



Report to the Chairman
Committee on Homeland Security
House of Representatives

January 2017

BORDER PATROL

Actions Needed to Improve Oversight of Post-Apprehension Consequences

GAO Highlights

Highlights of [GAO-17-66](#), a report to the Chairman, Committee on Homeland Security, House of Representatives

Why GAO Did This Study

To address smuggling along the U.S. southwest border, the U.S. Border Patrol developed CDS—a process to classify each apprehended alien into criminal or noncriminal categories and apply consequences, such as federal prosecution. Each Border Patrol sector ranks up to eight consequences from Most to Least Effective and Efficient to reduce recidivism. GAO was asked to review and assess Border Patrol’s implementation of CDS across the southwest border. This report examines the extent to which Border Patrol (1) has a methodology for calculating recidivism that allows it to assess CDS program effectiveness, (2) applied consequences it determined to be most effective and efficient in each southwest border sector and (3) established guidance and controls to monitor field implementation of CDS.

GAO analyzed Border Patrol’s recidivism rate methodology; apprehension data and CDS application along the southwest border for fiscal years 2013 through 2015, the most recently available data; and DHS’s U.S. Immigration and Customs Enforcement data on alien removals. GAO also interviewed Border Patrol personnel and reviewed CDS guidance.

What GAO Recommends

GAO is making six recommendations to strengthen the methodology for measuring recidivism, assess reasons agents do not apply CDS guides’ Most Effective and Efficient consequence, and ensure performance management oversight. DHS concurred with all but one recommendation, which relates to strengthening its recidivism methodology, citing other means to measure CDS performance. GAO believes the recommendation remains valid, as discussed in the report.

View [GAO-17-66](#). For more information, contact Rebecca Gambler at (202) 512-8777 or gambler@gao.gov.

January 2017

BORDER PATROL

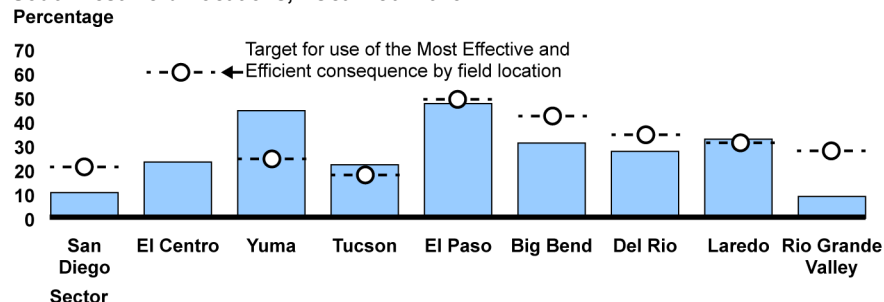
Actions Needed to Improve Oversight of Post-Apprehension Consequences

What GAO Found

The U.S. Border Patrol (Border Patrol), an office within the Department of Homeland Security’s (DHS) U.S. Customs and Border Protection, uses an annual recidivism rate to measure performance of the Consequence Delivery System (CDS)—a process that identifies consequences as Most Effective and Efficient to deter illegal cross border activity in each sector—however, methodological weaknesses limit the rate’s usefulness for assessing CDS effectiveness. GAO found that Border Patrol’s methodology does not account for an alien’s apprehension history beyond one fiscal year and neither accounts for nor excludes apprehended aliens for whom there is no record of removal after apprehension and who may have remained in the United States without an opportunity to recidivate. GAO’s analysis of recidivism for fiscal year 2015 considering these factors showed a 29 percent recidivism rate, compared to Border Patrol’s 14 percent recidivism rate. Border Patrol could more accurately assess recidivism and CDS effectiveness by strengthening its recidivism rate methodology, such as by using an alien’s apprehension history beyond one fiscal year and excluding aliens for whom there is no record of removal from the United States.

