OFFICE OF INSPECTOR GENERAL

Streamline: Measuring Its Effect on Illegal Border Crossing

Homeland Security

May 15, 2015

OIG-15-95

HIGHLIGHTS

Streamline: Measuring Its Effect on Illegal Border Crossing

May 15, 2015

Why We Did This

Streamline is an initiative to criminally prosecute individuals who illegally enter the United States through defined geographic regions along the Southwest border. We reviewed: (1) whether Border Patrol measures Streamline's effect on illegal re-entry; (2) whether the cost of Streamline can be determined; and (3) how Streamline affects U.S. Immigration and Customs Enforcement (ICE) Office of Enforcement and Removal Operations' (ERO) resources.

What We Recommend

We recommend measuring Streamline's effects differently, estimating costs, determining appropriate staffing levels, and developing guidance on using Streamline for aliens expressing fear of return or prosecution.

For Further Information:

Contact our Office of Public Affairs at (202) 254-4100, or email us at DHS-OIG.OfficePublicAffairs@oig.dhs.gov

What We Found

Although U.S. Customs and Border Protection's (CBP) Border Patrol measures Streamline's effect on re-entry of illegal aliens, its metrics do not reflect an alien's crossing history, re-entry, or re-apprehension over multiple years. As a result, Border Patrol is not fully and accurately measuring Streamline's effect on deterring aliens from entering and re-entering the country illegally. Additionally, because Border Patrol does not distinguish Streamline costs from the costs of its other border enforcement consequences, Border Patrol is not able to differentiate Streamline-associated costs. Finally, according to ICE ERO, Streamline has increased the workload at some of its Southwest border field offices. However, ERO cannot be certain which aliens it removes as a result of Streamline and which removals result from other enforcement actions.

We identified an additional issue not directly related to our objectives that needs management's attention. Border Patrol does not have guidance on using Streamline for aliens who express fear of persecution or return to their home countries, and its use of Streamline with such aliens is inconsistent and may violate U.S. treaty obligations.

Component Response

U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement concurred with all five recommendations.

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Abbreviations

BOP	Bureau of Prisons
CBP	U.S. Customs and Border Protection
CDS	Consequence Delivery System
DHS	Department of Homeland Security
DOJ	Department of Justice
ERO	Enforcement and Removal Operations
FY	fiscal year
ICE	U.S. Immigration and Customs Enforcement
INA	Immigration and Nationality Act
OIG	Office of Inspector General
OTM	Other Than Mexican
SAUSA	Special Assistant United States Attorney
USAO	U.S. Attorneys' Office
USC	United States Code
USMS	U.S. Marshals Service

Results of Inspection

Border Patrol uses its Consequence Delivery System (CDS) as an analysis tool to evaluate the circumstances of each apprehension, and decides which enforcement action is most likely to impede or deter repeated illegal border crossings. Within CDS, Border Patrol uses the Streamline initiative to target aliens who illegally enter or re-enter the United States through defined geographic regions, and then refers these aliens to the Department of Justice (DOJ) for criminal prosecution. The goal of Streamline is to reduce rates of alien re-entry recidivism.

We reviewed whether the Border Patrol measures Streamline's effect on illegal re-entry, whether the cost of Streamline can be determined, and how Streamline affects U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) resources. We determined:

- Border Patrol has metrics to evaluate Streamline's effect on illegal re-entry, but current metrics limit its ability to fully analyze illegal re-entry trends over time.
- Border Patrol does not distinguish Streamline resource costs from its other CDS border enforcement actions, and is not able to determine Streamline associated costs.
- According to ICE, as a result of Streamline, ERO must remove more aliens, which increases its workload at some Southwest border ERO field offices and strains staffing resources.

We identified an additional issue not directly related to our objectives that needs management's attention. Border Patrol does not have guidance on using Streamline for aliens who express fear of persecution or return to their home countries. Border Patrol's practice of referring such aliens to prosecution under Streamline is inconsistent among Border Patrol sectors and may violate U.S. treaty obligations.

We also identified that other Federal departments and agencies have a significant role in supporting and implementing Streamline, which results in substantial operational and resource commitments by these entities. See appendix F for more information concerning these pertinent support efforts.

We recommend Border Patrol measure the effect of Streamline on illegal entry over multiple years, U.S. Customs and Border Protection (CBP) and ICE determine appropriate staffing levels for Streamline, and CBP develop guidance on using Streamline for aliens expressing fear of return or persecution.

Background

Border security and immigration enforcement require cooperation and coordination among Federal Government agencies. Within the Department of Homeland Security (DHS), CBP and ICE are responsible for conducting immigration enforcement along the border and inside the United States. DOJ and the U.S. Courts are also responsible for some aspects of immigration enforcement and play a vital role in supporting and implementing Streamline criminal prosecutions and sentencing.

Streamline

In December 2005, Border Patrol began using Operation Streamline (the precursor to the current Streamline initiative) in response to an increase in illegal alien entries from countries other than Mexico in 2004 and 2005. Implemented in collaboration with and assistance from DOJ and the U.S. Courts, Streamline is a Border Patrol initiative where Border Patrol refers aliens entering the United States illegally for the first time or attempting re-entry to DOJ for criminal prosecution. Border Patrol officials said the goal of Streamline is to reduce the rate of alien re-entry recidivism.

Before 2004, Border Patrol only referred a limited number of illegal entry aliens to DOJ for criminal prosecution. Historically, when apprehending aliens entering the United States illegally for the first time, Border Patrol would:

- immediately return most Mexican nationals to Mexico through the Voluntary Return process, that is, departure without an order of removal;
- administratively detain and process aliens for formal removal from the United States through the civil immigration system;
- issue a Notice to Appear in immigration court and release aliens on their own recognizance pending their appearance; or
- refer to prosecution aliens deemed dangerous based on criminal history or suspected of smuggling.[1]

According to Border Patrol officials, in 2004 and 2005, illegal entry for Other Than Mexican (OTM) foreign nationals increased in Border Patrol's Del Rio sector.[2] Border Patrol could not use Voluntary Return procedures for OTMs because Voluntary Return is not an option for aliens from countries that do not have a contiguous border with the United States. In addition, ICE had limited

[1] See appendix D for more information on types of removals.
[2] Border Patrol divides border areas between U.S. ports of entry into sectors and operates 20 sectors along the U.S. border; 9 of these sectors are on the Southwest border.

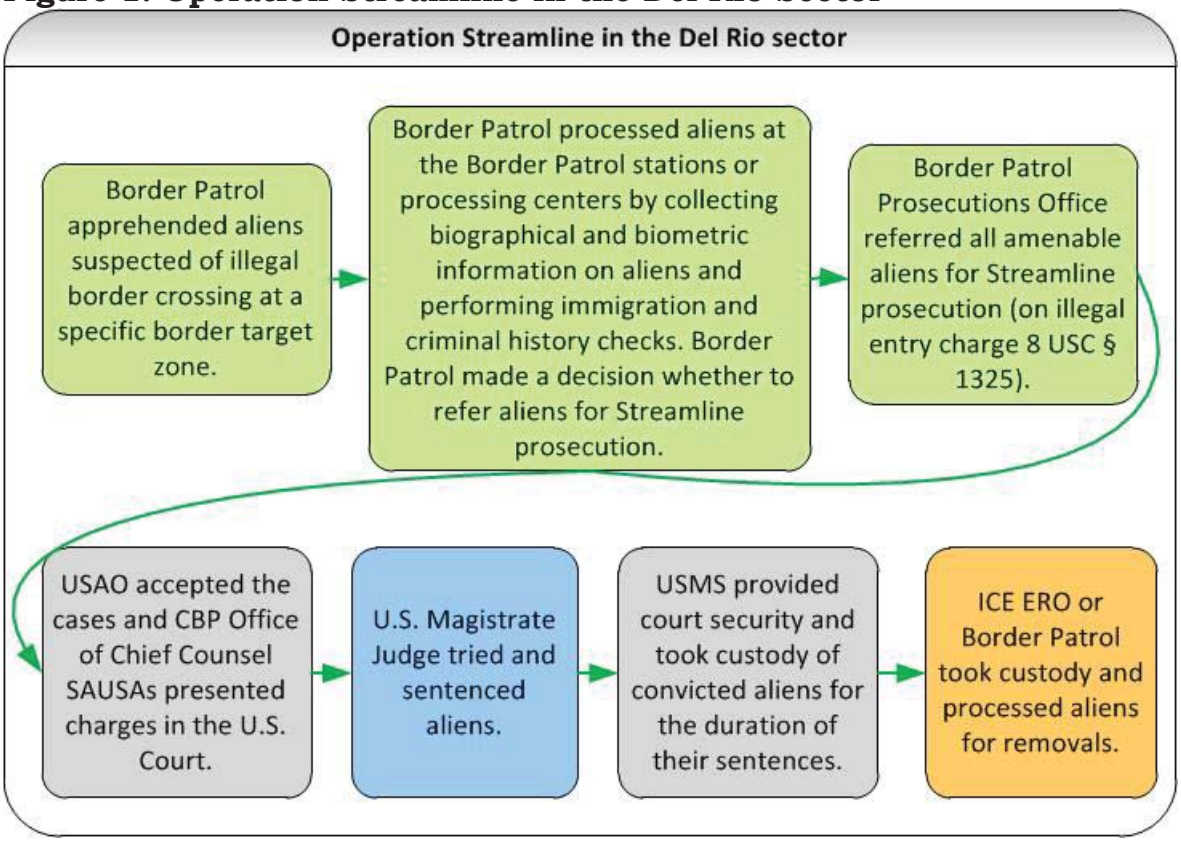
detention capacity to hold these aliens pending immigration hearings or removal, and Border Patrol did not have the authority or capacity to detain long-term OTMs it apprehended. As a result, Border Patrol released most OTMs into surrounding U.S. communities with a Notice to Appear in immigration court. This practice was commonly referred to as "catch and release." The volume of OTM illegal alien entries continued to increase in the Del Rio sector, which Border Patrol attributed to the spread of information in some Central and South American countries about the practice of releasing OTMs into U.S. communities.

