions to be completed by December 31, 2021.

OIG Analysis: We consider these actions responsive to the intent of Recommendation 3, which is resolved and open. We will close this recommendation when CBP provides documentation showing that it has communicated best practices for surge response across the organization and that there is a process in place to implement these best practices during future surges.

DHS Comments to Recommendation 4: Concur. The CBP Office of Facilities and Asset Management is finalizing the Soft-Sided Facilities After Action Review and Playbook Team to: (1) identify key lessons learned for continuation or



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improvement; (2) conduct an inventory of existing and planned permanent holding capacity; and (3) develop a Surge and Emergency Construction Task Force Playbook that will document a standardized process for future emergency construction during migrant surges. CBP expects these actions to be completed by December 31, 2021.

OIG Analysis: We consider these actions responsive to the intent of Recommendation 4, which is resolved and open. We learned that during the surge, CBP not only acquired large-scale holding facilities, but also purchased portable shower stalls, air conditioning units, and other temporary facilities to manage surge conditions; developed technological solutions such as the electronic sick bay space request system at Weslaco; and created mobile processing units and carts. We expect these and any other solutions identified at locations we did not visit to be included in an inventory of solutions developed during the surge and to be assessed for feasibility of implementation in future surges. We will close this recommendation when we receive documentation showing that CBP performed a full inventory of physical and technological enhancements the field developed to address the 2019 surge and evaluated these enhancements for incorporation in planning and staging for future migrant surges.

DHS Comments to Recommendation 5: Concur. Border Patrol said it continues to provide guidance to sectors to incorporate ICE ERO and HHS surge planning protocols. Border Patrol collaborates with DHS components such as ICE ERO in an integrated information system, the Unified Information Portal. This system is complete, but is continually upgraded and provides component-specific data across DHS and is shared with partners such as HHS. Border Patrol currently coordinates with DHS, ICE ERO, and HHS Office of Refugee Resettlement (ORR) in planning and coordinating response to anticipated surges, which is an ongoing and current effort. Further, Border Patrol stood up a surge planning team on November 19, 2020 that is currently coordinating with ICE ERO, HHS ORR, and other stakeholders to coordinate a response to the current surge of family units and unaccompanied alien children occurring on the southern border. Such planning and coordination efforts are currently distributed via the Border Patrol Law Enforcement Operations Directorate to Sector representatives for the current surge. CBP expects these actions to be completed by April 30, 2021.

OIG Analysis: We consider these actions responsive to Recommendation 5, which is resolved and open. We will close this recommendation when we receive guidance issued to Border Patrol sectors that they should incorporate ICE ERO and HHS detention capacity in their risk assessments when planning their operational responses to migrant surges.



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DHS Comments to Recommendation 6: Concur. In consultation with the DHS Office of Policy Border Security and Immigration, CBP Operations Support and ICE ERO will jointly develop proposed thresholds to address transportation, case processing, and detention gaps during migrant surges. This effort will build upon existing CBP surge response plans and ICE guidance related to operations for managing a migration surge. By December 31, 2021, CBP and ICE will forward senior component leadership-cleared results of their threshold determination efforts to the Under Secretary for Policy, who will then seek DHS Secretary approval for implementation, as appropriate. DHS anticipates these actions to be completed by February 28, 2022.

OIG Analysis: We consider these actions responsive to Recommendation 6, which is resolved and open. We will close this recommendation when we receive documentation showing a jointly developed set of thresholds for when DHS will request a whole-of-government approach to address transportation, case processing, and detention gaps during migrant surges.



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Appendix A

Objective, Scope, and Methodology

Department of Homeland Security Office of Inspector General was established by the *Homeland Security Act of 2002* (Pub. L. No. 107-296) by amendment to the *Inspector General Act of 1978*.

Our objective was to identify issues CBP faced in its efforts to comply with the general requirement to hold detainees in its custody no longer than 72 hours, as specified in the TEDS standards.

