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# Highlights

Highlights of GAO-05-305, a report to the Chairman, Subcommittee on Immigration, Border Security, and Claims, Committee on the Judiciary, House of Representatives

## Why GAO Did This Study

Globally, alien smuggling generates billions of dollars in illicit revenues annually and poses a threat to the nation's security. Creation of the Department of Homeland Security (DHS) in March 2003 has provided an opportunity to use financial investigative techniques to combat alien smugglers by targeting and seizing their monetary assets. For instance, the composition of DHS's largest investigative component—U.S. Immigration and Customs Enforcement (ICE)—includes the legacy Customs Service, which has extensive experience with money laundering and other financial crimes. Another DHS component, U.S. Customs and Border Protection (CBP) has primary responsibility for interdiction between ports of entry. In summer 2003, ICE announced that it was developing a national strategy for combating alien smuggling. Among other objectives, GAO determined the implementation status of the strategy and investigative results in terms of convictions and seized assets.

## What GAO Recommends

To enhance the federal response to alien smuggling, GAO recommends that (1) the Secretary of Homeland Security establish a mechanism for tracking the results of referrals made by CBP to ICE and (2) the Attorney General consider developing and submitting to Congress a legislative proposal, with appropriate justification, for amending the civil forfeiture authority for alien smuggling. The departments agreed.  
[www.gao.gov/cgi-bin/getrpt?GAO-05-305](http://www.gao.gov/cgi-bin/getrpt?GAO-05-305).

To view the full product, including the scope and methodology, click on the link above. For more information, contact Rich Stana at (202) 512-8777 or [stanar@gao.gov](mailto:stanar@gao.gov).

# COMBATING ALIEN SMUGGLING

## Opportunities Exist to Improve the Federal Response

### What GAO Found

As of April 2005, ICE had not finalized its strategy for combating alien smuggling. ICE was adjusting the draft strategy to focus on the southwest border and encompass all aspects of smuggling, aliens as well as drugs and other contraband. In adjusting the strategy, ICE officials stressed the importance of incorporating lessons learned from ongoing follow-the-money approaches such as Operation ICE Storm, a multi-agency task force launched in October 2003 to crack down on migrant smuggling and related violence in Arizona. Also, the strategy's effectiveness depends partly on having clearly defined roles and responsibilities for ICE and CBP, two DHS components that have complementary antismuggling missions. In this regard, ICE and CBP signed a memorandum of understanding in November 2004 to address their respective roles and responsibilities, including provisions for sharing information and intelligence. Currently, however, there is no mechanism in place for tracking the number and the results of referrals made by CBP to ICE for investigation. CBP and ICE officials acknowledged that establishing a tracking mechanism could have benefits for both DHS components. Such a mechanism would help ICE ensure that appropriate action is taken on the referrals. Also, CBP could continue to pursue certain leads if ICE—for lack of available resources or other reasons—cannot take action on the referrals.

In fiscal year 2004, about 2,400 criminal defendants were convicted in federal district courts under the primary alien-smuggling statute, and ICE reported seizures totaling \$7.3 million from its alien-smuggling investigations. For the first 6 months of fiscal year 2005, ICE reported \$7.8 million in seizures from alien-smuggling investigations. A concern raised by ICE and the Department of Justice is the lack of adequate statutory civil forfeiture authority for seizing real property, such as "stash" houses where smugglers hide aliens while awaiting payment and travel arrangements to final destinations throughout the nation. However, Justice does not have a legislative proposal on this subject pending before Congress because the department's legislative policy resources have been focused on other priorities.

### Aliens Held in "Stash" House in Southern California



Source: ICE.



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**Abbreviations**

CAFRA	Civil Asset Forfeiture Reform Act of 2000
CBP	Customs and Border Protection
DHS	Department of Homeland Security
FBI	Federal Bureau of Investigation
FinCEN	Financial Crimes Enforcement Network
ICE	Immigration and Customs Enforcement
INS	Immigration and Naturalization Service
IRS-CI	Internal Revenue Service-Criminal Investigation
MLAT	Mutual Legal Assistance Treaty

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United States Government Accountability Office  
Washington, DC 20548

May 27, 2005

The Honorable John N. Hostettler  
Chairman  
Subcommittee on Immigration, Border Security, and Claims  
Committee on the Judiciary  
House of Representatives

Dear Mr. Chairman:

Globally, alien smuggling generates illicit revenues estimated to total billions of dollars annually and is recognized as a significant and growing problem that can pose a serious threat to the security of the United States, a primary destination country. Our May 2000 report noted that although it is likely that most aliens smuggled into the United States seek economic opportunities, some are brought into the United States as part of criminal or terrorist enterprises.<sup>1</sup> This concern has heightened since September 11, 2001. Creation of the Department of Homeland Security (DHS) in March 2003 has provided new opportunities to more effectively combat alien smuggling, particularly in reference to using financial investigative techniques to target and seize the monetary assets of smuggling organizations. For instance, the department's largest investigative component—U.S. Immigration and Customs Enforcement (ICE)—integrates the legal authorities and investigative tools of the legacy Immigration and Naturalization Service (INS) and the Customs Service, which has extensive experience in combating money laundering and other financial crimes.

Accordingly, at congressional hearings in June and July 2003, ICE officials testified that ICE was developing a national strategy to dismantle criminal and terrorist organizations that smuggle or traffic in people by tracing and stripping away their monetary assets. This report addresses the following principal questions:

- What is the implementation status of ICE's strategy for combating alien smuggling, particularly regarding efforts to use financial investigative

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<sup>1</sup>GAO, *Alien Smuggling: Management and Operational Improvements Needed to Address Growing Problem*, GAO/GGD-00-103 (Washington, D.C.: May 1, 2000).

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techniques to follow the money trail and seize the monetary assets of smuggling organizations?

- Since the creation of DHS and ICE, what results have been achieved from alien-smuggling investigations in terms of prosecutions and convictions, as well as seizures of smugglers' monetary assets?

Also, to provide supplementary and contextual perspectives on the federal response to alien smuggling, appendix III of this report presents an overview of the roles of various federal agencies—DHS components such as ICE and U.S. Customs and Border Protection (CBP), as well as components of the Departments of Justice, the Treasury, and State; and appendix IV discusses federal efforts to work with the governments of source and transit countries to reduce the flow of smuggled aliens into the United States.

To address these questions and topics, we interviewed responsible officials at and reviewed relevant documentation obtained from the Departments of Homeland Security, Justice, the Treasury, and State and their components. Regarding ICE's strategy for combating alien smuggling, we interviewed ICE officials to determine its implementation status and the extent to which it includes a focus on following the money trail. Regarding prosecutions and convictions in alien-smuggling cases, we obtained relevant statistics from the Executive Office for U.S. Attorneys. Regarding seizures of monetary assets, we obtained data from the federal government's applicable asset forfeiture funds. We discussed the sources of these data with federal agency officials and worked with them to resolve any inconsistencies. We determined that the data were sufficiently reliable for the purposes of this review. Also, to more fully understand and illustrate the results of alien-smuggling investigations, we identified and summarized recent alien-smuggling cases prosecuted in federal district courts in three districts—the District of Arizona, the Southern District of California, and the Southern District of Texas—each of which is coterminous with the U.S.-Mexico, or southwest, border (see app. V).<sup>2</sup> To identify recent alien-smuggling cases federally prosecuted in these districts, we reviewed press releases issued by the respective U.S. Attorney's Office during January through June 2004. We discussed each of

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<sup>2</sup>Mexico represented 91 percent of deportable aliens (by region or country of nationality) who entered the United States without inspection and were apprehended in fiscal year 2003, according to DHS's *2003 Yearbook of Immigration Statistics* (Washington, D.C.: Sept. 2004).



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these cases with U.S. Attorney's Office and ICE officials. Because these cases were selected using a nonprobabilistic method, they are not representative of all cases in the districts or nationwide. We conducted our work from April 2004 to March 2005 in accordance with generally accepted government auditing standards. Appendix I presents more details about our objectives, scope, and methodology.

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## Results in Brief

Although its development was announced as early as June 2003, ICE's national strategy for combating alien smuggling had not been finalized as of April 2005. In the absence of a national strategy, ICE used various means to provide interim guidance to investigators. ICE officials said the draft strategy was being adjusted to broadly cover all aspects of smuggling, encompassing aliens as well as drugs and other illegal contraband, and to focus initially on the southwest border. Officials stressed the importance of incorporating lessons learned from ongoing follow-the-money approaches before issuing the strategy. An example of such an approach is Operation ICE Storm, a multi-agency task force launched in October 2003 to crack down on migrant smuggling and related violence in Arizona. Another reason for the strategy's continuing development period is that the working relationship of ICE and CBP is still evolving. The strategy's effectiveness depends partly on having clearly defined roles and responsibilities for these two DHS components, which have complementary antismuggling missions. In this regard, ICE and CBP signed a memorandum of understanding in November 2004 to address their respective roles and responsibilities, including provisions for sharing information and intelligence. Currently, however, there is no mechanism in place for tracking the number and the results of referrals or leads made by CBP to ICE for investigation. Without such a mechanism, there may be missed opportunities for identifying and developing cases on large or significant alien-smuggling organizations. CBP and ICE officials acknowledged that establishing a tracking mechanism could have benefits for both agencies. Such a mechanism would help ICE ensure that appropriate action is taken on the referrals. Also, CBP could continue to pursue certain leads if ICE—for lack of available resources or other reasons—cannot take action on the referrals. This report recommends that the Secretary of Homeland Security establish a referral-tracking mechanism. DHS agreed with our recommendation.

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In fiscal year 2004, about 2,400 criminal defendants were convicted in federal district courts under section 274 of the Immigration and Nationality Act, the primary statute for prosecuting alien smuggling.<sup>3</sup> Further, for fiscal year 2004, ICE reported seizures totaling \$7.3 million from its alien-smuggling investigations—plus an additional \$5.3 million generated by the state of Arizona under Operation ICE Storm. ICE officials anticipate increased seizures from alien-smuggling investigations in future years, as ICE more broadly applies its financial and money-laundering expertise. For the first 6 months of fiscal year 2005, for instance, ICE officials reported seizures of \$7.8 million. The officials cautioned, however, that there are competing demands for investigative resources and also noted that alien-smuggling cases, in contrast to drug-trafficking cases, are much less likely to result in large seizures of currency. But, even absent seizures of money or other assets from alien smugglers, ICE officials noted the importance of applying financial investigative expertise in appropriate cases to determine the scope and operational patterns of alien-smuggling organizations, identify the principals, and obtain evidence to build prosecutable cases. Regarding potential forfeitures in alien-smuggling cases, ICE and Department of Justice officials said that a concern for investigators is lack of adequate statutory civil forfeiture authority for seizing real property, such as “stash” houses, used to facilitate the smuggling of aliens. According to Justice, analysis of civil and criminal forfeiture statutes generally has led the department to conclude that a statute that provides only for criminal and not civil forfeiture of facilitating property will be inadequate in such cases, and investigative experience indicates that these cases are numerous. Justice officials noted, however, that the department has not developed and submitted to Congress a legislative proposal because the department’s legislative policy resources have been focused on other priorities. This report recommends that the Attorney General, in collaboration with the Secretary of Homeland Security, consider developing and submitting to Congress a legislative proposal, with appropriate justification, for amending the civil forfeiture authority for alien smuggling. The Department of Justice agreed with our recommendation.

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<sup>3</sup>Also, according to the Department of Justice, alien-smuggling-related activity may have been prosecuted under a variety of other federal criminal statutes covering, for example, passport fraud, immigration document fraud, bribery of a public official, and racketeering activity.

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## Background

By definition, alien smuggling (sometimes called people smuggling or human smuggling) is transnational in that it involves more than one country and also usually involves persons who have consented to be transported to another country. This activity generally produces short-term profits for the smugglers. That is, after the aliens reach their final destinations, they have no continuing relationship with the smugglers. In legal and diplomatic references, alien smuggling is distinct from human trafficking, although both smuggling and trafficking may have similarities or common elements. In human trafficking, the criminality and human rights abuses—such as coercion for prostitution, labor sweat shops, or other exploitative purposes and servitude arrangements—may continue after the migrants reach the United States in order to produce both short-term and long-term profits. Whereas a trafficked person is a victim, an alien who consents to be smuggled is subject to criminal processing and deportation.

Given the underground nature of alien smuggling, exact figures quantifying the size or scope of this transnational crime are not available. Nonetheless, estimates by the United Nations and the federal law enforcement and intelligence communities indicate that people smuggling is a huge and highly profitable business worldwide, involving billions of dollars annually, and the United States is a major destination country. People smuggling is a continuously growing phenomenon, according to the International Criminal Police Organization (Interpol). The types of smugglers can range from opportunistic business owners who seek cheap labor to well-organized criminal groups that engage in alien smuggling, drug trafficking, and other illegal activities. Partly because of increased border monitoring by governments, Interpol has noted that criminal networks increasingly control the transnational flow of migrants. That is, willing illegal migrants increasingly rely on the services of criminal syndicates that specialize in people smuggling, even though traveling conditions may be inhumane and unsafe.

Alien smuggling generally is prosecuted under section 274 of the Immigration and Nationality Act, which prohibits knowingly or recklessly bringing in, transporting, or harboring certain aliens.<sup>4</sup> Depending on the conduct charged, a conviction under section 274 could result in a

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<sup>4</sup>See 8 U.S.C. § 1324. Also, as mentioned previously, alien-smuggling-related activity may be prosecuted under a variety of other federal criminal statutes covering, for example, passport fraud, immigration document fraud, bribery of public officials, and racketeering activity.

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maximum penalty of 10 years' imprisonment per alien smuggled. Moreover, significant enhanced penalties are provided for some section 274 violations that involve serious bodily injury or placing life in jeopardy. If certain violations result in the death of any person, the convicted defendant may be punished by imprisonment for any term of years or be subjected to a death sentence.<sup>5</sup> Other federal criminal statutes may also be applicable. Specifically, alien-smuggling-related offenses are among the list of Racketeer Influenced and Corrupt Organizations predicate offenses (18 U.S.C. § 1961(1)) and also are included within the definition of specified unlawful activity for purposes of the money-laundering statute (18 U.S.C. § 1956). Further, criminal and civil forfeiture statutes may apply to alien-smuggling cases.

Although ICE is a primary DHS component for investigating alien smuggling, combating the smuggling of aliens into the United States can involve numerous federal agencies, as well as the cooperation and assistance of foreign governments. In addition to ICE, other relevant DHS components are the Border Patrol (a "front-line defender"), which is now part of CBP, and the U.S. Coast Guard, which is tasked with enforcing immigration law at sea. Additionally, significant roles in combating alien smuggling are carried out by Department of Justice components, including the Criminal Division, the Federal Bureau of Investigation (FBI), and U.S. Attorney's Offices, and Department of the Treasury components, such as Internal Revenue Service (Criminal Investigation) and the Financial Crimes Enforcement Network (FinCEN). Further, Department of State components have significant roles. For instance, the Bureau of Diplomatic Security—the law enforcement arm of the State Department—is statutorily responsible for protecting the integrity of U.S. travel documents. Perhaps the most coveted and sought after travel documents

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<sup>5</sup>There are various differences in penalty provisions applicable to alien smuggling, including the following:

- There are mandatory minimum penalties for certain violations of 8 U.S.C. § 1324(a)(2) but not for similar violations of 8 U.S.C. § 1324(a)(1)(A).
- Enhanced penalties for causing serious bodily injury or placing life in jeopardy apply to violations of 8 U.S.C. § 1324(a)(1)(A) but not to similar violations of 8 U.S.C. § 1324(a)(2).
- The death penalty or imprisonment for life may be imposed for violations of 8 U.S.C. § 1324(a)(1)(A) in which death results, but such penalties are not available for similar violations of 8 U.S.C. § 1324(a)(2).

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in the world are U.S. passports and visas. Alien smuggling and travel document fraud often are inextricably linked.

The March 2003 creation of DHS, including its largest investigative component (ICE), ushered in an opportunity for developing a strategy to combat alien smuggling by, among other means, using financial investigative techniques. Two months later, in May 2003, ICE used such techniques to follow the money and prosecute the perpetrators of a smuggling operation that had resulted in the deaths of 19 aliens in Victoria, Texas. The Victoria 19 case has been cited by ICE as representing a new model for fighting alien smuggling—a model that ICE (1) subsequently used to launch a multi-agency task force (Operation ICE Storm) in the Phoenix (Arizona) metropolitan area and (2) reportedly was using to develop ICE’s national “Antismuggling/Human-Trafficking Strategy.”<sup>6</sup>

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## ICE’s Strategy for Combating Alien Smuggling Not Yet Issued

Although its development was announced as early as June 2003, a national strategy for combating alien smuggling had not been finalized and implemented by ICE as of April 2005. In the absence of a national strategy to combat alien smuggling, including investigating the money trail, ICE used various means to provide interim guidance to investigators. ICE officials indicated that the draft strategy was being adjusted to broadly cover all aspects of smuggling—encompassing aliens, as well as drugs and other illegal contraband—and to focus initially on the southwest border. The strategy’s continuing development period is attributable partly to organizational and training needs associated with integrating the separate and distinct investigative functions of the legacy INS and the U.S. Customs Service, following creation of DHS in March 2003. Also, ICE and CBP—two DHS components with complementary antismuggling missions—signed a memorandum of understanding in November 2004 to address their respective roles and responsibilities, including provisions to ensure proper and timely sharing of information and intelligence. Such sharing is critical to achieving ICE’s investigative objective of determining “how each single violation ties into the larger mosaic of systemic vulnerabilities and organized crime.” The ability to make such determinations should be enhanced when DHS components have compatible or interoperable information technology systems—which is a long-term goal of an ongoing,

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<sup>6</sup>See appendix II for additional background information about the Victoria 19 case and Operation ICE Storm, which was subsequently expanded statewide as part of the Arizona Border Control Initiative.

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multiyear project called the Consolidated Enforcement Environment. Currently, however, there is no mechanism in place for tracking the number and the results of referrals or leads made by CBP to ICE for investigation, including even whether ICE declined to act on the referrals. Without such a mechanism, there may be missed opportunities for identifying and developing cases on large or significant alien-smuggling organizations. For instance, if a tracking mechanism were in place, CBP could continue pursuing certain leads if ICE—for lack of available resources or other reasons—does not take action on the referrals.

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### National Strategy Announced as Early as June 2003 Is Still in Draft and Has Changed to Focus on the Southwest Border

At congressional hearings in June and July 2003, ICE officials testified that ICE was developing a strategy—the Antismuggling/Human-Trafficking Strategy—to address alien smuggling and human trafficking at the national and international levels. The strategy was to concentrate ICE’s efforts in intelligence-driven investigations against major violators, specifically targeting organizations with ties to countries that support terrorist organizations such as al Qaeda.<sup>7</sup> A strategic goal was to dismantle the criminal and terrorist organizations that smuggle or traffic in people by tracing and stripping away their monetary assets.

In May 2004, in response to our initial inquiry, ICE headquarters officials told us that the national Antismuggling/Human-Trafficking Strategy was still in draft and was being vetted among DHS components. In October 2004, the officials told us that ICE was narrowing the initial focus of the strategy to the southwest border, between the United States and Mexico—the most active area in terms of smuggling activity and open investigations. The officials explained that ICE was developing a comprehensive southwest border strategy, given the anticipated displacement of smuggling activity to other areas along the border resulting from Operation ICE Storm and the Arizona Border Control Initiative (see app. II). In further elaboration, ICE headquarters officials said that the southwest border strategy would broadly cover all aspects of smuggling to encompass aliens as well as drugs and other illegal

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<sup>7</sup>Statement of Tom Homan, ICE Interim Resident Agent-In-Charge (San Antonio, Tex.); at a hearing (“Deadly Consequences of Illegal Alien Smuggling”) before the Subcommittee on Immigration, Border Security, and Claims, House Committee on the Judiciary; June 24, 2003; and statement of Charles H. Demore, ICE Interim Assistant Director of Investigations; at a hearing (“Alien Smuggling/Human Trafficking: Sending a Meaningful Message of Deterrence”) before the Subcommittee on Crime, Corrections and Victims’ Rights, Senate Committee on the Judiciary, July 25, 2003.

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contraband. The officials explained that lessons learned—based, for example, on the results of Operation ICE Storm and the Arizona Border Control Initiative—indicated that criminal enterprises tend to smuggle not only people but also drugs, weapons, counterfeit trade goods, and other illegal contraband. The ICE officials emphasized that it was important to incorporate these lessons learned into the southwest border strategy before issuing it. Also, the officials noted that irrespective of whether smuggling involves aliens or contraband, ICE can use similar investigative techniques for following the money trail.

In April 2005, ICE officials told us that the draft southwest border strategy was in the final stages of review; had been vetted with CBP, which is ICE's closest partner in the antismuggling arena; and was expected to be implemented within the next 30 to 60 days. Moreover, the officials said that, following a certain period of implementation, the southwest border strategy would be evaluated and expanded into a nationwide strategy. The officials noted, for instance, that although there is no one law enforcement strategy totally effective in all areas of the nation, the methodologies applied in Arizona with both Operation ICE Storm and the Arizona Border Control Initiative would be evaluated and tailored for use in other parts of the country.

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### Continuing Development Period for ICE's Strategy Attributable Partly to Organizational and Training Needs

ICE has had to evolve into an organization that integrates the separate and distinct investigative functions of the legacy INS and the U.S. Customs Service. As stated in our October 2004 report:

"The integration of INS and Customs investigators into a single investigative program has involved blending two vastly different workforces, each with its own culture, policies, procedures, and mission priorities. Both programs were in agencies with dual missions that prior to the merger had differences in investigative priorities. For example, INS primarily looked for illegal aliens and Customs primarily looked for illegal drugs. In addition, INS investigators typically pursued administrative violations, while Customs investigators typically pursued criminal violations."<sup>8</sup>

Thus, at the outset of ICE's formation in March 2003, a substantial amount of cross-training was needed regarding the relevant enforcement functions and authorities of the respective legacy agencies. As of October 1, 2003,

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<sup>8</sup>GAO, *Homeland Security: Management Challenges Remain in Transforming Immigration Programs*, GAO-05-81 (Washington, D.C.: Oct. 14, 2004), page 11.

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for example, ICE had about 2,400 legacy INS agents who were not trained on the subject of money laundering or financial investigative techniques.