In 2005, Border Patrol approached the U.S. Attorneys' Office (USAO) for the Western District of Texas and proposed that the USAO criminally prosecute all aliens entering illegally in a target enforcement zone in the Del Rio sector.[3] Border Patrol and the USAO reached an agreement to implement this initiative, and in December 2005 the Del Rio sector began using Operation Streamline. According to Border Patrol, the initial intent of Operation Streamline was to deter illegal entries and end catch and release with an operation that included arrest, prosecution, and removal.

In the Del Rio sector, Border Patrol apprehended illegal aliens, processed them, and decided whether to refer them to DOJ for prosecution under Operation Streamline. CBP attorneys, deputized as Special Assistant U.S. Attorneys (SAUSAs), assisted with criminal immigration proceedings. USAO prosecuted illegal immigration cases in U.S. courts. The U.S. Marshals Service (USMS) transported and took custody of aliens during their sentences. After aliens had served their sentences, ERO or the Border Patrol took custody of the aliens from USMS and processed them for removal. Figure 1 shows the steps and Federal partner Operation Streamline roles in the Del Rio sector.

[3] According to Border Patrol, target enforcement zones are areas of high-traffic illegal entry.

Figure 1: Operation Streamline in the Del Rio Sector



Source: Office of Inspector General (OIG) Summary of DHS, DOJ, and U.S. Courts data.

Between 2005 and 2008, Operation Streamline expanded to other Border Patrol sectors in Texas and Arizona and was renamed "Streamline." At the height of the program, six sectors participated. As of December 2014, only the Tucson, Del Rio, and Laredo sectors continue to participate in Streamline.[4] Table 1 shows Streamline implementation by Border Patrol sectors as of August 2014.

[4] Yuma, El Paso, and Rio Grande Valley sectors discontinued using Streamline between 2013 and 2014. However, the USAO Branch Offices in these sectors continue to prosecute misdemeanor 8 USC § 1325 – improper entry by alien cases.

Table 1: Streamline Implementation by Border Patrol Sectors

Southwest Border Sectors	Year Streamline Started	Status as of August 2014	Application	Average Number of Streamline Prosecutions Per Month as of June FY 2014
Del Rio	2005	Active	Entire Sector	945
Laredo	2007	Active	Targeted Enforcement Zone	463
Tucson	2008	Active	Entire Sector	2,100

Source: OIG summary of Border Patrol data.

According to Border Patrol, sectors use Streamline differently depending on sector resources, courthouse and jail infrastructure, geography, crossing population, the prosecutorial priorities of its Federal partners. For example, some sectors use Streamline for persistent border crossers or criminal aliens; other sectors use Streamline for aliens apprehended in a specific target zone, regardless of crossing or criminal history.

Border Patrol estimates that between fiscal years (FY) 2006 and 2011, approximately 168,856 apprehensions resulted in referrals to DOJ for prosecution under Streamline.[5] Table 2 shows apprehensions processed using referral to Streamline for FY 2012 through March 2014.

Table 2: Border Patrol Apprehensions Processed Using Referral to Streamline Prosecutions

Sector	FY 2012	FY 2013	October 2013 through March 2014	Total
Yuma	2,222	2,473	1,647	6,342
Tucson	17,153	14,154	7,891	39,198
El Paso	36	128	Discontinued Using Streamline in 2013	164
Del Rio	14,986	18,652	6,773	40,411
Laredo	4,840	6,740	2,023	13,603
Rio Grande Valley	5,059	4,546	1,262	10,867
Total:	**44,296**	**46,693**	**19,596**	**110,585**

Source: Border Patrol data.

[5] Border Patrol could not provide the number of apprehensions resulting in Streamline referrals to DOJ prosecution by sector for FYs 2006 to 2011.

Border Patrol currently uses Streamline as part of CDS. According to Border Patrol, the aim of CDS is to standardize the application of criminal, administrative, and programmatic border enforcement consequences. Border Patrol evaluates the circumstances of each apprehension and determines the most appropriate consequence with the goal of impeding or deterring repeated illegal border crossings. Appendix E contains more information on CDS.

Border Patrol Is Not Fully Measuring Streamline's Deterrent Effect on Illegal Re-entry

To determine Streamline's effectiveness in deterring illegal re-entry into the United States, Border Patrol measures an alien's crossing history by fiscal year. According to Border Patrol, by this measurement, Streamline is more effective at deterring illegal re-entry than the Voluntary Return process. That is, in FYs 2012 and 2013, the percentage of recidivism, or re-crossing the border illegally, post-Streamline was lower than the percentage of recidivism for aliens who had been returned to their home country under the Voluntary Return process. However, using year-to-year data to analyze re-entry trends does not take into account attempts at illegal re-entry that span multiple years. For example, by the Border Patrol's metric an alien attempting to cross the border at the end of a fiscal year and making a second attempt at the beginning of the next fiscal year would not be considered a recidivist.

Border Patrol officials said that the goal of Streamline is to reduce rates of alien recidivism. Border Patrol sectors develop specific targets for recidivism and re-apprehension rates for each fiscal year based on previous fiscal year rates.

Citing FYs 2012 and 2013 statistics, Border Patrol officials said Streamline, especially when compared to Voluntary Return, is an effective program for deterring illegal border crossers. Table 3 shows Streamline's overall Southwest border recidivism rate in FY 2012 was about 10 percent and in FY 2013 was about 9 percent compared to the Voluntary Return rates of 27 and 28 percent during the same time period.[6]

Table 3: Streamline and Voluntary Return Recidivism Rates by Sector

Border Patrol Sector	Streamline Recidivism Percentage Rate		Voluntary Return Recidivism Percentage Rate	
	FY 2012	FY 2013	FY 2012	FY 2013
Yuma	18.71	16.26	23.28	22.07
Tucson	12.80	9.83	24.27	27.36
El Paso	0	24.41	14.29	18.01
Del Rio	5.08	6.83	13.95	17.58
Laredo	11.01	10.23	18.68	17.85
Rio Grande Valley	13.15	11.53	23.74	26.36
Total:	**10.30**	**9.26**	**27.06**	**28.61**

Source: Border Patrol data.

Border Patrol also uses the average number of re-apprehensions of the same recidivist to measure the effectiveness of Streamline. According to Border

[6] Border Patrol did not track Streamline data consistently until it implemented the CDS in FY 2011.

Patrol, it re-apprehended 72,742 illegal Southwest border crossers in FY 2012 and 79,364 in FY 2013. Table 4 shows the average number of re-apprehensions per recidivist for Streamline and Voluntary Return in FY 2012 and 2013. During this period, the average number of Streamline re-apprehensions per recidivist decreased and Voluntary Return re-apprehensions increased.

Table 4: Streamline and Voluntary Return: Average Number of Re-apprehensions of Recidivists[7]

Border Patrol Sector	Streamline Average Number of Re-apprehensions		Voluntary Return Average Number of Re-apprehensions	
	FY 2012	FY 2013	FY 2012	FY 2013
Yuma	2.49	2.45	2.60	2.43
Tucson	2.33	2.32	2.44	2.92
El Paso	0	2.71	2.42	2.58
Del Rio	2.14	2.18	2.36	2.61
Laredo	2.19	2.13	2.21	2.29
Rio Grande Valley	2.28	2.27	2.51	2.75
Total:	**2.29**	**2.26**	**2.59**	**2.77**

Source: Border Patrol data.

