

# Department of Homeland Security **Office of Inspector General**

## **ICE's Release of Immigration Detainees**





**OFFICE OF INSPECTOR GENERAL**  
Department of Homeland Security

Washington, DC 20528 / [www.oig.dhs.gov](http://www.oig.dhs.gov)

August 7, 2014

MEMORANDUM FOR: The Honorable Thomas S. Winkowski  
Principal Deputy Assistant Secretary  
U.S. Immigration and Customs Enforcement

FROM: John Roth   
Inspector General

SUBJECT: *ICE's Release of Immigration Detainees*

To provide further clarity to our report, *ICE's Release of Immigration Detainees (OIG-14-116)*, we made technical modifications as detailed on the attached spreadsheet.

We will post the revised report on our public website, including your formal written response as an appendix to the report.

Call me with any questions, or your staff may contact Deborah Outten-Mills, Acting Assistant Inspector General for Inspections, at (202) 254-4015.

Attachment



# OFFICE OF INSPECTOR GENERAL

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Technical Modifications To Final Report:  
**ICE's Release of Immigration Detainees**  
OIG Project No. 13-147-ISP-ICE

**OIG Actions Taken**  
**August 5, 2014**

Technical Modifications					
Item #	Page	Paragraph	Line	Draft Language	OIG Final Report Language
1	1	B1	L1-5	<p>Congress requires ICE to maintain an average daily population of 34,000 detainees and expects ICE to fund detention at this level. However, congressional appropriations only cover approximately 31,300 of those beds. As a result, ICE must secure the remaining funding from fluctuating revenue sources or by transferring funding from other programs. This funding structure leaves ICE with inadequate resources when there is an increase in detainees.</p>	<p>The <i>Consolidated and Further Continuing Appropriations Act</i> (P.L. 113-6) requires ICE to maintain an average daily population of 34,000 detainees and expects ICE to fund detention at this level. Congressional appropriations cover approximately 31,300 of those beds. ICE secures the remaining funding from fluctuating revenue sources or by transferring funding from other programs. This funding structure leaves ICE with inadequate resources when there is an increase in detainees.</p>
2	1	B5	L2-3	<p>Only after House appropriations staff told the ICE Chief Financial Officer on January 31, 2013, to keep the average daily population at 34,000 did ICE executive leadership realize ICE would need to obtain additional funding to cover the detention budget shortfall.</p>	<p>Only after House appropriations staff informed ICE's Chief Financial Officer on January 31, 2013, that maintaining 34,000 average daily population is a statutory requirement did ICE executive leadership realize ICE would need to obtain additional funding to cover the detention budget shortfall.</p>
3	7	P1	L1	<p>In fiscal year (FY) 2013, Congress appropriated funding for approximately 31,300 of ICE's detention beds.</p>	<p>In fiscal year (FY) 2013, ICE requested funding for approximately 31,300 of ICE's detention beds.</p>



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<b>Technical Modifications</b>					
<b>Item #</b>	<b>Page</b>	<b>Paragraph</b>	<b>Line</b>	<b>Draft Language</b>	<b>OIG Final Report Language</b>
4	17	P3	L1-3	Detention management funding sources are not reliable. Congress requires ICE to maintain an ADP of 34,000 detention beds; however, Congress only funds approximately 31,300 detention beds.	Detention management funding sources are not reliable. The statute requires ICE to maintain an ADP of 34,000 detention beds; however, ICE requested funds for approximately 31,300 detention beds.
5	18	P4	L1	Congress should provide ICE reliable funding for detention management and the authority to determine which aliens are best suited for detention.	ICE needs reliable funding for detention management and the authority to determine which aliens are best suited for detention.



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## Abbreviations

ADP	average daily population
CBP	U.S. Customs and Border Protection
CFO	Office of the Chief Financial Officer
DHS	Department of Homeland Security
ENFORCE	Enforcement Case Tracking System
ERO	Enforcement and Removal Operations
FOD	Field Office Director



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FY	fiscal year
ICE	U.S. Immigration and Customs Enforcement
INA	Immigration and Nationality Act
OCFO	Office of the Chief Financial Officer Office of Budget and Program Performance
OIG	Office of Inspector General
OMB	Office of Management and Budget



## Executive Summary

In February and March 2013, media sources reported U.S. Immigration and Customs Enforcement (ICE) released hundreds of immigration detainees, including detainees with criminal convictions. The publicized releases occurred the weekend before sequestration went into effect on March 1, 2013, generating speculation that the releases were improperly motivated.

We determined that the following factors influenced ICE's decision to release 2,226 immigration detainees between February 9 and March 1, 2013:

- The *Consolidated and Further Continuing Appropriations Act* (P.L. 113-6) requires ICE to maintain an average daily population of 34,000 detainees and expects ICE to fund detention at this level. Congressional appropriations cover approximately 31,300 of those beds. ICE secures the remaining funding from fluctuating revenue sources or by transferring funding from other programs. This funding structure leaves ICE with inadequate resources when there is an increase in detainees.
- From fiscal year 2011 to fiscal year 2012, total apprehensions in the Rio Grande Valley increased from approximately 59,000 to 98,000, or 66 percent. Accordingly, ICE started fiscal year 2013 with an average daily population of 35,610 in its immigration detention facilities.
- During fiscal year 2013, ICE faced reductions as a result of being funded through a continuing resolution based on prior years' funding and the impending sequestration budget cuts. In addition, funding typically used to cover the shortfall—breached immigration bonds and user fees—collected in fiscal year 2013 were lower than ICE's projection. However, ICE did not develop contingency plans to address the budget shortfall.
- When ICE's budgetary shortfall became apparent in January 2013, ICE leadership assumed it would be able to manage the shortfall by reducing the number of detained aliens. ICE's Chief Financial Officer decided to cover part of the shortfall through a sharp and immediate reduction in detention bed space.
- Only after House appropriations staff informed ICE's Chief Financial Officer on January 31, 2013, that maintaining 34,000 average daily population is a statutory requirement did ICE executive leadership realize ICE would need to obtain additional funding to cover the detention budget shortfall.



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- Of the 2,226 budgetary releases reported to Congress, ICE released approximately 1,450 immigration detainees over the weekend of February 23, 2013.

The execution of the releases was problematic as well. Insufficient ICE executive leadership planning and limited engagement with its Enforcement and Removal Operations field offices contributed to the timing and number of alien releases. Prior to the detainee releases, ICE executive leadership did not communicate effectively with Enforcement and Removal Operations, and did not inform Department of Homeland Security (DHS) leadership or the Executive Office of the President about the budget shortfall. In addition, ICE did not notify DHS' Secretary about plans to release aliens as a remedy for the budget shortfall.

Between February 9 and March 1, 2013, Enforcement and Removal Operations field offices released some aliens with criminal convictions whose detention was statutorily required. However, field offices did not release aliens they considered a danger to the community. Given the short timeframe of the releases and the mandate from ICE headquarters to do so, Enforcement and Removal Operations Field Office Directors applied selection criteria and processes appropriately. Enforcement and Removal Operations officers reviewed their own detained alien dockets to determine the best candidates for release. Enforcement and Removal Operations supervisory field officers reviewed each release recommendation.

Since the February 2013 budget releases, ICE has not developed an effective strategy to manage its detention budget. We determined ICE senior leadership continues to manage detention bed space and the budget from headquarters and provides field offices with fluctuating average daily population guidance. To manage detention bed space more effectively, ICE must develop a transparent budget process, delegate detention management functions to field offices, and engage Congress to fund detention bed space fully with multiple year or no year appropriations. We are making four recommendations to improve ICE detention management.



## Background

Senators Tom A. Coburn, M.D., and John S. McCain requested we review the Department's action related to the immigration detainee budgetary releases. We reviewed:

- (1) the circumstances of and reasons for the release of the detainees, including how much money ICE or DHS thought it would save through the release;
- (2) the selection criteria and process used to identify detention centers and detainees for the release, including the specific criminal background of each detainee released;
- (3) whether ICE accurately applied its selection criteria and processes to the immigration detainee population; and
- (4) whether ICE received guidance or directives about the timing or nature of the release from the Executive Office of the President.

Enforcement and Removal Operations (ERO) manages and oversees the Federal civil immigration removal process. ERO's 24 Field Office Directors (FOD) manage detention operations for their respective field offices across the United States. ERO prioritizes the detention of removable aliens determined to need custodial supervision during immigration court proceedings. ERO also prioritizes the detention of aliens that received a final order of removal from the United States. ICE's detained population comes from two categories: aliens apprehended in the United States and arriving aliens on the border.<sup>1</sup>

FODs can generally plan for the detention of aliens apprehended in the United States, but have limited advance notice to manage arriving aliens apprehended on the southern border. For example, U.S. Customs and Border Protection's (CBP) Border Patrol apprehends most arriving aliens. Border Patrol apprehensions may fluctuate seasonally. Apprehensions often decrease in the summer and over the winter holidays, and the proportion of juveniles and families generally increases in the spring. Apprehensions may increase or decrease from year to year. For example, changes in the U.S. economy may correlate with changes in the number of aliens the Border Patrol apprehends on the southern border. However, the Border Patrol does not have long-term detention capabilities and transfers these aliens to ERO custody.<sup>2</sup>

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<sup>1</sup> The definition of an "arriving alien" is "an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States. . . ." 8 C.F.R. § 1.2.

<sup>2</sup> Department of Health and Human Services Office of Refugee Resettlement provides custody for unaccompanied alien children. ERO transports unaccompanied alien children to approved facilities.