Equally important, legacy Customs agents had to obtain training and experience in handling immigration-related cases. In several aspects, alien-smuggling cases can be challenging and time-consuming. ICE and CBP officials noted, for example, that alien-smuggling cases usually involve language and humanitarian issues, as well as logistical challenges and difficulties (e.g., transporting, housing, and processing aliens). Also, the officials explained that certain investigative techniques, such as controlled delivery operations used to develop drug-trafficking cases, are either very difficult or unavailable in alien-smuggling cases because humans are involved.<sup>9</sup> Further, the officials said that unlike drug-trafficking cases where the contraband itself is proof of the illegal activity, the successful prosecution of alien-smuggling cases relies on the availability of material witnesses (illegal migrants) who often get terrified before or during trial and change their mind about testifying against smugglers. The officials noted that this is an everyday phenomenon—partly because, in an alien-smuggling case, even the best witness is a party of interest to the crime.

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### Working Relationship between ICE and CBP Addressed in Memorandums of Understanding

#### ICE and CBP Agreement (April 2004)

The continuing development period for issuing and implementing an antismuggling strategy also stems partly from the fact that the working relationship between ICE and CBP is still evolving, as evidenced by two memorandums of understanding signed by these DHS components in 2004.

The March 2003 formation of ICE raised issues about the future of the antismuggling investigative units that the Border Patrol had established in sectors and districts along the southwest border. About a year later, in April 2004, ICE and CBP—two components within DHS—signed a memorandum of understanding regarding the transition of the Border Patrol’s former antismuggling units to ICE. The memorandum listed the following general guidelines to facilitate the transition:

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<sup>9</sup>In some drug-trafficking investigations, the traffickers are allowed to proceed on their journey and deliver a shipment, unaware that law enforcement authorities are monitoring the shipment. The purpose of this controlled-delivery investigative technique is to capture organizers or kingpins, rather than simply arresting a courier or seizing a single shipment.



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- ICE would assume the full burden of administratively supporting, equipping, and funding the antismuggling units. Existing equipment would not be transferred from one DHS component to another unless otherwise mutually agreed upon.
  - ICE would have lead responsibility for certain nationally designated cases as well as Joint Terrorism Task Force cases.
  - The Border Patrol would have lead responsibility for all cross-border, border-related interdiction activities, including check-point operations.
  - The Border Patrol and ICE would be jointly responsible for ensuring the proper and timely sharing of information and intelligence.

The April 2004 memorandum of understanding also recognized a need to develop a more comprehensive agreement regarding the working relationship between ICE investigations and CBP.

#### ICE and CBP Agreement (November 2004)

In November 2004, ICE and CBP signed a second memorandum of understanding, which acknowledged that the missions of the two DHS components “are intricately connected and complementary.” The memorandum stated, for instance, that ICE’s Office of Investigations has primary responsibility for all investigations, while the Border Patrol has primary responsibility for all interdictions between ports of entry. The purpose of the November 2004 memorandum of understanding (a 14-page document) was to comprehensively address the roles and responsibilities of the Border Patrol and ICE’s Office of Investigations, including provisions for sharing intelligence. To ensure proper and timely sharing of information and intelligence, the memorandum stated that colocation of the intelligence assets of ICE and the Border Patrol is a “best practice and a policy preference.”

The November 2004 memorandum of understanding also contains provisions requiring periodic implementation reviews, which are to be the joint responsibility of the Assistant Secretary, ICE, and the Commissioner, CBP. Specifically, the memorandum calls for joint reviews (1) 6 months from the date of the memorandum, (2) 1 year after its initial effective date, and (3) thereafter every 2 years or at any time requested by either party. After these reviews are conducted, the Under Secretary for the Border and Transportation Security Directorate (or his designee) is to concur with any modifications to be made to the memorandum of understanding.

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## Interim Guidance in Absence of a Strategy

In the absence of a national strategy to combat alien smuggling, including investigating the money trail, ICE used various means to provide interim guidance to investigators. Such guidance included, for instance, the formation of working groups with members from various field offices and disciplines, as well as a presentation at a March 2004 conference of special-agents-in-charge and attachés. Moreover, ICE said it continues to provide guidance to the field in the form of training seminars and managerial conferences. Also, ICE indicated that it has posted guidance and policy memorandums to the field on its Web site, which is available and accessible to agents at their desktops for reference. According to ICE, the Web site is regularly reviewed and updated to ensure that the most recent guidance is available to the field. Additionally, ICE officials said that headquarters staff routinely travel to field offices to review ongoing undercover operations and large-scale investigations to help ensure compliance with existing policies and priorities.

In April 2004, ICE's Office of Investigations electronically disseminated guidance to all field offices advising them of ICE's mission and priorities. The guidance noted that, since mission threats vary by regions or areas of responsibility, field offices have the latitude to manage their resources to address designated national priorities in the manner they determine the most effective. The guidance designated that the major national priorities to be targeted by field offices consist of three broad investigative categories—smuggling, financial, and national security. Also, the guidance explained that all investigative priorities tie together through the Cornerstone initiative,<sup>10</sup> which

“is now evolving far beyond its initial designation as an umbrella financial program ... and represents the essence of what ICE ... [investigators] should be striving for in all disciplines. We should be focusing our resources on efforts that determine systemic vulnerabilities that can be exploited by criminal organizations and terrorists ... We should be looking to examine all of our different investigative activities to see if there is connectivity between them and to see if this connectivity provides evidence of systemic vulnerabilities. ... We may start each investigation with the most simple of border violations, but we should always aim to see how each single violation ties into the larger mosaic of systemic vulnerabilities and organized crime.”

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<sup>10</sup>Launched in July 2003, Cornerstone is ICE's comprehensive enforcement initiative focusing on financial and trade investigations to identify and eliminate vulnerabilities that can be exploited. Besides financial and money-laundering investigations, Cornerstone targets commercial fraud, smuggling and trafficking, export and trade violations, and intellectual property crimes.

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Generally, the ability to identify connectivity or the larger mosaic depends largely on the effectiveness of information and intelligence sharing by ICE and CBP—whose working relationship is continuing to evolve. Also, the necessary technology infrastructure is continuing to evolve, as discussed in the following section.

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### Ongoing Project to Improve Information Technology Systems

A key aspect of implementing any antismuggling strategy is the interagency sharing of information and intelligence. Such sharing is critical to achieving ICE’s investigative objective of determining “how each single violation ties into the larger mosaic of systemic vulnerabilities and organized crime.” This analytical connectivity ability should be enhanced when DHS components have interoperable information technology systems—the goal of an ongoing, multiyear project (the Consolidated Enforcement Environment).

The ongoing Consolidated Enforcement Environment project is a department-level information technology initiative to address the enforcement and investigative needs of DHS components—ICE, CBP (including the Border Patrol), U.S. Citizenship and Immigration Services, Transportation Security Administration, U.S. Coast Guard, and U.S. Secret Service. In December 2004, ICE officials told us that the initiative was still in the conceptual stage.

In further perspective, the Consolidated Enforcement Environment project is part of a larger initiative—the Federal Investigative Case Management System—that envisions a “common solution platform” to be used governmentwide to support the missions of investigative agencies. Here again, this initiative is in its early stages. In September 2004, DHS and the Department of Justice jointly released a “request for information” and scheduled an “industry day” to seek submission of product/solution descriptions that would allow investigative agencies to “systematically build new and/or evolve existing case management systems into common case management architecture throughout the federal government.” An interim goal is to have the system’s architecture reflected in business cases submitted for the fiscal year 2006 budget review. The envisioned common system architecture could have particular relevance for managing alien-smuggling cases, given that various federal agencies—including components of the Departments of Homeland Security, Justice, the Treasury, and State—can be involved in investigations (see app. III).

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## Opportunity for Increasing the Utility of Referrals from CBP to ICE

An important aspect of the working relationship between ICE and CBP involves referrals of alien-smuggling leads for investigation. The Border Patrol is the primary DHS component responsible for interdicting aliens smuggled between ports of entry. Generally, after the Border Patrol makes an interdiction, the smuggled aliens are separated from members (drivers, guides, etc.) of the smuggling organization; interviews are conducted of both groups; sworn statements are solicited from material witnesses; fingerprints are taken; and other relevant information is accumulated. Given the large annual volume of interdictions, the Border Patrol usually refers to ICE's Office of Investigations only those cases that it believes involve a significant scope, violence, or other egregious circumstances. To facilitate investigative efforts, the November 2004 memorandum of understanding specified, for example, that the Border Patrol is to notify ICE's Office of Investigations of certain interdiction events, such as the deaths of aliens, hostage situations, and the arrests of aliens from special interest countries. During our review, ICE officials stressed to us the importance of maximizing enforcement efforts by prioritizing investigations to target the most egregious cases, such as criminal organizations, violent offenders, and threats against U.S. security.

In addition to making notifications or referrals that result from tactical interdictions, the Border Patrol also makes referrals to ICE based on more in-depth or strategic analyses conducted by intelligence units. That is, the Border Patrol's intelligence units—which are located in each of the organization's 20 geographical sectors—routinely analyze alien-smuggling interdictions to develop information on smuggling patterns and identify leads warranting further investigation. For these leads, the Border Patrol prepares and submits target or intelligence folders to ICE. In this regard, the November 2004 memorandum of understanding specified that the Border Patrol would actively prepare intelligence folders and forward them to ICE on a case-by-case basis as the need arises.

The memorandum made no mention of tracking either the number or the results of such referrals. Moreover, headquarters officials at both ICE and CBP told us there was no mechanism in place for tracking the number and the results of these referrals, including even whether ICE declined to act on the referrals. ICE officials noted, however, that establishment of a tracking mechanism would help ICE ensure that appropriate action is taken on referrals. Also, in response to our inquiry at ICE headquarters, the chief of the Human Smuggling and Trafficking Unit said that implementing a tracking mechanism could have benefits for both agencies, particularly in reference to identifying opportunities for developing cases on large or significant alien-smuggling organizations.

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Similarly, CBP headquarters and field officials commented that having a mechanism for tracking the disposition of investigative referrals to ICE could have benefits for the Border Patrol. The officials noted, for instance, that the Border Patrol could continue pursuing leads if ICE—for lack of available resources or other reasons—does not take action on the referrals. Further, the CBP officials said that having information on the results of referrals—including, if applicable, the reasons for declinations—could help the Border Patrol develop better target or intelligence folders in making referrals to ICE.

CBP officials also commented that implementing a tracking mechanism probably would involve minimal costs while providing substantial benefits. The CBP officials noted, for instance, that such a mechanism could consist of recording referrals and monitoring progress or dispositions.

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## Prosecutions and Convictions Pursued in Alien-Smuggling Cases; Asset Seizures Expected to Increase

About 2,400 criminal defendants were convicted in federal district courts in fiscal year 2004 under the primary alien-smuggling statute. According to federal officials we interviewed, most alien-smuggling prosecutions stem from reactive or interdiction-type cases at the border, wherein in-depth investigations to follow a money trail either are not warranted or are precluded by resource and time constraints. For fiscal year 2004, ICE reported seizures totaling \$7.3 million from its alien-smuggling investigations—plus an additional \$5.3 million generated by the state of Arizona under Operation ICE Storm. Officials at Treasury’s Executive Office for Asset Forfeiture told us they anticipate that ICE will have increased seizures in fiscal year 2005 or later, as ICE further applies its financial and money-laundering expertise to address alien smuggling. Similarly, ICE officials anticipate increased seizures. In this regard, for the first 6 months of fiscal year 2005, ICE reported seizures of \$7.8 million from alien-smuggling investigations. Also, according to Justice and ICE officials, federal efforts to dismantle smuggling organizations could be enhanced by civil forfeiture authority for real property (such as stash houses) used to facilitate alien smuggling.

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## Prosecutions of Alien Smugglers: More than 2,000 Convictions Annually

The principal federal statute used to prosecute alien smugglers is section 274 of the Immigration and Nationality Act, which prohibits knowingly or recklessly bringing in, transporting, or harboring certain aliens. Under this statute, which is codified at 8 U.S.C. § 1324, federal prosecutors have obtained more than 2,000 convictions annually since fiscal year 1999, as table 1 shows.

**Table 1: Number of Defendants Convicted (under 8 U.S.C. § 1324) in Federal Courts for Smuggling Unlawful Aliens, Fiscal Years 1995 through 2004**

<b>Fiscal year</b>	<b>Number of defendants convicted under 8 U.S.C. § 1324</b>
1995	589
1996	1,253
1997	1,310
1998	1,694
1999	2,302
2000	2,429
2001	2,348
2002	2,103
2003	2,654
2004	2,457

Source: Executive Office for U.S. Attorneys data.

Note: According to Justice, alien-smuggling-related activity also may have been prosecuted under a variety of other statutes, including 18 U.S.C. § 1543 (passport fraud); 18 U.S.C. § 1544 (misuse of passport); 18 U.S.C. § 1546 (immigration document fraud); 18 U.S.C. § 1028 (identification document fraud); 18 U.S.C. § 201 (bribery of public official); 18 U.S.C. § 1962 (racketeering activity); 8 U.S.C. § 1325 and 18 U.S.C. § 2 (aiding and abetting illegal entry); and 8 U.S.C. § 1326 (reentry after removal).

Prosecutions of immigration offenses may result from either reactive or proactive investigations. As the name implies, the first category (reactive investigations) is analogous to instances where police officers encounter and instantly react to street crimes as they occur. Whereas proactive investigations generally have planning and targeting aspects and may involve undercover operations and the use of electronic surveillance and other long-term investigative techniques, including support from ICE's Asset Identification and Removal Groups, which are specialized units that focus on locating, tracing, and seizing assets of criminal organizations. Regarding table 1, the Executive Office for U.S. Attorneys data did not indicate which cases resulted from proactive versus reactive investigations.

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## Officials Reported That Most Immigration Offense Cases Are Reactive, but the Formation of ICE Has Provided an Opportunity for More Proactive Cases Using Financial Investigative Techniques

According to the federal officials we interviewed in three federal judicial districts encompassing much of the southwest border—the District of Arizona, the Southern District of California, and the Southern District of Texas—the vast majority of immigration offense cases are reactive rather than proactive.<sup>11</sup> Officials noted, for instance, that most prosecutions result from interdictions made by the Border Patrol, the front-line DHS component that functions in a fast-paced operations tempo and encounters a tremendous volume of instant cases, wherein in-depth investigations either are not warranted or are precluded by resource and time constraints.

Nevertheless, the creation of DHS—which included the formation of ICE—has provided an opportunity for more proactive investigations of alien-smuggling organizations, such as using financial investigative techniques to follow the money trail from smuggling fees. ICE officials told us that while many of the investigations opened by ICE are the result of referrals from the Border Patrol and other law enforcement first-responders, ICE has always been involved in proactive investigations related to alien smuggling and trafficking.

In response to our inquiry, officials in the Domestic Security Section of Justice’s Criminal Division indicated that the creation of DHS was an important development and has resulted in an investigative entity (ICE) that can focus on asset forfeiture and money-laundering offenses as part of significant alien-smuggling investigations.<sup>12</sup> According to ICE headquarters, significant investigations would include, for example, alien-smuggling networks identified by the targeting subgroup of the National Security Council’s Migrant Smuggling and Trafficking Interagency Working Group.

During our visits in September 2004 to ICE field offices responsible for southwest border areas, we asked to review the files of any closed alien-smuggling cases that reflected the use of financial investigative techniques. In response to our inquiries, the field office managers informed us that

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<sup>11</sup>To more fully understand and illustrate the types and results of alien-smuggling investigations, we identified and summarized recent cases that have been prosecuted in these three federal judicial districts (see app. V).

<sup>12</sup>The Justice officials noted that—based on interagency working relationships, including participation on the ICE Undercover Review Committee—it is clear that the development of a financial evaluation of investigative targets has become a routine part of the investigative process.

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their respective offices had not yet completely closed relevant cases. For instance, ICE officials in the southern district of Texas said that they were still tracing illegal proceeds in the *Salman* case involving the smuggling of Chinese nationals, which is summarized in appendix V based on press release information. ICE headquarters officials explained that criminal investigations in which persons are targeted for prosecution and assets are identified for seizure can remain open for 1, 2, or more years before being completely closed. The officials noted that it is not uncommon for targeted individuals to be arrested, convicted, and sentenced while seized assets are still pending final disposition through civil or criminal forfeiture proceedings.

Also, during our field visits in September 2004, we asked U.S. Attorney's Office officials for their observations regarding whether there has been an increasing emphasis on the financial aspects of alien-smuggling investigations since the creation of DHS and ICE. In Arizona, federal prosecutors emphasized that Operation ICE Storm is a clear indication of ICE's efforts to become more proactive in alien-smuggling investigations. Also, federal prosecutors in Texas (Houston) said the money trail is being pursued when appropriate, such as proactive cases involving smuggling organizations that are based in the Far East (e.g., Thailand and certain provinces in the People's Republic of China) and have networks in Latin America and Mexico. The federal officials noted that investigations of these cases may include FBI participation and the use of undercover agents and electronic surveillance and may result in assets being seized and suspects being charged with money laundering and violations of the Racketeer Influenced and Corrupt Organizations Act.

In December 2004, ICE headquarters officials told us that ongoing alien-smuggling cases in other areas of the nation—Florida, Georgia, New York, and Washington—were also using financial investigative techniques and are expected to result in substantial seizures. Because these cases were ongoing, the officials declined to provide specific details, other than information already made available to the public. For example, according to ICE or U.S. Attorney's Office news releases:

- *Southern District of Florida*: Sixteen people were arrested in December 2004, following an investigation conducted by ICE in Miami, New York, and Ecuador. Using immigration documents provided by undercover agents, the defendants participated in smuggling Ecuadorian and Chinese nationals into the United States by



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commercial airline. The criminal organizations behind the scheme charged as much as \$20,000 per alien.<sup>13</sup>

- *Northern District of Georgia*: In November 2004, federal indictments were unsealed regarding 19 defendants allegedly connected with an illegal-alien-smuggling conspiracy. According to the indictments, the defendants employed hundreds of undocumented aliens in various gas station/convenience stores in the Atlanta metropolitan area as a means of attaining higher profits through nonpayment of overtime compensation, nonpayment of employer-share taxes, and nonpayment of mandatory employee benefits. Forfeitures amounting to “millions of dollars” are being sought.<sup>14</sup>
- *Northern District of New York*: From January 1999 through November 17, 2004, the defendants, all operators of various Chinese buffet restaurants in Albany, Schenectady, Saratoga, Columbia, and Dutchess Counties, used illegal aliens of Chinese and Mexican nationality as workers in their restaurants and laundered proceeds from the operation of those restaurants. Forfeitures are being sought relating to more than 40 bank accounts, as well as vehicles (allegedly used during the commission of the offenses) and parcels of real property (allegedly purchased with the illegal proceeds).<sup>15</sup>
- *Western District of Washington*: In November 2004, the defendant—who had admitted to organizing a scheme whereby Cambodian children were taken from their families and represented on immigration forms as orphans for adoption by American families—was sentenced to 18 months in prison, 3 years of supervised release, 300 hours of community service, and more than \$60,000 in restitution. Also, the defendant was ordered to forfeit the proceeds of the crime to the

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<sup>13</sup>ICE, *Inside ICE*, “ICE’s ‘Operation Palmdale’ Disrupts Major International Smuggling Ring,” Volume 1, Issue 18, December 20, 2004.

<sup>14</sup>U.S. Attorney’s Office, Northern District of Georgia, “Operation Sugar Crisp Takes Down Ring, Indictment Unsealed Naming 19 Defendants,” November 19, 2004.

<sup>15</sup>ICE, news release, “Operators of Chinese Restaurants in New York Charged with Money Laundering and Harboring Illegal Aliens,” November 18, 2004. Also, the February 2005 issue of *Government Executive* (“ICE Warms Up—New Partnership Nets Major Bust for Immigration and Customs Agents”) reported that “Last November, ICE executed search warrants on several restaurants and homes, arrested ringleaders, and seized 11 vehicles and nearly \$4 million in cash, real estate, and other assets.”

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government—a home in Hawaii worth \$1.4 million and a Jaguar car (approximately \$25,000).<sup>16</sup>

More recently, in April 2005, ICE officials emphasized to us that ICE has many ongoing investigations in which criminal organizations are targeted for alien smuggling violations and their assets are being targeted for seizure. The officials declined to provide specific details because disclosure of information could compromise the ongoing investigations.

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### Alien-Smuggling Cases: ICE Reported Seizures Totaling \$7.3 Million in 2004

For fiscal year 2004, ICE reported seizures totaling \$7.3 million from alien-smuggling investigations, as table 2 shows.

**Table 2: Amount of ICE Seizures from Alien-Smuggling Investigations, Fiscal Year 2004**

ICE investigation program	Seizure amount
Alien smuggling	\$3,400,000
Other investigations involving alien smuggling <sup>a</sup>	3,900,000
<b>Total</b>	<b>\$7,300,000</b>

Source: ICE data.

Note: According to Justice, these seizure amounts may not reflect all proceeds derived from alien-smuggling investigations. Specifically, Justice noted that, pursuant to 19 U.S.C. § 2081 and 8 U.S.C. § 1363a, ICE has the authority to use proceeds from certified undercover operations to offset the necessary and reasonable expenses of the operations.

<sup>a</sup>According to ICE, these investigations were money-laundering investigations linked to human-smuggling violations.

Also, under Operation ICE Storm, the state of Arizona had generated an additional \$5.3 million in seizures, as of September 2004 (see app. II). Further, at the time of our visit to Phoenix in September 2004, ICE officials told us that the most significant alien-smuggling cases under Operation ICE Storm were still being developed. The officials anticipated that several major smuggling organizations would be the subjects of arrests and indictments in the coming months. In October 2004, for example, ICE and the Arizona Attorney General's Office announced that a multi-agency investigation had resulted in state grand jury indictments of 21 individuals involved in providing criminal groups with used cars for smuggling illegal immigrants, drugs, or cash. According to ICE, 11 used car lots located in

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<sup>16</sup>ICE, news release, "Woman Sentenced to 18 Months in Prison for Visa Fraud and Money Laundering in Connection with Cambodian Adoption Scam," November 19, 2004.

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the Phoenix metropolitan area were shut down, and 349 cars worth almost \$1.4 million were seized by ICE and the Arizona Attorney General's Office.

To obtain additional perspectives on the results of alien-smuggling investigations in terms of recovered funds or seized assets, we contacted Treasury's Executive Office for Asset Forfeiture, which provides management oversight of the Treasury Forfeiture Fund—the receipt account for the deposit of nontax forfeitures made pursuant to laws enforced or administered by the Internal Revenue Service-Criminal Investigation and DHS components (including ICE, CBP, the U.S. Secret Service, and the U.S. Coast Guard). Regarding fund deposits since October 2003 that resulted from alien smuggling cases, Executive Office for Asset Forfeiture officials commented (in July 2004) substantially as follows:

- Fund deposits are not tracked by type of case. All member agencies are mandated to deposit forfeited funds regardless of the type of investigation.
- Anecdotally, however, as of July 2004, the Executive Office for Asset Forfeiture has had no real experience with alien-smuggling investigations that resulted in substantial enforcement actions (seizures with a value of more than \$100,000). But substantial investigations of any kind (except bulk cash smuggling) go through the judicial process, which in many cases takes 1 to 3 years from the date of seizure to perfect the forfeiture.