Recommendation 1. We recommend that the Chief of U.S. Border Patrol develop and implement performance metrics that track illegal alien recidivism and re-apprehension rates over multiple fiscal years.

Management Comments and OIG Analysis

We evaluated the Department's consolidated written response and have made changes to the report where we deemed appropriate. A summary of the written response to the report recommendations and our analysis of the response follow each recommendation. A copy of the Department's response, in its entirety, is included as appendix C.

In addition, we received technical comments from CBP, ICE, DOJ, and the U.S. Courts, and incorporated these comments into the report where appropriate. CBP and ICE concurred with all five report recommendations. We appreciate the comments and contributions made by CBP, ICE, DOJ, and the U.S. Courts.

Management Comments: CBP officials concurred with Recommendation 1. CBP said analysis of illegal re-entry trends or patterns over an expanded duration requires consideration of other factors that directly influence attempts to commit immigration violations and recidivism. CBP believes the best approach to address this recommendation is to consider it in the context of

[7] The total number of re-apprehensions divided by the total number of recidivists equals the average number re-apprehensions per recidivist.

Border Patrol's efforts to implement a more comprehensive "State of the Border Risk Methodology" strategy. CBP describes this strategy in more detail in the Department's consolidated response. CBP said that rather than focusing solely on recidivism and the re-apprehension rate, conducting analyses of a wide range of indicators demonstrates better evaluation and assessment of CBP's enforcement efforts at the strategic, operational, and tactical levels. Border Patrol began developing this methodology in 2013, to compare current and historical data through monitoring and tracking 12 risk factors. CBP accomplishes this assessment by establishing benchmarks, from historical data for each sector and risk factor, and then compares a sector's 12-month averages to these established benchmarks. By using this evolving methodology, Border Patrol will be capable of continually assessing its progress in demonstrating effectiveness and addressing limitations.

Additionally, Border Patrol will explore partnering with ICE ERO's Law Enforcement Systems and Analysis Division to adopt best practices in organizational structure, data collection, analysis, and technology and process improvements. Doing so should help Border Patrol in delivering tools, studies, and recommendations that assist its leadership's decision-making, planning, and substantive data analysis. CBP believes these actions will sufficiently meet the intent of the recommendations, as Streamline will be one of the consequences that feeds or supports this methodology. CBP estimates it will complete the methodology by September 30, 2015.

OIG Analysis: We consider CBP's proposed actions responsive to the intent of Recommendation 1, which is resolved and open. We will close this recommendation when we receive and have reviewed the State of the Border Risk Methodology strategy.

Border Patrol Does Not Track or Estimate Streamline Costs

Border Patrol does not distinguish Streamline costs from its other border enforcement consequences evaluated under CDS, such as Voluntary Return, Expedited Removal, or issuance of Notice to Appear. Border Patrol agents apprehend, transport, process, and make post-apprehension enforcement decisions regardless of whether agents ultimately select Streamline referral to DOJ for prosecution as an appropriate consequence. As a result, Border Patrol is not able to differentiate Streamline associated costs.

Border Patrol should determine a reasonable cost estimate for CDS enforcement consequences. Border Patrol could measure the cost difference between various consequences by tracking the time required to perform an action. Doing so would position Border Patrol better to determine which consequence is appropriate given existing resources. In addition, once Border Patrol makes a decision on an appropriate consequence, it should work with its other Federal partners in evaluating how to determine different enforcement consequence costs. For example, Border Patrol's decision to assign a Streamline consequence to an alien might not incur additional costs for Border Patrol, but it affects prosecutorial, detention, and judicial resources in the DOJ and U.S. District Courts, as well as ICE ERO's resources.

Recommendation 2. We recommend that the Chief of U.S. Border Patrol develop and implement a cost estimate for enforcement consequences analyzed under the Consequence Delivery System.

Management Comments: CBP concurred with Recommendation 2. CBP responded that in March 2015, Border Patrol headquarters contacted the field with a request for information to determine which sectors tracked costs associated with Streamline. Currently, only the Rio Grande Valley sector tracks Streamline costs using the Rough Order of Magnitude Workbook and cost analysis worksheets.

To ensure a consensus among sectors and to provide for the development of a consistent, reasonable cost estimate for enforcement consequences analyzed under CDS, Border Patrol headquarters will work with sectors to establish a working group comprised of subject-matter experts to fully address this recommendation. CBP estimates it will complete these cost estimates by September 30, 2015.

OIG Analysis: We consider CBP's proposed actions responsive to the intent of Recommendation 2, which is resolved and open. We will close this recommendation when we receive and have reviewed the working group's

consistent and reasonable cost estimate for enforcement consequences analyzed under CDS.

CBP was able to identify a direct cost for CBP attorneys, deputized as SAUSAs, who assist with Streamline criminal immigration proceedings. At the time of our field work, Border Patrol's Office of Chief Counsel was funding one full-time equivalent SAUSA in Del Rio and two full-time equivalents in Tucson to work on Streamline cases.

According to USAO and CBP officials, SAUSAs help Streamline run efficiently. Officials also said having Border Patrol fund additional SAUSAs would benefit sectors using Streamline.

Recommendation 3. We recommend that the Chief of U.S. Border Patrol develop and implement a plan to determine the feasibility and appropriateness of funding additional Special Assistant U.S. Attorneys for Streamline prosecutions in more sectors.

Management Comments: CBP officials concurred with Recommendation 3. CBP responded that it may be feasible and appropriate to increase funding for SAUSAs, but it needs a broader approach for whole-of-Government immigration law enforcement on our Nation's border. Border Patrol plans to determine the appropriate number of additional SAUSAs and to conduct a feasibility study for connecting the CDS Targeted Enforcement Initiative and DOJ collaboration with larger DHS efforts within Border Patrol's Southwest border sectors. CBP describes CDS Targeted Enforcement Initiative, in more detail in the Department's consolidated response, and how all Border Patrol sectors integrate the initiative into their operations.

With the CDS Targeted Enforcement Initiative, CBP officials proposed a three-part approach to this recommendation: 1) the Chief of the Border Patrol will engage with his counterpart in CBP's Office of Chief Counsel to determine the number of additional SAUSAs and how to fund these positions; 2) the Executive Director of the Border Patrol headquarters Mission Support Division will review the determination and give feedback on whether Border Patrol can fund additional SAUSAs or whether an alternative funding is needed; and 3) the Chief of Border Patrol will direct the Chiefs of the Law Enforcement Operations and Strategic Planning, Policy, and Analysis Directorates to explore the possibility of leveraging existing DOJ relationships and discuss with all Streamline partners the future of immigration law enforcement. The Chiefs of these two Directorates will be responsible for the initial phase of this effort. CBP estimates it will complete the proposed plan by September 30, 2015.

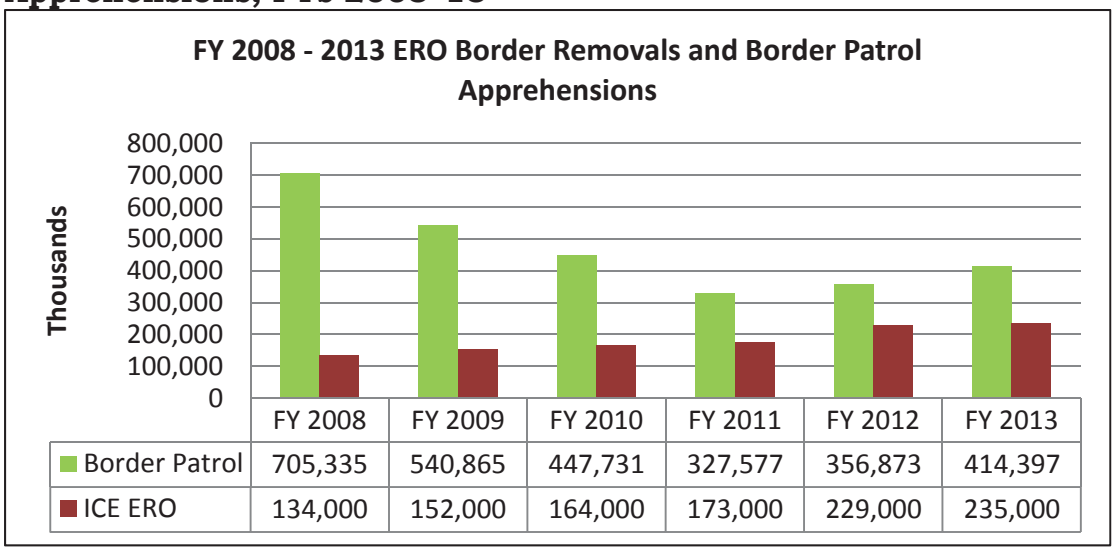
OIG Analysis: We consider CBP's proposed actions responsive to the intent of Recommendation 3, which is resolved and open. We will close this

recommendation when we receive and have reviewed the outcomes of CBP's proposed three-part plan to implement this recommendation.