Agent application of consequences Border Patrol identified in CDS guidance as the Most Effective and Efficient has declined from 28 percent in fiscal year 2013 to 18 percent in fiscal year 2015 across the southwest border. In addition, Border Patrol has not assessed reasons for the relatively low application of consequences determined to be the Most Effective and Efficient consequence in each sector; but some agency officials stated that challenges include agents’ hesitation to apply consequences that require referral to federal partners facing capacity constraints, such as Department of Justice immigration courts. Assessing why agents do not apply the Most Effective and Efficient consequence could inform Border Patrol of actions needed to increase application of Most Effective and Efficient consequences to reduce recidivism. Border Patrol established some mechanisms to facilitate monitoring field implementation of CDS, but lacked controls to ensure effective performance management. For example, six of nine field locations missed performance targets for application of the Most Effective and Efficient consequences in fiscal year 2015 as shown in the figure below. Ensuring consistent oversight of performance management would provide greater assurance that Border Patrol is most effectively using CDS to address cross-border illegal activity.

Target and Actual Use of the Most Effective and Efficient Consequence Across Border Patrol Southwest Field Locations, Fiscal Year 2015



Source: GAO analysis of U.S. Border Patrol data. | GAO-17-66

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Abbreviations

ATEP	Alien Transfer Exit Program
BOP	Bureau of Prisons
CBP	Customs and Border Protection
CDS	Consequence Delivery System
CDS PMO	Consequence Delivery System Project Management Office
DHS	Department of Homeland Security
DOJ	Department of Justice
EOIR	Executive Office for Immigration Review
ICE	Immigration and Customs Enforcement
OASSIS	Operation against Smugglers Initiative on Safety and Security
USAO	United States Attorney's Office
USMS	United States Marshals Service

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January 12, 2017

The Honorable Michael T. McCaul
Chairman
Committee on Homeland Security
House of Representatives

Dear Mr. Chairman:

Transnational criminal organizations represent a significant cross-border threat to homeland security, controlling most smuggling of drugs and guns, as well as an increasing percentage of human smuggling, according to the 2012-2016 U.S. Border Patrol (Border Patrol) Strategic Plan. To help break the smuggling cycle between U.S. ports of entry on the southwest border, Border Patrol, within the Department of Homeland Security's (DHS) U.S. Customs and Border Protection (CBP), developed the Consequence Delivery System (CDS) in 2011 that Border Patrol now uses across all U.S. borders.¹ CDS is a process by which Border Patrol agents are to classify each alien apprehended illegally crossing the border and then apply one or more post-apprehension consequences determined to be most effective and efficient to discourage alien recidivism, that is, further apprehensions for illegal cross-border activity.² Border Patrol agents classify alien apprehensions into one of seven types of criminal or noncriminal categories. The eight post-apprehension consequences range in severity from criminal prosecution in federal court to allowing an alien to voluntarily return to his or her home country.

Border Patrol established a CDS Program Management Office (CDS PMO) at headquarters to develop CDS guidance and provide analytical support for field implementation and oversight of the CDS program across

¹Ports of entry are facilities that provide for the controlled entry into or departure from the United States. Specifically, a port of entry is any officially designated location (seaport, airport, or land border location) where CBP officers or employees are assigned to clear passengers, merchandise and other items; collect duties; and enforce customs laws; and where CBP officers inspect persons seeking to enter or depart, or applying for admission into, the United States pursuant to U.S. immigration law.

²Under U.S. immigration law, an "alien" is any person that is not a U.S. citizen or national. See 8 U.S.C. § 1101(a)(3). According to the National Institute of Justice, recidivism refers to a person's relapse into criminal behavior, often after the person receives sanctions or undergoes intervention for a previous crime.

all border locations, including the nine southwest Border Patrol sectors.³ Such support includes working with sector personnel to develop a CDS guide each fiscal year that is unique to each sector which ranks each of the available consequences from most effective and efficient to least effective and efficient for each of the seven alien categories.⁴ As circumstances permit, Border Patrol agents are to apply consequences to each alien according to the relative rankings in each sector's CDS guide, and Border Patrol assesses CDS program effectiveness using various performance indicators that include the rate of recidivism for aliens illegally crossing the border between the ports of entry on the southwest border. DHS also uses the CDS program recidivism rate for the southwest border as one performance measure, among others, to report on the status of U.S. border security.