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FODs have broad authority to detain or release aliens pending a decision by an immigration judge on whether to order the aliens removed from the United States.<sup>3</sup> The *Immigration and Nationality Act* (INA), as amended, and its implementing regulations, provide that certain categories of aliens are subject to mandatory detention. Figure 1 shows these categories and appendix D provides more information on mandatory detention. When circumstances change for these aliens, they may be eligible for release. For example, aliens referred to an immigration judge to make an asylum claim may become eligible for release.<sup>4</sup> In addition, since 2001 the U.S. Supreme Court has determined that ICE generally should not detain aliens with a final order of removal for longer than 6 months if there is no significant likelihood of removal in the reasonably foreseeable future.<sup>5</sup>

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<sup>3</sup> See INA § 236 for FOD authority to detain or release. Unless indicated otherwise, we use the term “release” to mean release, parole, or release on bond, throughout this report. Department of Justice Executive Office for Immigration Review immigration judges generally have jurisdiction to review custody determinations for aliens apprehended within the United States. Immigration judges generally do not have jurisdiction to authorize release of arriving aliens, or aliens with a final order of removal. For additional information on the role of the Executive Office for Immigration Review, see Department of Justice Executive Office for Immigration Review, *Immigration Court Practice Manual*, June 10, 2013, [http://www.justice.gov/eoir/vll/OCIJPracManual/ocij\\_page1.htm](http://www.justice.gov/eoir/vll/OCIJPracManual/ocij_page1.htm).

<sup>4</sup> For more information on protection claims, see Office of Inspector General, *Information Sharing on Foreign Nationals: Border Security*, OIG-12-39, February 2012, pages 21–25. For withholding of removal, see INA § 241(b)(3). The United States implemented Article 3 of the United Nations *Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment* through P.L. 105-277 at § 2242(a), with certain reservations.

<sup>5</sup> For more information on limits to detention of aliens with a final order of removal, see *ICE’s Compliance With Detention Limits for Aliens With a Final Order of Removal From the United States*, Office of Inspector General, OIG-07-28, February 2007.



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**Figure 1: Mandatory Detention Categories**

Categories	Basis
Arriving aliens (includes Border Patrol apprehensions)	INA § 235
Suspected terrorists	INA § 236A
Aliens inadmissible for national security/terrorism reasons Arriving aliens who have committed crimes listed under 236(c) Removable aliens who have been convicted of crimes listed under 236(c)	INA § 236(c) <sup>6</sup>
Final orders of removal	INA § 241(a)(2)
Exceptions	Basis
Witness security	INA § 236(c)(2)
Significant public benefit	INA § 212(d)(5)
Urgent humanitarian reasons	INA § 212(d)(5)
Serious medical conditions Legitimate law enforcement objectives	8 C.F.R § 212.5(b)

Source: *Immigration and Nationality Act, as amended; Code of Federal Regulations.*

Figure 2 lists some factors FODs consider to determine whether to release aliens from custody when detention is not mandatory. With some exceptions, aliens in removal proceedings may request an immigration judge review the FOD’s release decision.<sup>7</sup> FODs may consult with ICE attorneys when making release decisions.<sup>8</sup>

<sup>6</sup> This category includes aliens convicted of aggravated felonies. Aggravated felonies are defined in §101(a)(43) of the INA, and affect whether an alien is eligible for forms of relief from removal. See also ICE’s Memorandum on *Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens*, March 11, 2011.

<sup>7</sup> 8 C.F.R. § 1003.19, § 1236.1. For additional information on the role of the Executive Office for Immigration Review, see Department of Justice Executive Office for Immigration Review, *Immigration Court Practice Manual*, June 10, 2013, [http://www.justice.gov/eoir/vll/OCIJPracManual/ocij\\_page1.htm](http://www.justice.gov/eoir/vll/OCIJPracManual/ocij_page1.htm).

<sup>8</sup> Each field office has attorneys that advise ERO and represent ICE in immigration proceedings. These attorneys report to the ICE headquarters Office of Principal Legal Advisor.



**Figure 2: Custody Considerations for Non-Mandatory Detention Cases**

<b>Danger to the Community</b>	
<b>U.S. Criminal Convictions</b>	<b>Other Safety Concerns</b>
<ul style="list-style-type: none"> <li>•Severity of Conviction</li> <li>•Rehabilitation</li> <li>•Recency</li> </ul>	<ul style="list-style-type: none"> <li>•National Security</li> <li>•Extradition Requests</li> <li>•Multiple Arrests</li> <li>•Gang Affiliations</li> </ul>
<b>Flight Risk</b>	
<ul style="list-style-type: none"> <li>•Ties To The Community</li> </ul>	<ul style="list-style-type: none"> <li>•Immigration Violations</li> </ul>
<b>Likelihood of Removal</b>	
<ul style="list-style-type: none"> <li>•Final Order Of Removal</li> </ul>	<ul style="list-style-type: none"> <li>•Access To Travel Documents</li> </ul>
<b>Additional Considerations</b>	
<ul style="list-style-type: none"> <li>•Humanitarian Concerns</li> <li>•Medical Concerns</li> </ul>	<ul style="list-style-type: none"> <li>•Law Enforcement Objectives</li> <li>•Significant Public Benefit</li> </ul>

Source: **OIG Analysis of ICE Guidance.**

ERO uses the Enforcement Case Tracking System (ENFORCE) to track detention, removal, and release operations.<sup>9</sup> ERO uses data in ENFORCE to publish routine and customized reports that ICE shares with the DHS Secretary, the Office of Management and Budget (OMB) and congressional staff. These reports may include the number of aliens in detention: whose detention is mandatory; who have criminal convictions; and who are non-criminal immigration violators. ENFORCE also categorizes aliens by criminal level based on the type of conviction and length of sentence.<sup>10</sup> Although these categories provide stakeholders an overview of ICE’s detained population, FODs must consider the circumstances of each individual case when making a release determination.

**Congressional Detention Mandate**

The number of aliens ICE detains fluctuates daily as ICE arrests, books into detention, releases, and removes aliens. However, congressional appropriations language requires that ICE “shall maintain a level of not less than 34,000 detention beds . . . .”<sup>11</sup> ICE tracks compliance with the congressional mandate by measuring its “average daily population”

<sup>9</sup> Data is extracted using the ICE Integrated Decision Support System. For more information, see *Privacy Impact Assessment Update for the Alien Criminal Response Information Management System and Enforcement Integrated Database*, September 29, 2010.

<sup>10</sup> ICE designates as Level 1 those aliens convicted of two or more crimes each punishable by at least 1 year, or convicted of aggravated felonies as defined under the INA. These crimes may be violent or non-violent. ICE designates as Level 2 aliens convicted of a felony, or three or more crimes each punishable by less than 1 year. ICE designates as Level 3 aliens convicted of crimes punishable by sentences of less than 1 year.

<sup>11</sup> P.L. 113-6, *Consolidated and Further Continuing Appropriations Act*, 2013, Division D, Title II.



(ADP). In fiscal year (FY) 2013, ICE requested funding for approximately 31,300 of ICE's detention beds. ICE planned to fund the remaining 2,700 beds from two sources of revenue, breached bonds and user fees.<sup>12</sup>

With a limited budget, when ICE detains more than 34,000 aliens early in an FY, ICE must lower its detention population later to achieve the 34,000 ADP. During a continuing resolution, ICE must meet its ADP at the end of the continuing resolution. ICE's budget assumes detention beds cost \$122 a day on average.<sup>13</sup> However, ICE houses aliens in more than 250 facilities nationwide, with varying contract terms that affect costs. For example, detention bed space is generally more expensive in the northeast and northwest than in southern and midwestern states.

## Results of Review

In FY 2013, increased alien apprehensions, continuing resolutions, and sequestration budget constraints had an effect on ICE's ability to manage its detention bed space. Insufficient planning by ICE executive leadership and limited engagement with ERO contributed to the timing and number of alien releases. ICE executive leadership did not communicate effectively with ERO, the DHS Secretary, or OMB about the budget shortfall, nor did they notify DHS' Secretary about plans to release aliens as a remedy for the budget shortfall. In addition, ICE did not anticipate the potential consequences of its decision to release 1,450 immigration detainees over one weekend. As a result, ICE was unprepared to respond to congressional inquiries about the detainee releases and provided incorrect data. We determined ERO applied selection criteria and processes appropriately in determining which aliens to release. However, unreliable funding sources do not cover all costs of ICE's mandate to maintain 34,000 detention beds. Consequently, it is difficult for ICE to manage its detention bed space effectively. We obtained no evidence ICE sought or received guidance about the timing or nature of the

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<sup>12</sup> Breached Bonds: ICE releases some aliens from detention on bond. When aliens breach the terms of the bond, ICE retains the breached bond funds and applies most of it to detention costs. ICE may maintain breached bond revenue until spent. P.L. 102-395 authorizes a breached bond detention fund. 8 C.F.R. §103.6 addresses bonds collected from aliens in immigration proceedings. 8 C.F.R. §241.5 addresses bonds collected from aliens with a final order of removal from the United States. 8 C.F.R. §1240.26(c)(3) addresses bonds for aliens that have been granted voluntary departure from the United States.

User Fees: CBP collects an immigration user fee from passengers arriving on commercial aircraft and vessels at U.S. air and sea ports of entry. ICE uses these fees to recover costs of its operations to deter, detect, detain, adjudicate, and remove passengers who are inadmissible to the United States. ERO receives a portion of these fees. ICE may maintain user fee revenue until spent. Section 286 of the INA authorizes the immigration inspection user fee account.

<sup>13</sup> ICE calculated 34,000 beds at \$122 a day for 365 days, for a budget of \$1,514,020,000.



detainee budgetary releases from the DHS Secretary or the Executive Office of the President.

### **Circumstances of and Reasons for the Release of ICE Detainees**

ICE executive leadership did not plan adequately for increased Border Patrol apprehensions on the southern border in the Rio Grande Valley. ICE was not able to track available funds or expenditures accurately, and did not inform DHS' Secretary or DHS' Chief Financial Officer (CFO) when ICE realized it faced a budget shortfall. ICE executive leadership did not provide ERO sufficient time to plan the budgetary releases. Nonetheless, FODs made reasonable release decisions given the short timeframe.