Streamline May Affect ICE ERO Resources

According to ERO, since Border Patrol began using Streamline to refer aliens to DOJ for prosecution, the number of aliens ERO must remove has increased. ERO officials said these removals have increased its workload and strained staffing resources at some of its field offices. However, ERO cannot be certain which aliens are being removed as a result of Streamline and which are a result of other enforcement actions. To better determine the effect on staffing resources and the staff needed to handle the workload, ERO should track which removable aliens have been in Streamline.

Chart 1: Increased ERO Border Removals and Decreased Border Patrol Apprehensions, FYs 2008–13



	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Border Patrol	705,335	540,865	447,731	327,577	356,873	414,397
ICE ERO	134,000	152,000	164,000	173,000	229,000	235,000

Source: OIG summary of ERO and Border Patrol data.

As shown in chart 1, according to ERO, the number of aliens removed along the Southwest border increased from approximately 134,000 in FY 2008 to approximately 235,000 in FY 2013. From FY 2009 to June 2014, ERO officials said staffing and other resources, such as bed space, have decreased in some of its busiest field offices along the Southwest border.

ERO San Antonio field office officials said since Streamline implementation, the number of USMS transfers increased from dozens to hundreds per week. In ERO's Del Rio sub-office, managing USMS Streamline transfers constitutes a significant portion of its workload. However, ERO's Laredo and Del Rio sub-offices have not received additional resources.

Not every alien referred by Border Patrol to DOJ for prosecution is referred under Streamline. However, ERO could determine whether aliens transferred by USMS are a result of a Streamline prosecution. For every alien transferred, ERO could access USMS' alien transfer packet, which contains a DHS

Form I-213, Record of Deportable/Inadmissible Alien. This form includes a removable alien's apprehension and detention history, the manner of U.S. entry, prior contact with authorities, criminal record, and date and manner, if any, of removal from the United States. This form also indicates whether Border Patrol used Streamline for prosecuting the alien. Although there is no requirement for ERO to track or analyze this information, doing so could help ERO better determine staffing needs and staff distribution.

Recommendation 4. We recommend that the ICE Executive Associate Director for the Office of Enforcement and Removal Operations determine whether current Southwest Border Enforcement and Removal Operations field office staffing levels are sufficient to support increased alien removals due to U.S. Border Patrol's enhanced border enforcement efforts. Reallocate staffing levels or implement other measures to provide appropriate level of support, as necessary.

Management Comments: ICE ERO concurred with Recommendation 4. ICE responded that ERO continues to assess staffing levels throughout the country and along the Southwest border in particular. In 2014, to support the Border Patrol's enhanced border enforcement efforts, ERO deployed12 additional positions to Laredo and Harlingen, Texas. Additionally, in December 2014, after completing the only ICE ERO academy course of 2014, ICE deployed 13 of 24 academy graduates along the Southwest border. Furthermore, ICE received funding in FY 2015 for additional positions, many of which it will deploy along the Southwest border.

ICE ERO further responded that to address current and future staffing demands, ICE is in the process of modeling, creating and implementing a new Workload Staffing Model. This model will identify ICE staffing requirements by type of position, activity, and Area of Responsibility, to include needs down to the ERO sub-office level. As a result, ERO will have a better tool to assess staffing levels to support and balance the workload in each Area of Responsibility.

OIG Analysis: We consider ICE's proposed actions responsive to the intent of Recommendation 4, which is unresolved and open. We will close this recommendation when we receive and have reviewed the findings of a new Workload Staffing Model for ERO's field offices along the Southwest border and documentation on where ICE deployed the 13 positions and where it plans to deploy the FY 2015 additional positions.

Other Issue for Consideration

We identified an additional issue that, although not directly related to our objectives, needs management's attention. Specifically, Border Patrol does not have guidance on whether to refer to Streamline prosecution aliens who express fear of persecution or fear of return to their home countries. As a result, Border Patrol agents sometimes use Streamline to refer aliens expressing such fear to DOJ for prosecution. Using Streamline to refer aliens expressing fear of persecution, prior to determining their refugee status, may violate U.S. obligations under the 1967 United Nations Protocol Relating to the Status of Refugees, which the United States ratified in 1968.

The United States generally will not return a foreign national to a country that threatens the individual's life or freedom on account of race, religion, nationality, membership in a particular social group, or political opinion. Most aliens who fear persecution because of one or more of these factors may apply for various protections or relief from removal, including asylum. Aliens previously removed are not eligible for asylum, but may apply for other forms of protection.

According to *Immigration and Nationality Act* (INA) provisions, most encountered aliens who reach a U.S. border without proper documents or with fraudulent documents face expedited removal and mandatory detention.[8] In processing these aliens, Border Patrol agents must ask whether the aliens have any fear of persecution or torture, or fear of return to their home country. When an alien answers yes, Border Patrol agents document the fear in the alien's file. Typically, an alien expressing such fear will then enter expedited removal proceedings and be detained by ERO. While in ERO custody, a U.S. Citizenship and Immigration Services asylum officer interviews the alien to determine whether he or she has a credible or reasonable fear of persecution. If so, the alien is placed in regular removal proceedings in which he or she can seek asylum or other appropriate protection or relief, before an immigration judge.

According to Border Patrol officials, however, the Border Patrol does not have guidance on whether to refer aliens expressing fear to prosecution under Streamline, and sectors are doing so inconsistently. In two of the four sectors we visited that use Streamline, Border Patrol refers aliens expressing fear of persecution or return to Streamline prosecution. Border Patrol officials in these two Streamline sectors explained the Streamline process for aliens who express fear of persecution is the same as for aliens who do not. In these sectors, aliens are processed through the U.S. Courts on illegal entry or re-entry charges, receive sentences, and serve sentences in DOJ custody.

[8] See appendix D for more information on INA provisions.

After serving sentences and before removal, aliens may again express a fear of persecution or torture, or fear of return. ERO arranges interviews with U.S. Citizenship and Immigration Services asylum officers at which the officers determine whether an alien has a credible or reasonable fear. According to Border Patrol officials, when an immigration judge approves the asylum claim for aliens prosecuted through Streamline, the judge vacates the conviction for illegal entry. The majority of Border Patrol agents in these two sectors and SAUSAs that we interviewed said they did not believe such a claim of fear disqualifies an alien from Streamline prosecution.

In one sector we visited, Border Patrol did not routinely use Streamline for the aliens who expressed fear of return. Border Patrol headquarters officials and SAUSAs in one sector said aliens expressing such fear are not the "best candidates" for Streamline prosecution. Moreover, Border Patrol officials at headquarters were unsure whether it is permissible to refer aliens expressing fear to Streamline.

Recommendation 5. We recommend that the Chief of U.S. Border Patrol develop and implement processing and referral guidance for aliens who express a fear of persecution or return to their country of origin at any time during their Border Patrol processing for Streamline.

Management Comments: CBP officials concurred with Recommendation 5. CBP described the importance of integrity in processing administrative and criminal cases in the Department's consolidated response. CBP recognizes that detainees need to have the appropriate avenue to make claims pertaining to credible fear. On November 26, 2014, the Chief of Border Patrol sent a guidance memorandum and muster modules to the field to emphasize and further address credible fear determinations in expedited removal cases.

However, CBP also responded that it is imperative the criminal and administrative processes be separate avenues. Inclusion in one does not exclude inclusion in the other. CBP can prosecute an undocumented alien criminally, while at the same time the alien makes a claim to credible fear administratively. Neither process affects the outcome of the other. The fact that an undocumented alien is being prosecuted does not influence the outcome of his or her credible fear claim. The claim of credible fear cannot be used as a criterion to exclude an undocumented alien from a possible prosecution for a criminal act.

CBP responded that the Chief of the U.S. Border Patrol will develop and implement guidance in all Border Patrol sectors that use Streamline to ensure consistency in all aspects of administrative and criminal processing, particularly with regard to claims of fear of persecution or return. In developing this guidance, Border Patrol headquarters will work with the sectors to explore

the possibility of establishing a working group comprised of processing subject-matter experts, including ICE ERO. The working group will review Streamline processing operations and establish internal controls that will provide reasonable assurance of the consistency, integrity, and accuracy of Border Patrol's processing for Streamline. CBP officials estimate it will develop the guidance by September 30, 2015.