More recently, we reviewed the *Treasury Forfeiture Fund Accountability Report—Fiscal Year 2004* and found no case highlights regarding alien-smuggling investigations. The report stated:

“FY 2004 was a robust and unprecedented revenue year for the law enforcement bureaus participating in the Treasury Forfeiture Fund, with over \$335 million from all sources. ... It is our view that the greatest damage to criminal enterprise can be effected through large forfeitures, hence we have set a target level of 75 percent of our currency forfeitures to be high impact forfeitures. Fund Management works through budgetary and policy means to emphasize high-impact cases, i.e., those cash forfeiture cases equal to or greater than \$100,000 in value. For FY 2004 we exceeded our target significantly with 84 percent of our cash forfeiture revenue stemming from high-impact cases. This is a credit to our law enforcement bureaus and their dedication to the fight against crime.”

To illustrate the types of investigative cases worked by the fund's law enforcement agencies, the report gave summary highlights of 33 cases—IRS (17 cases), CBP (8 cases), ICE (5 cases), U.S. Secret Service (2 cases),

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and U.S. Coast Guard (1 case). None of the 33 case summaries referenced alien smuggling. The 5 ICE cases involved, respectively, a bank scam, an adult video store and other businesses seized for racketeering, counterfeit cigarette traffickers, a counterfeit motion picture network, and a church fraud scheme. Of the 17 IRS cases, 5 were narcotics-related investigations, and another 3 involved bulk-cash seizures in south Texas of approximately \$370,000; \$993,000; and \$5.3 million, respectively.<sup>17</sup> Also, of the 8 CBP cases, 4 involved bulk-cash seizures—Nogales, Arizona (about \$464,000); Eagle Pass, Texas (about \$518,000); and 2 separate seizures at Rouses Point, New York (about \$991,000 and \$995,000).

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**Alien-Smuggling Cases:  
Asset Seizures Expected to  
Increase, although There  
Are Caveats**

Treasury's Executive Office for Asset Forfeiture officials told us they anticipate that ICE's alien-smuggling investigations will begin having an impact on the fund in fiscal year 2005 or later. The officials explained that, over time, if ICE applies the financial and money-laundering expertise of the former Customs Service special agents to address alien smuggling, ICE should develop an immigration investigations program on par with the narcotics, money-laundering, trade, and export programs—each of which produces significant asset forfeiture revenue. For instance, according to the Treasury officials, it is not uncommon for export or trade cases to render plea agreements for cash forfeitures of tens of millions of dollars.

ICE headquarters officials also told us they anticipate that alien-smuggling investigations will begin having an impact on the Treasury Forfeiture Fund in fiscal year 2005 and future years. For the first 6 months of fiscal year 2005, ICE reported seizures totaling \$7.8 million from alien-smuggling investigations, as table 3 shows.

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<sup>17</sup>Regarding the bulk-cash seizures, the report noted that IRS-CI agents worked closely with other law enforcement agencies of the South Texas Asset Forfeiture and Money Laundering Task Force.

**Table 3: Amount of ICE Seizures from Alien-Smuggling Investigations (Oct. 1, 2004, to Mar. 31, 2005)**

<b>ICE investigation program</b>	<b>Seizure amount</b>
Alien smuggling	\$5,200,000
Other investigations involving alien smuggling <sup>a</sup>	2,600,000
<b>Total</b>	<b>\$7,800,000</b>

Source: ICE data.

<sup>a</sup>According to ICE, these investigations were money-laundering investigations linked to human-smuggling violations.

Generally, regarding asset seizures and forfeitures from alien-smuggling investigations, ICE officials noted that there can be competing demands for investigative resources. The mission of ICE's Office of Investigations—which has more than 5,000 agents in 26 field offices nationwide—encompasses a broad array of national security, financial, and smuggling violations, including narcotics smuggling, financial crimes, illegal arms exports, commercial fraud, child pornography/exploitation, immigration fraud, and human trafficking. Regarding immigration enforcement, the Office of Investigations is responsible not only for deterring, dismantling, and diminishing the smuggling and trafficking of aliens but also for minimizing immigrant benefit fraud, removing employers' access to undocumented workers, and responding to community complaints about illegal immigration. Nationally, about 7 percent of ICE's total investigative hours were devoted to alien-smuggling cases in fiscal year 2004. As noted in table 4, these investigative hours included cases involving alien-smuggling organizations (5 percent), as well as individuals and groups (2 percent).

In its technical comments on a draft of this report, DHS noted that other investigative programs conducted by ICE involve criminal organizations that profit, wholly or in part, from alien smuggling. Specifically, DHS said that the percentage of ICE's total investigative hours devoted to alien-smuggling cases in fiscal year 2004 could be up to 29 percent when, in addition to the 7 percent statistic, other relevant investigative programs are considered (see table 4)—criminal alien (12 percent), identity and benefit fraud (5 percent), Joint Terrorism Task Force (3 percent), and human trafficking (2 percent). In providing an overall perspective regarding ICE investigative resources devoted to alien-smuggling cases, we agree that the 7 percent statistic is properly supplemented by other investigative programs. However, reporting a 29 percent statistic may be

overreaching, given that these other programs may only partly involve alien smuggling.

**Table 4: National Overview of ICE Investigative Hours Worked by Program, Fiscal Year 2004**

Investigative program	Percentage of all investigative hours worked
Drugs	26
Financial	17
Other	16
Criminal alien	12
Alien-smuggling and alien absconder (744,337 hours)	7
Alien-smuggling organizations (526,668 hours or 5 percent of total)	
Alien-smuggling individuals/groups (198,763 hours or 2 percent of total)	
Alien absconder (18,906 hours or less than 1 percent of total)	
Identity and benefit fraud	5
Child pornography	4
Fraud	4
Strategic	4
Joint Terrorism Task Force	3
Human trafficking	2
<b>Total investigative hours: 10,037,981</b>	<b>100%</b>

Source: ICE data.

In further reference to the Treasury Forfeiture Fund, ICE headquarters officials cautioned that alien-smuggling cases, in comparison with drug cases, are much less likely to result in seizures of money. The officials explained that almost all drug deals are conducted in cash; therefore, it is not unusual for law enforcement to arrest criminals handling hundreds of thousands or even millions of dollars in drug money. In contrast, the officials noted that alien-smuggling fees per person generally involve smaller amounts that are paid by wire transfers, which present law enforcement the challenge of identifying consolidation points. ICE officials said that wire transfers reflect a developing trend by alien smugglers to exploit money services—a trend that ICE is addressing. For instance, the officials noted that the use of wire transfers by criminal

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organizations has been aggressively investigated during Operation ICE Storm and the Arizona Border Control Initiative.

From another perspective, Canadian immigration and law enforcement officials, including Royal Canadian Mounted Police representatives, told us that alien-smuggling cases that result in seizures of money can be considered a bonus—that is, such results are more the exception than the norm. However, even absent seizures of money or other assets from alien smugglers, ICE headquarters and field office officials stressed to us the importance and utility of applying financial investigative expertise in appropriate cases. The officials noted that such investigative expertise is very useful for determining the scope and operational patterns of alien-smuggling organizations, identifying the principals, and obtaining evidence to build prosecutable cases. As a case in point, the officials cited the Victoria 19 case (see app. II), which they described as being very successful in dismantling a smuggling organization, even though the case did not produce substantial asset seizures or forfeitures.

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### According to Justice and ICE, Civil Forfeiture Authority Is Not Adequate to Seize Stash Houses Used by Alien Smugglers

Regarding potential forfeitures in alien-smuggling cases, Justice and ICE headquarters officials said a concern for investigators is the lack of adequate statutory civil forfeiture authority for seizing real property—particularly stash houses used by smugglers.<sup>18</sup> Asset forfeiture law has long been used by federal prosecutors and law enforcement as a tool for punishing criminals and deterring further illegal activity. For instance, as a result of the government’s seizure of vehicles, vessels, and aircraft used to traffic drugs or smuggle aliens, criminals are prevented from using the property to commit new crimes. Under current federal law, the government has both criminal and civil forfeiture authority, but its availability depends on several factors, including whether there has been a conviction for the underlying offense and the nature of that offense.

### Criminal Forfeiture Authority: Not Available for Fugitive Defendants or Property Owners Not Indicted

Criminal forfeiture refers to the seizure of assets in the context of a criminal prosecution. That is, upon his or her conviction, the defendant forfeits and the government takes ownership of property that the defendant used to commit or facilitate the offense or property that constituted the proceeds of the illegal activity. In alien-smuggling cases,

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<sup>18</sup>These houses sometimes are also referred to as “drop” houses or “safe” houses where smugglers hide aliens while awaiting payment and travel arrangements to final destinations throughout the nation.

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the current criminal forfeiture authority—codified at 18 U.S.C. 982(a)(6)(A)—provides that in imposing sentence on a person convicted of an applicable violation, the court

“shall order that the person forfeit to the United States, regardless of any provision of State law—(i) any conveyance, including any vessel, vehicle, or aircraft used in the commission of the offense of which the person is convicted; and (ii) and property real or personal—(I) that constitutes, or is derived from or is traceable to the proceeds obtained directly or indirectly from the commission of the offense of which the person is convicted; or (II) that is used to facilitate, or is intended to be used to facilitate, the commission of the offense of which the person is convicted.”

Before the resolution of a criminal forfeiture action, there must be a conviction of the defendant based on a high evidentiary standard—the beyond-a-reasonable-doubt standard. Thus, irrespective of the type of criminal offense involved, the criminal forfeiture authority is not available for seizing the property of alleged felons who have fled to avoid prosecution.

Additionally, in alien-smuggling cases, the use of the criminal forfeiture authority is rarely an option for seizing rented real property (e.g., stash houses) used to facilitate the offense. In many alien-smuggling cases, according to Justice and ICE, the real properties at issue are not owned by the smugglers; rather, the properties are rental units, often in distressed areas. Justice and ICE noted that evidence that the owner of a rented stash house knew about the illegal activity and intentionally ignored it is not sufficient to indict the owner for smuggling, and there is rarely evidence of greater involvement in the offense by the owner; as a result, the criminal forfeiture option is not available in such cases.

#### Civil Forfeiture Authority: Innocent Owners Have Statutory Protections

In contrast to criminal forfeiture procedure, civil forfeiture, in which the government seizes real property and initiates a civil action to forfeit the property, does not require that the owner of the property be charged with a federal offense. Rather, the action is against the property, and the government would have to demonstrate that the property is subject to forfeiture under the applicable civil forfeiture statute for the underlying offense. If the government is able to do so, the burden would shift to the property owner to prove by a preponderance of the evidence that he or she was an innocent owner. The innocent-owner defense is not available to someone who intentionally turned a blind eye to the illegal use of his or her property, although such an individual most likely could not be convicted of the offense involved.



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The innocent-owner defense and other substantive and procedural protections were enacted as part of the Civil Asset Forfeiture Reform Act of 2000 (CAFRA),<sup>19</sup> which was intended to prevent abuses of civil asset forfeiture law. Before CAFRA's enactment, news articles and congressional hearings recounted stories of innocent owners of motels or air transport services who had lost their businesses trying to meet the legal requirements for recovering their seized property. CAFRA eliminated or modified some of these requirements. For example, the burden of proof shifted to the government to show that the property was subject to forfeiture, rather than the claimant having to prove that it was not. Also, individuals seeking to recover their property no longer have to post a bond in order to make a claim.

After CAFRA, in order to forfeit facilitating property that was purchased with legitimately earned funds, the government must demonstrate a substantial connection between the use of the property and the offense. Before CAFRA, some courts had allowed such forfeitures based on a weaker connection to the crime. CAFRA was written to create uniform procedures for civil asset forfeiture, regardless of the nature of the underlying offense. Moreover, CAFRA increased uniformity among the substantive forfeiture statutes by creating a single definition of proceeds of the offense, expanding statutes to allow forfeiture of proceeds if not already allowed, and creating a single innocent-owner defense with clearer criteria for invoking it. Although its focus was civil forfeiture, CAFRA also amended the criminal asset forfeiture provision for alien-smuggling cases, which had been inadvertently written in a manner that rendered it inoperable when it was enacted as part of a larger package of legislation addressing immigration law in 1996. There is no evidence in the CAFRA legislative history that Congress considered expanding civil asset forfeiture in alien-smuggling cases to include real property used to commit the offense.

Civil Forfeiture Authority:  
Statutorily Limited in Alien-  
Smuggling Cases Compared to  
Other Criminal Offenses

Although the CAFRA amendments to criminal and civil forfeiture in alien-smuggling cases were important, the statutory civil forfeiture authority in alien-smuggling cases needs further enhancing, according to Justice and ICE. The current statutory authority for civil forfeiture of assets used in alien smuggling is codified at 8 U.S.C. § 1324(b) and provides that

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<sup>19</sup>Pub. L. No. 106-185, 114 Stat. 202 (Apr. 24, 2000).

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“Any conveyance, including any vessel, vehicle, or aircraft, that has been or is being used in the commission of a violation of subsection (a) [of 8 U.S.C. § 1324], the gross proceeds of such violation, and any property traceable to such conveyance or proceeds, shall be seized and subject to forfeiture.”

It is important to note that the civil forfeiture authority for alien smuggling is not parallel to the criminal forfeiture provision. Most notably, the civil provision does not include forfeiture of real property used to facilitate the offense. Rather, the civil forfeiture provision addresses only personal property, such as vessels, vehicles, and aircraft. Thus, under the civil forfeiture statute for alien smuggling, a house used to hide the aliens, conduct the alien-smuggling business, etc., could not be forfeited as facilitating property.<sup>20</sup>

This statutory limitation contrasts with provisions in other federal criminal statutes, which do have parallel civil forfeiture provisions. That is, civil forfeiture provisions applicable to various criminal offense categories—including drug trafficking, child pornography, and money laundering—are available for seizing facilitating real property. For instance, if a house is used to conduct drug transactions, store the drugs and money, etc., the house can be forfeited as facilitating property. In the view of Justice and ICE, regarding civil forfeiture authority for seizing facilitating real property, the statutory distinction between alien smuggling and other criminal offenses is inappropriate.

### Justice and ICE Consider the Current Civil Forfeiture Authority Inadequate

Justice and ICE consider the current civil forfeiture authority inadequate to effectively seize real property (stash houses) used to facilitate alien smuggling. In a December 2004 written response to our inquiry regarding whether an amendment to 8 U.S.C. § 1324(b) is needed, Justice emphasized that

“One of the major remaining omissions in the forfeiture statutes for alien smuggling offenses is the lack of civil forfeiture authority over facilitating property other than vessels, vehicles and aircraft. In particular, there is no civil forfeiture authority over real property used to conceal illegal aliens or otherwise to facilitate the alien smuggling offense. ... The Department of Justice supports amending section 1324 to address this problem.”

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<sup>20</sup>However, if money laundering were charged in this example case, the house used for alien smuggling could be forfeited under a money-laundering forfeiture provision.

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An amendment to the civil forfeiture authority, according to Justice, would enhance federal efforts to dismantle smuggling organizations because would-be defendants often are fugitives, which makes criminal forfeiture unavailable. Also, a civil forfeiture authority for real property used to facilitate alien smuggling would enable the government to establish willful blindness arguments against landlords who hope to profit from such ventures without becoming directly involved. Justice officials told us in April 2005, however, that the department does not have a legislative proposal on this subject pending before Congress because the department's legislative policy resources have been focused on other priorities.

We asked Justice whether there has been a broad analysis of investigative case data to determine the scope and significance of the perceived inadequacy of the current civil forfeiture authority—that is, an analysis to provide a basis or justification for consideration of a legislative amendment. In its response, Justice noted that statistics are not collected on civil forfeiture cases that could not be brought, such as cases involving real property held by fugitives or third parties that was used to facilitate alien smuggling. However, Justice's analysis of civil and criminal forfeiture statutes generally has led the department to conclude that a statute that provides only for criminal and not civil forfeiture of facilitating property will be inadequate in such cases. In addition, Justice officials told us that investigative experience with alien smuggling has convinced them that such cases are numerous. Further, in March 2005, Justice provided us summary examples of recent or pending alien-smuggling cases in which real property used to facilitate the offense could not be forfeited because of the absence of statutory civil forfeiture authority (see app. VI). According to Justice, the summary examples provided are illustrative of typical cases that recur with great frequency in federal judicial districts along the southwest border.<sup>21</sup>

Expanding civil forfeiture authority in alien-smuggling cases to include real property used to facilitate the offense may raise some of the same concerns addressed by CAFRA in 2000. These concerns include the potential for abuse of this type of forfeiture and the adequacy of protection for the rights of innocent property owners. CAFRA was

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<sup>21</sup>A related concern raised by Justice is that the current alien smuggling statutes need to be amended to define "proceeds" as including the cost savings realized by an employer who engages in alien smuggling for the purpose of employing cheap illegal labor. The scope of our work did not cover this issue.

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compromise legislation that was developed over several years by Congress, the Executive Branch, and interest groups. Some observers felt that the legislation did not provide enough reforms and protections, while others felt that it went too far and would curtail a legitimate law enforcement tool. The procedural protections in CAFRA included specific requirements for real property forfeitures, such as notice and an opportunity to be heard prior to seizure and judicial, as opposed to administrative, forfeiture for all real property. CAFRA's requirement that the government prove a substantial connection between facilitating property and the underlying offense also would apply to any expansion of civil forfeiture authority in the alien-smuggling statute, absent a specific exemption. Views as to whether these CAFRA protections were adequate likely will affect whether expanding the civil forfeiture authority to include real property used to facilitate alien smuggling is seen as striking an appropriate balance of the law enforcement and the property interests involved.

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## Conclusions

Creation of DHS in March 2003 has provided new opportunities to more effectively combat alien smuggling, particularly in reference to using financial investigative techniques to target and seize the monetary assets of smuggling organizations.

However, after more than 2 years, the federal response to alien smuggling is still evolving, including development and implementation of a strategy to follow the money trail. Also evolving is the working relationship of ICE and CBP, two DHS components that have the primary responsibility for investigating and interdicting alien smugglers. Having clearly defined roles and responsibilities for these components is important, given their complementary antismuggling missions. In this regard, ICE's and CBP's November 2004 memorandum of understanding did not address a mechanism for tracking the number and the results of leads referred by CBP to ICE for investigation. If a tracking mechanism were in place, CBP could continue pursuing certain leads if ICE—for lack of available resources or other reasons—does not take action on the referrals. As such, a tracking mechanism would help to further ensure that large or significant alien-smuggling organizations are identified and investigated.

Federal law enforcement has concerns that efforts to dismantle alien-smuggling organizations are constrained by the current absence of civil forfeiture authority for real property used to facilitate the smuggling of aliens. In contrast, for drug trafficking and various other criminal offense categories, civil forfeiture authority is available for seizing real property

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used to facilitate these crimes. Our review of CAFRA legislative history found no evidence that Congress considered modifying this statutory distinction when CAFRA was enacted. According to Justice and ICE, the absence of civil forfeiture authority for real property used to facilitate the smuggling of aliens is inappropriate because law enforcement is unable in many cases to seize stash houses where smugglers hide aliens while awaiting payment and travel arrangements to final destinations throughout the nation. However, because its legislative policy resources have been focused on other priorities, Justice has not developed and submitted a legislative proposal to Congress.

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## Recommendations for Executive Action

To enhance the federal response to alien smuggling, we are making two recommendations. Specifically, we recommend that

- the Secretary of Homeland Security establish a cost-effective mechanism for tracking the number and results of referrals by CBP to ICE, and
- the Attorney General, in collaboration with the Secretary of Homeland Security, consider developing and submitting to Congress a legislative proposal, with appropriate justification, for amending the civil forfeiture authority for real property used to facilitate the smuggling of aliens.

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## Agency Comments and Our Evaluation

We provided a draft of this report for comment to the Departments of Homeland Security, Justice, the Treasury, and State. In its written comments, DHS expressed general agreement with our findings and outlined steps it planned to take to implement our recommendation on the establishment of a cost-effective mechanism for tracking the number and results of referrals by CBP to ICE.

DHS also raised a concern regarding interpretation of the data in table 4 (national overview of ICE's investigative hours worked by program, fiscal year 2004), noting that the percentage of ICE's total investigative hours devoted to alien-smuggling cases in fiscal year 2004 could be up to 29 percent when, in addition to the 7 percent statistic we reported, other relevant investigative programs are considered. In providing an overall perspective regarding ICE investigative resources devoted to alien-smuggling cases, we agree that the 7 percent statistic is properly supplemented by other investigative programs. However, reporting a 29 percent statistic may be overreaching, given that these other programs may only partly involve alien smuggling. The full text of DHS's written

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comments is reprinted in appendix VII. DHS also provided technical comments, which we incorporated in this report where appropriate.

We also received comments via e-mail from designated liaisons at the Departments of Justice, the Treasury, and State. Justice agreed with our recommendation to consider developing and submitting to Congress a legislative proposal, with appropriate justification, for amending the civil forfeiture authority for real property used to facilitate the smuggling of aliens. Treasury said that the report accurately and fairly portrayed the department's role in helping to identify, track, and attack the financing of alien smuggling. Treasury did not comment on the two recommendations, which were made to the Secretary of Homeland Security and the Attorney General, respectively. Similarly, State concurred with the report but did not comment on the recommendations. Also, State provided one technical comment, which we incorporated in this report where appropriate.

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As arranged with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days after the date of this report. At that time, we will send copies of this report to interested congressional committees and subcommittees. We will also make copies available to others on request. In addition, this report will be available at no charge on GAO's Web site at <http://www.gao.gov>.

If you or your staff have any questions about this report or wish to discuss the matter further, please contact me at (202) 512-8777 or Danny Burton at (214) 777-5600. Other key contributors to this report were Odilon Cuero, Kathleen Ebert, Frances Cook, Jan Montgomery, Mary K. Muse, Maureen Shields, and David Alexander.