You asked us to review and assess Border Patrol's implementation of CDS across the southwest border. This report addresses the following three questions:

- (1) To what extent does Border Patrol's methodology for calculating recidivism allow the agency to assess CDS program effectiveness?
- (2) To what extent have Border Patrol agents applied the consequences identified in CDS guides as most effective and efficient in each southwest border sector?
- (3) To what extent has Border Patrol established guidance and controls to monitor field implementation of CDS?

³CBP has divided geographic responsibility for the southwest border, which covers the U.S.-Mexican border along four states—California, Arizona, New Mexico and Texas—among nine Border Patrol sectors, each of which has a headquarters with management personnel. These sectors are San Diego and El Centro in California; Yuma, which covers parts of California and Arizona; Tucson in Arizona; El Paso in New Mexico and a part of Texas; and Big Bend, Del Rio, Laredo and Rio Grande Valley in Texas. These sectors are further divided geographically into varying numbers of stations, with agents assigned to patrol defined geographic areas. In September 2012, Border Patrol also implemented CDS in its Northern and Coastal border sectors.

⁴Specifically, for each of the seven alien types, consequences are ranked as Most Effective and Efficient, Highly Effective and Efficient, Effective and Efficient, Less Effective and Efficient, Least Effective and Efficient, or Not Applicable.

To answer these questions, we reviewed Border Patrol's implementation of CDS from fiscal years 2013 through 2015 across all nine Border Patrol sectors along the southwest border. We reviewed policies and procedures related to CDS, such as Border Patrol procedures for developing a CDS guide. We obtained and analyzed data from Border Patrol on apprehensions and the use of CDS along the southwest border from fiscal year 2013 through fiscal year 2015.⁵ We also examined the outcomes of Border Patrol apprehensions of aliens in fiscal years 2014 and 2015, including obtaining and analyzing U.S. Immigration and Customs Enforcement (ICE) data on enforcement actions and case status for these aliens. We assessed the reliability of these data by reviewing system documentation, interviewing knowledgeable officials about system controls and conducting electronic testing, and we determined that the data were sufficiently reliable for the purposes of this report.

Further, we interviewed Border Patrol managers and agents from all nine southwest border sectors to obtain their views on CDS. Additionally, we visited three of Border Patrol's southwest border sectors—the San Diego, Tucson, and Rio Grande Valley sectors—to observe how agents in these sectors applied CDS in their operations. We selected these sectors to visit because they had the highest number of apprehensions in fiscal years 2014 and 2015 as well as the most consequences listed in their CDS guides for those fiscal years. We also interviewed officials at Border Patrol headquarters, including staff from CDS PMO, about CDS guidance and implementation throughout the southwest border and reviewed program documentation. We reviewed our prior reports on Border Patrol,⁶ and reports by the Congressional Research Service⁷ and the DHS Inspector General.⁸ We compared the results of our analyses against

⁵Fiscal years 2013 through 2015 represented the first and most recent years of complete apprehension data since the implementation of CDS, when Border Patrol provided us apprehension data in March 2016 for this report.

⁶GAO, *Border Patrol: Key Elements of New Strategic Plan Not Yet in Place to Inform Border Security Status and Resource Needs*, [GAO-13-25](#) (Washington, D.C.: Dec. 10, 2012); *Border Security: Opportunities Exist to Strengthen Collaborative Mechanisms along the Southwest Border*, [GAO-14-494](#) (Washington, D.C.: June 27, 2014); and *Alien Smuggling: DHS Needs to Better Leverage Investigative Resources and Measure Program Performance along the Southwest Border*, [GAO-10-328](#) (Washington, D.C.: May 24, 2010).

⁷Congressional Research Service, *Border Security Metrics Between Ports of Entry*, R44386 (Washington, D.C.: February 2016).

⁸Department of Homeland Security Office of Inspector General, *Streamline: Measuring Its Effect on Illegal Border Crossing*, OIG-15-95 (Washington, D.C.: May 2015).

Standards for Internal Control in the Federal Government,⁹ best practices identified in our Cost Estimating and Assessment Guide,¹⁰ and Border Patrol's policies and procedures for CDS.