### **Border Patrol Apprehensions Increased**

Border Patrol apprehensions in the Rio Grande Valley increased significantly, as seen in figure 3. Total apprehensions in the Rio Grande Valley rose from 59,243 in FY 2011 to 97,762 in FY 2012, or 65 percent. Moreover, Border Patrol apprehended more than twice as many non-Mexicans in FY 2012 as it had in FY 2011. As shown in Figure 3, apprehensions of non-Mexicans rose from 20,890 in FY 2011 to 49,939 in FY 2012. The Border Patrol placed these aliens in expedited removal, making detention mandatory. ERO needs more time and resources to process non-Mexicans, who require travel documents and flight arrangements.<sup>14</sup>

Total apprehensions increased from 340,525 in FY 2011 to 364,768 in FY 2012. Border Patrol apprehensions continued to increase in FY 2013, as seen in appendix E. ICE executive leadership did not develop contingency plans to: (1) address potential budget shortfalls; (2) discuss options for cutting costs; or (3) obtain additional funding. As a result, ERO overspent its budget. At the beginning of FY 2013, ERO's ADP was 35,610. This ADP was well over ERO's 34,000 funding level, so ERO was aware of its high expenditures.<sup>15</sup>

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<sup>14</sup> In most instances, the Mexican government does not require its citizens to present travel documents when returning to Mexico across the United States–Mexican border.

<sup>15</sup> ICE spends approximately \$4.15 million a day with a 34,000 ADP and \$4.34 million with a 35,610 ADP.



**Figure 3: Increase in Arriving Aliens**

INCREASE IN ARRIVING ALIENS			
Border Patrol Apprehensions	FY 2011	FY 2012	Increase
All Southwest Border	327,577	356,873	9%
Rio Grande Valley	59,243	97,762	65%
Non-Mexicans	43,098	99,013	130%
Non-Mexicans in Rio Grande Valley	20,890	49,939	139%
ICE ADP			
Nationwide	33,300	34,260	3%
ICE Total Detained Population			
All Field Offices	429,247	477,523	11%
San Antonio	64,927	118,105	82%

Source: ICE and CBP.

### Budget Centralization

In FY 2013, ICE's CFO managed ERO's budget, including tracking expenditures and projecting available funding. Between October 1, 2012, and January 1, 2013, ERO repeatedly asked ICE's CFO for information on available funding, but did not receive it. ERO attempted to track its expenditures, but ERO numbers on the amount of the shortfall differed from the ICE CFO's numbers. Without full information on available funding, ERO reduced ADP by increasing removal operations. This strategy incurred additional costs for charter flights, tickets for commercial flights, and overtime for ICE escorts.

### Communication

ICE's executive leadership did not communicate effectively with ERO, and did not inform DHS leadership or the Executive Office of the President when they realized ICE was facing a budget shortfall. As a result, ICE executive leadership assumed incorrectly that they could cover some of the shortfall by reducing ERO's ADP sharply. Appendix F shows the timeline of the budgetary releases.

- On January 7, 2013, ICE's CFO first reported to ICE executive leadership that ICE faced a budget shortfall. ICE would need approximately \$90 million more by the end of the continuing resolution to continue its current spending.
- On January 29, 2013, ICE's CFO first informed OMB that ICE faced a budget shortfall. At the end of January 2013, ADP was 34,451 and ICE's



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CFO proposed to reduce the daily population to 25,700 by the end of the continuing resolution on March 27, 2013.

- On January 31, 2013, Congressional staff informed ICE's CFO that maintaining 34,000 ADP is a statutory requirement. Around this time, ICE's CFO requested \$22 million from OMB.<sup>16</sup> OMB initially responded negatively and asked for a legal analysis.
- On February 20, 2013, ICE executive leadership sought legal guidance from ICE counsel concerning the 34,000 ADP requirement. After receiving legal advice from ICE's counsel, ICE's CFO again requested \$22 million from OMB.
- On February 21, 2013, OMB requested legal input by DHS counsel, which was provided.
- On Friday, February 22, 2013, ICE executive leadership decided to reduce ADP sharply by the following Monday to address the budget shortfall and provided FODs target detention populations.<sup>17</sup> ICE notified OMB of the analysis received from DHS counsel. We obtained no evidence ICE informed OMB of its planned releases. We were not able to determine why ICE executive leadership did not wait for OMB to make a decision on releasing additional funding.

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<sup>16</sup> During a continuing resolution, OMB routinely withholds some appropriated funding in case funding for the full year is lower than expected. The \$22 million was funding from ICE's FY 2013 appropriation.

<sup>17</sup> At 10:39 a.m. on Friday, February 22, 2013, ERO HQ sent an email to the FODs stating, "I hope to have a more definitive target number for everyone this afternoon."

At 11:41 a.m. ERO HQ sent an email to the FODs stating, "[a]ttached is a spreadsheet showing where you need to be, by Monday, February 25, 2013." The spreadsheet, in appendix G, shows that the original deadline was Friday, March 1, 2013.



## **The Weekend Releases**

When ICE executive leadership decided to introduce target reduction numbers on February 22, 2013, ICE leadership did not provide ERO time to review and update its draft reduction targets. As a result, ERO leadership sent field offices disproportionate target reduction numbers. For example, there was no written methodology to explain why ERO headquarters instructed 14 of the 24 field offices to reduce their populations, while it instructed the other 10 field offices to target a number higher than their current detention population. Appendix G shows the target reductions for the 24 field offices. Further, ERO headquarters officials did not provide field offices written guidance on how to prioritize the releases or from which facilities to release aliens.

ICE's instructions to release aliens over a weekend complicated ERO coordination efforts. For example, most ERO officers that manage a detained docket work during regular business hours. FODs required these officers to work overtime to ensure staff familiar with the cases made the release decisions. ERO officers also had limited access to legal advice because ICE executive leadership did not formally notify ICE attorneys of the weekend releases. Only one ERO field office had an attorney available to review each case before release.

ERO's detention population included few detainees whose detention was not mandatory and who did not have criminal convictions, as shown in appendix G. In addition, some aliens categorized as non-criminal immigration violators were not suitable for release. This caseload included national security and extradition cases, aliens awaiting sentencing in criminal cases, and aliens already scheduled for removal. Some releasable aliens were located in facilities where ICE is obligated to pay a mandatory bed space minimum.<sup>18</sup>

Given the short timeframe of the releases, FODs applied selection criteria and processes appropriately. ERO officers reviewed their own detained alien dockets to determine the best candidates for release. Officers reviewed information available online for recent criminal convictions. They also visually checked candidates for release for evidence of gang affiliations. ERO supervisory field officers reviewed each release recommendation. ERO officers told us that when they were not certain whether to release an alien, they kept the alien in detention. As appendix H shows, most field offices did not meet their target populations. By close of business February 25, 2013, ERO had released 1,450 aliens for budgetary reasons.

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<sup>18</sup> For mandatory minimum detention contracts, ICE agrees to pay for a certain number of beds whether the beds are used or not.



## **Response to ICE Weekend Releases**

ICE executive leadership did not anticipate questions about the detainee releases and did not instruct ERO field offices to track the releases. It was only on February 28, 2013, that ICE executive leadership began asking ERO for detailed information on the releases. ICE executive leadership made several data requests and provided ERO limited time to respond to each request. Some ERO officers said the information they provided in response to those requests was accurate, but others said their numbers were not accurate.<sup>19</sup> Because ICE compiled numbers without sufficient planning, ICE executive leadership did not provide Congress with accurate information on the number of aliens released for budgetary reasons. Appendix I shows the numbers ICE provided Congress.<sup>20</sup>

ICE executive leadership did not communicate to Congress or the public that, given the short timeframe, ERO officers made reasonable decisions on which aliens to release. ICE executive leadership requested that ICE attorneys conduct two reviews of aliens categorized as aggravated felons or felons.<sup>21</sup> ICE officials leading and participating in these reviews concluded that ERO officers made reasonable release decisions given the short timeframe. As shown in appendix I, ICE reported that ERO redetained 54 aliens following these reviews. ICE did not provide context for the redetentions. In addition, ICE headquarters officials made the decision to redetain many of the aliens after ERO supervisory officers and ICE field attorneys had already determined not to redetain. Many redetained aliens were ill, had served their sentences more than a decade earlier, were non-violent offenders, or were final order cases and would require

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<sup>19</sup> At least one field office inadvertently included in its reported total an alien released for law enforcement reasons. Other field offices included aliens that they would have released irrespective of the reduction targets. A few offices categorized some aliens as released for lack of funds in ENFORCE, but did not include these aliens in the totals provided ERO headquarters.

<sup>20</sup> Appendix I shows that on March 13, 2013, ICE told Congress it released 2,228 aliens, 629 of whom had criminal convictions. On April 8, 2013, ICE revised the number to 2,226 aliens, 622 of whom had criminal convictions. In June 2013, ICE provided us alien registration numbers for 2,211 released aliens, 617 of whom had criminal convictions. Of the 2,211 aliens, ICE included 5 not released in the February 9 to March 1, 2013, timeframe.

<sup>21</sup> March 15, 2013, Review:

Goal: Review cases of aliens ERO classified as Level 1, Level 2 custody decisions for budgetary releases.

Result: ERO redetained 25 aliens, because more than half met a mandatory detention category.

March 20, 2013, Review:

Goal: Review all Level 2 cases to determine whether aliens are appropriately classified, the crimes that support the classification, the individual is mandatory based on the INA, and redetain is recommended.

Result: As shown in Appendix I, based on the attorney review, ERO reclassified many Level 2 cases as Level 1, Level 3, or non-criminal. ERO reclassified some based on the attorneys' legal analysis or new information, but reclassified others because attorneys noted the ENFORCE database automated categorization of priority levels "is not always accurate."