OIG Analysis: We consider CBP's proposed actions responsive to the intent of Recommendation 5, which is resolved and open. We will close this recommendation when we receive and have reviewed: 1) the guidance to all Border Patrol sectors using Streamline that ensures consistency in all aspects of administrative and criminal processing, particularly with regard to claims of fear of persecution or return; and 2) the November 26, 2014, guidance memorandum and muster modules from the Chief of Border Patrol addressing credible fear determinations in expedited removal cases.

Appendix A

Transmittal to Action Official

OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

May 15, 2015

MEMORANDUM FOR: The Honorable R. Gil Kerlikowske
Commissioner
U.S. Customs and Border Protection

The Honorable Sarah Saldaña
Director
U.S. Immigration and Customs Enforcement

FROM: John Roth
Inspector General

SUBJECT: *Streamline: Measuring Its Effect on Illegal Border Crossing*

Attached for your information is our final report, *Streamline: Measuring Its Effect on Illegal Border Crossing*. We incorporated the formal comments from the U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) in the final report.

The report contains five recommendations aimed at improving CBP's management of the Streamline initiative. Your offices concurred with all recommendations. Based on information provided in your response, we consider Recommendations 1, 2, 3, and 5 resolved and open. We consider Recommendation 4 unresolved and open.

As prescribed by the *Department of Homeland Security Directive 077-01, Follow-Up and Resolutions for Office of Inspector General Report Recommendations*, within 90 days of the date of this memorandum, please provide our office with a written response that includes your (1) corrective action plan and (2) target completion date for each recommendation. Also, please include responsible parties and any other supporting documentation necessary to inform us about the current status of the recommendation.

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

OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Please call me with any questions, or your staff may contact Anne L. Richards, Assistant Inspector General for Inspections, at (202) 254-4100.

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Appendix B

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.

Streamline is a criminal prosecution program targeting aliens who illegally enter and illegally re-enter the United States through defined geographic regions. We reviewed: (1) whether Border Patrol measures Streamline's effect on illegal re-entry; (2) whether the cost of Streamline can be determined; and (3) how Streamline affects ICE ERO resources.

We examined Border Patrol directives, policies, and procedures for Streamline. We reviewed Border Patrol statistics related to alien Streamline prosecutions. We analyzed ERO staffing in field offices that use Streamline. We also reviewed statistics, budgets, directives, policies, and procedures pertaining to Streamline from DOJ-related agencies and the Federal Judiciary.

We interviewed Border Patrol, CBP's Office of Chief Counsel, and ERO officials at headquarters to discuss their role in implementing Streamline. We met with DHS' Office for Civil Rights and Civil Liberties staff, as well as nongovernmental organization representatives to discuss concerns about Streamline. In addition, we met with DOJ headquarters officials from the Executive Office for the United States Attorneys, USMS, Bureau of Prisons (BOP), and the Executive Office of Immigration Review to discuss their role in supporting Streamline.

We conducted site visits in the following Border Patrol sectors: Del Rio, Laredo, and Rio Grande Valley, Texas; and Tucson, Arizona. During these site visits, we interviewed Border Patrol managers and agents who implement Streamline. We observed processing of apprehended illegal entry aliens. We interviewed ICE officials to determine how Streamline affects ERO removal management operations. We met with DOJ officials from USAO and USMS in districts that support Streamline to discuss their involvement. We also observed Streamline court proceedings and met with U.S. District and Magistrate Judges, Pretrial Services staff, and Public Defender's Office representatives to discuss their support of Streamline.

We performed field work for this review from February 2014 to June 2014. We conducted this review 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.

Appendix C

CBP and ICE Comments to the Draft Report

APR 22 2015

1300 Pennsylvania Avenue NW
Washington, DC 20229

U.S. Customs and Border Protection

MEMORANDUM FOR: John Roth
Inspector General

FROM: Eugene H. Schied
Assistant Commissioner
Office of Administration

SUBJECT: OIG Draft Report: "Streamline: Measuring Its Effect on Illegal Border Crossing" (Project Number 14-030-ISP-DHS)

U.S. Customs and Border Protection (CBP) thanks the Department of Homeland Security (DHS) Office of Inspector General (OIG) for the opportunity to review and comment on this draft report. CBP would like to take this opportunity to frame Streamline through an overview of its historical development and eventual inclusion as one of a variety of possible administrative, criminal, and programmatic consequences, which exist within Federal law and regulations, and are utilized by the U.S. Border Patrol (USBP), in conjunction with an analysis of effectiveness and efficiency metrics by the Consequence Delivery System (CDS).

On December 6, 2005, Operation Streamline, as it was initially called, began in the USBP's Del Rio Sector. The operation was intended to impose a prosecution-based consequence on individuals determined to have illegally entered in the United States. It was subsequently expanded to the Yuma, Laredo, Tucson, and Rio Grande Valley sectors, and the program was renamed "Streamline." Under Streamline, USBP sector Chief Patrol Agents (CPA) first designated target enforcement zones, or high-traffic and problematic areas that had the most illegal activity. Then, USBP would refer those aliens who unlawfully entered for prosecution for a violation of 8 U.S.C. § 1325, the illegal entry of an alien into the United States. To successfully prosecute these illegal aliens, Streamline leveraged DHS's strategic partnerships and the collaborative efforts of multiple agencies, including Offices of the United States Attorneys, the U.S. Marshal's Service, the Federal Judiciary, the CBP Office of Chief Counsel, and U.S. Immigration and Customs Enforcement's (ICE) Office of Enforcement and Removal Operations (ERO). As in the past, the expansion of Streamline to jurisdictions other than the Del Rio Sector continues to require close coordination between DHS and the Department of Justice (DOJ). As a targeted prosecution effort, Streamline is only one consequence analyzed by CDS to deter, deny, degrade, disrupt, and dismantle the ability of criminal elements to conduct

illegal operations. While Streamline is effective, it is not the ultimate answer to solving cross-border illegal activity issues. It also is not a zero-tolerance initiative. Streamline, properly framed, is a geographically focused, impact-driven operation used to achieve certain specific operational objectives. The purpose of any USBP consequence analyzed by CDS is to achieve the desired outcome of improving our Nation's border security.

Beginning in January 2011, USBP used CDS to improve the methodology for consequence application to apprehended illegal aliens. Since that time, the USBP has seen a positive trend in the outcome measures relating to illegal cross-border activity. CDS standardized USBP's decision-making process, which is designed to uniquely evaluate the circumstances of each apprehension and determine the most effective and efficient application of consequences to influence the subject's future decision to attempt to illegally re-enter the United States. As transnational criminal organizations become familiar with the ramifications of a particular consequence, those outcomes are taken into account in the decision making process, and will have less of a deterrent effect. Also, when the same consequence is applied to a single individual multiple times, the impact of that consequence lessens with each subsequent application; therefore, it is not realistic to believe that the types of consequences analyzed by CDS would influence an alien's behavior in perpetuity. Still, USBP largely believes the performance metrics for tracking Streamline recidivism and re-apprehension rates are adequate.

The draft report contained five recommendations with which CBP and ICE concurs. Specifically, the OIG recommended that:

Recommendation 1: The Chief of USBP develop and implement performance metrics that track illegal alien recidivism and re-apprehension rates over multiple fiscal years.

Response: Concur. However, it is important to note that instead of focusing on one single consequence, CBP believes the best way to approach this recommendation is to consider it in the context of USBP's efforts to implement a more comprehensive strategy known as the "State of the Border Risk Methodology" discussed more fully below. In the end, recidivism and re-apprehension rates are only a few of the metrics used by USBP to allocate its resources along our Nation's borders. In a broader sense, the United States – Mexico border is a dynamic environment that presents with unique challenges. Conditions change constantly due to a practically infinite number of push-pull factors, some of which can be affected by USBP efforts and some of which cannot. The analysis of illegal re-entry trends or patterns over an expanded duration requires consideration of other factors that directly influence attempts to commit immigration violations and recidivism.

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It can be asserted that deterrence achieved solely through Streamline cannot be differentiated from deterrence achieved through other USBP efforts aimed at increasing a perceived likelihood of arrest and a perceived likelihood of receiving a consequence in the minds of potential illegal crossers. The vast majority of USBP enforcement efforts are directed, in whole or in part, toward creating deterrence as one of several acceptable outcomes. Determining the degree to which Streamline plays a role in this deterrence in isolation would require an unacceptable level of risk, because USBP would have to cease Streamline prosecutions purely for intellectual curiosity or cease other enforcement efforts for comparison's sake. Streamline and other consequences are more effective at deterring recidivism when the drivers of immigration are weaker. Conversely, an enforcement action that successfully deterred a subject in one year when the drivers of immigration were weaker may not affect that same subject to the same degree, or at all, if stronger reasons, such as greater disparity in economic opportunity or increased political unrest in the subject's home country, existed to enter illegally into United States. Although the metrics used within CDS can be pulled and analyzed across quarters, fiscal years, or in multiples of years, judging the effectiveness of Streamline over time without any consideration of context would be misleading.