To address our first question regarding the extent to which Border Patrol's methodology for calculating recidivism allows the agency to assess CDS program effectiveness, we reviewed Border Patrol's methodology for measuring recidivism included in DHS's strategic plan and annual performance reports. We analyzed Border Patrol's data on apprehensions to calculate recidivism for the entire southwest border using Border Patrol's methodology.¹¹ To provide context on how the recidivism rate may be affected by different methodologies, we also used alternative methodologies to calculate recidivism rates using an alien's apprehension history over an expanded timeframe and accounted for the ICE reported case status of an alien after apprehension.¹² Specifically, we calculated recidivism rates using aliens' apprehension history from fiscal years 2013 through 2015 and accounted for the ICE reported removal status from fiscal years 2014 through 2015. We compared the results of our analysis to Border Patrol's reported recidivism rate, and assessed the extent to which Border Patrol's methodology for calculating recidivism allows Border Patrol management to perform monitoring activities that are consistent with *Standards for Internal Control in the Federal Government*.¹³ We also interviewed officials from DHS' Performance, Analysis and Evaluation division, which oversees the management of the

⁹GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington, D.C.: Nov. 10, 1999).

¹⁰GAO *Cost Estimating and Assessment Guide: Best Practices for Developing and Managing Capital Program Costs (Supersedes GAO-07-1134SP)*, [GAO-09-3SP](#) (Washington, D.C.: Mar. 2, 2009). The methodology outlined in this guide is a compilation of best practices that federal cost-estimating organizations and industry use to develop and maintain reliable cost estimates throughout the life of a government program. This guide states that cost estimates used to make decisions or allocate resources should be well documented, comprehensive, accurate, and credible. We used this guide to assess the accuracy and credibility of Border Patrol's cost estimates for CDS consequences because Border Patrol uses these cost estimates to inform decision-making about the CDS program.

¹¹The Border Patrol apprehension data are retained in the "E3" module of ENFORCE Integrated Database (EID).

¹²Appendix 1 provides detailed information on the alternative methods we used to calculate the recidivism rate. ICE data on case status of apprehended aliens are retained in ICE's EID.

¹³[GAO/AIMD-00-21.3.1](#).

department's performance measures, including assessing high priority areas such as the effectiveness of DHS's efforts to secure the U.S. border.

To address our second question on the extent to which Border Patrol agents applied the consequences identified in CDS guides as Most Effective and Efficient in each southwest border sector, we compared the Most Effective and Efficient consequence Border Patrol identified in each sector's CDS guide to consequences Border Patrol agents recorded applying to each alien in Border Patrol's apprehension database (the term Most Effective and Efficient consequence will be used throughout this report to denote Border Patrol's highest-ranked consequence within each CDS guide). Specifically, we made this comparison for Border Patrol apprehensions in fiscal years 2013 through 2015 to obtain results for the southwest border overall as well as across each of the nine Border Patrol sectors and seven alien classifications. We discussed any challenges Border Patrol agents may face in applying the Most Effective and Efficient consequence identified in CDS guides, with sectors' management and staff. We also interviewed officials from federal partners that are involved with implementing certain CDS consequences. These partners include ICE, which detains aliens, litigates charges of removability in immigration court proceedings and removes aliens from the United States; and the Department of Justice (DOJ), which adjudicates administrative removal proceedings or prosecutes criminal offenses in federal court. Within DOJ, we spoke with officials from the U.S. Marshals Service (USMS), which provides pretrial detention services for criminal prosecutions, and the United States Attorney's (USAO) in the Southern District of Texas, the District of Arizona, and the Southern District of California. These offices conduct criminal prosecutions within their respective districts along the southwest border.¹⁴

To address our third question on the extent to which Border Patrol has established guidance and controls to monitor field implementation of CDS, we reviewed CDS PMO's guidance to sectors on implementing CDS, including existing guidance on estimating costs to implement various consequences and policies and procedures for monitoring performance and data integrity. Specifically, we analyzed CDS PMO's

¹⁴These three federal judicial districts—the Southern District of Texas, the District of Arizona, and the Southern District of California correspond geographically to the three sectors we visited and receive cases from the Rio Grande Valley, Tucson and San Diego Border Patrol sectors, respectively.