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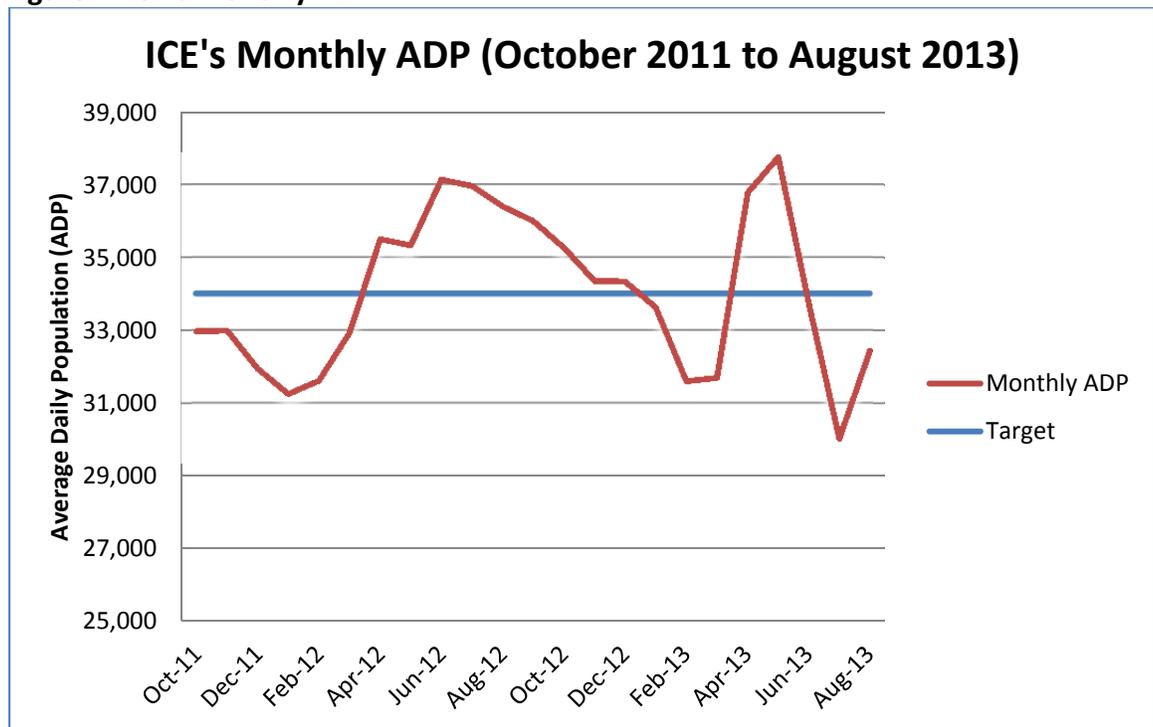
release within a few months. Moreover, ICE's executive leadership and Office of Principal Legal Advisor and Office of Chief Counsel attorneys limited their after action reviews to determining whether released Level 1 and Level 2 aliens were categorized correctly and whether ICE executive leadership would recommend redetention of certain released aliens. These reviews did not assess whether field offices had better options for release, given ICE executive leadership instructions to meet target population reductions.

#### **ICE Budget Management**

Since the February 2013 releases, ICE has not improved communication or transparency with key stakeholders. Officials from DHS' CFO said they have difficulty obtaining sufficient information from ICE's CFO to conduct adequate oversight. The ERO officials we interviewed, including budget staff, said they did not have reliable information on available funding. ICE executive leadership's ability to track expenditures and available funding has not improved. After the budgetary releases, DHS transferred funding from other DHS components to fund detention bed space. Despite this transfer, ERO officials said ICE executive leadership instructed them several times to increase detention populations and then release detainees. As a result, as shown in figure 4, ICE did not meet the 34,000 mandate for FY 2013. ICE's ADP at the end of FY 2013 was 33,788.



Figure 4: ICE's Monthly ADP



Source: OIG Analysis of ICE ERO Law Enforcement Systems and Analysis Division.

The budgetary releases demonstrate ICE's executive leadership could not centralize budget management effectively. In June 2013, the CFO centralized managing ICE's detention facility contracts. Both ICE CFO and ERO officials said centralization was to increase cost predictability. ICE's CFO said that in some instances FODs incurred detention costs and paid for the bed space after the fact, thus increasing the risk ICE would incur costs it did not have funds to cover. However, FODs need flexibility to obtain bed space without advance notice. Without notice, FODs must take custody of aliens that are violent, physically or mentally ill, or vulnerable. To prevent harm to aliens in ICE custody, FODs need flexibility to provide appropriate detention capabilities.

ICE needs to develop an effective and transparent budget management strategy. ICE should delegate to FODs detention management functions, including managing detention budgets and contracts. ICE should also develop a transparent budget tracking and reporting process to ensure that stakeholders, including DHS' CFO, the Executive Office of the President, and Congress, receive information timely concerning external detention management challenges to ICE's budget. These challenges include, but are not limited to, significant changes in Border Patrol apprehension rates. ICE should develop a comprehensive



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contingency strategy to address unforeseen alien surges that will exceed the available budget.

#### **Recommendations**

We recommend that the ICE Principal Deputy Assistant Secretary:

#### **Recommendation #1:**

Develop and implement a plan to provide Enforcement and Removal Operations reliable and transparent funding sources to manage detention bed space efficiently and effectively.

#### **Recommendation #2:**

Develop and implement a plan to improve transparency in tracking and reporting ICE budget expenditures to the DHS Chief Financial Officer, the Executive Office of the President, and Congressional Appropriations committees.

#### **Management Comments and OIG Analysis**

We evaluated ICE's written response and have made changes to the report where we deemed appropriate. A summary of ICE's written response to the report recommendations and our analysis of the response follows each recommendation. A copy of ICE's response, in its entirety, is appendix C. ICE concurred with all four report recommendations. We appreciate ICE's comments and contributions.

**Management Response:** ICE officials concurred with Recommendation 1. In its response, ICE clarified how OIG characterized the detention bed mandate from the FY 2013 *Appropriations Act*. ICE said the FY 2013 *Appropriations Act* provided "[t]hat funding made available under this heading shall maintain a level of not less than 34,000 detention beds through September 30, 2014." [P.L. 113-6.] ICE said the OIG report and recommendations characterize this language as requiring a specific average daily population of detainees. ICE said this language does not indicate a specific daily population, but rather requires DHS to maintain a level of detention beds.

In its specific response to Recommendation 1, ICE officials said the Office of the Chief Financial Officer Office of Budget and Program Performance (OCFO) will develop and implement a plan to provide ERO information on funding resources that ERO needs to effectively manage detention bed space. To improve the



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accuracy of available information, the CFO implemented financial accounting task codes that correspond to each detention facility to identify money by detention facility. ICE said this change has improved the accuracy rate of its detention space financial data to more than 95 percent. ICE said the OCFO will continue to improve the accuracy of its ICE CFO Bed Rate model, which continues to mature. In addition, ERO and OCFO will continue to meet on a regular basis to discuss execution status and compare projections, while discussing any anomalies and potential issues that arise. ICE requests OIG consider this recommendation resolved and open pending corrective actions, which ICE estimates completing by February 27, 2015.

**OIG Analysis:** We consider ICE's proposed actions partially responsive to the intent of this recommendation, which is resolved and open. In its general comments, the ICE cite to the FY 2013 *Appropriations Act* is accurate. However, ICE reports weekly to Congress on the average daily population and daily count of detainees, which is the number of detention beds filled, not the level of detention beds.

In response to Recommendation 1, ICE provided information on plans to improve the accuracy of its financial accounting. ICE did not provide information on plans to supply ERO with reliable and transparent funding sources. We will close this recommendation when we receive documentation that ICE has implemented a plan to provide ERO reliable and transparent funding sources. We recognize developing a better financial accounting system may be necessary to achieve this goal.

**Management Response:** ICE officials concurred with Recommendation 2. In its response, ICE said the OCFO will develop and implement a plan to improve transparency in tracking and reporting ICE budget expenditures to the DHS CFO, the Executive Office of the President, and congressional appropriations committees. ERO and OCFO will continue to meet on a regular basis to discuss execution status and often compare projections, while discussing any anomalies and potential issues that may arise. ICE said it will work to provide more detailed monthly reports to the DHS CFO and bi-annually to the Executive Office of the President and congressional appropriations committees. ICE will also work with its stakeholders to determine whether additional reporting would provide a clearer picture of ICE's ongoing detention efforts. ICE requests OIG consider this recommendation resolved and open pending corrective actions, which ICE estimates completing by February 27, 2015.

**OIG Analysis:** We consider ICE's proposed actions responsive to the intent of this recommendation, which is resolved and open. We will close this



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recommendation when we receive a sample of the improved monthly report to the DHS Chief Financial Officer and bi-annual report to the Executive Office of the President and congressional appropriations committees.

#### **Statutory Requirements for Detention Funding and Management**

Congressional appropriations do not support ICE's need to respond to cyclical changes in Border Patrol apprehension rates, nor support efficient detention management. The congressional 34,000 ADP mandate requires ERO to make release decisions based on bed space availability.

#### **Detention Management Funding**

Detention management funding sources are not reliable. The statute requires ICE to maintain an ADP of 34,000 detention beds; however, ICE requested funds for approximately 31,300 detention beds. ICE funds the remaining detention beds with breached bond and user fee revenues. Revenue from these sources may vary:

- Since 2010, ERO's bond management office has automated its paper-based bond process, introducing efficiencies in reporting, collecting, and reimbursing bonds. Bond management officials implemented the automated process to reduce breached bonds. As a result, breached bond funding decreased.
- In FY 2012, the Government Accountability Office noted ICE had not implemented a recommendation that ICE analyze user fee data to identify what fee adjustments, if any, were necessary.<sup>22</sup> In response, ICE revised the methodology for determining its user fee revenue. Before the budgetary releases the ICE CFO reported a shortfall in user fee funding for detention beds.