Sincerely yours,



Richard M. Stana  
Director, Homeland Security and Justice

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# Appendix I: Objectives, Scope, and Methodology

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## Objectives

Our overall purpose was to study the federal response to alien smuggling, especially efforts of the Department of Homeland Security (DHS) and its largest investigative component, U.S. Immigration and Customs Enforcement (ICE). The key questions addressed were as follows:

- What is the implementation status of ICE’s strategy for combating alien smuggling, particularly regarding efforts to use financial investigative techniques to follow the money trail and seize the monetary assets of smuggling organizations?
- Since the creation of DHS and ICE, what results have been achieved from alien-smuggling investigations in terms of prosecutions and convictions, as well as seizures of smugglers’ monetary assets?

Also, to provide supplementary and contextual perspectives on the federal response to alien smuggling, we obtained overview information on (1) the roles of various federal agencies—DHS components such as ICE and U.S. Customs and Border Protection (CBP), as well as components of the Departments of Justice, the Treasury, and State; and (2) federal efforts to work with the governments of source and transit countries to reduce the flow of smuggled aliens into the United States.

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## Scope and Methodology

To address these questions and obtain contextual perspectives, we interviewed responsible officials at and reviewed relevant documentation obtained from the Departments of Homeland Security, Justice, the Treasury, and State and their components. Our work focused on alien smuggling and not human trafficking, although both smuggling and trafficking may have common elements. In legal and diplomatic references, alien smuggling is distinct from human trafficking. By definition, alien smuggling (sometimes called people smuggling or human smuggling) involves more than one country—that is, alien smuggling involves procuring illegal entry into a country of which the smuggled person is neither a citizen nor a lawful permanent resident. Alien smuggling usually involves persons who have consented to be transported to another country, and this activity generally produces short-term profits for the smugglers. That is, after the aliens reach their final destinations, they have no continuing relationship with the smugglers. In contrast, the criminality and human rights abuses associated with human trafficking—such as coercion for prostitution, labor sweat shops, or other exploitative purposes and servitude arrangements—may continue after the migrants reach the United States in order to produce both short-term and long-term

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profits. Whereas a trafficked person is a victim, an alien who consents to be smuggled is subject to criminal processing and deportation.

Initially, in addressing the key questions, we reviewed information available on the Web sites of the Departments of Homeland Security, Justice, the Treasury, and State. To obtain additional background and overview perspectives, we conducted a literature search to identify relevant reports, studies, articles, and other documents—including congressional hearing testimony—regarding the federal response to alien smuggling. For example, at congressional hearings in June and July 2003, ICE officials testified that ICE was developing a strategy—the Antismuggling/Human-Trafficking Strategy—to address alien smuggling and human trafficking at the national and international levels and that the strategy would concentrate ICE’s efforts in intelligence-driven investigations against major violators, specifically targeting organizations with ties to countries that support terrorist organizations such as al Qaeda.<sup>1</sup>

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## ICE’s Strategy for Combating Alien Smuggling

Regarding ICE’s strategy for combating alien smuggling, we interviewed officials of relevant DHS components, particularly ICE, to determine the status of the strategy’s development and implementation and the extent to which it included a focus on investigating the money trail from smuggling fees. The scope of our review was limited because ICE’s strategy for combating alien smuggling had not been finalized as of April 2005. Rather, ICE was in the process of adjusting the draft strategy to focus on the southwest border and encompass all aspects of smuggling, aliens as well as drugs and other contraband.

In the absence of a final strategy, we determined what interim guidance ICE headquarters had disseminated to its field offices to ensure a focus on following the money trail in alien-smuggling investigations. Also, we obtained information about Operation ICE Storm, a multi-agency task force launched in October 2003 to crack down on migrant smuggling and

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<sup>1</sup>Statement of Tom Homan, ICE Interim Resident Agent-In-Charge (San Antonio, Tex.), at a hearing (“Deadly Consequences of Illegal Alien Smuggling”) before the Subcommittee on Immigration, Border Security, and Claims, House Committee on the Judiciary, June 24, 2003, and statement of Charles H. Demore, ICE Interim Assistant Director of Investigations, at a hearing (“Alien Smuggling/Human Trafficking: Sending a Meaningful Message of Deterrence”) before the Subcommittee on Crime, Corrections and Victims’ Rights; Senate Committee on the Judiciary, July 17, 2003.



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related violence in Arizona by, among other means, targeting the monetary assets of smuggling organizations (see app. II).

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## Results Achieved from Investigations

To determine the results that have been achieved from alien-smuggling investigations in terms of prosecutions and convictions, we obtained statistics from the Executive Office for U.S. Attorneys. Specifically, for fiscal years 1995 through 2004, the Executive Office for U.S. Attorneys provided us data on the number of defendants convicted (under 8 U.S.C. § 1324) in federal courts for smuggling unlawful aliens.

To determine the results that have been achieved from alien-smuggling investigations in terms of recovered funds or seized assets, we contacted managers of the federal government's applicable asset forfeiture funds:

- Asset seizures and forfeitures resulting from alien smuggling cases accrued to the Department of Justice Forfeiture Fund in 2003 and previous fiscal years, given that the legacy Immigration and Naturalization Service was a component of Justice.
- For 2004 and subsequent fiscal years, seizures and forfeitures made by ICE accrue to the Treasury Forfeiture Fund. The Department of the Treasury's Executive Office for Asset Forfeiture provides management oversight of the Treasury Forfeiture Fund, which is the receipt account for the deposit of nontax forfeitures made pursuant to laws enforced or administered by DHS components (including ICE, U.S. Customs and Border Protection, the U.S. Secret Service, and the U.S. Coast Guard) and Internal Revenue Service-Criminal Investigation.

Further, we obtained perspectives from Justice and ICE on the usefulness (and limitations) of statutory revisions (under the Civil Asset Forfeiture Reform Act of 2000) that were intended to enhance the government's authority to pursue civil forfeiture of the gross proceeds of alien smugglers.

Also, to more fully understand and illustrate the results of alien-smuggling investigations, we identified and summarized recent cases that have been prosecuted in three federal judicial districts—the District of Arizona, the Southern District of California, and the Southern District of Texas (see app. V). Each of these federal judicial districts is coterminous with the U.S.-Mexico, or southwest, border. To identify alien-smuggling cases federally prosecuted in these districts, we reviewed press releases issued by the respective U.S. Attorney's Office during January through June 2004.

In this 6-month period, the three districts issued press releases that covered a collective total of 23 alien-smuggling cases—District of Arizona (9), Southern District of California (3), and Southern District of Texas (11). We discussed these cases with U.S. Attorney’s Office and ICE officials in each of the three districts. Because these cases were selected using a nonprobabilistic method, they are not representative of all cases in the districts or nationwide.

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### Other Departments’ Efforts to Help Address Alien Smuggling

To determine how the Departments of Justice, the Treasury, and State have helped DHS address alien smuggling, particularly efforts of smugglers to launder their proceeds, we interviewed component agency officials and reviewed documentation regarding relevant initiatives, programs, task forces, or other activities (see app. III). Also, from the applicable components, we solicited examples of recent alien-smuggling cases that agency officials considered to be significant, and we discussed with agency officials the nature and extent of interagency cooperation in the cases. A limitation is that these cases may not be representative of the universe.

As an additional probe regarding interagency efforts, we obtained information about the roles and functioning of relevant coordination mechanisms, such as (1) the National Security Council’s Migrant Smuggling and Trafficking Interagency Working Group, which has a targeting subgroup to identify for investigation the most dangerous international alien-smuggling networks, especially those that pose a threat to national security and (2) the Human Smuggling and Trafficking Center, an interagency entity for disseminating intelligence and other information to address the separate but related issues of alien smuggling, trafficking in persons, and clandestine terrorist travel.

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### Working with Source and Transit Countries

To determine the extent to which federal entities have been working with the governments of source and transit countries to reduce the flow of smuggled aliens into the United States, we interviewed officials at and reviewed documentation obtained from the Departments of Homeland Security, Justice, the Treasury, and State (see app. IV). We focused on relevant bilateral efforts with border nations (Mexico and Canada), as well as other source and transit countries. We discussed bilateral efforts with representatives of the Mexican and Canadian embassies in Washington, D.C.

Regarding multilateral efforts, we contacted the Department of State to obtain information about the implementation status of the “Protocol against the Smuggling of Migrants by Land, Sea and Air,” which is an agreement supplementing the United Nations Convention against Transnational Organized Crime.

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## Data Reliability

We conducted our work from April 2004 to March 2005 in accordance with generally accepted government auditing standards. Regarding the results of alien-smuggling investigations—for example, convictions and asset seizures and forfeitures—we discussed the sources of the data with federal agency officials and worked with them to resolve any inconsistencies. Similarly, regarding ICE investigative hours by program, as well as analytical support provided for alien-smuggling cases by the Financial Crimes Enforcement Network, we discussed the sources of the data with federal agency officials and worked with them to resolve any inconsistencies. We determined that these data were sufficiently reliable for the purposes of this review.

Also, appendix III summarizes Department of State data—such as the number of passports issued and the number of arrests for passport fraud—that were presented in a fact sheet (dated May 12, 2004). Because these data are used in our report only for background or contextual purposes, we did not assess their reliability.

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# Appendix II: Creation of the Department of Homeland Security Has Provided New Opportunities for Combating Alien Smuggling

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Creation of the Department of Homeland Security in March 2003 provided new opportunities to more effectively combat alien smuggling by, among other means, bringing to bear financial investigative techniques. In particular, U.S. Immigration and Customs Enforcement—the largest investigative component of DHS—integrates the legal authorities and investigative tools of the legacy Immigration and Naturalization Service and the Treasury Department’s U.S. Customs Service, which has extensive experience in combating money laundering and other financial crimes.

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## Seminal Case Cited as New Model for Fighting Alien Smuggling

A seminal case illustrating the potential of these integrated legal authorities and investigative tools to combat alien smuggling began on May 14, 2003, with the tragic discovery of 17 bodies and more than 50 other undocumented aliens in a trailer abandoned at a truck stop near Victoria, Texas.<sup>1</sup> In this case, the smuggling operation involved aliens from Mexico and several Central American countries (El Salvador, Honduras, Nicaragua, and Guatemala) who were to be transported to Houston, Texas. According to congressional testimony:

“ICE worked closely with other DHS components, local law enforcement, and intelligence and law enforcement agencies in Mexico and Guatemala. Our unique combination of investigative tools allowed us to follow the money, pinpoint the conspirators, and bring them to justice. In one month’s period, ICE’s coordinated approach led to the arrest and prosecution of 14 defendants in the United States and abroad.

“This success was the foundation for a new model for fighting smuggling, which we’ve now taken to Arizona. ICE assembled a task force known as ‘Operation ICE Storm’ to combat violent crime in the Phoenix metropolitan area.”<sup>2</sup>

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<sup>1</sup>Two other immigrants who were inside the trailer later died at a hospital, making a death toll of 19. More details about the “Victoria 19” case are presented in appendix V.

<sup>2</sup>Statement of John P. Torres, ICE Deputy Assistant Director, Smuggling and Public Safety, at a hearing (“Pushing the Border Out on Alien Smuggling: New Tools and Intelligence Initiatives”) before the Subcommittee on Immigration, Border Security, and Claims; House Committee on the Judiciary, May 18, 2004.

## Operation ICE Storm Launched in Phoenix: A Focus on Targeting the Monetary Assets of Smuggling Organizations

In October 2003, ICE launched Operation ICE Storm, described as an unprecedented multi-agency initiative to combat human smuggling and the violence it has generated in Arizona. ICE’s November 2003 press release says:

“ICE ... brings to bear a broad array of authorities and resources that make it uniquely qualified to lead the fight against human smuggling. ICE agents will combine immigration, smuggling, and financial investigative powers to attack the criminal rings from a variety of levels. ICE’s financial investigations expertise, for example, will allow the task force to follow the money trail in ways not previously possible. ... A critical facet of ICE Storm involves targeting the monetary assets of smuggling organizations. Authorities say ‘following the money trail’ and crippling the organizations’ financial infrastructure is crucial to disabling their operations.”<sup>3</sup>

A key aspect of the initiative was formation of a task force consisting of local, state, and federal agencies (see table 5)—including ICE’s deployment of 50 additional special agents to the Phoenix area, which effectively doubled the size of ICE’s field office there.

**Table 5: Federal, State, and Local Composition of Operation ICE Storm (Arizona)**

Governmental levels	Participating agencies
Federal	U.S. Attorney’s Office ICE U.S. Customs and Border Protection Bureau of Alcohol, Tobacco, Firearms and Explosives
State	Arizona Attorney General’s Office Arizona Department of Public Safety
Local	Maricopa County Attorney’s Office Phoenix Police Department Mesa Police Department Tempe Police Department Scottsdale Police Department Maricopa County Sheriff’s Office Pinal County Sheriff’s Office

Source: ICE.

In September 2004, about 1 year after Operation ICE Storm was launched, we visited Phoenix to discuss the progress and results of the initiative.

<sup>3</sup>ICE press release, “Department of Homeland Security Launches Operation ‘ICE Storm’—ICE to Lead Landmark Crackdown on Human Smuggling,” November 10, 2003.

According to ICE officials, results as of September 20, 2004, included the following:

- Some \$5.5 million in U.S. currency (funds potentially earmarked for smuggling organizations) had been seized.
- Some 275 persons had been arrested for alien smuggling or violence-related offenses. Of these, 36 had been charged with hostage taking, which is punishable by a term of imprisonment up to life.
- Some 5,013 smuggled aliens had been arrested. Of these, about 700 had been held against their will by the smugglers, who were attempting to extort additional payments.

Of the currency seized, the large majority (\$5.3 million) resulted from efforts conducted by state and local agency participants—e.g., the Arizona Attorney General’s Office, the Arizona Department of Public Safety, and the Phoenix Police Department—in the multi-jurisdictional task force. ICE officials noted that this success is due partly to the fact that Arizona’s laws and judicial processes are more conducive (compared with federal laws and processes) to using “sweeping or damming warrants” for seizing alien-smuggling-related funds being transmitted through money remittance outlets. In this regard, the ICE officials commented that the ability to draw upon and leverage the authorities and resources of all participants are important advantages of the multi-agency law enforcement task force led by ICE.

As of September 20, 2004, none of the seizures under Operation ICE Storm involved real property, such as stash houses used by smugglers.<sup>4</sup> However, the Arizona Attorney General’s Office expects that a new state law enacted in June 2004 will facilitate such seizures in the future. Sometimes referred to in the vernacular as “coyote RICO” legislation, the new law allows a house to be seized if there is evidence that it was used to facilitate the smuggling of at least 15 immigrants a month.<sup>5</sup>

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<sup>4</sup>As of April 2005, according to ICE, federal seizures under ICE Operation Storm included \$38,000 in real property; and four additional properties were pending seizure, with a total potential seizure value of \$260,000.

<sup>5</sup>Act of June 1, 2004, ch. 291, 2004 Ariz. Legis. Serv. 291 (West) (amending the definition of racketeering related to money laundering). The law became effective August 25, 2004, and is codified at Ariz. Rev. Stat. § 13-2317.F.3(c)(2004).

Further, at the time of our visit to Phoenix, in September 2004, ICE officials told us that the most significant alien-smuggling cases under Operation ICE Storm were still being developed. The officials anticipated that several major smuggling organizations would be the subjects of arrests and indictments in the coming months. In October 2004, for example, ICE and the Arizona Attorney General's Office announced that a multi-agency investigation had resulted in state grand jury indictments of 21 individuals involved in providing criminal groups with used cars for smuggling illegal immigrants, drugs, or cash. According to ICE, 11 used car lots located in the Phoenix metropolitan area were shut down, and 349 cars worth almost \$1.4 million were seized by ICE and the Arizona Attorney General's Office.

Regarding seizures of currency under Operation ICE Storm, as of April 2005, ICE reported that the cumulative total had reached \$7.4 million, which consisted of \$6.7 million seized by the state of Arizona and about \$654,000 seized federally.

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## Arizona Border Control Initiative Launched in March 2004

Expanding on Operation ICE Storm, in March 2004, DHS announced the Arizona Border Control Initiative, a program to support the priority mission of Homeland Security agencies to detect and deter terrorist activities and all cross-border illicit trafficking.<sup>6</sup> Among other efforts to achieve a safer and more secure southwest border, the initiative envisioned the deployment of additional resources (e.g., Border Patrol agents) and use of unmanned aerial vehicles, as well as fixed-wing aircraft and helicopters. Further, the initiative called for continued efforts to disrupt, dismantle, and target the financial assets of human smugglers. For instance, in congressional testimony, an ICE official explained that

"We're building on ICE Storm's success with DHS' Arizona Border Control initiative, in which the vigorous application of money laundering and other federal and state statutes is depriving smuggling organizations of the criminal proceeds, disrupting their operations and decimating their organizational hierarchies in the United States and abroad."<sup>7</sup>

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<sup>6</sup>DHS, Press Office, "Department of Homeland Security Announces Arizona Border Control Initiative," March 16, 2004.

<sup>7</sup>Statement of John P. Torres, ICE Deputy Assistant Director, Smuggling and Public Safety, at a hearing ("Pushing the Border Out on Alien Smuggling: New Tools and Intelligence Initiatives") before the Subcommittee on Immigration, Border Security, and Claims; House Committee on the Judiciary; May 18, 2004.

ICE officials have characterized Operation ICE Storm as the “investigative component” of the Arizona Border Control Initiative. Also, ICE officials noted that a majority of the efforts under the Arizona Border Control Initiative are geared toward interdiction as opposed to investigation, which means that U.S. Customs and Border Protection has a larger role than ICE.

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## Expansion of Strategy Beyond Arizona

In May 2004, ICE reported that Special Agents-in-Charge of ICE’s offices in Chicago, Denver, El Paso, Los Angeles, San Diego, Tucson, and Mexico City had met in Phoenix to “review the strides made under ICE Storm and evaluate how aspects of the strategy might be adapted to combat smuggling activity beyond Arizona.”<sup>8</sup> In July 2004, ICE reported that as a result of the crackdown in Arizona:

- Many criminal smuggling organizations were shifting their activities to the Los Angeles area, where they hold the undocumented migrants while arranging for transportation to destinations nationwide.
- And, in response, DHS was placing teams (including ICE investigators and Border Patrol agents) for operation at Los Angeles International Airport—a key West Coast transportation hub used increasingly by smugglers.<sup>9</sup>

The placement and operation of enforcement teams at the Los Angeles International Airport, according to ICE, was an outgrowth of the Arizona Border Control Initiative. In October 2004, ICE headquarters officials told us that ICE was developing a comprehensive southwest border strategy,

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<sup>8</sup>ICE press release, “Feds Vow to Use ‘ICE Storm’ Tactics in Other Cities as Phoenix Sees Progress in Human Smuggling Crackdown,” May 18, 2004.

<sup>9</sup>ICE news release, “Homeland Security Expands Efforts to Combat Human Smuggling in the Los Angeles Area—Initial Phase of Multi-Agency Operation Focuses on LAX,” July 14, 2004.



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**Appendix II: Creation of the Department of  
Homeland Security Has Provided New  
Opportunities for Combating Alien Smuggling**

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given the anticipated displacement of smuggling activity to other areas along the border resulting from Operation ICE Storm and the Arizona Border Control Initiative. Also, the officials noted that although there is no one law enforcement strategy totally effective in all areas of the nation, the methodologies applied in Arizona with both Operation ICE Storm and the Arizona Border Control Initiative were being evaluated and tailored for use in other parts of the country.

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# Appendix III: Federal Agencies Responsible for Combating Alien Smuggling

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Although Department of Homeland Security components, particularly U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection, have primary roles in investigating and interdicting alien smuggling, various other agencies—including components of the Departments of Justice, the Treasury, and State—also have significant roles. While not exhaustive, this appendix highlights some of the antismuggling roles of various components of the Departments of Homeland Security, Justice, the Treasury, and State (see table 6) and provides some examples of actual cases. Also, this appendix discusses two coordination mechanisms used to help ensure that available resources are effectively leveraged. One coordination mechanism is the National Security Council’s Migrant Smuggling and Trafficking Interagency Working Group, which is cochaired by State and Justice. The Interagency Working Group has a targeting subgroup, whose role is to identify for investigation and prosecution the most dangerous international alien smuggling networks, especially those that pose a threat to national security. Another coordination mechanism is the Human Smuggling and Trafficking Center, an interagency entity for disseminating intelligence and other information to address the separate but related issues of alien smuggling, trafficking in persons, and clandestine terrorist travel. Although its establishment was announced in December 2000, the center was not operational until July 2004.

**Table 6: Federal Departments and Components Responsible for Combating Alien Smuggling**

<b>Department</b>	<b>Components</b>
Department of Homeland Security	U.S. Immigration and Customs Enforcement <ul style="list-style-type: none"> <li>• Office of Investigations</li> <li>• Office of Intelligence</li> </ul> U.S. Customs and Border Protection U.S. Coast Guard
Department of Justice	U.S. Attorneys Offices Criminal Division <ul style="list-style-type: none"> <li>• Domestic Security Section</li> <li>• Organized Crime and Racketeering Section</li> </ul> Federal Bureau of Investigation
Department of the Treasury	Internal Revenue Service <ul style="list-style-type: none"> <li>• Criminal Investigation</li> </ul> Financial Crimes Enforcement Network
Department of State	Bureau of Diplomatic Security Bureau for International Narcotics and Law Enforcement Affairs

Source: GAO, based on discussions with federal officials.

## Department of Homeland Security and Its Components

DHS components that have immigration enforcement responsibilities include ICE, CBP, and the U.S. Coast Guard.

### U.S. Immigration and Customs Enforcement

ICE is the largest investigative arm of DHS. ICE’s Office of Investigations has field offices throughout the nation that are supported by various divisions, including the Smuggling/Public Safety Division, whose Smuggling/Human Trafficking Branch is responsible for overseeing programs to identify, locate, disrupt, and prosecute criminal enterprises that (1) bring, transport, harbor, and smuggle people into the United States in violation of law or (2) engage in human trafficking. Also, assigned to U.S. embassies throughout the world, ICE attachés are to work with their counterparts in foreign law enforcement agencies to help coordinate

investigations and communication, including efforts to follow the money and seize the profits of smuggling organizations.<sup>1</sup>

The types of alien-smuggling cases handled by ICE are illustrated in appendix V, which summarizes recent cases prosecuted in three federal judicial districts coterminous with the U.S.-Mexico border. Of the total 23 alien-smuggling cases summarized, the majority (15) involved enforcement actions taken by ICE.

Also, in October 2003, ICE launched Operation ICE Storm in Phoenix, an initiative to combat human smuggling and the violence it has generated in Arizona (see app. II). The Office of Investigations and ICE's other major internal components—Office of Intelligence, Air and Marine Operations,<sup>2</sup> Federal Air Marshal Service, Detention and Removal Operations, and Federal Protective Service—are represented in the initiative.