In late 2013, USBP began working in earnest on a project, which later came to be known as the State of the Border Risk Methodology. Headquarters personnel from the USBP Law Enforcement Operations Directorate (LEO) and the USBP Strategic Planning and Analysis Division (SPA) began developing this methodology to compare a USBP corridor's current state of affairs against its own historic state of affairs through monitoring and tracking the behavior of 12 risk factors: 1) Daily Average Apprehensions; 2) Percent of Other Than Mexicans (OTM); 3) Percent of First-Time Apprehensions; 4) Percent of Unique-Criminal Aliens; 5) Border Patrol Terrorist Screening Database Matches; 6) Recidivist Rate; 7) Average Apprehensions per Recidivist; 8) Interdiction Effectiveness Rate; 9) Assaults on Agents; 10) Percent of Confirmed Non-Illicit Activity (Geospatial Intelligence); 11) Percent of Total Southwest Border Marijuana Seizures; and 12) Federal Drug Identification Number Qualified Marijuana Average Weight per Seizure (pounds). This assessment is accomplished by first establishing benchmarks, which come from collecting historical data for each corridor and each risk factor. Next, a corridor's averages from the last 12 months are compared to these established benchmarks. CBP believes that by using this evolving methodology USBP will be capable of continually assessing progress by demonstrating our effectiveness and addressing our limitations.

The Chief of USBP will direct the Chiefs of LEO and SPA, specifically the Associate Chiefs of the SPA Analysis Branch, the LEO Intelligence Liaison Branch, and the SPA Enforcement Systems Branch, to explore the feasibility of making this methodology an

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operationally viable tool before the end of Fiscal Year (FY) 2015. These Offices will examine continued development of several risk indicators to evaluate effectiveness, detect change, and assess risk in support of its risk-based approach, which began with the issuance of the *2012–2016 Border Patrol Strategic Plan*. CBP believes that these indicators can provide credible evidence to show that our enforcement programs are successful, or that we have uncovered and are addressing limitations. Rather than focusing solely on recidivism and the re-apprehension rate, CBP believes that conducting analyses of a wide range of indicators demonstrates that we are serious about evaluation and about improving our work at the strategic, operational, and tactical levels. To develop this methodology, beginning with the southwest border sectors, USBP plans to engage sector leadership to designate a data analysis points of contact for future collaboration. USBP also will explore working with the CBP Office of Intelligence and Investigative Liaison for current intelligence threads, and the CBP Office of International Affairs for clear picture of international events. Beyond CBP, USBP will explore partnering with ICE ERO's Law Enforcement Systems and Analysis Division to adopt best practices in organizational structure, data collection, analysis, and technology and process improvements to deliver tools, studies, and recommendations that assist Headquarters leadership's decision-making, planning, and substantive data analysis. In this environment, a more sophisticated USBP risk methodology is needed, and a genuine collaborative effort in border law enforcement is demanded. CBP believes these actions will sufficiently meet the intent of the OIG recommendations since Streamline will be one of the consequences that feeds or supports this methodology.

Estimated Completion Date (ECD): September 30, 2015

Recommendation 2: The Chief of USBP develop and implement a cost estimate for enforcement consequences analyzed under the CDS.

Response: Concur. Southwestern Border Patrol Sectors using CDS do not distinguish between costs from border enforcement consequences evaluated under CDS, such as Streamline, Voluntary Return, Expedited Removal, or issuance of Notice to Appear. Border Patrol agents apprehend, transport, process, and make post-apprehension enforcement decisions regardless of whether agents ultimately select Streamline or other appropriate consequences.

The following Sectors are using Streamline as a consequence under CDS:

- Del Rio
- Laredo
- Rio Grande Valley

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- Tucson
- Yuma

On March 25, 2015, Border Patrol Headquarters reached out to the field with a request for information to determine which Sectors tracked costs associated with Streamline. Currently, only the Rio Grande Valley (RGV) Sector tracks Streamline costs. RGV tracks the costs using the Rough Order of Magnitude Workbook, and cost analysis worksheets provided by SPA. Costs for sample cases are analyzed in the following manner:

- Subject transportation cost (fuel cost) from Streamline zone to processing location
- Subject processing time
- Subject meals provided
- Subject transportation to court
- Average cost for agents providing security
- Average cost for G4S for fuel and court security (BP contract)
- Average cost for weekend (Sunday layover) at County detention facility for Streamline
- Cost for transport back to station (time served)
- Cost for fuel to transport to POE (BP/G4S)
- Cost for employee salary for removal

In order to ensure a consensus among Sectors, and to provide for the development of a consistent, reasonable cost estimate for enforcement consequences analyzed under CDS, Border Patrol Headquarters will work with Sectors to establish a working group comprised of subject-matter-experts (SME) from the following Offices to include SPA CDS, SPA Enforcement Systems (e3), and Sector level processing and prosecutions units to fully address this recommendation.

ECD: September 30, 2015

Recommendation 3: The Chief of USBP develop and implement a plan to determine the feasibility and appropriateness of funding additional Special Assistant U.S. Attorneys (SAUSAs) for Streamline prosecutions in more sectors.

Response: Concur. However, CBP believes that while it may be feasible and appropriate to increase funding for SAUSAs – indeed USBP is funding this effort currently – a broader approach may be needed to bring about true, Whole-of-Government immigration law enforcement on our Nation's border that goes beyond just Streamline. Therefore, USBP will develop a plan for determining the appropriate number of additional SAUSAs that should be funded, and will also conduct a feasibility study for

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connecting the CDS Targeted Enforcement Initiative (TEI) and DOJ collaboration with larger DHS efforts within USBP sectors along the southwest border. This planned course of action will align closer with USBP's goals to employ a more holistic approach which utilizes the concept of targeted immigration enforcement.

As background, in October 2013, USBP's CDS Program Management Office (PMO), in cooperation with the CBP Office of Intelligence and Investigative Liaison, and CBP Office of Chief Counsel, began implementing the CDS TEI. CDS TEI is a nationwide, multi-agency effort designed to target and apply appropriate administrative and criminal consequences to aliens who pose a significant risk to the safety and security of the United States, as well as to CBP resources and operations, in support of the *2012–2016 Border Patrol Strategic Plan.*

Since the initial roll-out of CDS in the Tucson Sector in FY 2011, USBP has seen a significant reduction in both the rate of recidivism as well as the average number of times each alien is apprehended each year. However, there is a small percentage of aliens for whom this overall trend does not apply. To address this population and determine the level of risk posed by each alien, the CDS framework incorporated TEI as a targeting component.

Unlike traditional targeting, CDS TEI generated its initial target list based on exceptionally high levels of recidivism. Each of these subjects has an extensive immigration-related arrest history, and these recidivists are persistently active in other cross-border illegal activity. Once an alien is identified as a significant operational risk, by virtue of recent and frequent apprehensions, that alien is categorized by his or her level of individual risk, utilizing certain parameters such as traditional targeting analysis of criminal and immigration histories, nexus to alien and drug smuggling, prior convictions, and a variety of other pertinent factors. Once prioritized by total risk, he or she is placed into a three-tiered targeting system, with appropriate consequences assigned to each tier based on a graduated scale of consequence effectiveness.

On November 1, 2013, the Chief of the U.S. Border Patrol directed all USBP sectors to begin integrating CDS TEI into their operations. Earlier in the year, CDS PMO briefed this new initiative to all Southwest Border U.S. Attorneys' Offices during a meeting of the DOJ Attorney General's Advisory Committee (AGAC). The committee, which reports to the Attorney General through the Deputy Attorney General, represents the voice of the U.S. Attorneys and provides advice and counsel to the Attorney General on policy, management and operational issues impacting the Offices of the U.S. Attorneys.

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As part of facilitating the mandatory and prioritized presentation for prosecution stakeholders of this initiative, every CPA was required to meet with the U.S. Attorney responsible for the enforcement of Federal law in their area of responsibility to discuss the implementation of this initiative. Each CPA began working with their U.S. Attorney counterparts to coordinate CDS TEI implementation. It is through a relationship built through CDS TEI that USBP plans to engage the larger community of Streamline stakeholders to take immigration enforcement to a new level.