Congress appropriates funding for a specific FY and appropriations do not support ICE's need to respond to cyclical changes in Border Patrol apprehension rates. As a result, ICE cannot apply appropriated funding from a year when Border Patrol apprehensions are lower to a year when apprehensions are higher. Rather, DHS must identify funding from other ICE offices or other DHS components and complete an extensive reprogramming process. Should Congress fund the detention mandate fully and provide no year or multiple year

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<sup>22</sup> See Government Accountability Office, *2012 Annual Report: Opportunities to Reduce Duplication, Overlap and Fragmentation, Achieve Savings, and Enhance Revenue*, February 2012, GAO-12-342SP.



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appropriations to manage cyclical changes in detention needs, ICE could meet the detention bed mandate more effectively.

In addition, Congressional appropriations do not support efficient detention contract management. For example, ICE is only able to fund its detention contracts in 1-year increments. Operating under continuing resolutions further complicates contract management. Should Congress provide no year or multiple year funding, it would position ICE better to negotiate contract terms and achieve greater cost efficiencies.

#### **Statutory Detention Requirements**

The ADP congressional mandate requires ERO to make release decisions based on bed space availability, not only whether detention is necessary for public safety or to effect removals. Appropriations, breached bond/user fee revenues, and DHS reprogramming only provide funding for a maximum ADP of 34,000. As a result, during periods when the Border Patrol apprehends more arriving aliens or when ICE stages enforcement operations, ERO field offices may need to release aliens that are better suited for detention. These releases could include aliens in noncompliance with immigration and removal proceedings, or aliens with recent convictions for driving under the influence or domestic violence. In contrast, ERO field offices may detain discretionary cases during periods when the Border Patrol apprehends fewer arriving aliens.

ICE needs reliable funding for detention management and the authority to determine which aliens are best suited for detention. Without these resources, it is likely ICE will continue to make detention decisions based on available funding rather than the most efficient use of detention bed space. ICE should engage Congress to obtain funding for all detention bed space mandated costs. The funding should provide flexibility to manage cyclical changes in apprehensions of arriving aliens.

#### **Recommendations**

We recommend that the ICE Principal Deputy Assistant Secretary:

##### **Recommendation #3:**

Pursue budget authority to obtain no year or 5-year appropriations to fund detention of arriving aliens.



**Recommendation #4:**

Pursue budget authority to obtain funding for the full costs of the detention bed space mandate.

**Management Comments and OIG Analysis**

**Management Response:** ICE officials concurred with Recommendation 3. In its response, ICE said it requested 5-year funding in its FY 2015 budget request for ICE custody operations. OCFO will work with the DHS CFO to develop a plan to ensure that ICE's requests for funding reflect the appropriate budget authorities for ICE's detention needs. ICE requests OIG consider the recommendation resolved and closed.

**OIG Analysis:** We consider ICE's proposed actions responsive to the intent of this recommendation, which is resolved and open. We will close this recommendation when we receive a copy of the FY 2015 budget request.

**Management Response:** ICE officials concurred with Recommendation 4. In its response, ICE said it requested funding to house an average of 30,539 aliens per day in its FY 2015 budget request for ICE custody operations. The ICE OCFO will work with the DHS CFO to develop a plan to ensure that ICE's requests for funding reflect the full costs of ICE's detention needs. ICE requests OIG consider the recommendation resolved and closed.

**OIG Analysis:** We consider ICE's proposed actions responsive to the intent of this recommendation, which is resolved and open. We will close this recommendation when we receive a copy of the FY 2015 budget request.

**ICE Did Not Seek or Receive External Guidance or Directives on the Releases**

We obtained no evidence ICE sought or received guidance or directives about the timing or nature of the detainee releases from the Executive Office of the President. ICE executive leadership stated to us and to Congress that ICE did not consult with or inform the DHS Secretary, DHS CFO, OMB, or Congress in advance of its decision. We reviewed email correspondence to and from ICE's executive leadership from January 2013 through February 26, 2013, and did not see evidence that ICE discussed the releases in advance.



## **Appendix A**

### **Objectives, Scope, and Methodology**

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

We reviewed ICE's budgetary releases from February 9 to March 1, 2013. Our objectives were to determine:

- (1) the circumstances of and reasons for the release of the detainees, including how much money ICE or DHS thought it would save through the release;
- (2) the selection criteria and process used to identify detention centers and detainees for the release, including the specific criminal background of each detainee released;
- (3) whether ICE accurately applied its selection criteria and processes to the immigration detainee population; and
- (4) whether ICE received guidance or directives about the timing or nature of the release from the Executive Office of the President.

Our scope was limited to the aliens identified by ICE as budgetary releases during the period from February 9 to March 1, 2013. We did not review the selection criteria and processes used to release other aliens during FY 2013, and did not review the conditions of release for any aliens in ICE custody. ERO uses ENFORCE to manage detention, removal, and release operations. We conducted a limited review of the ENFORCE database to provide general context on routine ICE releases from custody, and did not use this review to generate statistics on the composition of ICE's detained or released caseload.

We conducted fieldwork for this report from April 2013 to April 2014. We conducted 120 interviews with more than 170 officials from ICE, ICE contractors, non-governmental organizations, and officials from the DHS CFO and Department of Justice Executive Office for Immigration Review. These interviews included in-person and telephone interviews with FODs, Deputy FODs, and Assistant FODs involved in the February 2013 releases from 18 of the 24 ERO field offices. We interviewed ERO headquarters staff, including detailed field officials to headquarters before or during the February 2013 budgetary releases. We also interviewed ICE officials from the Office of the Principal Legal Advisor, CFO, and the ICE ERO Law Enforcement Systems and Analysis Division. We conducted eight field site visits to interview ERO supervisory and non-supervisory



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officers involved in the February 2013 budgetary releases, and ICE Office of Chief Counsel attorneys involved in the after action reviews.

In response to our request for documents related to the budgetary releases, ICE provided over 20,000 documents, including email messages, case analysis for the after action reviews, planning documents, and documents used to prepare congressional testimony. ICE provided few of the documents we requested to assess ICE's budget. Based on our interviews with the DHS CFO, ICE executive leadership, ICE CFO staff, and ERO budget staff, we concluded the information ICE's CFO provided ICE executive leadership on expenditures and available funding was incomplete. We obtained direct access to the ENFORCE database, and conducted an independent review of the records of aliens detained and released from custody in FY 2013.

We conducted this review under the authority of the *Inspector General Act of 1978*, as amended, and according to the Quality Standards for Inspections issued by the Council of the Inspectors General on Integrity and Efficiency.



## **Appendix B**

### **Recommendations**

We recommend that the ICE Principal Deputy Assistant Secretary:

#### **Recommendation #1:**

Develop and implement a plan to provide Enforcement and Removal Operations reliable and transparent funding sources to manage detention bed space efficiently and effectively.

#### **Recommendation #2:**

Develop and implement a plan to improve transparency in tracking and reporting ICE budget expenditures to the DHS Chief Financial Officer, the Executive Office of the President, and Congressional Appropriations committees.

#### **Recommendation #3:**

Pursue budget authority to obtain no year or 5-year appropriations to fund detention of arriving aliens.

#### **Recommendation #4:**

Pursue budget authority to obtain funding for the full costs of the detention bed space mandate.



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**Appendix C**  
**Management Comments to the Draft Report**

*Office of Management and Administration*

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



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

July 11, 2014

MEMORANDUM FOR: The Honorable John Roth  
Inspector General  
Office of Inspector General

FROM: *for* Radha C. Sekar *RS*  
Executive Associate Director  
Management and Administration

SUBJECT: Management Response to OIG Draft Report, "ICE's Release of  
Immigration Detainees" (Project No. 13-147-ISP-ICE)

U.S. Immigration and Customs Enforcement (ICE) thanks you for the opportunity to review and respond to the DHS Office of Inspector General (OIG) draft report titled "ICE's Release of Immigration Detainees."

The draft report contained four recommendations. We concur with the recommendations in the report, but note a clarification with the manner in which the detention bed mandate from the Fiscal Year (FY) 2013 Appropriations Act is characterized in the report and in the recommendations. Specifically, as quoted in the report at page 6, the FY 2013 Appropriations Act provided "[t]hat funding made available under this heading shall maintain a level of not less than 34,000 detention beds through September 30, 2014." Pub. L. No. 113-6. The report and recommendations, however, characterize this language as requiring a specific average daily population of *detainees*. The language of the provision from the Appropriations Act does not indicate a specific daily population, but rather requires DHS to maintain a level of detention beds. While it is important to clarify the characterization of the bed mandate, the Department concurs with the report's recommendations.

We are committed to addressing the issues identified in the report and have already begun developing plans of action to facilitate timely closure of these recommendations. The following is our formal response for each recommendation in the draft report:

**Recommendation # 1:** Develop and implement a plan to provide Enforcement and Removal Operations (ERO) reliable and transparent funding sources to manage detention bed space efficiently and effectively.

[www.ice.gov](http://www.ice.gov)



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Management Response to OIG Draft Report – ICE’s Release of Immigration Detainees (Project No. 13-147-ISP-ICE)

Page 2

**Response:** Concur. ICE’s Office of the Chief Financial Officer Office of Budget and Program Performance (OCFO) will work to develop and implement a plan that will provide ERO information on funding resources that ERO needs to effectively manage detention bed space. To improve the accuracy of available information, OCFO implemented financial accounting task codes that correspond to each detention facility so that money can be identified by detention facility. This single change has improved the accuracy rate of our detention space financial data to over 95%. Further, OCFO will continue to improve the accuracy of its ICE CFO Bed Rate model, which continues to mature. In addition, ERO and OCFO will continue to meet on a regular basis to discuss execution status and compare projections while discussing any anomalies and potential issues that may arise. ICE requests this recommendation be considered resolved and open pending completion of the corrective actions. Estimated Completion Date (ECD): February 27, 2015.