We reviewed policies, procedures, guidance, and planning documents developed by CBP, ICE, and the DHS Office of Operations (OPS), Office of Policy, and various task forces and working groups with relevant responsibilities. We reviewed documentation on Border Patrol and OFO efforts to process and transfer detainees from custody, including decisions on custody management and efforts to secure ICE ERO and HHS bed space. We reviewed documentation on ICE ERO's bed space management, including budget, forecasting, and transfer and removal information. We reviewed email correspondence from senior DHS, CBP, and ICE officials from FY 2019. We also reviewed available information from CBP and ICE data systems.

Within CBP, we interviewed senior headquarters officials; senior field Border Patrol agents, OFO officers, and juvenile coordinators; attorneys from the Office of Chief Counsel; representatives of the CBP Emergency Operations Center; and officials responsible for database development.

Within ICE, we interviewed officials from the San Antonio, New Orleans, Phoenix, El Paso, and Houston field offices; headquarters ICE ERO officials responsible for budget, acquisitions, forecasting, and bed space management; juvenile coordinators; and officials from the Detainee Operations Coordination Center, Office of the Principal Legal Advisor, ICE Health Services Corps, and Law Enforcement Systems and Analysis.

We interviewed participants in joint DHS operations and task forces, including the JTF-West, Migration Crisis Action Team, UCG SWB, IBEC, and JIAG. We also interviewed participants in two joint CBP and ICE process improvement initiatives facilitated by consultants.

Within DHS headquarters, we interviewed an official from the Office of the Chief Financial Officer. We interviewed senior OPS officials, including those responsible for drafting the 2015 Plan and the September 2019 draft campaign plan. We interviewed officials from three Office of Policy Offices: (1) Immigration Statistics; (2) Immigration Policy; and (3) Strategy, Plans, Analysis, and Risk.



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To obtain more information about DHS' response to the 2019 surge, we conducted interviews with the Federal Emergency Management Agency and non-governmental organizations with a presence on the Southwest border. We interviewed headquarters and field officials from the HHS Office of Refugee Resettlement, and obtained a demonstration of the UAC Portal used to refer UACs from DHS to HHS custody.

We conducted field site visits to the following border areas:

- El Paso (October 2–4, 2019);
- Phoenix (November 4, 2019);
- Houston (November 5–6, 2019);
- San Antonio (November 6–7, 2019); and
- the Rio Grande Valley (November 12–15, 2019).

At these locations, we interviewed CBP Border Patrol agents, OFO officers, and ICE officers responsible for juveniles, custody management, transportation, data quality and integrity, intra-agency coordination, and coordination with HHS Office of Refugee Resettlement. In the El Paso area and Rio Grande Valley area, we toured detention facilities that had held detainees longer than 72 hours during the 2019 surge.

We conducted our fieldwork between August 2019 and June 2020 under the authority of the *Inspector General Act of 1978*, as amended, and according to the *Quality Standards for Inspection and Evaluation* issued by the Council of the Inspectors General on Integrity and Efficiency.



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Department of Homeland Security

Appendix B
Management Comments to the Draft Report

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



March 2, 2021

MEMORANDUM FOR: Joseph V. Cuffari, Ph.D.
Inspector General

FROM: Jim H. Crumacker, CIA, CFE
Director
Departmental GAO-OIG Liaison Office

JIM H
CRUMPACKER
Digitally signed by
JIM H CRUMPACKER
Date: 2021.03.02
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SUBJECT: Management Response to Draft Report: “DHS’ Fragmented Approach to Immigration Enforcement and Poor Planning Resulted in Extended Migrant Detention During the 2019 Surge” (Project No. OIG-19-064-SRE-DHS)

Thank you for the opportunity to comment on this draft report. The U.S. Department of Homeland Security (DHS or the Department) appreciates the work of the Office of Inspector General (OIG) in planning and conducting its review and issuing this report.

The Department is pleased to note the OIG’s recognition of steps the U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) took to address the unprecedented surge of migrants attempting to illegally enter the United States along the Southwest Border beginning in late 2018 and continuing into 2019. Examples include:

1. CBP developed and implemented many whole-of-government strategies (i.e., Migrant Protection Protocols; Asylum Cooperation Agreements with Guatemala, Honduras and El Salvador; Electronic Nationality Verification; and the Prompt Asylum Claim Review) to mitigate the challenges experienced during this time, and
2. ICE Enforcement and Removal Operations (ERO) adjusted available resources and priorities to add detention capacity in advance of, and during the surge. As the surge continued, ICE also sought additional funding through congressional reprogramming authorities, and completed multiple contracting actions (including one in only 6 weeks compared to the usual 2-3 months) to acquire an additional 14,574 detention beds.