controls over field development and use of CDS cost estimates for fiscal years 2013 through 2015 by reviewing and assessing cost estimates developed by eight sectors¹⁵ implementing this guidance to determine the accuracy, consistency, and completeness of these estimates and compared our findings to best practices identified in our Cost Estimating and Assessment Guide.¹⁶ We compared CDS performance results for each sector to their respective performance targets in fiscal year 2015. We also analyzed Border Patrol's internal controls established to ensure alien classifications in the apprehension database are accurate and consistent and compared our findings to Border Patrol guidance on data integrity and *Standards for Internal Control in the Federal Government*.¹⁷

We conducted this performance audit from October 2015 to January 2017 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Border Patrol is to apply consequences under CDS to all apprehended aliens, which numbered over 1.1 million along the southwest border from fiscal year 2013 through 2015.¹⁸ Border Patrol agents implement CDS by classifying apprehended aliens into one of seven noncriminal or criminal categories and then applying one or more of eight different consequences

¹⁵ Border Patrol did not provide us cost estimates for the Yuma sector.

¹⁶ [GAO-09-3SP](#).

¹⁷ [GAO/AIMD-00-21.3.1](#).

¹⁸ DHS reports that consequences for approximately two percent of Border Patrol apprehensions on the southwest border are not tracked in CDS or included in CDS performance metrics, including the recidivism rate. Individuals with respect to which CDS consequences are not tracked include juvenile aliens under age 14 or those older than 79, and certain other categories of aliens for whom Border Patrol generally does not take fingerprints (or other biometric identifiers), or issue a Fingerprint Identification Number. See 8 C.F.R. § 235.1(f)(1)(iv).

categorized as criminal, administrative or programmatic.¹⁹ Border Patrol guidance states that Border Patrol agents must apply at least one administrative consequence to every apprehended alien but may apply more than one consequence, including using a mix of administrative, criminal and programmatic consequences to a single apprehended alien.²⁰ Figure 1 provides an overview of CDS alien classifications and Figure 2 provides an overview of possible consequences under CDS.

Figure 1: Alien Classifications in Border Patrol’s Consequence Delivery System

	Alien classification	Definition
Noncriminal categories	First time apprehension	The first apprehension of a deportable alien by the Border Patrol ever. ^a
	Second or third time apprehension	The second or third apprehension of a deportable alien by the Border Patrol ever. ^a
	Persistent apprehension	The fourth or greater apprehension of a deportable alien by the Border Patrol ever. ^a
	Family unit apprehension	The apprehension of a deportable alien who is accompanied by a dependent.
Criminal categories	Suspected smuggler apprehension	The apprehension of a deportable alien who has either been positively identified or suspected of having a nexus to a criminal smuggling organization and was acting in that capacity when apprehended.
	Targeted smuggler apprehension	The apprehension of a deportable alien who has been identified as having a nexus to a criminal or smuggling organization and for whom an investigative file, preapproved prosecution, or other similar identifier or predetermined course of action exists.
	Criminal alien apprehension	The apprehension of a deportable alien with any prior criminal convictions.

Source: GAO analysis of U.S. Border Patrol data. | GAO-17-66

^aApprehensions of this alien by other federal, state or local agencies are not counted.

¹⁹Border Patrol uses an administrative consequence for every apprehension. Administrative consequences are those that do not involve criminal prosecution nor are part of a special program or initiative. See 8 U.S.C. §§ 1225(a)(4) (withdrawal of application for admission, i.e., voluntary return), (b) (expedited removal); 1229 & 1229a (initiation and conduct of formal removal proceedings); 1231(a)(5) (reinstatement of removal). Criminal consequences involve criminal prosecution in the federal district or magistrate court system, or in cooperation with the Government of Mexico. See, e.g., 8 U.S.C. §§ 1321-1330 (general penalty provisions under U.S. immigration law including penalties for illegal entry or reentry); 18 U.S.C. §§ 1541-47 (criminal penalties for immigration-related fraud). Programmatic consequences are associated with agency programs or initiatives, such as efforts to disrupt the cycle of smuggling.