**Recommendation # 2:** Develop and implement a plan to improve transparency in tracking and reporting ICE budget expenditures to the DHS Chief Financial Officer, the Executive Office of the President, and Congressional Appropriations committees.

**Response:** Concur. ICE OCFO will develop and implement a plan to improve transparency in tracking and reporting ICE budget expenditures to the DHS Chief Financial Officer, the Executive Office of the President, and Congressional Appropriations committees. ERO and OCFO will continue to meet on a regular basis to discuss execution status and often compare projections while discussing any anomalies and potential issues that may arise. Also, ICE will work to provide more detailed monthly reports to the DHS Chief Financial Officer and bi-annually to the Executive Office of the President, and Congressional Appropriations committees. Also, ICE will work with its stakeholders to determine if additional reporting would provide a clearer picture of ICE’s ongoing detention efforts. ICE requests this recommendation be considered resolved and open pending completion of the corrective actions. ECD: February 27, 2015.

**Recommendation # 3:** Pursue budget authority to obtain no year or 5-year appropriations to fund detention of arriving aliens.

**Response:** Concur, with the recommendation to request adequate budget authority for ICE’s detention needs. ICE notes that five-year funding was requested in the FY 2015 budget request for ICE custody operations. ICE OCFO will work with the DHS Chief Financial Officer to develop a plan to ensure that ICE’s requests for funding reflect the appropriate budget authority for ICE’s detention needs. ICE requests this recommendation be considered resolved and closed.

**Recommendation # 4:** Pursue budget authority to obtain funding for the full costs of the detention bed space mandate.

**Response:** Concur, with the recommendation to pursue adequate budget authority for ICE’s detention needs. ICE notes that funding to house an average of 30,539 aliens per day was requested in the FY 2015 budget request. ICE OCFO will work with the DHS Chief Financial



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Officer to develop a plan to ensure that ICE's requests for funding reflect the full costs of ICE's detention needs. ICE requests this recommendation be considered resolved and closed.

Again, thank you for the opportunity to review and comment on this draft report. Technical comments were previously provided under separate cover. We look forward to working with you in the future.

Should you have any questions, please contact Michael Moy, Senior Portfolio Manager, at (202) 732-6263 or by e-mail at [Michael.C.Moy@ice.dhs.gov](mailto:Michael.C.Moy@ice.dhs.gov).



## **Appendix D**

### **Mandatory Detention Categories**

**Expedited Removal Under INA § 235:** Aliens who arrive at U.S. ports of entry without valid documentation or with false documentation and aliens who are encountered between ports of entry without valid documentation are subject to “expedited removal.” An alien ordered removed under the expedited removal process is not entitled to any further hearings, reviews, or appeals. Aliens subject to expedited removal must be detained until they are removed and may only be released due to medical emergency or, if necessary, for law enforcement purposes. When an arriving alien expresses a fear of persecution or torture or intent to apply for asylum, the alien is placed in detention until a credible fear interview can be held. Aliens determined to have a credible fear may be paroled from custody and placed in formal removal proceedings under INA section 240. Aliens with negative credible fear determinations are detained until the alien is removed from the United States.

**Suspected Terrorists Under INA § 236A:** The INA requires the detention of an alien whom the Attorney General certifies as someone who the Attorney General has “reasonable grounds” to believe is involved in terrorist activities, or in any other activity that endangers national security. Within 7 days of detaining the alien, the Attorney General must initiate removal proceedings, bring criminal charges, or otherwise release the alien. An alien who is detained solely as a certified terrorist and is unlikely to be removed in the “reasonably foreseeable future,” may be detained for additional periods of up to 6 months only if release would threaten the national security of the United States or public safety. The Attorney General must review the terrorist certification every 6 months.

**Criminal Aliens Under INA § 236(c):** Aliens who are inadmissible for national security or terrorism-related reasons are subject to mandatory detention. Aliens who are seeking admission or entered unlawfully into the United States are subject to mandatory detention if they have committed: (1) crimes involving moral turpitude; (2) controlled substance offenses; (3) multiple criminal convictions with aggregate sentences of 5 years; (4) prostitution and commercialized vice; (5) human trafficking; and (6) money laundering.

The INA also states that aliens who have been admitted to the United States and are removable based on the conviction of certain criminal offenses while in the United States, are subject to mandatory detention. These offenses generally include: (1) a crime involving moral turpitude for which a sentence of 1 year or longer may be imposed; (2) two or more crimes involving moral turpitude; (3) aggravated felonies; (4) drug offenses; and (5) firearms offenses.



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**INA § 241(a):** Once an order of removal becomes administratively final, DHS has discretion to detain or release “final order” aliens during the first 90 days, except for certain aliens who must be detained during that period, which generally include aliens inadmissible or deportable for criminal or security-related grounds. An alien subject to mandatory detention and determined by the DHS Secretary to be a risk to the community or unlikely to comply with the order of removal may be held beyond the 90-day removal period.



## Appendix E Increased Apprehensions and Detentions in FY 2012

INCREASE IN ARRIVING ALIENS			
Border Patrol Apprehensions	FY 2011	FY 2012	Change
<b>By Region</b>			
All Southwest Border	327,577	356,873	9%
Non-Southwest Border	12,675	7,895	-38%
<b>Total</b>	<b>340,252</b>	<b>364,768</b>	<b>7%</b>
<b>By Nationality</b>			
Mexicans	297,154	265,755	-11%
Non-Mexicans	43,098	99,013	130%
<b>Total</b>	<b>340,252</b>	<b>364,768</b>	<b>7%</b>
<b>Non-Mexicans By Region</b>			
Rio Grande Valley	20,890	49,939	139%
Other Southern Border	26,107	44,593	71%
Outside Southern Border	7,101	4,481	-37%
<b>Total</b>	<b>54,098</b>	<b>99,013</b>	<b>83%</b>
<b>ICE Aliens Booked Into Custody</b>			
San Antonio (Rio Grande Valley)	64,927	118,105	82%
Other Southern Border	126,843	149,526	18%
Outside Southern Border	237,477	209,892	-12%
<b>Total</b>	<b>429,247</b>	<b>477,523</b>	<b>11%</b>

**Sources:**

United States Border Patrol Nationwide Illegal Alien Apprehensions, Fiscal Years 1925–2013<sup>23</sup>

United States Border Patrol Southwest Border Sectors, Total Illegal Apprehensions by Fiscal Year<sup>24</sup>

United States Border Patrol Illegal Alien Apprehensions from Countries Other Than Mexico by Fiscal Year<sup>25</sup>

ICE ERO Information Resource Management Weekly Departures and Detention Report

<sup>23</sup> <http://www.cbp.gov/sites/default/files/documents/U.S.%20Border%20Patrol%20Fiscal%20Year%20Apprehension%20Statistics%201925-2013.pdf>

<sup>24</sup> <http://www.cbp.gov/sites/default/files/documents/U.S.%20Border%20Patrol%20Fiscal%20Year%20Apprehension%20Statistics%201960-2013.pdf>

<sup>25</sup> <http://www.cbp.gov/sites/default/files/documents/U.S.%20Border%20Patrol%20Fiscal%20Year%20Apprehension%20Statistics%20by%20sector%20and%20border%20area.pdf>



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**Appendix F**  
**Timeline of ICE Budgetary Releases**

**January 2013**

S	M	T	W	T	F	S
30 ADP 34,659	31	1	2	3	4	5
6 ADP 34,635	7 CFO projects \$94m deficit Advocates ADP reduction to 31,701 ERO encourages ADP reduction	8	9	10	11	12
13 ADP 34,630	14	15	16	17	18 CFO projects \$128m deficit Advocates immediate reduction to 24,593	19
20 ADP 34,546	21	22	23	24	25 CFO projects \$128m deficit Advocates ADP reduction to 31,713	26
27 ADP 34,451	28	29 CFO tells OMB of overall execution issue	30 CFO and ERO budget deficit estimates differ by \$23m	31 Congressional staffer tells CFO 34,000 ADP is statutory requirement ERO encourages ADP reduction, caps detention levels	1	2

**Timeline Legend: NCIV=Non-Criminal Immigration Violators**

ERO Releases Due To Budget Shortfall	Budget Management	ICE HQ Instructions To Field Officers	Public Response	ICE HQ Data Request to ERO	ICE Attorney File Review	ADP=Average Daily Population
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## February 2013

S	M	T	W	T	F	S
					1	2
3 ADP 34,338	4 OMB asks CFO about detention bed rates CFO provides information and FY 2012 bed rates	5 CFO provides additional information to OMB on bed rate	6 CFO provides OMB detention spending information	7 ERO HQ tells field they are exceeding cap, not decreasing at rate needed for CR	8	9 ERO releases 3
10 ADP 34,210	11 ERO releases 28	12 ERO releases 46	13 CFO advocates saving \$47m by reducing daily population to 25,700 ERO releases 32	14 ERO HQ tells field HQ reviewing budget, ADP, provides NCIV list ERO releases 40 CFO recommended ADP of 30,905	15 OMB declines CFO funding request House & Senate tell CFO to keep ADP at 34,000 ERO HQ again provides field NCIV list ERO releases 100	16 ERO releases 3
17 ADP 34,087 ERO releases 1	18 ERO releases 1	19 ERO HQ provides NCIV list, target of 25,800 ADP by 03/31/2013 ERO releases 36	20 CFO briefs House, CFO requests \$22m from OMB, OMB asks for ICE legal opinion on ADP mandate ERO HQ provides NCIV list, target of 30,748 detainees by 02/22/2014 ERO releases 81	21 OMB asks for DHS legal input, which was provided ERO releases 59	22 ERO HQ gives field target of 29,536 detainees and 02/25/2013 deadline, ERO provides specific target reductions for 14 field offices ICE provides OMB DHS legal input ERO releases 232	23 ERO releases 156
24 ADP 33,968 ERO releases 292	25 Media reports on AZ, NJ, NY releases ERO releases 770	26 Congressional inquiries, DHS CFO learns of shortfall ICE HQ asks AZ, NJ, NY for information OMB asks required funding level, CFO requests \$22m ERO releases 206	27 Congressional inquiries continue AZ, NJ, NY respond ICE calls releases non-criminal, low risk offenders ICE CFO calls OMB, DHS CFO ERO releases 81 ERO redetains 1	28 Congressional inquiries continue ICE HQ asks all field offices details on criminal releases \$22m apportionment signed by OMB ERO releases 36	1	2