In August 2004, to enhance efforts aimed at shutting down narcotics and human-smuggling routes and networks that operate along the U.S.-Canada border, ICE opened an air and marine facility at Bellingham, Washington, and announced that similar facilities in four additional northern states (New York, Michigan, North Dakota, and Montana) were planned.

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## U.S. Customs and Border Protection

CBP resulted from the merger of most of the legacy U.S. Customs Service with all the immigration inspectors and the Border Patrol from the former Immigration and Naturalization Service—a merger designed to establish “one face at the border.”<sup>3</sup> The Border Patrol's mission as a front-line defender is to patrol the border between official ports of entry to deter, detect, and prevent the entry of terrorists and terrorist weapons, illegal aliens, and the smuggling of contraband into the United States.

The types of alien-smuggling cases handled by CBP or the Border Patrol are illustrated in appendix V, which summarizes recent cases prosecuted

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<sup>1</sup>Remarks of Michael J. Garcia (Assistant Secretary, ICE), at the U.S. Coast Guard Intelligence Coordination Center's Fourth Annual Human Smuggling and Illegal Migration Conference (Apr. 6, 2004).

<sup>2</sup>In 2004, Air and Marine Operations was transferred to CBP.

<sup>3</sup>Our 1993 report provides an historical context of the need for such a merger. See GAO, *Customs Service and INS: Dual Management Structure for Border Inspections Should Be Ended*, GAO/GGD-93-111 (Washington, D.C.: June 30, 1993).

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in three federal judicial districts coterminous with the U.S.-Mexico border. Of the total 23 alien smuggling cases summarized, almost one-half (10) involved enforcement actions taken by U.S. Customs and Border Protection or the Border Patrol.

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## U.S. Coast Guard

The Coast Guard is tasked with enforcing U.S. immigration law at sea. The Coast Guard implements this responsibility principally by interdicting illegal migrants at sea before they reach the shores of the United States. Through its interdiction and deterrence efforts, the Coast Guard's goal is to eliminate most of the potential flow of undocumented migrants entering the country by maritime routes.

After the Coast Guard makes interdictions at sea, disposition of the migrants may be determined under the Presidential Directive 27 process, which involves interagency deliberations that include the National Security Council, the Department of State, the Department of Justice, and other relevant federal entities.<sup>4</sup> Some cases result in criminal prosecutions in the United States, while others may result in foreign prosecutions.

Generally, however, most migrants interdicted by the Coast Guard are not brought into the United States; rather, the migrants are repatriated to the departure countries.

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## Department of Justice and Its Components

Department of Justice components that have roles in combating the smuggling of aliens into the United States include U.S. Attorneys, the Criminal Division's Domestic Security Section and the Organized Crime and Racketeering Section, and the Federal Bureau of Investigation (FBI).

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## U.S. Attorneys

U.S. Attorneys serve as the nation's principal litigators under the direction of the Attorney General. There are 93 U.S. Attorneys stationed throughout the United States, Puerto Rico, the Virgin Islands, Guam, and the Northern Mariana Islands. U.S. Attorneys are appointed by, and serve at the discretion of, the President of the United States, with the advice and consent of the U.S. Senate. Each U.S. Attorney is the chief federal law enforcement officer of the United States within his or her particular

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<sup>4</sup>The White House; Presidential Directive/NSC 27, Subject: Procedures for Dealing with Non-Military Incidents; January 19, 1978.

jurisdiction. Among other responsibilities, U.S. Attorneys are responsible for prosecuting criminal cases brought by the federal government. For example, appendix V summarizes recent alien-smuggling cases prosecuted by U.S. Attorneys in three federal judicial districts.

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**Criminal Division's  
Domestic Security Section**

Among other functions, the Criminal Division's Domestic Security Section has collaborative responsibility for criminal immigration offenses. Domestic Security Section officials said:

- The Domestic Security Section routinely collaborates with U.S. Attorney's Offices in the investigation and prosecution of alien smugglers. Nearly all such cases involve investigative activity outside the United States. The Domestic Security Section, by reason of its close working relationship with ICE and the State Department's Bureau of Diplomatic Security investigators abroad, is in a position to provide immediate legal advice and guidance at the early stages of investigations. As an investigation develops to the point where venue for prosecution becomes evident, the appropriate U.S. Attorney's Office is brought into the investigation. At times, U.S. Attorney's Offices also request the assistance of the Domestic Security Section in cases where its expertise in international and intelligence matters would significantly assist prosecution efforts.
- Domestic Security Section attorneys routinely respond to inquiries from U.S. Attorney's Offices for legal and policy guidance on matters relating to immigration crimes and violent crime. For example, the section works closely with the U.S. Attorney's Office for the Southern District of Florida on matters related to maritime alien smuggling, especially from Cuba and Haiti.

Moreover, the officials noted that the Domestic Security Section participates on the committee that reviews ICE's proposed undercover investigations involving "sensitive circumstances" that relate to alien smuggling or immigration fraud violations. Since proposals often involve investigative activity in multiple districts, the Domestic Security Section tries to ensure that the appropriate U.S. Attorneys Offices are fully informed of and support the proposed undercover operational plans and have agreed to prosecute meritorious cases that are developed.

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Criminal Division's  
Organized Crime and  
Racketeering Section

According to Justice, the Organized Crime and Racketeering Section has a role in combating alien smuggling because (1) alien smuggling has become a sophisticated organized criminal activity and (2) the alien-smuggling statute and certain immigration fraud offenses are predicate offenses under the Racketeer Influenced and Corrupt Organizations Act. Justice noted, for instance, that Organized Crime Strike Force Units in several U.S. Attorney's Offices, under the supervision of the Organized Crime and Racketeering Section, prosecute alien-smuggling cases when the offenses involve the activities of organized crime groups.

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Federal Bureau of  
Investigation

While recognizing that DHS is the primary investigating agency with respect to alien smuggling, the FBI may play a role in specific investigations, particularly those with a nexus to terrorism. Also, the FBI may also get involved when alien smuggling becomes the predicate crime on an investigation under the Racketeer Influenced and Corrupt Organizations Act, or when federal officers, such as Border Patrol agents, are assaulted by smugglers. Moreover, the FBI participates in various international groups or projects that include a focus on addressing alien smuggling. Further, FBI legal attaches in other countries participate in activities related to combating alien smuggling.

Investigations with a Nexus to  
Terrorism or Organized  
Criminal Enterprises

At times, alien-smuggling activity may be a component of a terrorist organization or other criminal enterprise. Regarding terrorist organizations, the FBI's goal is to identify the global infrastructure of terrorists' travel-facilitating networks that focus on alien smuggling, as well as fraudulent document vendors, corrupt foreign government officials, and suspect travel agencies. If a nexus to terrorism is established for an identified target, the FBI is to assume the lead investigative role pursuant to a memorandum of agreement, which was signed in May 2003 by the Attorney General and the Secretary of Homeland Security and contained a number of provisions designed to resolve jurisdictional issues and enhance interagency coordination regarding terrorist-financing investigations.<sup>5</sup> The FBI's lead role in these investigations is implemented through Joint Terrorism Task Forces, which can have participants from

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<sup>5</sup>GAO, *Investigations of Terrorist Financing, Money Laundering, and Other Financial Crimes*, GAO-04-464R (Washington, D.C.: Feb. 20, 2004).

federal, state, and local law enforcement agencies.<sup>6</sup> In July 2004, the FBI provided us the following information:

- Each JTTF member, including assigned DHS agents, has access to investigative and other pertinent information. For instance, the FBI is to share intelligence gathered related to alien smuggling and assist in assessing trends of this activity.
- For the period following September 11, 2001, to date, records indicate that 5 Joint Terrorism Task Forces reported a total of 11 accomplishments related to immigration violations. That is, four persons were arrested and seven were summoned to appear, which initiated their respective deportation process.

Additionally, in its July 2004 response to our inquiry, the FBI noted that two investigations were recently opened with a primary focus on the use of false visas and fraudulent entry documents by terrorist group affiliates.

#### Participation in International Groups or Projects

In its June 2004 response to our inquiries, the FBI cited the following as examples of its participation in international groups or projects related to alien smuggling:

- *Italian American Working Group*. Historically, the Italian American Working Group has been a “cop-to-cop” forum for U.S. and Italian authorities (executives, supervisory special agents, investigators, analysts, etc.) to discuss current law enforcement issues of mutual interest, such as drug smuggling, organized crime, international terrorism, computer crime, money laundering, and illegal immigration. The group meets every other year, alternating between the United States and Italy.
- *Canada-U.S. Cross-Border Crime Forum*. Held annually since its establishment in 1997, the Canada-U.S. Cross-Border Crime Forum allows Canadian and U.S. authorities to develop coordinated policies for addressing cross-border crimes. According to Justice, the forum works through subgroups that deal with various issues, including the targeting of alien-smuggling organizations. Justice noted that subgroups work on specific law enforcement issues and objectives

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<sup>6</sup>According to the FBI, the first Joint Terrorism Task Force came into being in 1980, and the total number of task forces has nearly doubled since September 11, 2001. Today, there is a Joint Terrorism Task Force in each of the FBI’s 56 main field offices, and additional task forces are located in smaller FBI offices.



throughout the year and report on their progress and make recommendations at the annual meeting of the forum.

- *Project Bridge*. Initiated in 1999 and led by Interpol, Project Bridge seeks to collect information on organized-crime groups and criminal enterprises involved with alien-smuggling activity. The project provides strategic intelligence analysis to identify human-smuggling trends and routes. Also, the project provides a forum for the international law enforcement community to identify issues, discuss cases, and develop collaborative investigative and legislative efforts. Besides the FBI, other U.S. participants are the Department of Justice, ICE, and U.S. Customs and Border Protection. Also, in addition to the United States, participating countries include Australia, Canada, Great Britain, member states of the European Union, and countries in central Europe and Asia.

#### FBI Attachés in Other Countries

According to the FBI, most (if not all) of the agency's legal attachés overseas are involved in activities related to combating alien smuggling. Routinely, for instance, legal attachés liaise with law enforcement agencies within the respective countries to target and address alien-smuggling problems. Some examples cited by the FBI in its June 2004 response to our inquiry included the following:

- Legat Athens organized a visitation of a Macedonian delegation of judges, prosecutors, and investigators. There have been attempts by Macedonians to illegally enter the United States through the use of false documents—that is, documents that have been found to be counterfeit or legitimate documents with the pictures altered. The Macedonians are also in the process of implementing more aggressive laws to combat this issue.
- Legat Bangkok is involved in multiple joint investigations targeting alien-smuggling organizations based in Bangkok and addressing alien-smuggling activities transiting through Thailand.
- Legat Rome has a priority interest in alien smuggling from the Balkan countries, particularly Albania. For the sole purpose of prostitution, women from Ukraine, Moldova, Belarus, and other Eastern European countries are trafficked through the Balkans for destinations throughout Western Europe, Great Britain, and the United States.

Also, the FBI's June 2004 response to our inquiry indicated that FBI officials had recently met with host government officials in Albania and Greece to address various crime problems, including alien smuggling and

trafficking of persons. As a result, the FBI noted that it will seek to establish a task force in Albania as part of an “upstream” effort to address crimes that affect the United States before problems become insurmountable.

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## Department of the Treasury and Its Components

### Internal Revenue Service- Criminal Investigation

Department of the Treasury components that have roles in combating the smuggling of aliens into the United States include Internal Revenue Service-Criminal Investigation and the Financial Crimes Enforcement Network (FinCEN).

Criminal Investigation (CI) is the law enforcement arm of the Internal Revenue Service (IRS). At times, IRS-CI has conducted alien-smuggling investigations jointly with ICE, particularly in areas of high-volume illegal immigration, such as Texas, Arizona, and New York. In June 2004, in response to our inquiry, IRS-CI provided us the following examples of alien-smuggling investigations conducted jointly with ICE (or legacy INS):

- *Valente Sillero, et al. (Austin, Tex.)*. From 1998 through May 2002, Sillero and his associates in Austin were involved in smuggling more than 1,000 aliens from Mexico into the United States, charging from \$800 to \$2,200 a head. Sillero’s organization smuggled not only Hispanic aliens but also Middle Eastern aliens, although for a higher fee. IRS-CI estimates that Sillero’s organization grossed \$2 million in a 2-year period. Most of the smuggling fees were paid in cash, although a portion was paid by wire transmittals made by the aliens’ relatives in the United States. In 2002, Sillero was sentenced to 120 months of imprisonment. Seized assets included cash (\$10,000), a 2002 Solara (\$24,000), a Harley Davidson motorcycle (\$10,000), and two tow trucks (\$8,000 and \$5,000).
- *Robert and Sheery Lu Porges (New York, New York)*. From 1993 through September 2000, Robert Porges (a prominent Manhattan immigration lawyer) and his wife, Sheery Lu Porges, aided Chinese smugglers by using their law firm to fraudulently create asylum requests. In that period of time, more than 1,000 Chinese aliens were smuggled into the country, with the Porgeses charging \$40,000 to \$50,000 per alien. Further, the Porgeses filed false income tax returns and paid their employees in cash, avoiding all withholdings. On August 9, 2002, Robert and Sheery Lu Porges were each sentenced to 97 months of imprisonment and were also ordered to forfeit to the government \$6 million through the sale of assets.

- *Richard “Trigger” Jones (Abilene, Tex.)*. Jones was a Deputy U.S. Marshal who used his position, from 1996 through 2002, to obtain Immigration and Naturalization “parole” documents for several aliens whom he had encouraged or induced to remain in the United States on the false premises that they would be “law enforcement confidential informants.” Jones and others made the aliens provide manual labor at various places in and near Abilene. Jones transported the aliens for this purpose, and he also filed false tax returns for 1997 through 2002. In 2004, Jones was sentenced to 24 months of imprisonment and fined \$100,000.

According to IRS-CI case agents, the smuggling fees paid by aliens often are in currency and, therefore, are very difficult to track. Agents noted, for instance, that currency proceeds from smuggling on the southwest border are simply “bulk carried” back to Mexico where the smugglers (called coyotes) have trusted relationships.

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## Financial Crimes Enforcement Network

FinCEN, which was established in 1990 to help combat money laundering and other financial crimes, does not initiate or carry out any investigations on its own. Rather, by serving as a central source for financial intelligence information and analysis, FinCEN supports the investigative and prosecutive efforts of numerous law enforcement agencies. In doing so, FinCEN has access to a variety of commercially maintained databases, as well as the investigative-case databases of various federal law enforcement agencies.<sup>7</sup> Also, FinCEN administers the largest financial transaction reporting system in the world, which is based on record-keeping and reporting requirements mandated or authorized under the Bank Secrecy Act, as amended.

Enacted in 1970, the Bank Secrecy Act—Public Law 91-508, 84 Stat. 1114 (1970)—provides the U.S. government’s framework for preventing, detecting, and prosecuting money laundering. Despite its name, the Bank Secrecy Act, among other things, is a record-keeping and reporting law. As originally enacted, the legislation required, for example, the maintenance of records by financial institutions and the reporting of certain domestic currency transactions and cross-border transportation of currency. A purpose of the Bank Secrecy Act is to prevent financial institutions from being used as intermediaries for the transfer or deposit of money derived

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<sup>7</sup>GAO, *Money Laundering: FinCEN’s Law Enforcement Support Role Is Evolving*, GAO/GGD-98-117 (Washington, D.C.: June 19, 1998).

from criminal activity and to provide a paper trail for law enforcement agencies in their investigations of possible money laundering. Over the years, the Bank Secrecy Act has evolved into an important tool to help deter money laundering, drug trafficking, terrorist financing, and other financial crimes. For instance, passage of the USA PATRIOT Act in 2001 expanded provisions to prevent, detect, and prosecute terrorist financing and extended anti-money laundering requirements to financial service providers previously not covered.<sup>8</sup>

For the period October 2000 through August 2004, FinCEN reported that it provided analytical support for a total of 201 alien-smuggling cases. As table 7 indicates, the large majority of these cases involved support for current or legacy DHS components.

**Table 7: Analytical Support Provided by FinCEN for Alien-Smuggling Cases (Oct. 2000 through Aug. 2004)**

Agency receiving FinCEN assistance	Number of cases	Number of subjects	Number of FinCEN hours
Department of Homeland Security <sup>a</sup>	184	1,147	2,616
Department of Justice—Federal Bureau of Investigation	7	20	223
Department of Labor—Inspector General	3	28	No data
Department of State—Bureau of Diplomatic Security	3	5	79
State of Maryland High Intensity Drug Trafficking Area Task Force	1	17	No data
Department of the Treasury—IRS-CI	1	9	No data
Social Security Administration—Inspector General	1	2	7
Air Force Office of Special Investigations	1	1	2
<b>Total</b>	<b>201</b>	<b>1,229</b>	<b>2,927</b>

Source: FinCEN data.

<sup>a</sup>The Department of Homeland Security figures include cases of the U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection, and the legacy Immigration and Naturalization Service.

According to FinCEN, the value of its contributions and the significance of cases may not be readily apparent because many cases involve long lag times between investigation and successful prosecution. Generally, however, the way in which FinCEN provided value to the majority of these investigations involved identifying and tracking subjects, accounts, and businesses through analysis of Bank Secrecy Act data and the available

<sup>8</sup>Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act, Pub. L. No. 107-56, 115 Stat. 272 (2001).

commercial and law enforcement databases. Also, FinCEN noted that it has helped investigators understand more complex money-laundering methodologies, such as informal transfer systems, that may be associated with alien smuggling.

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## Department of State and Its Components

Department of State components that have roles in combating the smuggling of aliens into the United States include the Bureau of Diplomatic Security and the Bureau for International Narcotics and Law Enforcement Affairs.

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## Bureau of Diplomatic Security

The Bureau of Diplomatic Security, the law enforcement arm of the Department of State, has agents posted in over 160 countries worldwide. Diplomatic Security has statutory responsibility for protecting the integrity of U.S. passports and visas—widely considered to be the most valuable identity and travel documents in the world. Investigations of passport and visa fraud often show direct links to alien smuggling. A State Department fact sheet (dated May 12, 2004) stated:

- Nearly 7 million U.S. passports are issued every year. Last year, Diplomatic Security investigated 3,200 new cases of passport fraud and made 642 arrests. Currently there are more than 400 active arrest warrants for passport fraud.
- Also, visa fraud is coming under closer scrutiny after September 11. Such fraud is most commonly committed not by counterfeiting but through the sale, or facilitating the issuance process for, unqualified visa applicants.
- Last year, Diplomatic Security arrested 90 individuals on visa fraud charges. Of these, 16 arrests were the result of investigations of large-scale visa malfeasance operations at 4 locations—the U.S. embassies in Colombo (Sri Lanka) and Prague (Czech Republic) and the U.S. consulates in Nuevo Laredo and Ciudad Juarez (Mexico).

The Colombo case involved the payment of hundreds of thousands of dollars by people in Sacramento, California, and elsewhere to two U.S. citizen employees of the American embassy in exchange for the issuance of visas to various foreign nationals, primarily from Vietnam and India. The 2-year investigative case—which was initially indicted on May 1, 2003, and resulted in guilty pleas on April 30, 2004—reflected multi-agency cooperation that involved Diplomatic Security and the State Department’s

Bureau of Consular Affairs; the governments of Sri Lanka, Vietnam, and Fiji; the U.S. Attorney's Office for the Northern District of California; the Sacramento Joint Terrorism Task Force; FBI; ICE; and state and local law enforcement in California, Oregon, and Virginia.

Announcing the guilty pleas, the Department of Justice's press release noted that the two employees—a State Department foreign service officer and her husband, who had been employed in the consular section of the American embassy in Sri Lanka—each faced a minimum of at least 5 years in prison, a 3-year term of supervised release, and a substantial fine.<sup>9</sup> Also, Justice reported that the couple had agreed to forfeit two homes (one in Oregon and another in Colorado); a sum of \$361,766, including funds seized from bank accounts in California, Oregon, Washington, and Virginia; and nearly \$90,000 in cash recovered from the Oregon home and from the pillows of a love seat in Sri Lanka.

In response to our inquiry regarding efforts to follow the money trail in this case, bureau officials explained that:

- Diplomatic Security investigated the financial gains associated with this conspiracy by using established relationships with both domestic and foreign law enforcement agencies. Through the use of grand jury subpoenas, Diplomatic Security acquired evidence and leads into banking and investment firms located in the United States and abroad. Additional ill-gotten gains were discovered through intelligence analysis and law enforcement techniques, such as interviews, surveillance, and trash recovery.
- Also, Diplomatic Security performed financial analyses of all targets in the case, including several “visa brokers.” Through the tracking of assets and proceeds, targets were found to be involved in money laundering, hiding profits, and using proceeds to invest and make mortgage payments. Further, by working with Justice's Office of International Affairs, requests were sent to both Sri Lanka and Fiji for information from banks, and both countries provided helpful responses.

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<sup>9</sup>Department of Justice press release, “Two U.S. State Department Employees Plead Guilty in Bribes-For-Visas Scheme” (Apr. 30, 2004).

In sum, according to the Bureau of Diplomatic Security, the Colombo case exemplifies how document fraud investigations help dismantle illegal smuggling rings.

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### Bureau for International Narcotics and Law Enforcement Affairs

While the Bureau for International Narcotics and Law Enforcement Affairs does not have arrest or other law enforcement authority, its role is to help develop policies and programs (e.g., technical assistance and training) to combat international narcotics trafficking and other crimes, including alien smuggling. For instance, the State Department's fiscal year 2005 budget justification reported that the bureau, among other activities (1) had provided law enforcement training on combating alien smuggling to more than 300 foreign officials in the past 3 years and (2) will work with international partners to interdict and halt alien smuggling as far from U.S. borders as possible. The budget justification further noted that the bureau anticipated providing support to foreign governments that have chosen to ratify and implement the UN Convention against Transnational Organized Crime and its protocol on migrant smuggling.

In addition to providing foreign governments with training and other material assistance specifically targeted to counter alien smuggling and trafficking in persons, the Bureau for International Narcotics and Law Enforcement Affairs works with various U.S. federal law enforcement agencies to strengthen the institutional capacity of selected countries and international organizations to fight crime. State Department officials noted that strengthening the underlying rule of law and justice sector institutions—such as legal codes, court systems, prosecutorial capabilities, investigative capacity, and interagency cooperation—enhances the ability to combat alien smuggling and trafficking in persons, even when assistance efforts are not targeted exclusively against these crimes.