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We are also pleased to note OIG's draft report acknowledges that ICE considered gender, security risks, and medical concerns when placing detainees. These placement considerations help ensure compliance with Performance Based National Detention Standards to protect safety and security in the facilities, as well as the health, safety, and welfare of each detainee.

However, the Department is concerned that OIG's report language could be read as implying these considerations were an impediment to placing detainees. ICE provided the audit team clarifying contextual information during the report review process to address this concern, but was told OIG would not revise the report narrative. It is important to recognize that these placement considerations are *critical* to promoting a safe and secure environment for both detainees and staff and should not, in anyway, be viewed as impediments.

The draft report contained six recommendations with which the Department concurs. Attached find our detailed response to each recommendation. DHS previously submitted technical comments addressing several accuracy, contextual and other issues under a separate cover for OIG's consideration.

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.

Attachment



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Attachment: Management Response to Recommendations Contained in OIG-19-064-SRE-DHS

OIG recommended that the ICE Director:

Recommendation 1: Create a comprehensive surge detention capacity contingency plan that considers Customs and Border Protection apprehension levels, and ensure a process exists for its implementation during future surges.

Response: Concur. ICE ERO is developing a detention system that will more quickly adapt and respond to major surges in migrant populations. Procurement of ICE detention beds generally requires a minimum of 90-120 days in order to activate new beds, negotiate agreements for additional capacity, transfer migrants to the beds, and avoid overcrowding in CBP holding facilities. The current system does not easily allow for immediate response to rapid increases in migration patterns at the Southwest Border. Consequently:

1. ICE ERO worked with the ICE Office of Acquisition Management to negotiate and modify ten existing agreements to establish surge beds nationwide. These modifications were awarded between January 30, 2020, and May 19, 2020, and the additional beds are available for use when directed by ICE.
2. ICE ERO field offices will work with their local CBP counterparts, including U.S. Border Patrol (USBP) and Office of Field Operations (OFO), to review detention requirements and logistics needed for ICE to provide bed space to meet the needs of CBP apprehensions for individuals at, or approaching, 72 hours in custody.

Estimated Completion Date (ECD): December 31, 2021.

Recommendation 2: Standardize documentation required in alien files that Customs and Border Protection needs to include for transfer of aliens from Customs and Border Protection to Immigration and Customs Enforcement, Enforcement and Removal Operations custody that will apply to all field offices.

Response: Concur. ICE ERO Field Operations will consult with CBP USBP and OFO, as well as the Department of Justice Executive Office for Immigration Review, and will develop and distribute guidance to all field offices standardizing the information required in an alien file in order to accept the transfer of an alien from CBP. ECD: December 31, 2021.



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OIG recommended that the CBP Commissioner:

Recommendation 3: Identify strategies and solutions Customs and Border Protection's Border Patrol sectors and Office of Field Operations field offices used during the 2019 surge to manage delays in detainee transfers to partner agencies, determine the best practices that can be implemented during future surges, and communicate these best practices across the organization, and ensure a process exists for their implementation during future surges.

Response: Concur. In response to the 2019 migrant surge, CBP developed and implemented several whole-of-government strategies, in which multiple partner agencies worked seamlessly and created a baseline in which CBP USBP and OFO continue to work today.

USBP and OFO are currently collaborating to update the CBP Surge Plan, and already established an incident command in November 2020 that is collaborating internally within DHS, as well as with other strategic partners such as the Department of Health and Human Services (HHS), to increase the lines of communication and coordination in anticipation of future surges. USBP established an Incident Command Structured Immigration Surge Team on November 19, 2020, to address multiple lines of efforts, including illegal migration and detention capacity related matters in real time. USBP Leadership also engaged with ICE ERO and HHS during face-to-face meetings and as part of the Unified Command Group to further its whole of government approach that addresses migration surges in a unified manner.