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**March 2013**

S	M	T	W	T	F	S
					1	2
					Sequestration begins ICE Director briefs DHS Secretary ICE HQ asks additional details on criminal releases ERO releases 3	
3 ADP 33,784	4 House requests briefing on releases ERO redetains 1	5 ICE leadership requests copies of ERO field guidance	6 ICE HQ asks details ASAP on non-criminal releases	7 ERO redetains 1, Immigration judge later grants relief	8 ICE CFO requests reprogramming \$38m in user fee revenue for detention beds	9 ERO prepares releases summary
10 ADP 33,623	11 ICE HQ asks field additional details ASAP on releases	12 ERO redetains 1, Immigration judge later ordered release on bond	13 ICE provides Congress matrix of released aliens (appendix I) ERO redetains 1	14 ICE Director testifies (House Committee on Appropriations)	15 ICE Director requests legal review of released Level 1s, Level2s ERO, field attorneys begin review ERO redetains 4	16 ERO, field attorneys continue review ERO redetains 1
17 ADP 33,516 ERO, field attorneys continue review San Francisco directed to detain mandatory cases	18 ICE HQ directs field to rearrest specific aliens, ERO redetains 25	19 ICE Director testifies (House Committee on Judiciary) ERO redetains 2	20 ICE Director requests second legal review of released Level 1s, Level2s, ICE HQ begins to collect alien files ERO redetains 1	21 ICE attorney conference call, search for archived alien files at National Records Center	22 ICE attorney file review continues	23 ICE attorney file review continues
24 ADP 33,459 ICE attorney file review continues	25 Some Level 2s reclassified as Level 1, Level 3, or non-criminal	26 ICE attorney file review results compiled (appendix I) ERO redetains 3	27 Continuing resolution ends ERO redetains 6	28 ERO redetains 4	29 ERO redetains 2	30
31 ADP 33,467	1	2	3	4	5	6



## Appendix G

### Target and Actual Budgetary Releases by Field Office

#### Target Detention Populations Sent to ERO Field Offices

Field Office	Population As of 02/20/2013	ADP Target Projections For 03/01/2013	ADP Target Projections For 03/31/2013
Atlanta	2,088	1,884	1,543
Baltimore	281	301	260
Boston	682	750	600
Buffalo	344	450	450
Chicago	1,136	998	863
Dallas	713	854	738
Denver	497	400	400
Detroit	420	481	417
El Paso	1,293	1,639	1,338
Houston	2,205	1,896	1,640
Los Angeles	1,786	1,954	1,690
Miami	1,793	1,574	1,362
New Orleans	2,323	1,999	1,729
New York City	869	736	637
Newark	1,120	1,040	900
Philadelphia	931	867	750
Phoenix	2,750	2,371	2,051
Salt Lake City	387	390	337
San Antonio	5,519	5,111	4,422
San Diego	1,114	916	792
San Francisco	639	575	527
Seattle	1,275	1,300	1,300
St. Paul	402	400	400
Washington	613	650	600
<b>Total</b>	<b>31,180</b>	<b>29,536</b>	<b>25,748*</b>

Source: ICE.

\*As a result of an ICE rounding error in data formulas it used to create the alien ADP target projections for this chart, the total ADP for 03/31/2013 equals 25,748, not 25,746.



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**Target Detention Populations and Actual Releases**

Field Office	Detention Population As of 02/20/2013	ADP Target Projections For 03/01/2013	*Target Release by 02/25/2013	Actual Releases
Atlanta	2,088	1,884	204	130
Baltimore	281	301	(20)	13
Boston	682	750	(68)	2
Buffalo	344	450	(106)	5
Chicago	1,136	998	138	144
Dallas	713	854	(141)	26
Denver	497	400	97	34
Detroit	420	481	(61)	10
El Paso	1,293	1,639	(346)	154
Houston	2,205	1,896	309	240
Los Angeles	1,786	1,954	(168)	13
Miami	1,793	1,574	219	225
New Orleans	2,323	1,999	324	54
New York City	869	736	133	73
Newark	1,120	1,040	80	25
Philadelphia	931	867	64	9
Phoenix	2,750	2,371	379	332
Salt Lake City	387	390	(3)	8
San Antonio	5,519	5,111	408	341
San Diego	1,114	916	198	225
San Francisco	639	575	64	47
Seattle	1,275	1,300	(25)	44
St. Paul	402	400	2	49
Washington	613	650	(37)	8
<b>Total</b>	<b>31,180</b>	<b>29,536</b>	<b>1,644</b>	<b>2,211</b>

Source: OIG Analysis of Information Provided by ICE.

(Budget releases statistics derived from alien numbers provided by ICE)

\*Numbers in parenthesis indicate target population higher than actual population



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**Criminal Aliens/Mandatory Detention by Field Office**

Field Office	Detention Population as of 02/20/2013	2013 ADP Target Projections Mar 1, 2013	Mandatory Detainees as of 02/20/13*	Percentage of Mandatory Detainees	Convicted Criminals as of 02/20/13**	Percentage of Convicted Criminal
Atlanta	2,088	1,884	1,216	58%	1,668	80%
Baltimore	281	301	229	81%	234	83%
Boston	682	750	507	74%	540	79%
Buffalo	344	450	298	87%	267	78%
Chicago	1,136	998	726	64%	919	81%
Dallas	713	854	553	78%	641	90%
Denver	497	400	350	70%	383	77%
Detroit	420	481	275	65%	335	80%
El Paso	1,293	1,639	1,044	81%	599	46%
Houston	2,205	1,896	1,552	70%	1,443	65%
Los Angeles	1,786	1,954	1,081	61%	1,628	91%
Miami	1,793	1,574	1,328	74%	1,251	70%
New Orleans	2,323	1,999	1,930	83%	1,456	63%
New York City	869	736	517	59%	696	80%
Newark	1,120	1,040	766	68%	745	67%
Philadelphia	931	867	767	82%	613	66%
Phoenix	2,750	2,371	2,231	81%	1,275	46%
Salt Lake City	387	390	288	74%	372	96%
San Antonio	5,519	5,111	5,022	91%	1,521	28%
San Diego	1,114	916	997	89%	517	46%
San Francisco	639	575	443	69%	566	89%
Seattle	1,275	1,300	786	62%	940	74%
St. Paul	402	400	285	71%	368	92%
Washington	613	650	387	63%	569	93%
<b>Total</b>	<b>31,180</b>	<b>29,536</b>	<b>23,578</b>	<b>76%</b>	<b>19,546</b>	<b>63%</b>
<b>*Some aliens that are mandatory detainees, such as expedited removal cases, are not criminals</b>						
<b>**Some aliens with criminal convictions do not require mandatory detention</b>						

Source: OIG Analysis of Information Provided by ICE.



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**Non-Criminal Immigration Violators/Actual Budget Releases**

Field Office	Total Detention Population As of 02/20/2013	*Non Criminal Immigration Violators In Detention As of 02/20/2013	**Target Release by 02/25/2013	Actual Budget Releases Total	Actual Budget Releases Criminal	Actual Budget Releases Non-Criminal
Atlanta	2,088	208	204	130	55	75
Baltimore	281	16	(20)	13	3	10
Boston	682	51	(68)	2	0	2
Buffalo	344	20	(106)	5	1	4
Chicago	1,136	98	138	144	46	98
Dallas	713	17	(141)	26	3	23
Denver	497	6	97	34	29	5
Detroit	420	38	(61)	10	1	9
El Paso	1,293	96	(346)	154	29	125
Houston	2,205	190	309	240	99	141
Los Angeles	1,786	28	(168)	13	1	12
Miami	1,793	165	219	225	76	149
New Orleans	2,323	150	324	54	0	54
New York City	869	79	133	73	48	25
Newark	1,120	128	80	25	4	21
Philadelphia	931	40	64	9	2	7
Phoenix	2,750	138	379	332	116	216
Salt Lake City	387	3	(3)	8	2	6
San Antonio	5,519	239	408	341	40	301
San Diego	1,114	48	198	225	1	224
San Francisco	639	22	64	47	36	11
Seattle	1,275	87	(25)	44	0	44
St. Paul	402	4	2	49	25	24
Washington	613	19	(37)	8	0	8
<b>Total</b>	<b>31,180</b>	<b>1,890</b>	<b>1,644</b>	<b>2,211</b>	<b>617</b>	<b>1,594</b>

Source: OIG Analysis of Information Provided by ICE.