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### Migrant Smuggling and Trafficking Interagency Working Group: An Overarching Coordination Mechanism

In combating alien smuggling, an overarching coordination mechanism to help avoid duplication of efforts and ensure that available resources are effectively leveraged is the National Security Council's Migrant Smuggling and Trafficking Interagency Working Group, which is cochaired by State and Justice and includes participants from DHS and the intelligence community. The Interagency Working Group has a targeting subgroup, whose role is to identify for investigation the most dangerous international alien-smuggling networks, especially those that pose a threat to national security. Generally, top priority is to be given to targeting smugglers who are suspected of having links to terrorism, whether or not the smugglers are aware of those links. Such links may include special interest aliens,

that is, aliens from countries hostile to the United States or where global terrorist groups are known to have operated or recruited. Also, the subgroup may recommend actions other than investigations. For example, the subgroup may recommend intelligence gathering on an identified target or recommend that the Department of State use diplomatic means to convince a foreign government to take its own action against a target.

As mentioned previously, if a nexus to terrorism is established for an identified target regarding terrorist financing investigations, the FBI is to assume the lead investigative role pursuant to a memorandum of agreement, which was signed in May 2003 by the Attorney General and the Secretary of Homeland Security and contained a number of provisions designed to resolve jurisdictional issues and enhance interagency coordination.<sup>10</sup> The FBI's lead role in these investigations is implemented through Joint Terrorism Task Forces, which can have participants from federal, state, and local law enforcement agencies.

Since 2002, according to Justice and the FBI, the efforts of the Interagency Working Group, its targeting subgroup, and investigative agencies have resulted in the apprehension and prosecution of leaders (more than 15) of major smuggling organizations. ICE was the lead investigative entity in the majority of the targeted cases. In its May 2005 comments on a draft of this report, DHS noted that several of the cases had a nexus to terrorism and that ICE had the lead investigative role on all but one of these cases. DHS explained that the May 2003 memorandum of agreement pertained to financial investigations and not to alien-smuggling investigations. Also, in its May 2005 comments on a draft of this report, the State Department noted that ICE has been the lead investigative agency in many terrorism-related investigations, notwithstanding the May 2003 memorandum of agreement. State explained that these investigations had considerable overseas operations, and ICE had the legacy resources, experience, and capabilities.

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<sup>10</sup>GAO, *Investigations of Terrorist Financing, Money Laundering, and Other Financial Crimes*, GAO-04-464R (Washington, D.C.: Feb. 20, 2004).



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## Human Smuggling and Trafficking Center: Operational Potential Not Yet Fully Achieved

The Human Smuggling and Trafficking Center is an interagency coordination entity designed to address the separate but related issues of alien smuggling, trafficking in persons, and clandestine terrorist travel. The center has had an extended startup history. State and Justice announced the center's establishment (with a slightly different predecessor name) as early as December 2000.<sup>11</sup> However, because of subsequent events—the attacks of September 11, 2001, which resulted in a redirection of personnel and resources and a reorganization of the U.S. government—the center did not become operational until July 2004.

The center's current charter was signed on behalf of the Secretary of State on May 19, 2004, and on behalf of the Attorney General and the Secretary of Homeland Security on July 9, 2004. The charter states:

- Federal agencies have acknowledged that intensified efforts, together with enhanced interagency coordination, are needed to support more effective enforcement, diplomatic, and other actions to counter smugglers and traffickers.
- The center's efforts will be fundamentally supportive rather than directive in nature, consisting primarily of facilitating the dissemination of intelligence, preparing strategic assessments, identifying issues that would benefit from enhanced interagency coordination or attention, and coordinating or otherwise supporting agency or interagency efforts in appropriate cases.
- As such, the center will serve as an all-source fusion entity and clearinghouse, with a view to ensuring that the entire community of interest receives all useful information relating to migrant smuggling, trafficking in persons, and clandestine terrorist travel.

In December 2004, the center was formally established by Section 7202 of the Intelligence Reform and Terrorism Prevention Act of 2004.<sup>12</sup> In addition to providing a statutory underpinning for the charter, the 2004 act added

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<sup>11</sup>The White House, Office of the Press Secretary, Fact Sheet, *Migrant Smuggling and Trafficking in Persons Coordination Center* (Washington, D.C.: Dec. 15, 2000). The fact sheet reported that "Today, in furtherance of the President's International Crime Control Strategy, the Departments of State and Justice announced the establishment of a Migrant Smuggling and Trafficking in Persons Coordination Center."

<sup>12</sup>Pub. L. No. 108-458, 118 Stat. 3638, 3813 (Dec. 17, 2004).

several additional mandates to the center. Specifically, the act requires the center to

- serve as the focal point for interagency efforts to address terrorist mobility;
- serve as a clearinghouse with respect to all relevant information from all federal government agencies in support of the U.S. government strategy to prevent terrorist travel, human smuggling, and trafficking in persons;
- ensure cooperation among all relevant policy, law enforcement, diplomatic, and intelligence agencies of the federal government to improve effectiveness, and to convert all information available to the federal government relating to clandestine terrorist travel, human smuggling, and trafficking in persons into tactical, operational, and strategic intelligence that can be used to combat such illegal activities; and
- prepare and submit to Congress an annual strategic assessment regarding vulnerabilities in the United States and foreign travel system that may be exploited by international terrorists, human smugglers and traffickers, and their facilitators.

In addition, as part of its mission to combat terrorist travel, the center is to work to support the efforts of the National Counterterrorism Center.

According to State Department officials, the Human Smuggling and Trafficking Center is to have a strong foreign focus, and information synthesized by the center will support diplomatic efforts and U.S. law enforcement cooperation with foreign agencies, as well as inform State's Bureau of International Narcotics and Law Enforcement Affairs in providing assistance programs to strengthen certain foreign agencies. For example, as of late July 2004, State reported that the center's accomplishments included (1) preparing a strategic assessment on alien smuggling from a certain South American country and (2) proposing an action plan that the United States presented to the G8<sup>13</sup> to address

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<sup>13</sup>Annual G8 summits bring together the leaders of Canada, France, Germany, Italy, Japan, Russia, the United Kingdom, and the United States. In addition, the European Union participates and is represented by the President of the European Council and the President of the European Commission. The annual meetings cover a broad-based agenda of international economic, political, and social issues.

fraudulent document production and alien smuggling in a certain Asian country.

Also, according to State, the center serves as the venue for interagency meetings on terrorist mobility, alien smuggling, and trafficking issues, including hosting the targeting subgroup of the Interagency Working Group. State recognized that partly because the center had only recently become operational and was still being staffed,<sup>14</sup> there is a need to more fully establish procedures for processing and sharing intelligence, law enforcement, and other information. For instance, State provided explanatory details substantially as follows:

- A significant amount of the information handled by the center will be highly classified or originator controlled and may not be able to be used in its original form by law enforcement. Thus, the center will explore methods for redacting or summarizing information to be shared in appropriate cases.
- Also, the center is developing relationships with international organizations, such as Interpol, as well as with foreign law enforcement, intelligence, and immigration authorities to exchange information more efficiently. If negotiated agreements are necessary, estimating time frames is difficult.

As mentioned previously, as of March 2005, the center's staffing level was only about one-half of the total full-time-equivalent positions anticipated to be filled by the end of calendar year 2005. In this regard, it should be noted that section 7202(d) of the Intelligence Reform and Terrorism Prevention Act requires the President to transmit to Congress a report that, among other things, describes the staffing and resource needs of the

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<sup>14</sup>As of July 2004, center staffing consisted of eight full-time-equivalent personnel—that is, three full-time State Department personnel (an officer and an information technologist detailed from the Bureau of International Narcotics and Law Enforcement Affairs and an intelligence analyst detailed from the Bureau of Diplomatic Security); four full-time DHS personnel (a Director nominee designate, two senior special agents, and one analyst); one part-time DHS senior special agent; and one part-time Central Intelligence Agency senior analyst. In March 2005, State Department officials provided us updated information, which indicated that the center's staffing level was approximately one-half of the total 24 full-time-equivalent positions anticipated to be filled by the end of calendar year 2005.

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center.<sup>15</sup> The required report is important because the center's staffing and resource needs may affect its ability to perform mandated functions, such as preparing and submitting to Congress an annual strategic assessment regarding vulnerabilities in the United States and foreign travel system that may be exploited.

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<sup>15</sup>Section 7202(d) specified that the report shall be transmitted not later than 180 days after enactment of the act—that is, not later than June 15, 2005. By memorandum dated April 21, 2005, the President assigned this reporting function to the Secretary of State. The memorandum noted that the reporting function shall be coordinated with the Attorney General and the Secretary of Homeland Security.

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# Appendix IV: Federal Efforts to Work with Foreign Governments to Reduce the Flow of Smuggled Aliens into the United States

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Federal efforts to work with governments of source and transit countries to prevent illegal entries into the United States include participation in both bilateral and multilateral agreements and activities. While not exhaustive, this appendix provides an overview of various agreements and activities, including efforts to identify and seize smugglers' funds or assets located abroad.

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## Federal Bilateral Efforts to Work with Foreign Governments

Federal bilateral efforts to work with foreign governments include focusing on source and transit countries, including border nations (Mexico and Canada), and using the skills and contacts of federal agents posted abroad to address issues upstream.

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## Bilateral Agreements Generally Cover a Broad Range of Criminal Activity

The United States has negotiated and signed more than 50 bilateral mutual legal assistance treaties (MLATs) with law enforcement partners around the world, according to the Department of Justice. Such treaties—which are a mechanism for obtaining evidence in a form admissible in a prosecution—provide for a broad range of cooperation in criminal matters, such as locating or identifying persons, taking testimonies and statements, obtaining bank and business records, and assisting in proceedings related to immobilization and forfeiture of assets. Justice's Office of International Affairs coordinates the gathering of international evidence and, in concert with the State Department, engages in the negotiation of new MLATs.

According to the State Department, the U.S. government has few bilateral agreements that solely address alien smuggling; rather, the agreements cover a broad range of criminal activity. As examples of bilateral agreements that have alien-smuggling provisions, State noted that the cross-border accord with Canada and the accord with Cuba have alien-smuggling elements, as do agreements with the government of The Bahamas concerning cooperation in maritime law enforcement (which entered into force June 29, 2004) and with the government of the Dominican Republic concerning maritime counterdrug operations. Also, State noted that some extradition treaties that apply the concept of mutual criminality allow extradition for the crime of alien smuggling.

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## U.S.-Mexico Bilateral Efforts

In March 2002, the U.S. and Mexican governments adopted a plan—the U.S.-Mexico Border Partnership Agreement—designed to increase border security while still facilitating the legitimate flow of people and goods. One outcome of the agreement was establishment of a binational Alien

Smuggling and Trafficking Task Force, with a lead role designated for ICE's office in Mexico City. According to ICE, the task force has evolved to a point whereby information sharing is now standard operating procedure for both ICE and Mexican law enforcement and intelligence agencies. ICE officials noted, for example, that Mexican authorities have provided information useful in compiling target lists of smugglers to be investigated under Operation ICE Storm.

Another outcome of the partnership agreement was initiation of a pilot program in November 2002, the Guide Identification and Prosecution Program. The pilot program was initiated by the U.S. Border Patrol's El Centro Sector (located in the southern judicial district of California) and Mexico's Attorney General's Office (the Procuraduria General de la Republica, or PGR). The program's objective is to target alien smugglers and turn them over to Mexican authorities for prosecution, particularly if prosecution in the United States is declined. For instance, when a smuggler is interdicted in the United States and the U.S. Attorney's Office declines prosecution, Mexican authorities are to review the case and—if the case is deemed prosecutable in Mexico—the El Centro Border Patrol Sector is to turn over any applicable evidence or casework information.

According to El Centro Sector officials, the prosecution program was needed because the U.S. Attorney's Office in the Southern District of California was unable to handle all of the potential immigration-enforcement cases. Equally important, both the U.S. and Mexican governments were mutually concerned with preserving lives by identifying and prosecuting unscrupulous "guides or coyotes" who may lead migrants to death or harm in the harsh border terrain.

For the approximately 2-year period from inception of the pilot Guide Identification and Prosecution Program in November 2002 to November 2004, the El Centro Border Patrol Sector has reported referring 80 alien-smuggling cases to Mexican authorities. On the basis of these referrals, Border Patrol officials told us that Mexican federal authorities have obtained 31 convictions with jail sentences ranging from 1 to 6 years. According to Border Patrol headquarters officials, the Guide Identification and Prosecution Program is important and useful in combating alien smuggling because the program directly focuses on "foot guides." The officials explained that foot guides who have knowledge of routes through deserts or other harsh terrain on the border are far fewer in number than truck drivers and are much more difficult to replace or recruit. Thus, the officials noted that prosecuting the foot guides helps to dismantle smuggling organizations.

Regarding the future of the program, in August 2003, the Commissioner of CBP approved expansion to three additional Border Patrol sectors—San Diego, Tucson, and Yuma. However, as of January 2005, the program had not been expanded. According to the Assistant Chief Patrol Agent of the El Centro Sector, the government of Mexico supports expansion but faces resource issues. To help facilitate expansion, the Assistant Chief Patrol Agent suggested that it may be necessary for officials from CBP's Office of International Affairs to meet with Mexican government representatives in Mexico City.

Also, to increase bilateral coordination and intelligence sharing, CBP officials noted that every southwest border sector has a Mexican Liaison Unit to work full-time with counterparts in Mexico.

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## **U.S.-Canada Bilateral Efforts**

U.S.-Canada bilateral efforts to address cross-border crimes include the formation of multi-agency Integrated Border Enforcement Teams. Originally developed in 1996 to target cross-border criminal activity between British Columbia and Washington state, the teams have since expanded to cover strategic locations across the entire northern border. Core participants in these multi-agency teams are ICE, CBP, U.S. Coast Guard, Royal Canadian Mounted Police, Canada Customs and Revenue Agency, and Citizenship and Immigration Canada. Additional participants are municipal and provincial law enforcement agencies. Besides targeting trafficking in illegal drugs, weapons, vehicles, liquor, and tobacco, the integrated teams have reported successful intercepts of criminal networks attempting to smuggle illegal migrants across the border.

Another bilateral effort is the Canada-U.S. Cross-Border Crime Forum. The purpose of the forum, held annually since its establishment in 1997, is to allow Canadian and U.S. authorities to develop coordinated policies for addressing cross-border crimes. According to Justice, the forum works through subgroups that deal with various issues, including the targeting of alien-smuggling organizations. Justice noted that subgroups work on specific law enforcement issues and objectives throughout the year and report on their progress and make recommendations to the Canadian Deputy Prime Minister and the U.S. Attorney General at the annual meeting of the forum.

In December 2001, the Canadian and U.S. governments signed the Smart Border Declaration and an associated 30-point action plan designed to enhance the security of the two nations' shared border while facilitating the legitimate flow of people and goods. The action plan reflected

continuing support for Integrated Border Enforcement Teams and the Canada-U.S. Cross-Border Crime Forum.

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### **Federal Assistance to Ecuador and Other Countries**

In recent years, recognizing that Ecuador had become a major source and transit country for aliens entering the United States, the State Department's Bureau for International Narcotics and Law Enforcement Affairs has provided technical assistance to Ecuador for strengthening its investigative and prosecutorial capacity to combat alien smuggling. For example, the bureau's budget justification for fiscal year 2005 reported that the first-ever, U.S.-funded alien smuggling vetted unit was established in Quito, Ecuador; computers were purchased for use at the international airport in Quito; and funding was also provided to detail a team of attorneys to Ecuador to provide guidance on strengthening alien-smuggling legislation. Further, the 2005 budget justification noted plans for creating one or more additional alien-smuggling vetted units in the Dominican Republic, Guatemala, or Mexico and that the unit(s) would be trained in the areas of investigative techniques, consensual monitoring, anticorruption, and antismuggling.

As mentioned previously, in addition to providing foreign governments with training and other material assistance specifically targeted to counter alien smuggling and trafficking in persons, the Bureau for International Narcotics and Law Enforcement Affairs works with various U.S. federal law enforcement agencies to strengthen the institutional capacity of selected countries and international organizations to fight crime. In this regard, State Department officials noted that strengthening the underlying rule of law and justice sector institutions—such as legal codes, court systems, prosecutorial capabilities, investigative capacity, and interagency cooperation—enhances the ability to combat alien smuggling and trafficking in persons, even when assistance efforts are not targeted exclusively against these crimes.

Also, U.S. Customs and Border Protection officials said that CBP has been proactive in pushing out the border. As an example, the officials noted that BORTAC—a specially trained tactical unit of the Border Patrol—has helped Honduras plan and put into operation an organization with border police-type responsibilities.

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### **Federal Law Enforcement Agents at U.S. Embassies and Consulates**

Another upstream effort by the U.S. government to combat alien smuggling and other transnational crime is the posting of federal law enforcement agents abroad to work with their counterparts in foreign law enforcement agencies:



“In order to develop prosecutable criminal cases against principals in international alien-smuggling organizations, the United States must have an effective investigative capability in various parts of the world. ... Exact capabilities will vary by country, but United States law enforcement agents and prosecutors stationed at United States embassies and consulates often have excellent working relationships with their counterparts. Frequently, United States law enforcement personnel posted abroad can obtain information or evidence informally. If formal mutual assistance is needed, for example, if the evidence was not obtained in an admissible form, the information or evidence gathered informally may provide the basis for drafting a formal request.”<sup>1</sup>

As discussed in appendix III, federal agencies with overseas postings include not only the State Department’s Bureau of Diplomatic Security, but also the FBI and ICE.

ICE has 50 overseas offices (attachés). According to ICE, to reduce the flow of aliens into the United States, federal agents posted abroad are a necessary element in planning operations and exchanging case-related intelligence between ICE investigative units and foreign law enforcement. ICE headquarters officials said that human smuggling and related criminal activities are directly connected to the activities of organizations operating throughout the Americas (South America, Central America, and Mexico), as well as South Africa. The officials noted, for example, that—as a result of increased coordination, training, and communications led by ICE with the governments of Colombia, Guatemala, and South Africa—new investigations have been initiated into human-smuggling organizations. Also, the officials noted that the ICE attaché in Ecuador has made progress in addressing ICE’s mission of extending the border by dismantling human-smuggling organizations abroad.

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## Multilateral Protocol on Migrant Smuggling

Regarding multilateral efforts to address people smuggling, in December 2000, the United States and over 120 other countries signed the UN Convention against Transnational Organized Crime and more than 75 of these countries signed a supplementary agreement—the Protocol against the Smuggling of Migrants by Land, Sea and Air. The main purpose of the convention and the protocol is to enable the international community to better combat organized crime by harmonizing nations’ criminal laws and promoting increased cooperation. Before entering into force, the

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<sup>1</sup>Michael Surgalla and Arthur Norton, “International Aspects of Criminal Immigration Enforcement,” *United States Attorneys’ Bulletin*, September 2003.

convention had to be ratified by at least 40 countries. Nations may be a party to the convention only but not to the protocol only.

The convention and the protocol have entered into force, although the United States has signed but has yet to ratify the convention. According to Justice, the entry into force of the convention and the protocol has increased the effectiveness of immigration enforcement efforts with regard to several countries. For instance, the fact that the protocol is now in force in a particular country can be used to induce that country to assume its responsibilities by accepting the return of its nationals and prosecuting smugglers under its criminal laws. Also, Justice noted that, once the United States becomes a party to the protocol, certain extradition treaties that the United States has with other state parties will be deemed amended to include alien-smuggling offenses and travel document fraud as defined in the protocol. In addition, Justice noted that the United States will be able to utilize the protocol's mutual legal assistance provisions in dealing with those state parties that currently do not have a bilateral treaty with the United States for such assistance.

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## **Federal Efforts to Identify and Seize Smugglers' Funds or Assets Abroad**

According to some estimates, alien smuggling globally generates billions of dollars in illicit revenues annually. How much of the total involves aliens smuggled into the United States is not known, although the United States is often a primary destination country. Also, according to ICE officials, much of the U.S.-related smuggling revenues either may not be paid in this country or, if paid here, may be transported or transmitted abroad quickly. As such, federal efforts to combat alien smuggling by following the money trail frequently may present investigators and prosecutors with opportunities and challenges related to identifying and seizing funds or assets not located in the United States. The MLAT process is one tool available to help investigators and prosecutors meet these opportunities and challenges.

In March 2005, to get a sense of the extent to which federal law enforcement agencies were using the MLAT process to follow the money trail abroad in alien smuggling cases, we contacted Justice's Office of International Affairs. In reference to alien-smuggling cases, we asked for information regarding the number of requests made to foreign governments for assistance through provisions of an applicable MLAT or

by a letter rogatory.<sup>2</sup> According to the Deputy Director, the number of outgoing requests for formal law enforcement assistance in alien-smuggling cases is few in comparison with requests in cases of drug trafficking, money laundering, fraud, and various other offenses. For matters considered to be alien-smuggling cases, the Deputy Director noted that it would be very difficult to quantify the exact number of requests made to foreign countries. In explanation, the Deputy Director commented substantially as follows:

- The Office of International Affairs' database was created a number of years ago to track an extremely large volume of international requests. The database was not originally designed to include a category of "alien smuggling." This category designation was added to the database within only the last few years. Under this specific category, the database currently shows 10 pending outgoing requests and 3 closed outgoing requests.
- Further, the database has an "immigration violation" category, which would include alien smuggling and has existed for some time. Currently, the database shows over 160 closed cases in this category.

Also, we asked ICE headquarters for information regarding formal requests made in attempts to follow the money trail on alien-smuggling investigations that have extended overseas. That is, we asked how many MLAT requests were made in fiscal years 2003 and 2004, to which countries, and what have been the results in terms of assets tracked or seized. The Office of Investigations' Asset Forfeiture Unit responded that it had no way of determining the number of MLAT requests. ICE officials noted, however, that none of ICE's reported seizures from alien-smuggling cases in fiscal year 2004 (\$7.3 million) and the first 6 months of fiscal year 2005 (\$7.8 million) were made abroad.

We made a similar inquiry for information from the State Department's Bureau of Diplomatic Security. In response, the bureau noted that it has been a full member of the Department of Justice's Asset Forfeiture Program since October 1, 2004, and—after admission to the program—has taken steps to prepare and encourage agents to consider forfeiture

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<sup>2</sup>A letter rogatory is a method of obtaining assistance from abroad in the absence of a treaty or executive agreement. Essentially, this formal device is a request from a court in one country to a court in another country to seek international judicial assistance in obtaining testimony or other evidence.

whenever possible, including seeking the seizure and forfeiture of assets abroad. Additional comments were substantially as follows:

- Because participation in Justice's Asset Forfeiture Program is relatively new, the bureau has submitted only one MLAT request seeking the seizure and forfeiture of illegal assets overseas, and this request was still pending as of March 2005. However, the bureau currently is conducting numerous criminal investigations that most likely will result in the submission of several more MLAT requests to various foreign countries to seek the seizure and forfeiture of illegal funds and assets.
- The MLAT process sometimes may be very time consuming and on occasion has discouraged Assistant U.S. Attorneys from pursuing forfeiture of illegal assets via an MLAT request. In the absence of an MLAT, the letter rogatory process may be even more burdensome and time consuming and the results less certain.