Additionally, USBP and OFO are collaborating with CBP Office of Information Technology (OIT) and ICE ERO in an integrated information system, the Unified Information Portal, which provides component specific data across DHS and is shared with partners such as HHS.

Further, USBP and OFO also currently participate in planning through the Unified Command Group that includes DHS, the Department of Defense, HHS, ICE ERO, and various other stakeholders. ECD: December 31, 2021.

Recommendation 4: Conduct an inventory of infrastructure enhancements acquired during the 2019 surge and incorporate these into planning and staging for future migrant surges.

Response: Concur. The CBP Office of Facilities and Asset Management is finalizing the Soft-Sided Facilities After Action Review and Playbook Team to: (1) identify key lessons learned for continuation or improvement; (2) conduct an inventory of existing and planned permanent holding capacity; and (3) develop a Surge and Emergency



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Construction Task Force Playbook that will document a standardized process for future emergency construction during migrant surges. ECD: December 31, 2021.

Recommendation 5: Provide guidance to Border Patrol sectors to incorporate Immigration and Customs Enforcement, Enforcement and Removal Operations and Health and Human Services capacity in risk assessments for future migrant surge planning.

Response: Concur. USBP continues to provide guidance to sectors to incorporate ICE ERO and HHS surge planning protocols.

USBP continually collaborates with CBP OIT and DHS components such as ICE ERO in an integrated information system, the Unified Information Portal. This system is complete, but is continually upgraded and provides component-specific data across DHS and is shared with partners such as HHS. USBP currently coordinates with DHS, ICE ERO, and HHS Office of Refugee Resettlement (ORR) in planning and coordinating response to anticipated surges, which is an ongoing and current effort.

Further, USBP stood up a surge planning team on November 19, 2020 that is currently coordinating with ICE ERO, HHS ORR, and other stakeholders to coordinate a response to the current surge of family units and unaccompanied alien children occurring on the southern border. Such planning and coordination are currently distributed via the USBP Law Enforcement Operations Directorate to Sector representatives for the current surge. ECD: April 30, 2021.

OIG recommended that the DHS Secretary:

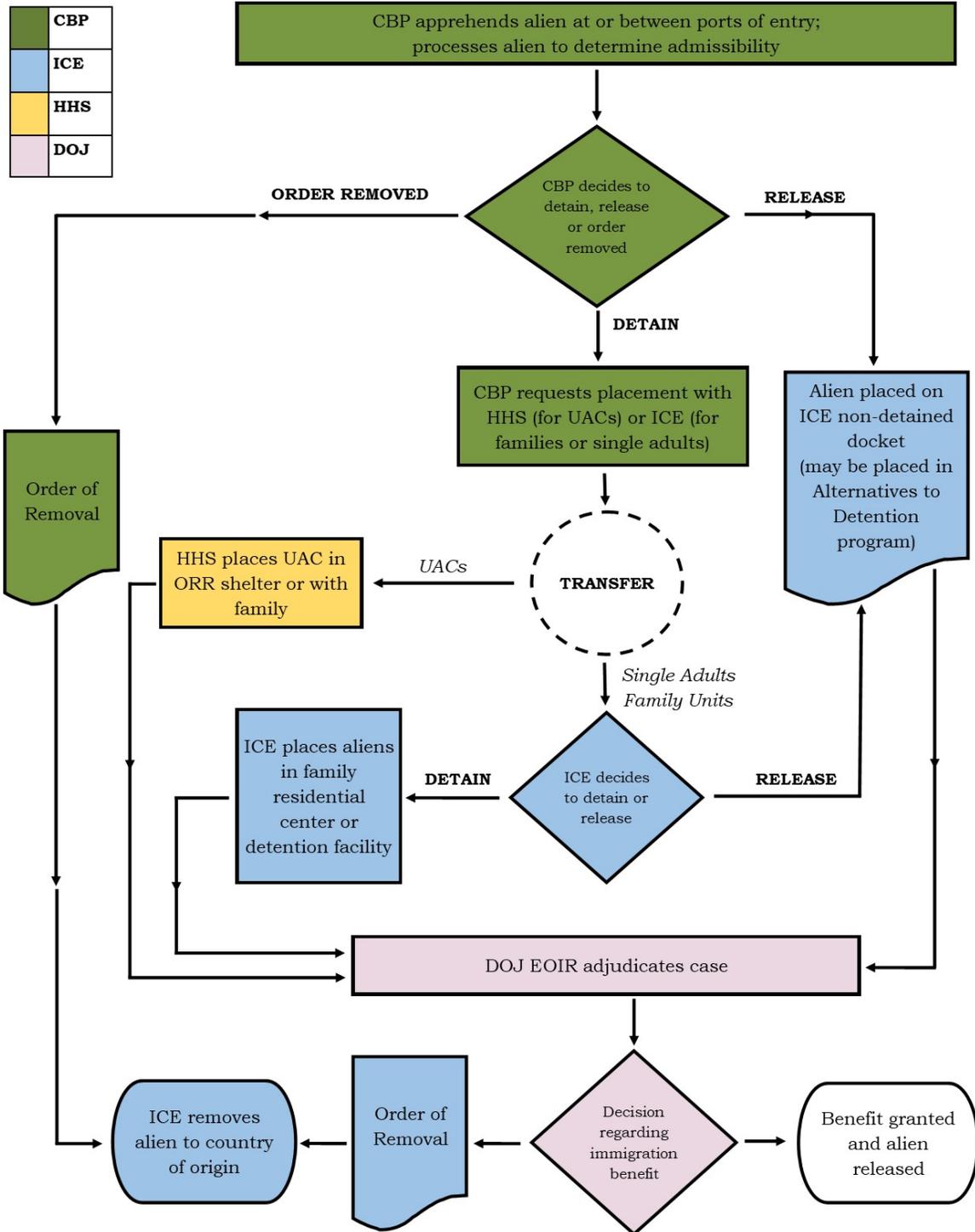
Recommendation 6: Ensure Customs and Border Protection and Immigration and Customs Enforcement create, draft, and coordinate thresholds, in consultation with the DHS Office of Strategy, Policy and Plans [PLCY] with approval from the Secretary, for when DHS will request a whole-of-government approach to address transportation, case processing, and detention gaps during migrant surges.

Response: Concur. In consultation with PLCY Border Security and Immigration, CBP Operations Support and ICE ERO will jointly develop proposed thresholds to address transportation, case processing, and detention gaps during migrant surges. This effort will build upon existing CBP surge response plans and ICE guidance related to operations for managing a migration surge. By December 31, 2021, CBP and ICE will forward senior Component leadership-cleared results of their threshold determination efforts to the Under Secretary for PLCY, who will then seek Secretary of Homeland Security approval for implementation, as appropriate. ECD: February 28, 2022.



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Appendix C
Overview of Immigration Process after Border Apprehension