Additionally, in April 2014, Secretary Johnson announced the Unity of Effort Initiative, which focuses on improving the DHS planning, programming, budgeting, and execution processes through strengthened Departmental structures and increased capability. In making these changes, the Department is improving the traceability between strategic objectives, budgeting, acquisition decisions, operational plans, and mission execution to enhance Departmental cohesiveness and operational effectiveness—realizing the vision of a true "guidance to results" framework for DHS. The Unity of Effort initiative contains four main lines of effort to gain better understanding of the broad and complex DHS mission space and empower DHS components to effectively execute their operations: 1) inclusive senior leader discussion and decision making forums that provide an environment of trust and transparency; 2) strengthened management processes for investment, including requirements, budget, and acquisition processes that look at cross-cutting issues across the Department; 3) focused, collaborative Departmental strategy, planning, and analytic capability that support more effective DHS-wide decision making and operations; and 4) enhanced coordinated operations to harness the significant resources of the Department more effectively. This initiative has already improved Department operations, such as the integrated development of the Southern Border and Approaches Campaign Plan and the establishment of a new DHS Joint Requirements Council (JRC). This component-led and focused governance body will assess how DHS may gain greater effectiveness and efficiency by looking across the Department's capability needs rather than through the lens of a single DHS Component.

With the CDS TEI initiative in mind, USBP's recommends a three-part approach to this recommendation. First, the Chief of USBP plans to begin a dialogue with his counterpart in CBP's Office of the Chief Counsel to determine the appropriate number of additional SAUSAs that may be needed, and how these positions may be funded. Second, the Executive Director of the USBP Headquarters Mission Support Division will review the recommendations and provide feedback on whether the number of additional SAUSAs can be supported or if an alternative funding amount should be provided. Third, the Chief of USBP will direct the Chiefs of USBP LEO and SPA to explore the possibility of leveraging existing DOJ relationships, forged through CDS TEI, and newly developed DHS initiatives to begin a serious discussion with all Streamline partners on the future of

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immigration law enforcement. The Chiefs of LEO and SPA will be responsible for the initial phase of this effort, charged with leading activities to develop strategic guidance, including outcomes with quantifiable targets, upon which the strategic framework and campaign plans were based. Ultimately, smart and effective enforcement and administration of federal immigration law remains an integral part of CBP's homeland security mission. Therefore, it is CBP's intention to explore the possibility of taking the CDS TEI relationships established with DOJ at the USBP sector levels, and connect them with larger DHS efforts across the southwest border.

ECD: September 30, 2015

Recommendation 4: The ICE Executive Associate Director for the Office of Enforcement and Removal Operations determine whether current Southwest Border Enforcement and Removal Operations field office staffing levels are sufficient to support increased alien removals due to USBP's enhanced border enforcement efforts. Reallocate staffing levels or implement other measures to provide appropriate level of support, as necessary.

Response: Concur. ICE ERO continues to assess staffing levels throughout the country and along the southwest border in particular. In 2014, to support USBP's enhanced border enforcement efforts, ERO augmented staff along the southwest border by deploying 12 additional positions to Laredo and Harlingen, Texas. Additionally, in December 2014, upon completion of the only ICE ERO academy course of 2014, 13 of 24 ICE ERO academy graduates were deployed along the southwest border: 10 graduates for San Antonio and 3 for Phoenix.

Furthermore, to address current and future staffing demands, ICE is currently in the process of modeling, creating and implementing a new Workload Staffing Model. This model will identify ICE staffing requirements, by type of position, activity, and Area of Responsibility (AOR), to include needs down to the ERO sub-office level. Based on the findings of this model, ERO will have a better tool at its disposal to assess staffing levels to support and balance the workload in each AOR.

ICE received funding in FY 2015 for additional positions, many of which will be deployed along the southwest border based on the findings of the Workload Staffing Model. It is anticipated that additional positions will be added before the conclusion of FY 2015. The total number of positions deployed to the southwest border is yet to be determined.

ECD: To Be Determined

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Recommendation 5: The Chief of USBP develop and implement processing and referral guidance for aliens who express a fear of persecution or return to their country of origin at any time during their Border Patrol processing for Streamline.

Response: Concur. Processing administrative and criminal cases is the backbone of all CBP enforcement operations. An encounter that results in an arrest may only take minutes, but the casework to support the arrest may take hours. Thorough and complete casework is essential to the successful prosecution and/or removal of subjects arrested by Border Patrol agents. CBP further recognizes that it is important to maintain the integrity of this process by ensuring that the required questions are being asked and that detainees are being provided with the appropriate avenue to make claims pertaining to credible fear. As recent as November 26, 2014, the Chief of USBP sent a guidance memorandum and muster modules to the field to emphasize and further address credible fear determinations in expedited removal (ER) cases. These documents were developed to remind Border Patrol agents of their responsibility to ask credible fear questions during ER processing. Furthermore, Border Patrol agents receive training in recognizing the circumstances that require a referral to U.S. Citizenship and Immigration Services (USCIS) for a credible fear interview.

However, CBP believes it is imperative that the criminal and administrative processes be separate avenues. Inclusion in one does not exclude inclusion in the other. An undocumented alien can be prosecuted criminally while at the same time make a claim to credible fear administratively. Neither of the processes affect the outcome of the other. The fact that an undocumented alien is being prosecuted does not influence the outcome of his or her credible fear claim. The claim of credible fear cannot be used as a criteria to exclude an undocumented alien from possible prosecution for a criminal act.

In each USBP sector, processing agents must first identify and classify the undocumented alien to determine if a criminal prosecution is warranted or if this is the best CDS-analyzed consequence for the detainee. If prosecution is selected as the best consequence, regardless if the consequence selected is Streamline or traditional prosecution, the CDS-analyzed, post-arrest consequence selected should be carried out.

Once the prosecutorial decision is made, the undocumented alien should be processed administratively. If the alien expresses a fear of persecution or return, the undocumented alien should be processed for a credible-fear-based expedited removal or a reasonable-fear-based reinstatement, or given an asylum-based notice to appear. The detainee may make this claim at any time during the criminal or administrative process, and he or she will be referred for an interview with a USCIS asylum officer for the credible fear,

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reasonable fear, or asylum claim, later being referred to an immigration judge for an asylum hearing if warranted. This involves the administrative removal process rather than the criminal process.

In the USBP Tucson Sector, for example, one of the criteria for Streamline is that the detainee has a prior removal from the United States, meaning the undocumented alien was previously arrested in the United States and removed either by an immigration judge or by an expedited removal. The detainee may have made a previous claim of credible fear, reasonable fear, or asylum and were removed after their hearing, meaning that he or she had an opportunity to make a claim during their previous arrest and removal, and the claim was unfounded prior to removal.

Ultimately, this prior outcome does not prohibit the undocumented alien from making subsequent claims; however the alien was advised of the procedures and the criminal implications of subsequent illegal re-entries. He or she always has the option of presenting themselves at the port of entry to make their claim. USBP feels that making a subsequent illegal re-entry into the United States shows the intent of circumventing and violating the laws of the United States.

In response to this recommendation, the Chief of USBP will work to develop and implement guidance in all Border Patrol sectors that use Streamline to ensure consistency in all aspects of administrative and criminal processing, particularly with regard to claims of fear of persecution or return. In developing this guidance, USBP Headquarters will work with the sectors to explore the possibility of establishing a working group comprised of processing subject-matter experts, including ICE ERO, to review Streamline processing operations and establish internal controls that will provide reasonable assurance of the consistency, integrity, and accuracy of the USBP processing for Streamline.

ECD: September 30, 2015

Again, thank you for the opportunity to review and comment on this draft report. Technical comments were provided under separate cover. If you have any questions or would like additional information, please contact me at (202) 344-2300, or a member of your staff may contact Ms. Jennifer Topps, Component Audit Liaison, Management Inspections Division, at (202) 325-7713.

Attachment

Appendix D

Select Types of Removals

According to the INA, removal is the compulsory and confirmed movement of an inadmissible or deportable alien out of the United States based on an order of removal. An alien who is removed faces administrative or criminal consequences upon subsequent re-entry.

Expedited Removal of Inadmissible Arriving Aliens under INA § 235(b): The *Illegal Immigration Reform and Immigrant Responsibility Act of 1996* § 302, as amended, authorizes DHS to quickly remove certain inadmissible aliens from the United States, without a hearing before an immigration court. DHS officers may order the removal of certain aliens who are inadmissible because they do not possess valid entry documents or because they have attempted to enter the United States by fraud or misrepresentation of material fact. Aliens placed in the expedited removal proceedings have the opportunity to seek asylum, among other protections. Aliens who have made certain claims may be referred to an asylum officer and ultimately to an Immigration Judge.