The bureau noted that in addition to utilizing the MLAT process, there are other procedures for gathering evidence or seizing the proceeds of a crime. For example, as part of a plea agreement, a defendant may consent to repatriate overseas assets to the United States without the involvement of the host country. Finally, the bureau emphasized that the ability to equitably share with foreign law enforcement agencies a percentage of the proceeds seized based on their assistance and participation in investigations is a very useful tool in securing the seizure and forfeiture of illegal assets overseas.

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# Appendix V: Examples of Alien-Smuggling Cases Prosecuted in Federal District Courts

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This appendix summarizes selected alien-smuggling cases prosecuted in federal district courts in three districts—the District of Arizona, the Southern District of California, and the Southern District of Texas. Each of these federal judicial districts is coterminous with the U.S.-Mexico, or southwest, border. To identify alien-smuggling cases federally prosecuted in these districts, we reviewed press releases issued by the respective U.S. Attorney’s Office during January through June 2004. For this 6-month period, our review found that the three districts issued press releases that covered a collective total of 23 alien-smuggling cases—District of Arizona (9), Southern District of California (3), and Southern District of Texas (11). In April and May 2005, the Executive Office for U.S. Attorneys provided us updated information on the results (e.g., convictions and sentencing provisions) of these cases.

As summarized below, most of the 23 cases were reactive-type cases, with no money trail being pursued. However, a few cases (particularly in Texas) were proactive investigations—including the use of undercover agents—and had a focus on pursuing financial transactions. Further, according to ICE officials, certain aspects of the relevant cases were still open at the time of our review, and investigators were continuing to follow the money trail. Regarding the reactive-type cases, ICE and U.S. Attorney’s Office officials emphasized that several of the cases involved fatalities and were prosecuted based on public safety concerns. Also, officials indicated that law enforcement agencies can gather and consolidate intelligence from reactive cases as a basis for developing larger or proactive cases.

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## District of Arizona

The nine alien-smuggling cases prosecuted in Arizona reflected a range of circumstances. For example (see table 8):

- Five of the cases involved truck (or tractor-trailer) drivers who were transporting as many as 65 undocumented aliens. In one of these cases, when the driver was fleeing from authorities, a 16-year-old female fell from the truck bed and died after being run over by the truck.
- Another two cases involved female U.S. citizens who were attempting to bring Mexican children into the United States. One of these cases involved 5 Mexican children, and the other case involved a 1-year-old Mexican boy.
- Another case reflects victimization and intimidation in the human-smuggling trade; that is, 23 undocumented aliens who were walking

**Appendix V: Examples of Alien-Smuggling  
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through the desert near Three Points, Arizona, were robbed and held for ransom.

**Table 8: District of Arizona Alien-Smuggling Cases Reported by U.S. Attorney’s Office Press Releases (January to June 2004)**

Press release number, date, and U.S. Attorney case number	Case facts, law enforcement agencies involved, and results (sentencing penalties or case status)
Press release 2004-027 February 6, 2004 Case number CR-03-2360 TUC	<p><i>Facts:</i> The evidence showed at trial that, on November 4, 2003, the defendant was driving a pickup truck near Arivaca, Arizona. A U.S. Border Patrol agent could see the knees and elbows of numerous individuals bouncing in the bed of the truck as it traveled through dips and washes. When the agent tried to perform a traffic stop on the vehicle, it failed to yield. Additional Border Patrol agents were able to successfully deflate the vehicle’s front tires with controlled tire deflation devices. However, the vehicle continued to elude agents until it eventually left the roadway and crashed through a fence into the open desert. Border Patrol agents riding ATVs continued the pursuit despite having objects, including a spare tire, thrown at them from the back of the truck. When the vehicle came to rest, agents immediately apprehended the driver (the defendant) as he attempted to flee.</p> <p>Subsequent investigation revealed the presence of 11 undocumented aliens in the bed of the truck and 14 undocumented aliens in the cab of the truck, including numerous children and infants. Defendant was also an illegal alien who had previously been deported from the United States.</p> <p><i>Law enforcement agencies:</i> Tucson and Nogales Sectors of U.S. Border Patrol.</p> <p><i>Results:</i> On February 5, 2004, a federal jury in Tucson found the defendant guilty of two counts of transportation of illegal aliens for commercial advantage or private financial gain (8 U.S.C. § 1324) and one count of illegal reentry following deportation (8 U.S.C. § 1326). The defendant was sentenced to 43 months in prison, but after being appealed, the sentence was reduced to 21 months.</p>
Press release 2004-032 February 13, 2004 Case number CR-03-1728	<p><i>Facts:</i> At trial, the evidence showed that on August 7, 2003, the defendant was driving a pickup truck with five illegal aliens, including three in the open bed of the truck, when stopped by U.S. Border Patrol agents near Marana, Arizona. The defendant claimed that he was just helping the people by taking them to a store. He also told Border Patrol agents there were more people on his property in a mobile home, where agents subsequently found 18 illegal aliens hiding.</p> <p><i>Law enforcement agencies:</i> U.S. Border Patrol.</p> <p><i>Results:</i> On February 12, 2004, a federal jury in Tucson found the defendant guilty of two counts of 8 U.S.C. § 1324(a)(1)(A)(ii) and one count of 8 U.S.C. § 1324(a)(1)(A)(iii). On October 29, 2004, the defendant was sentenced to 18 months in prison, to be followed by 2 years of supervised release.</p>
Press release 2004-035 February 17, 2004 Press release 2004-056 March 15, 2004 Case number CR-04-0147-PHX-SRB	<p><i>Facts:</i> On January 20, 2004, the defendant’s tractor-trailer was stopped at a Border Patrol checkpoint near Yuma, Arizona. A routine canine sniff alerted agents to search the tractor-trailer. Removing stacked pallets in the back of the tractor-trailer, agents discovered 65 illegal aliens, including 20 females and 11 juveniles. The defendant admitted to knowingly transporting the aliens for a fee of \$1,600.</p> <p><i>Law enforcement agencies:</i> U.S. Customs and Border Protection.</p> <p><i>Results:</i> On March 15, 2004, the defendant pled guilty to one count of transporting illegal aliens for profit. The defendant was sentenced to 24 months in prison, to be followed by 3 years of supervised release.</p>

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**Appendix V: Examples of Alien-Smuggling  
Cases Prosecuted in Federal District Courts**

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<b>Press release number, date, and U.S. Attorney case number</b>	<b>Case facts, law enforcement agencies involved, and results (sentencing penalties or case status)</b>
Press release 2004-038 February 18, 2004 Case number CR-04-0153-PHX	<p><i>Facts:</i> On January 26, 2004, defendant was driving a Freightliner tractor-trailer when he stopped at a Border Patrol checkpoint on Highway 95 north of Yuma, Arizona. He told the agents he was hauling citrus crates, but he could not produce any documentation for the load. Upon receiving consent to search the trailer, agents removed some of the stacked crates, discovering 50 illegal aliens (46 from Mexico and 4 from El Salvador) hiding in the trailer. The aliens had entered the trailer in a citrus grove in Yuma and had been shut inside for about 2 hours.</p> <p><i>Law enforcement agencies:</i> U.S. Customs and Border Protection.</p> <p><i>Results:</i> Defendant was indicted on February 18, 2004, for transporting illegal aliens. Records regarding the sentencing and judgment of conviction are sealed.</p>
Press release 2004-041 February 20, 2004 Case number CR-03-1854-TUC-FRZ	<p><i>Facts:</i> The evidence revealed on August 22, 2003, that two female U.S. citizens were stopped at the Douglas Port of Entry in Arizona, attempting to enter the United States with five children, who were citizens of Mexico. Both defendants claimed the children were theirs and were also U.S. citizens. The defendants had made prior arrangements with a man named Juan to pick up the children in Mexico from a stranger and get them into the United States illegally. Defendants were going to be paid \$50 per child.</p> <p><i>Law enforcement agencies:</i> U.S. Immigration and Customs Enforcement.</p> <p><i>Results:</i> On February 19, 2004, both defendants pleaded guilty to conspiracy to bring in illegal aliens in violation of 8 U.S.C. § 1324. The defendants were sentenced to prison terms of 16 and 15 months, respectively.</p>
Press release 2004-045 February 23, 2004 Case number CR-03-2297-TUC-CKJ	<p><i>Facts:</i> On October 23, 2003, a female U.S. citizen with three children was stopped at the Douglas Port of Entry in Arizona. She claimed all the children were U.S. citizens. However, a 1-year-old boy was a citizen of Mexico. The woman falsely claimed to be a babysitter for this child, but the evidence showed that she had driven to Mexico and picked up this boy, whom she did not know, from a stranger. She planned to take him to "Luis" in a trailer park in the United States. She expected to receive \$300 once she delivered the child.</p> <p><i>Law enforcement agencies:</i> ICE.</p> <p><i>Results:</i> On December 12, 2003, the defendant pleaded guilty to conspiracy to bring in illegal aliens in violation of 8 U.S.C. § 1324. On February 23, 2003, the defendant was sentenced to 22 months in prison—18 months for this offense plus 4 months for violating her probation by engaging in the same act of child smuggling.</p>
Press release 2003-069 April 8, 2004 Case number CR-03-2448-TUC	<p><i>Facts:</i> On November 15, 2003, the defendant attempted to enter the United States from Mexico at Arizona's Douglas Port of Entry accompanied by an adult female and a 7-year-old female. The defendant falsely claimed that the child was a U.S. citizen. The adult presented an Oregon identification document claiming U.S. citizenship. Upon further questioning by authorities, the defendant admitted she did not know the names of either the adult or child. The defendant said she had been given documents for the two aliens to facilitate entry into the United States and had coached them on what to say when they entered. The defendant also said that she and the two Mexican citizens were planning to take the bus to Tucson where the child's father would pick her up.</p> <p><i>Law enforcement agencies:</i> ICE.</p> <p><i>Results:</i> On April 8, 2004, the defendant pled guilty to conspiracy to transport illegal aliens, violating 8 U.S.C. § 1324, and was sentenced to 33 months in prison to be followed by 3 years of supervised release.</p>

**Appendix V: Examples of Alien-Smuggling  
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<b>Press release number, date, and U.S. Attorney case number</b>	<b>Case facts, law enforcement agencies involved, and results (sentencing penalties or case status)</b>
Press release 2004-079 April 27, 2004 Case number CR-03-1709-TUC-RCC (NFF)	<p><i>Facts:</i> On August 7, 2003, law enforcement agents observed numerous suspected undocumented aliens loading into the bed of a parked truck outside of Sells, Arizona. The agents pulled in front of the truck and identified themselves as law enforcement agents. The defendant backed the truck up and then went forward, fleeing from the scene. In doing so, a 16-year-old undocumented female in the truck bed fell out of the truck, and the defendant ran over her, killing her instantly. The defendant crashed into another truck and was arrested. The defendant told agents that he was taking the group of undocumented aliens to Phoenix, where he would be paid a set amount for each illegal alien.</p> <p><i>Law enforcement agencies:</i> ICE and Tohono O’Odham Police Department.</p> <p><i>Results:</i> On April 23, 2004, the defendant pled guilty to felony transportation of an illegal alien (resulting in death) and conspiracy to transport illegal aliens. The defendant was sentenced to 57 months in prison and ordered to pay restitution of \$1,104 (the cost of transporting the body of the deceased female to Mexico). Also, the defendant was sentenced in state court for negligent homicide, with the state sentence (6 years in prison) to run concurrently with the federal sentence.</p>
Press release 2004-094 May 18, 2004 Case number CR-04-4857M	<p><i>Facts:</i> On March 29, 2004, five Mexican men with numerous firearms approached a group of 23 undocumented aliens who were walking through the desert near Three Points, Arizona. The defendants robbed the group and told the aliens they would be taken to a nearby trailer where members of the group could contact a family member to pay a ransom. One member of the group escaped and contacted a Department of Public Safety officer. This member later led U.S. Border Patrol officers back to the scene, and the defendants fled but were soon captured. The U.S. Attorney’s Office is working closely with Department of Homeland Security agencies to prosecute human smugglers identified as part of the Arizona Border Control initiative, a statewide law enforcement effort launched by DHS in March 2004 to deter the illicit trafficking of people and drugs. ICE described this case “as yet another example of the victimization and intimidation that amount to business as usual in the human smuggling trade.”</p> <p><i>Law enforcement agencies:</i> ICE and U.S. Customs and Border Protection.</p> <p><i>Results:</i> On May 17, 2004, all five defendants pled guilty to conspiracy to commit hostage taking, violating 18 U.S.C. § 1203. Three of the five defendants were each sentenced to 10 years of prison. Also, the other two defendants were sentenced to prison for 121 months and 120 months, respectively, to be followed by 3 years of supervised release.</p>

Source: GAO summary of press releases (January through June 2004) by U.S. Attorney’s Office, District of Arizona, and sentencing information provided by the Executive Office for U.S. Attorneys.

**California, Southern District**

During the period January to June 2004, the U.S. Attorney’s Office for the Southern District of California issued press releases for three alien-smuggling cases (see table 9). One case involved the attempted smuggling of Chinese aliens, which resulted in the death of a Border Patrol agent. In the second case, an inspector from the legacy Immigration and Naturalization Service was charged with conspiracy. The third case involved a vehicle accident, resulting in the death of four aliens.



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**Table 9: Southern District of California Alien-Smuggling Cases Reported by U.S. Attorney's Office Press Releases (January to June 2004)**

Press release date <sup>a</sup>	Case facts, law enforcement agencies involved, and results (sentencing penalties or case status)
April 30, 2004	<p><i>Facts:</i> On December 16, 2003, the defendant was caught attempting to smuggle three undocumented Chinese nationals across the Colorado River to Arizona on the border area between California and Arizona. During the course of the rescue and apprehension of the group, a U.S. Border Patrol agent died of apparent drowning. The defendant was charged in a 12-count indictment, including bringing in and transporting illegal aliens resulting in death, and bringing in illegal aliens for financial gain.</p> <p><i>Law enforcement agencies:</i> FBI and U.S. Border Patrol.</p> <p><i>Results:</i> The defendant pled guilty to bringing in illegal aliens resulting in death in violation of 8 U.S.C. § 1324(a)(1)(a),(V)(ii) and (a)(1)(B)(iv) and aiding and abetting. The defendant was sentenced on September 10, 2004, to serve a prison term of 57 months, followed by 5 years of supervised release.</p>
May 25, 2004	<p><i>Facts:</i> Two members of a Mexican family allegedly arranged for the smuggling of marijuana and aliens through lanes at the San Ysidro Port of Entry manned by an INS inspector (defendant number 1). The inspector resigned in August 2001, following the seizure of a large amount of marijuana at an auto repair shop he frequented. The investigation, which began with the sale of false immigration documents to an INS undercover agent, was subsequently assigned to the Border Corruption Task Force, which included agents from the FBI, ICE, and the DHS Inspector General's Office. Ten defendants are involved in this case: the former INS inspector (defendant number 1) and three other U.S. citizens, three Mexican citizens, and three resident aliens. FBI and DHS agents arrested defendant number 1 in Atlanta, Georgia, as he was returning from Paris, France.</p> <p><i>Law enforcement agencies:</i> FBI, ICE, DHS Office of Inspector General, and Border Corruption Task Force.</p> <p><i>Results:</i> On May 25, 2004, the former INS inspector and nine additional defendants were arraigned. All 10 defendants were charged with conspiracy to bring in illegal aliens and bringing in illegal aliens for financial gain in violation of 8 U.S.C. § 1324. Five defendants were charged with conspiracy to import marijuana in violation of 21 U.S.C. §§ 952, 960, and 963. Three defendants were charged with importation of marijuana in violation of 21 U.S.C. §§ 952 and 960. One defendant was charged with use of false immigration documents in violation of 18 U.S.C. § 1546.</p> <p>As of April 15, 2005, nine defendants had pled guilty (including defendant number 1), and sentencing was pending; one defendant remained at large.</p>
June 16, 2004	<p><i>Facts:</i> Two defendants were involved in the smuggling of 21 undocumented aliens through the desert of Imperial County in a SUV. While in route, the loaded vehicle blew a tire and rolled over on highway 78, resulting in the deaths of four of the aliens.</p> <p><i>Law enforcement agencies:</i> U.S. Border Patrol, ICE, California Highway Patrol, and Imperial County Sheriff's Office.</p> <p><i>Results:</i> On June 16, 2004, one defendant, as part of a plea agreement, pled guilty to one count of bringing in an illegal alien, resulting in death, a violation of 8 U.S.C. § 1324(a)(1)(A)(i) and (B)(iv); and three counts of bringing in illegal aliens for financial gain, a violation of 8 U.S.C. § 1324(a)(2)(B)(ii). The second defendant pled guilty to one count of bringing in an illegal alien, resulting in death, a violation of 8 U.S.C. § 1324(a)(1)(A)(i); and one count of bringing in an illegal alien for financial gain in violation of 8 U.S.C. § 1324(a)(2)(B)(ii).</p> <p>On October 1, 2004, one defendant was sentenced to 60 months in prison, followed by 3 years of supervised release. The second defendant was sentenced to 46 months in prison, followed by 3 years of supervised release.</p>

Source: GAO summary of press releases (January through June 2004) by U.S. Attorney's Office, Southern District of California, and sentencing information provided by the Executive Office for U.S. Attorneys.

<sup>a</sup>The press releases from this district had dates but did not have reference numbers, nor did the press releases cite U.S. Attorney case numbers.

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## Texas, Southern District

During the period January to June 2004, the U.S. Attorney's Office for the Southern District of Texas issued press releases for 11 alien-smuggling cases (see table 10):

- Two of these cases involved multiple alien fatalities—specifically, 11 illegal immigrants in a locked railroad grain car and 19 from confinement in an abandoned tractor-trailer. And, in a third case, a fleeing 17-year-old Guatemalan national was struck and killed by oncoming highway traffic.
- Two other cases involved the smuggling of Chinese nationals into the United States. In one of these cases, the convicted defendant forfeited \$250,000 in cash assets earned from the smuggling venture.
- In another case, five South Americans involved in an international smuggling ring were prosecuted in the United States, even though the truck that transported the ring's human cargo of undocumented aliens was intercepted near Monterrey, Mexico. According to the press release, prosecution of these defendants was the first use in the Southern District of Texas of a law providing for the prosecution of crimes that occurred outside the territorial limits of the United States. The law takes into account the facts that the aliens' ultimate destination was the United States and the smuggling operation would have the most effect in the United States.

**Appendix V: Examples of Alien-Smuggling  
Cases Prosecuted in Federal District Courts**

**Table 10: Southern District of Texas Alien-Smuggling Cases Reported by U.S. Attorney's Office Press Releases (January to June 2004)**

Press release number and date <sup>a</sup>	Case facts, law enforcement agencies involved, and results (sentencing penalties or case status)
040105-flores January 5, 2004	<p><i>Facts:</i> The evidence introduced during the trial showed that the charges resulted from an incident that occurred in east Houston on June 3, 2003. On that date, a Houston Police officer responded to a call regarding possible alien smuggling taking place at 908 Cesar Chavez Street, Houston, Texas. On arrival, 29 illegal aliens were found inside the building at that address. ICE agents were called to the scene and began interviews, which led to the arrests of the two defendants. Defendant number 1 was identified as being in charge of the premises on Cesar Chavez Street. A search of the premises revealed a notepad containing information with which the smugglers could contact family members and friends to arrange the payment of smuggling fees. The notepad containing the contact information was sent to the DHS forensic unit, and a handwriting analysis found that the handwriting in the notepad matched the known handwriting of defendant number 1.</p> <p>The illegal aliens told investigating agents they entered the United States near Brownsville, Texas. Defendant number 2 was identified as a guide who led them through the brush in South Texas to circumvent the Border Patrol checkpoint in Sarita, Texas. Testimony also showed the illegal aliens were transported from South Texas to Houston in a number of vehicles to the building on Cesar Chavez Street.</p> <p><i>Law enforcement agencies:</i> ICE and Houston Police Department.</p> <p><i>Results:</i> Both defendants were convicted in a jury trial that concluded on August 28, 2003. On January 5, 2004, the U.S. Attorney announced that each defendant was sentenced to 27 months imprisonment for conspiracy to harbor and transport illegal aliens and five counts of concealing illegal aliens.</p>
040115-reyes January 15, 2004	<p><i>Facts:</i> The evidence introduced during three separate trials showed that five South Americans were involved in an international smuggling ring that transported undocumented aliens through El Salvador, Guatemala, and Mexico into the United States. The truck transporting the aliens was intercepted near Monterrey, Mexico, and Mexican authorities detained the truck and human cargo. The group (who were mostly El Salvadorans) had traveled by foot and then were transported in open bed trucks to become part of a human cargo of 146 men and women loaded into a tractor-trailer among stacked crates of bananas and apples. Witnesses identified defendant number 1 as the owner of the house in San Salvador where they paid initial smuggling fees, along with providing relatives' names to be contacted for the remaining payment of their fees. Defendants number 2, 3, 4, and 5 acted as guides or provided food and water during the journey.</p> <p><i>Law enforcement agencies:</i> ICE.</p> <p><i>Results:</i> Five persons (four El Salvadorans and one Guatemalan) were convicted in three jury trials that ended on January 15, 2004. Defendant number 1 was sentenced to 82 months in federal prison without parole for conspiring to aid and abet the smuggling of undocumented workers into the United States and transporting illegal aliens. The other prison terms levied were 8 years for defendants number 2 and 4, 66 months for defendant number 3, and 33 months for defendant number 5.</p> <p>Prosecution of these defendants was the first use in the Southern District of Texas of a law providing for the prosecution of crimes that occurred outside the territorial limits of the United States. The law takes into account the facts that the aliens' ultimate destination was the United States and the smuggling operation would have the most effect in the United States.</p>

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**Appendix V: Examples of Alien-Smuggling  
Cases Prosecuted in Federal District Courts**