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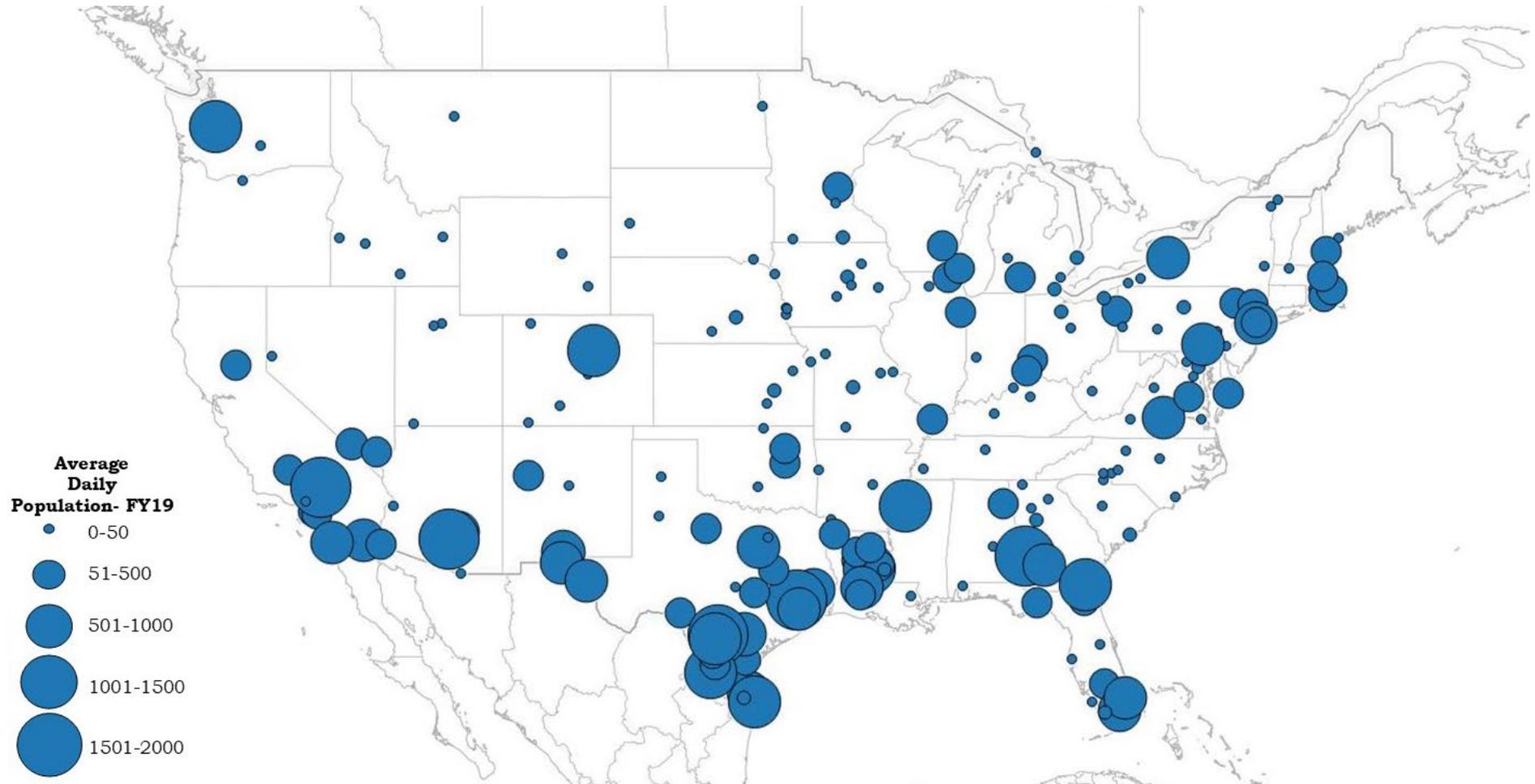
Appendix D
Roles of Federal Government Stakeholders in Immigration

Border Security and Immigration Related Functions	CBP	ICE	Other Agencies
Encounter aliens attempting to enter the United States at or between ports of entry	✓		Department of Defense (supporting role)
Apprehend aliens without valid documentation supporting admissibility to the United States	✓		
Screen aliens to determine eligibility for admission to the United States	✓		
Detain aliens during initial admissibility screening	✓		
Screen aliens for credible fear and eligibility for asylum			U.S. Citizenship and Immigration Services
Parole or otherwise release aliens into the United States pending adjudication of their removal proceedings	✓	✓	
Detain aliens pending adjudication of their removal proceedings		✓	
Place unaccompanied alien children in a shelter or with family members pending adjudication of their removal proceedings			Health and Human Services
Prosecute aliens for immigration offenses			U.S. Attorney's Office
Oversee the prosecution and sentencing of aliens on illegal entry or re-entry charges			U.S. Courts
Detain inadmissible aliens sentenced to short-term incarceration (less than 90 days) for immigration offenses			U.S. Marshals Service
Detain inadmissible aliens sentenced to longer-term incarceration (more than 90 days) for immigration offenses			Bureau of Prisons
Adjudicate aliens' removal case			Executive Office for Immigration Review
Repatriate inadmissible alien to country of origin		✓	



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Appendix E
FY 2019 Detention Facilities Used by ICE ERO





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Appendix F
Office of Special Reviews and Evaluations Major Contributors
to This Report

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Appendix G
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