Reinstatement of Final Removal Order under INA § 241: This provision permits DHS to reinstate final removal orders against aliens previously removed from the United States either by order of removal or voluntarily. DHS officers may remove the alien under the prior order of removal without further hearing or review at any time after the re-entry.

Voluntary Departure under INA § 240B: The departure of an alien from the United States without an order of removal. The departure can happen before or after a hearing with an Immigration Judge. An alien allowed to voluntarily depart concedes removability but does not have a bar to seeking admission at a port-of-entry at any time. Individuals who fail to depart are subject to fines and a 10-year period of ineligibility for other forms of relief.

DOJ Removal Proceedings: The process to remove an alien where an Immigration Judge conducts proceedings.

Source: OIG Analysis of various sections of the INA.

Appendix E

Consequence Delivery System

In 2011, Border Patrol launched the CDS to standardize the application of criminal, administrative, and programmatic border enforcement consequences. Border Patrol evaluates the circumstances of each apprehension and determines the most appropriate consequence with the goal of impeding or deterring repeated illegal border crossings. According to Border Patrol, it advises its agents to use a combination of consequences when possible.

CDS Consequence	Description
Streamline	Prosecutorial initiatives for criminal immigration violations
Standard Prosecution	
Operation Against Smugglers Initiative on Safety and Security	
Quick Court	
Warrant of Arrest/Notice to Appear	Initiation of removal proceedings pending an immigration court appearance
Expedited Removal	A form of formal removal
Reinstate	Reinstatement of Previous Order of Removal
Voluntary Return	The departure of an alien from the United States without an order of removal
Alien Transfer Exit Program	Remote repatriation programs
Mexican Interior Repatriation Program	

Source: OIG Summary of Border Patrol data.

Appendix F

Roles of Other Federal Agencies Supporting Streamline

Streamline uses Federal immigration enforcement and criminal justice system resources. DOJ and U.S. Courts have a significant role in supporting Streamline by prosecuting, convicting, transporting, and incarcerating Streamline aliens.

United States Attorneys' Office

A USAO official said 98 percent of DOJ's immigration misdemeanor dockets are for violations of 8 United States Code (USC) § 1325 – improper entry by aliens. In sectors where CBP does not provide SAUSAs, the USAO uses its attorneys for Streamline proceedings and supports this effort with existing resources. Border Patrol wants to refer more aliens for Streamline than the USAO is able to prosecute. The number of daily prosecutions for violation of 8 USC § 1325 are restricted in most USAO districts due to various resource limitations including but not limited to law enforcement, prosecutorial, and court resources.

In sectors where SAUSAs prosecute Streamline cases, the USAO does not incur direct costs for these prosecutions since CBP Office of Chief Counsel and Border Patrol fund SAUSAs. However, the USAO incurs indirect costs for legal assistance and data entry services in preparing 8 USC § 1325 cases. USAO officials said that Streamline districts noticed an increase in felony illegal re-entry 8 USC § 1326 charges resulting from earlier 8 USC § 1325 prosecutions, and these cases require additional USAO resources to process.

United States Marshals Service

USMS houses aliens sentenced to short-term incarceration for immigration offenses, provides these aliens with medical care, and transports them from courts to detention facilities. USMS also has a mandate to provide court security. USMS headquarters officials said 90 percent of Streamline aliens spend their sentences in USMS' custody. Although the number of aliens prosecuted for immigration offenses has increased, USMS cannot easily distinguish between aliens arrested for 8 USC § 1325 and 8 USC §1326 charges. USMS tracks those charges by combining illegal entry and re-entry charges into "immigration offenses."

Before Streamline, less than 40,000 aliens received criminal convictions for immigration offenses annually. USMS provided the number of aliens in their custody for immigration offenses during FY 2012 and FY 2013. As shown in the following table, this population increased in two Streamline districts.

USMS Immigration Offense Population in Streamline Jurisdictions

USMS District	FY 2012	FY 2013
Arizona District [Includes Tucson and Yuma Border Patrol sectors]	25,550	24,810
Western Texas District [Includes Del Rio Border Patrol sector]	19,610	20,318
Southern Texas District [Includes Laredo and Rio Grande Valley Border Patrol sectors]	23,886	32,199
Total	**69,046**	**77,327**

Source: USMS.

Although USMS cannot identify the exact cost associated with housing Streamline aliens, USMS officials in Tucson estimate the approximate annual costs for housing Streamline aliens are as follows:

USMS Streamline Caseload	Annual Costs
Number of Daily Prosecutions	70
Average Daily Number of Prisoners	2,072
Daily Per Diem Detention Cost of Prisoner	$83.49
Total Annual Detention Cost for Streamline	**$63,141,817**

Source: USMS.

A USMS Southwest border district official said USMS has devoted more resources since Streamline's implementation to accommodate these immigration charged aliens. For example:

- In Del Rio, USMS built a new jail, expanded an existing jail, and plans to expand the courthouse cellblock.
- In Tucson, USMS is in the process of expanding its cell block at the local courthouse.
- In Laredo and McAllen, some detained aliens have serious medical conditions and injuries and USMS spends more on medical care.
- In McAllen, USMS reassigned four employees from other duties to manage the logistics of transferring Streamline aliens, who have completed their sentences, to ERO custody for processing and removal.

Streamline proceedings have 20 to 100 aliens present in court at one time. To address the associated courtroom security requirements, USMS continually reallocates personnel. USMS also asks Border Patrol to provide agents or contractors to augment Streamline court security.

Bureau of Prisons

BOP's role in Streamline is to accept alien transfers from USMS' custody when the alien's sentence is more than 90 days. BOP coordinates with USMS to establish when USMS transfers an alien to BOP's custody. BOP's officials said approximately 10 percent of aliens convicted for immigration offenses enter BOP's custody.

BOP cannot easily distinguish between aliens in their custody for Streamline charges because BOP uses USC sections to classify inmates' offences. BOP provided the number of inmates in their custody convicted pursuant to 8 USC § 1325 from FY 2011 through May 2014. BOP cannot determine whether the cases were part of Streamline. The following table identifies inmates in BOP custody with 8 USC § 1325 convictions and serving sentences of 12 months or less.

BOP's Inmates Convicted of 8 USC § 1325 and Serving Sentences of 12 Months or Less, FY 2011 to May FY 2014

Fiscal Year	Jurisdictions in TX and AZ[9]	Other Jurisdictions	Nationwide
2011	5,801	201	6,002
2012	8,548	162	8,710
2013	8,222	153	8,375
2014 [As of May]	5,060	498	5,558

Source: BOP.

U.S. Courts

Streamline increases the number of immigration cases processed by the U.S. Courts. Of the 94 Federal District Courts nationwide, 5 located on the Southwest border process 74 percent of all U.S. Court immigration cases. Between FY 2005 and FY 2013, there was a 159 percent increase in the total number of immigration cases, a 226 percent increase in the number of illegal entry cases, and a 168 percent increase in the number of illegal re-entry cases. The following table shows these Southwest border cases from FY 2005 to FY 2013.

[9] BOP facilities in Texas and Arizona receive more aliens with 8 USC § 1325 charges than other jurisdictions due to their proximity to the Southwest border.

Increase of Criminal Immigration Cases on the Southwest Border

Fiscal Year	Illegal Entry (8 USC 1325)	Illegal Re-entry (8 USC 1326)	Total Immigration Cases[10]
2005	16,504	13,963	37,614
2006	13,643	16,493	37,529
2007	13,960	17,679	39,458
2008	49,663	21,320	79,431
2009	54,175	30,126	91,899
2010	43,688	35,836	87,375
2011	39,331	36,139	82,250
2012	48,032	37,196	91,941
2013	53,822	37,440	97,384

Source: Transactional Records Access Clearinghouse (TRAC).

The following Federal Judiciary offices assist with implementing Streamline, and officials from each office said they have experienced some increased use of resources to support Streamline implementation:

- Pretrial Services performs investigations of criminal history for Streamline aliens and assists the court by assessing suitability of pretrial defendants. Pretrial investigations have increased 195 percent since 2011.
- Defenders Services Program provides defense services for Streamline defendants. The program's increased Streamline workload, limited budget, and reduced workforce requires the Defenders Services Program to rely on contract attorneys to represent Streamline aliens.
- U.S. Magistrate Judges preside over Streamline cases that may include more than 80 aliens at one time. Some Magistrate Judges said courtroom space is not large enough to accommodate these defendants. Magistrate Judges also expressed concerns that there were not enough USMS or Border Patrol resources to ensure courtroom security.
- Interpreters translate court proceedings into a language understandable to Streamline defendants. According to Southwest border U.S. Court officials, the courts do not receive additional funding to pay interpreters.

[10] Total immigration cases include charges other than illegal entry and re-entry.

Appendix G

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Appendix H

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