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<b>Press release number and date<sup>a</sup></b>	<b>Case facts, law enforcement agencies involved, and results (sentencing penalties or case status)</b>
040204-frazier February 4, 2004	<p><i>Facts:</i> The defendant was arrested on April 21, 2003, after U.S. Border Patrol agents discovered four undocumented Mexican aliens in the trunk of a rental car. Among the four persons were a 3-year-old girl and her mother. The defendant was a front-seat passenger when the car was stopped and searched at the immigration checkpoint on Interstate Highway 35, approximately 15 miles north of Laredo. Evidence presented at trial showed he was involved in a larger conspiracy to transport and harbor aliens approximately 2 months before his arrest. He picked up undocumented aliens at a local hotel near the interstate highway and the Rio Grande river, placing them in the trunk of a rental car for transport to San Antonio, Texas. He dropped them off at a hotel, which served as a staging area and drop-off point for the undocumented aliens. According to trial testimony, it is believed that most of the undocumented aliens were bound for locations in and around Texas, including San Antonio, Austin, Dallas, and Houston.</p> <p><i>Law enforcement agencies:</i> U.S. Border Patrol.</p> <p><i>Results:</i> The defendant was convicted after a jury trial in September 2003 of conspiracy to transport 26 undocumented aliens within the United States and was sentenced to 70 months in federal prison, without parole. He was also fined \$5,000 and assessed a \$200 fee for the federal crime victims' fund.</p>
040218-lara February 18, 2004	<p><i>Facts:</i> On May 16, 2003, Victoria County Sheriff's Department officers discovered a group of 18 aliens concealed in the back of a tractor-trailer after being called to a rest area on U.S. Highway 59, about 5 miles north of Victoria, Texas. According to aliens aboard the tractor-trailer, the defendant (a Mexican national with U.S. resident alien status) had given them a pickaxe to use as a way out of the trailer in the event of an emergency.</p> <p>On June 26, 2003, Border Patrol agents discovered another group of illegal aliens inside two grain-hopper bins in a train yard in Harlingen, Texas. Upon discovery, the agents estimated that the temperature inside the grain-hopper approached 120 degrees. One woman, who was 5 months pregnant, was airlifted to Valley Baptist Hospital, and another four aliens required medical treatment. According to agents, the local fire department had to decontaminate the aliens, who were all covered in soda ash. The majority of the aliens in both groups were Mexican nationals, but some were from Honduras and El Salvador. The defendant paid drivers \$500 to \$800 for every alien transported, and two aliens stated they had agreed to pay the defendant \$1,500 to transport them from the Rio Grande Valley to Houston.</p> <p><i>Law enforcement agencies:</i> U.S. Border Patrol, ICE, and Victoria County Sheriff's Office.</p> <p><i>Results:</i> The defendant pleaded guilty to smuggling, transporting, and harboring over 200 undocumented aliens from the Rio Grande Valley to Corpus Christi, Victoria, and Houston, Texas. Further, he possessed a firearm during the commission of the offense and had obstructed justice by threatening a potential witness against him. He was sentenced to 188 months in federal prison, without parole.</p>

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**Appendix V: Examples of Alien-Smuggling  
Cases Prosecuted in Federal District Courts**

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Press release number and date <sup>a</sup>	Case facts, law enforcement agencies involved, and results (sentencing penalties or case status)
040220-salman February 20, 2004	<p><i>Facts:</i> Mexican federal agents arrested the defendant in November 1999 attempting to transport four Chinese nationals into the United States. He was transferred to the United States in a prisoner exchange program. The defendant admitted that—while based in Quito, Ecuador, and Mexico City—he worked closely with his wife in Houston and others to move Chinese nationals into the United States for commercial and private financial gain, creating and using fraudulent immigration documents to facilitate their movement into the United States, and laundering the money generated by his illegal activity. The defendant and others operated from five separate locations—including Brooklyn, New York; Mexico City; and Guang-Zhou City, China—and a Houston house and condominium the defendant owned. Federal undercover agents successfully penetrated the smuggling enterprise. The defendant unwittingly directed his wife to pay an undercover agent over \$250,000 in cash for his services relating to the aliens’ arrival in Houston from Quito. The defendant arranged for the aliens to be transported by plane from Houston to New York. The defendant also admitted that he and others agreed to launder over \$250,000 in cash proceeds earned from their smuggling enterprise. They set up bank accounts in Houston and New York to deposit smuggling funds and also used a safe deposit box to store cash proceeds. The defendant will be forfeiting his interest in a condominium used during the conspiracy to conceal and harbor some of the aliens and \$250,000 in cash assets earned from the smuggling venture.</p> <p><i>Law enforcement agencies:</i> U.S. Border Patrol, legacy Immigration and Naturalization Service, FBI, and Internal Revenue Service.</p> <p><i>Results:</i> The defendant pleaded guilty to importing 29 Chinese nationals into the United States via Mexico and Ecuador between 1999 and 2001. The defendant was convicted of racketeering conspiracy with an international smuggling enterprise based in China and was sentenced to prison for 51 months, without parole.</p>
040226-romero February 26, 2004	<p><i>Facts:</i> ICE initiated an investigation in October 2003 based on information about possible alien-smuggling activity occurring at an apartment complex in Houston. Agents witnessed activity consistent with alien smuggling while conducting physical surveillance on the apartment. Upon entering the apartment, agents found a total of 36 undocumented aliens, mostly from Brazil and some from Mexico. Further investigation revealed that defendant number 4 delivered the aliens to the apartment, and defendant number 2 concealed and guarded the aliens. After defendant number 3 had delivered several undocumented aliens to defendant number 4 in Corpus Christi, Texas, Western Union receipts indicated that defendant number 4 had wired \$3,300 to defendant number 3 in McAllen, Texas. Finally, defendant number 4 and defendant number 1 drove some of the aliens in separate vehicles from the apartment to Atlanta, Georgia.</p> <p><i>Law enforcement agencies:</i> ICE.</p> <p><i>Results:</i> On February 25, 2004, all four defendants were convicted of conspiring to harbor and transport undocumented aliens. The four defendants were sentenced to prison for 12, 21, 24, and 30 months, respectively.</p>

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**Appendix V: Examples of Alien-Smuggling  
Cases Prosecuted in Federal District Courts**

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<b>Press release number and date<sup>a</sup></b>	<b>Case facts, law enforcement agencies involved, and results (sentencing penalties or case status)</b>
040304-licea March 3, 2004	<p><i>Facts:</i> Defendant number 1, a Mexican citizen, was convicted in March 2003 for his role in a smuggling operation that resulted in the deaths of 11 illegal immigrants in a rail car in October 2002 in Denison, Iowa. He pled guilty to conspiring to transport and harboring undocumented aliens. Court documents indicated that the defendant was an integral part of an international smuggling operation moving illegal aliens from Central America into the United States through Mexico between January 2000 and February 2003. The organization harbored the aliens in drop houses in or near Harlingen, Texas, transported the aliens usually by rail past the U.S. Border Patrol check point in Sarita, Texas, then by vehicle to Houston, Texas, and other parts of the country. In June 2002, the defendant and other coconspirators lost track of a locked railroad grain car into which 11 undocumented aliens had been loaded. The 11 aliens were found 4 months later in the same locked rail car at a depot in Denison, Iowa, having died of dehydration and hyperthermia.</p> <p>Several other defendants have been charged with various aspects of the crime. One defendant, a former conductor for the Union Pacific Railroad, provided the group with information on the scheduled stops and locations of northbound trains headed out of the Rio Grande Valley so that the smugglers would know when and where they could load the aliens.</p> <p><i>Law enforcement agencies:</i> ICE, FBI, Crawford County Iowa Sheriff's Office, Denison Police and Fire Departments, Iowa Division of Criminal Investigation, Union Pacific Railroad Police, and the Iowa State Medical Examiner's Office.</p> <p><i>Results:</i> As of April 2005, sentencing was still pending for defendant number 1 and the former railroad conductor. Four other defendants received sentences of 57 months, 33 months, and 21 months (two defendants), respectively. Another two individuals remained fugitives as of April 2005.</p>

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**Appendix V: Examples of Alien-Smuggling  
Cases Prosecuted in Federal District Courts**

Press release number and date <sup>a</sup>	Case facts, law enforcement agencies involved, and results (sentencing penalties or case status)
<p>Five press releases (the "Victoria 19" case):            040301-Williams            March 15, 2004            040322-Gaytan            March 22, 2004            040412-Holloway            April 12, 2004            040429-Garcia            April 29, 2004            040614-Chavez            June 14, 2004</p>	<p><i>Facts:</i> Fourteen persons were charged in a superseding indictment on March 15, 2004, for their alleged involvement in a smuggling operation in which at least 74 undocumented aliens from Mexico, El Salvador, Honduras, Nicaragua, the Dominican Republic, and Guatemala were loaded onto a tractor-trailer near Harlingen, Texas, to be transported to Houston. This smuggling operation resulted in the deaths of 19 undocumented aliens—17 of whom were found dead in and around the trailer abandoned by the driver in Victoria, Texas, on May 14, 2003. Fifty-five undocumented aliens survived the ill-fated journey. Each undocumented alien was charged approximately \$1,800 in smuggling fees for the trip.</p> <p><i>Law enforcement agencies:</i> ICE; Texas Department of Public Safety (including the Texas Rangers); the Victoria County Sheriff's Department; and the McAllen, Harlingen, and Victoria Police Departments.</p> <p><i>Results:</i> A Jamaican national (the truck driver) has been charged with being part of a conspiracy to smuggle and transport undocumented aliens for financial gain that allegedly resulted in the death of some of the aliens. The Attorney General has authorized the death penalty be sought against this defendant, whose jury trial began on February 22, 2005. A partial verdict was returned on March 23, 2005; appellate issues are pending. The status (as of April 2005) of other 13 defendants was as follows:</p> <ul style="list-style-type: none"> <li>• Four defendants had pled to the conspiracy count, which carries a maximum penalty of life imprisonment, and were awaiting sentencing.</li> <li>• One defendant had pled guilty to harboring and transporting a smuggled 3-year-old child and was sentenced to 14 months' confinement.</li> <li>• One defendant's jury trial had been suspended pending completion of an appeal to the Fifth Circuit.</li> <li>• Following a 3-week jury trial, two defendants were convicted on numerous counts of the superseding indictment. Many of the counts carry a maximum penalty of life imprisonment. The defendants were awaiting sentencing.</li> <li>• One defendant's motion for a judgment of acquittal pursuant to Rule 29 of the Federal Rules of Criminal Procedure was granted by the district court judge upon completion of the government's case in chief. The defendant was in the custody of ICE and was undergoing deportation proceedings.</li> <li>• Three defendants were expelled from Mexico to the United States on February 9, 2005, and were apprehended that same day upon arrival at the George Bush Intercontinental Airport in Houston, Texas. The defendants were being detained awaiting trial, which is scheduled for October 17, 2005.</li> <li>• One defendant was a fugitive in Mexico, and the United States was seeking extradition.</li> </ul>

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**Appendix V: Examples of Alien-Smuggling  
Cases Prosecuted in Federal District Courts**

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Press release number and date <sup>a</sup>	Case facts, law enforcement agencies involved, and results (sentencing penalties or case status)
040401-Chen April 1, 2004	<p><i>Facts:</i> The indictment is the result of an ICE undercover operation in late 2003, during which federal agents infiltrated an organization by posing as alien smugglers willing to transport Chinese nationals into the United States. The husband and wife defendants (both Chinese nationals) made payments of \$12,000 to \$17,000 per alien to undercover agents for their assistance in the smuggling scheme, which allegedly reached over \$100,000 for the 12 undocumented aliens brought to the United States over a 3-month period.</p> <p>According to the indictment, the two defendants were members of an organization specializing in making arrangements for illegal alien immigrants from the People's Republic of China to be smuggled into the United States via Thailand and certain Central American countries. Human smugglers guided the aliens in the Central American countries to staging areas south of the U.S. border. Typically, the aliens were required to pay a portion of their total smuggling fee in advance of their departure, with the balance due after arriving in the United States. Upon being guided into the United States by smugglers, the aliens were held in drop houses or hotels until their relatives or friends paid the balance of the smuggling fee.</p> <p><i>Law enforcement agencies:</i> ICE.</p> <p><i>Results:</i> The defendants were charged with 12 counts of smuggling for commercial gain and private financial advantage and 4 counts of money laundering for the more than \$100,000 in fees paid to the undercover officers. Sentencing of the two convicted defendants was set for May 2005; each defendant faces a mandatory minimum sentence of 3 years in prison.</p>
040526-Garcia-Garcia May 26, 2004	<p><i>Facts:</i> The evidence showed that on December 2, 2003, U. S. Border Patrol agents on routine patrol near Premont, Texas, saw a pickup truck they believed to contain undocumented aliens. The agents turned on their emergency equipment and attempted to stop the vehicle. As the driver (later identified as the defendant) of the vehicle slowed, all of the occupants of the truck jumped out and fled. One occupant, a 17-year-old Guatemalan national, ran across the highway into the path of an oncoming tractor-trailer and was struck and killed. The defendant was tracked down and arrested.</p> <p><i>Law enforcement agencies:</i> U. S. Border Patrol and ICE.</p> <p><i>Results:</i> The defendant (a Mexican citizen) pleaded guilty to transporting an undocumented alien for private financial gain, resulting in the death of a 17-year-old Guatemalan national. The defendant was sentenced to 64 months in prison.</p>
040629-Vera June 29, 2004	<p><i>Facts:</i> Evidence revealed that on April 29, 2004, a Texas Department of Public Safety trooper attempted to stop a speeding Chevrolet Suburban traveling along Highway 59 near El Campo, Texas. The defendant attempted to elude the trooper by veering into the southbound lane of oncoming traffic, jumping the median into the northbound lane and resuming travel at a high speed. However, a tire on the car blew out, forcing him to stop. He attempted to escape on foot but was arrested by the trooper. Five aliens illegally in the United States were found hiding in the Suburban.</p> <p>The defendant admitted to ICE agents that he had received a telephone call from an alien smuggler offering to pay him a fee to transport undocumented aliens from Victoria, Texas, to Houston. He said he had picked up the aliens in Victoria, Texas, and was transporting the aliens to Houston, Texas.</p> <p><i>Law enforcement agencies:</i> ICE and Texas Department of Public Safety.</p> <p><i>Results:</i> On June 28, 2004, the defendant (a U.S. citizen) pleaded guilty to transporting undocumented aliens for private financial gain. The defendant was sentenced to 6 months of imprisonment.</p>

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**Appendix V: Examples of Alien-Smuggling  
Cases Prosecuted in Federal District Courts**

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Source: GAO summary of press releases (January through June 2004) by U.S. Attorney's Office, Southern District of Texas, and sentencing information provided by the Executive Office for U.S. Attorneys.

<sup>a</sup>The press releases from this district did not cite U.S. Attorney case numbers.

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# Appendix VI: Possible Effects of Not Having a Civil Forfeiture Provision for Real Property Used to Facilitate Alien Smuggling

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In March 2005, on the basis of its survey of U.S. Attorneys Offices along the southwest border, the Department of Justice provided us summary examples of recent or pending alien-smuggling cases in which real property used to facilitate the offense could not be forfeited because of the absence of statutory civil forfeiture authority. According to Justice, the following summaries are illustrative of typical cases that recur with great frequency.

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## District of Arizona

The Phoenix office of the United States Attorney for the District of Arizona reported a variety of instances in which the absence of a civil forfeiture statute for real property used to commit an alien-smuggling offense precluded the forfeiture of the property. In one case, the government did not discover that the alien smuggler owned real property that he had used to commit the offense until after the criminal case was over. At that point it was too late to seek criminal forfeiture of the property, because criminal forfeiture must be imposed as part of the defendant's sentence, and the absence of civil forfeiture made it impossible to recover the property. Therefore, the property remained in the hands of the convicted smuggler.

In two other cases, the U.S. Attorney was unable to forfeit stash houses used to hold illegal aliens because the houses were rented from third parties, who could not be charged with the criminal offense. In the absence of civil forfeiture authority, the government was powerless to forfeit these properties, even after the government sent the landlords warning letters giving them notice that their property was being used illegally and advising them to take steps to stop the illegal use.<sup>1</sup>

The Tucson office of the United States Attorney for the District of Arizona reported having cases in which properties used to store illegal aliens are owned by corporations. Because the corporations themselves are not prosecuted criminally for the alien-smuggling offenses, there was no possibility of criminal forfeiture of the properties, even if the alien smugglers were convicted.

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<sup>1</sup>Justice noted that, in some instances, the federal authorities were able to refer cases to the Arizona Attorney General for civil forfeiture under Arizona law.

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## Central District of California

The United States Attorney for the Central District of California reported three separate incidents in the second half of calendar year 2004 in which a rental property was used as a stash house for the forced detention of large numbers of illegal aliens. In each case, the stash house was a virtual prison, complete with bars and steel gates. Those facts and other circumstances made it likely that the landlord was aware of the purposes for which the properties were being used. Thus, the landlord would not have been able to assert a valid innocent owner defense to a civil forfeiture action. However, there was insufficient evidence to charge the landlord (as opposed to the tenant) with an alien-smuggling violation—thus, precluding criminal forfeiture of the property. As a result, given the absence of a civil forfeiture provision for real property, the rental properties used as stash houses were exempt from forfeiture.

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## Southern District of Texas

The United States Attorney for the Southern District of Texas reported having a pending case in which fugitives hiding in Mexico owned real property in Texas that they have used as a staging area for alien smuggling. Because the property owners are fugitives, there is no possibility of forfeiting the property criminally. Also, in the absence of a civil forfeiture statute for real property, there is no possibility of forfeiting the property civilly.

The same office reported being currently engaged in active investigations of cases in which hotels, motels, and private homes are used as staging areas for alien smuggling. Typically, the properties are temporary holding sites for aliens awaiting transport. In most cases, the owners of the properties are relatives of the smugglers—and, therefore, are aware of the smuggling activity—but are not themselves engaged in the smuggling operation. Thus, it is unlikely that any of the properties could be forfeited criminally.

# Appendix VII: Comments from the Department of Homeland Security

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



**Homeland  
Security**

May 17, 2005

Mr. Richard Stana  
Director, Homeland Security and Justice  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Dear Mr. Stana:

RE: Draft Report GAO-05-305, Combating Alien Smuggling: Opportunities Exist to Improve the Federal Response (GAO Job Code 440317)

The Department of Homeland Security (DHS) appreciates the opportunity to review and comment on the Government Accountability Office's draft report. The auditors identified areas where action can be taken to improve anti-smuggling efforts and yet recognized on-going efforts and accomplishments. We generally agree with the findings and recommendations made.

The auditors determined that the DHS' components are using financial investigative techniques to follow the money trail and that seizure of smuggling organizations' monetary assets are increasing. For example, the U.S. Immigration and Customs Enforcement (ICE) seizures totaled \$7.8 million from alien-smuggling investigations for the first six months of fiscal year 2005 compared to \$7.3 million for all of fiscal year 2004.

The report notes several of the reasons why ICE has not finalized its national strategy for combating alien smuggling, including the need to incorporate lessons learned from prior successful efforts to deter migrant smuggling and related violence in Arizona and the evolving relationship between ICE and U.S. Customs and Border Protection (CBP). For instance, to fight violent human smuggling and trafficking gangs in Phoenix, Arizona, and the surrounding area, ICE launched Operation ICE Storm – an unprecedented multi-agency initiative to dismantle the organized criminal enterprises that have made human smuggling a profitable but dangerous business venture in the southwestern United States. ICE Storm is part of ICE's broader goal of fighting human smuggling and trafficking wherever it may occur in order to promote U.S. border security, improve the integrity of the nation's immigration system, and shut down vulnerabilities in the nation's homeland security.

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

ICE Storm's methodology brings to bear the broad statutory authorities and investigative expertise of ICE in a task force configuration to include several ICE offices, CBP, other federal agencies, and state and local law enforcement organizations. This task force approach combines the wide range of skills, enforcement tools, and legal authorities of several agencies – pooling resources to develop a more powerful weapon in the fight against human smuggling. One of ICE's most important contributions to this initiative is targeting smuggling organizations' money in order to disable their operations by crippling their financial infrastructure. ICE lends its experience in financial investigations to help state and local agencies follow the money trail in ways not before possible. In addition, ICE's authority for enforcing immigration law provides another powerful tool in the fight against human smuggling. These combined authorities allow DHS' components in conjunction with our law enforcement partners to simultaneously attack smuggling rings from multiple angles.

While Operation ICE Storm focuses on the Phoenix metropolitan area, the initiative is designed as a strategic model for similar anti-smuggling operations in other parts of the nation. This narrowed focus on the southwest border will allow ICE to review best practices and evaluate lessons learned before an expanded nationwide strategy is finalized. In the interim, ICE continues to provide guidance to the field in the form of training seminars and managerial conferences. ICE posts guidance and policy memoranda to the field on a web page available to every ICE Agent at his/her desktop for reference. This website is regularly reviewed and updated by the ICE Human Smuggling and Trafficking staff to ensure that the most recent guidance is available to the field at all times.

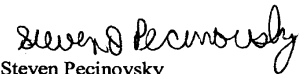
The report states that nationally about seven percent of ICE's total investigative hours were devoted to alien smuggling cases in fiscal year 2004. However, it should be emphasized that other investigative programs may at times have a nexus to alien smuggling and consequently the seven percent statistic is too low.

The report lists two recommendations, one of which is the establishment of a cost-effective mechanism for tracking the number and results of referrals by CBP to ICE. To clarify, ICE is capable of tracking referred investigations from CBP to ICE; however, there currently is not a mechanism in place for tracking the number of leads referred that do not generate investigations. The Sector Chiefs and Special Agents in Charge have developed operational partnerships at the local level that allow for the flexibility needed for dealing with unique circumstances within various border environments. Coordination efforts have been effective, although we recognize that there is always more that can be done. To that end, a six month joint review to examine implementation and compliance with a November 2004 Memorandum of Understanding (MOU) is currently underway. The purpose of the MOU was to address the roles and responsibilities of offices within CBP (Office of Border Patrol) and ICE (Office of Investigations), including provisions for sharing intelligence. Once the review is completed, CBP and ICE, in consultation with Border and Transportation Security, will work together to identify and implement a solution to address the recommendation.

We are pleased by the successful cooperative effort between ICE and CBP in this area. New initiatives based on the ICE Storm model of coordination and cooperation between federal, state, and local agencies have already been launched. For example, in March 2004, DHS launched the Arizona Border Control (ABC) initiative, led by ICE and CBP, to stop the flow of illegal immigration at the Arizona-Mexico border through aggressive policing, interagency cooperation, and increased surveillance by unmanned aerial drones. In June 2004, DHS launched the LAX Initiative, an intelligence driven operation to deter human smuggling at the Los Angeles International Airport, a key transportation hub used by criminal organizations to move smuggled migrants to destinations across the United States.

We are providing technical comments to your office under separate cover.

Sincerely,



Steven Pecinovsky  
Director  
Departmental GAO/OIG Liaison Office

MMcP

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