(Budget releases statistics derived from alien numbers provided by ICE)

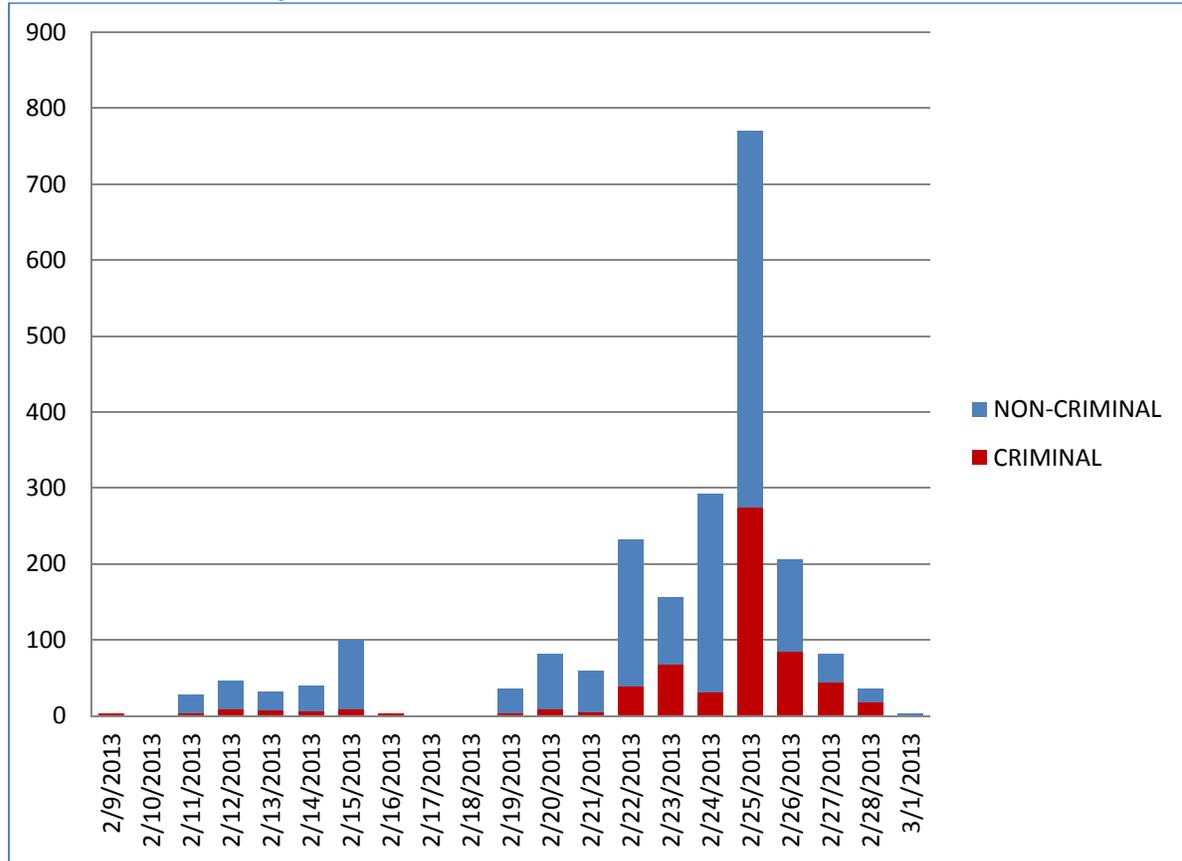
\*Includes aliens that represent a danger to the community or flight risk

\*\*Numbers in parenthesis indicate target population higher than actual population



## Appendix H Budgetary Releases by Date and Field Office

### Detainee Releases by Date

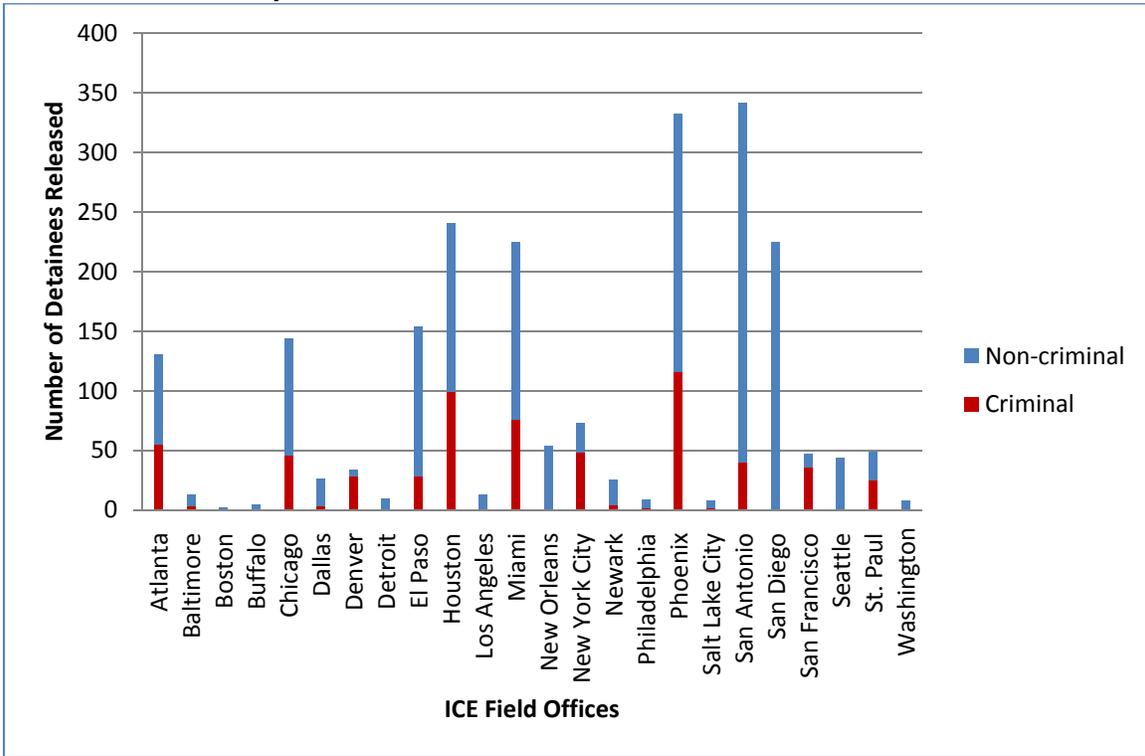


Source: OIG Analysis in ENFORCE Database Using Alien Numbers Provided By ICE.



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**Detainee Releases by Field Office**



Source: OIG Analysis in ENFORCE Database Using Alien Numbers Provided By ICE.



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**Appendix I**  
**Budgetary Release Tallies**

March 13, 2013, Budgetary Release Tally

**Detention Releases Solely for Budget Reasons by Field Office**

Field Office	Total	Total Non-Criminal	Total Criminal	Total Level 3	Total Level 2	Total Level 1
Atlanta	128	75	53	40	13	
Baltimore	13	10	3	3		
Boston	2	2	0	0		
Buffalo	5	4	1	1		
Chicago	146	99	47	34	10	3
Dallas	26	23	3	3		
Denver	34	5	29	29		
Detroit	10	9	1	1		
El Paso	154	125	29	26	3	
Houston	240	134	106	59	47	
Los Angeles	13	12	1	1		
Miami	225	149	76	59	15	2
Newark	28	24	4	3	1	
New Orleans	54	54	0	0		
New York City**	75	27	48	37	9	2
Philadelphia	9	7	2	2		
Phoenix	342	220	122	91	30	1
Salt Lake City	8	6	2	2		
San Antonio	341	301	40	40		
San Diego	225	224	1	1		
San Francisco*	49	13	36	3	31	2
Seattle	44	44	0	0		
St. Paul	49	24	25	25		
Washington	8	8	0	0	159	10
<b>Total</b>	<b>2228</b>	<b>1599</b>	<b>629</b>	<b>460</b>	<b>159</b>	<b>10</b>

1. All individuals remain in removal proceedings and under supervision.  
 2. Level 1: Aggravated Felon; Level 2: Other Felons and Multiple Misdemeanors; Level 3: Misdemeanor  
 3. These numbers do not include special releases due to court rulings or humanitarian concerns.

\* 1 Returned to ICE Custody \*\* 3 Returned to ICE Custody



Source: ICE.



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April 8, 2013, Budgetary Release Tally

**Total Detention Releases by Field Office from February 9 to March 1, 2013**

Field Office	Total	Total Non-Criminal	Total Criminal	Total Level 3	Total Level 2	Total Level 1
***Atlanta**	128	75	53	42	10	1
Baltimore	13	10	3	3		
Boston	2	2	0	0		
Buffalo	5	4	1	1		
***Chicago***	145	98	47	36	5	6
Dallas	26	23	3	3		
Denver	34	5	29	29		
Detroit	10	9	1	1		
El Paso***	154	125	29	27	2	
***Houston***	240	141	99	87	11	1
Los Angeles	13	12	1	1		
Miami***	225	149	76	64	8	4
Newark	28	24	4	3		1
New Orleans	54	54	0	0		
New York City* **	75	27	48	37	6	5
Philadelphia	9	7	2	2		
Phoenix***	341	219	122	95	22	5
Salt Lake City	8	6	2	2		
San Antonio	341	301	40	40		
San Diego	225	224	1	1		
***San Francisco***	49	13	36	9	16	11
Seattle	44	44	0	0		
St. Paul	49	24	25	25		
Washington	8	8	0	0	80	34
<b>Total</b>	<b>2226</b>	<b>1604</b>	<b>622</b>	<b>508</b>	<b>80</b>	<b>34</b>

1. All individuals remain in removal proceedings and under supervision.  
 2. Level 1: Aggravated Felony; Level 2: Other Felons and Multiple Misdemeanors; Level 3: Misdemeanor  
 3. These numbers do not include special releases due to court rulings or humanitarian concerns.  
 4. One non-criminal returned to custody (enforcement priority, but was later released on bond (Houston Field Office)).

As of 4-8-2013



Source: ICE.



## **Appendix J**

### **Major Contributors to This Report**

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Morgan Ferguson, Inspector  
Jennifer Kim, Inspector  
Marcia Moxey Hodges, Chief Inspector



## **Appendix K**

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