²⁰In fiscal year 2013, another consequence—Quick Court—was also available in the Tucson sector. Quick Court was a process in which an immigration judge held immigration hearings on site at the Tucson sector Processing Center. However, Quick Court does not appear in later years’ CDS guides for any of the nine southwest sectors.

Figure 2: Consequences in Border Patrol’s Consequence Delivery System (CDS) as of Fiscal Year 2015

	CDS consequence	Definition
Administrative consequences	Voluntary return	Border Patrol allows an alien to depart voluntarily from the United States in lieu of being subject to formal removal or expedited removal proceedings.
	Expedited removal ^a	Border Patrol immediately processes the alien for an expedited removal order.
	Reinstatement of removal ^b	For aliens previously ordered removed, Border Patrol reinstates an alien’s prior order of removal without additional review.
Programmatic consequence	Warrant/Notice to Appear	Border Patrol processes and initiates removal proceedings against the alien with the intent that the alien should be detained in Department of Homeland Security custody pending a hearing before an immigration judge.
	Alien Transfer Exit Program (ATEP)	Border Patrol repatriates Mexican nationals through geographic areas different from that of their entry location.
Criminal consequences	Operation Against Smugglers Initiative on Safety and Security (OASISS)	OASISS is a bilateral criminal prosecution agreement between the United States and the Government of Mexico, which allows Border Patrol to refer Mexican citizens suspected of smuggling aliens in the United States to be sent to Mexico for prosecution by the Government of Mexico.
	Streamline ^c	Border Patrol refers aliens entering the United States illegally for the first time or attempting reentry to the Department of Justice for criminal misdemeanor prosecution.
	Standard prosecution	Border Patrol refers the apprehended alien to the Department of Justice for criminal felony prosecution for violation of U.S. immigration laws and/or any other federal laws that U.S. Customs and Border Protection has the authority to enforce.

Source: GAO analysis of U.S. Border Patrol data. | GAO-17-66

^aAn arriving or other designated alien deemed inadmissible under sections 212(a)(6)(C), or (a)(7) of the Immigration and Nationality Act (INA), as amended, is subject to an expedited removal order if (1) the alien did not indicate either an intention to apply for asylum or a fear of persecution, or (2) the alien was referred for a credible fear interview with an asylum officer but the asylum officer found the alien does not have a credible fear of persecution (the alien may request that an immigration judge review the asylum officer’s negative determination). See 8 U.S.C. § 1225(b); 8 C.F.R. § 208.30.

^bA prior removal order is reinstated and enforced for an alien who has illegally reentered after being removed or departing voluntarily, if he or she (1) did not express a fear of returning to the country of removal; or (2) the alien was referred for a reasonable fear interview with an asylum officer but the asylum officer found that the alien does not have a reasonable fear of persecution or torture (the alien may request that an immigration judge review the asylum officer’s negative determination). See 8 U.S.C. § 1231(a)(5); 8 C.F.R. §§ 208.31, 241.8.

^cAccording to Border Patrol, Streamline was renamed the Criminal Consequence Initiative in fiscal year 2016.

To assist Border Patrol agents in selecting the most appropriate consequence, Border Patrol rank orders these consequences from Most Effective and Efficient to Least Effective and Efficient for each alien

classification and presents this information in a CDS guide. Figure 3 provides an example of one sector's CDS guide for fiscal year 2015.²¹

Figure 3: Example of a Consequence Delivery System (CDS) Guide, Fiscal Year 2015

Alien classification	Consequence						
	Federal prosecution	Streamline	Expedited removal	Warrant/notice to appear	Reinstatement of removal	Alien Transfer Exit Program	Voluntary return
First apprehension	●	○	●	●	○	○	○
Second/third apprehension	●	●	●	●	●	○	○
Persistent alien	●	●	●	○	●	○	○
Family unit	○	○	●	●	●	○	○
Suspected smuggler	●	○	●	●	●	○	○
Targeted smuggler	●	●	●	○	●	○	○
Criminal alien	●	●	●	○	○	●	○

● Most Effective and Efficient ● Effective and Efficient ○ Least Effective and Efficient
 ● Highly Effective and Efficient ○ Less Effective and Efficient ○ Not applicable

Source: U.S. Border Patrol. | GAO-17-66

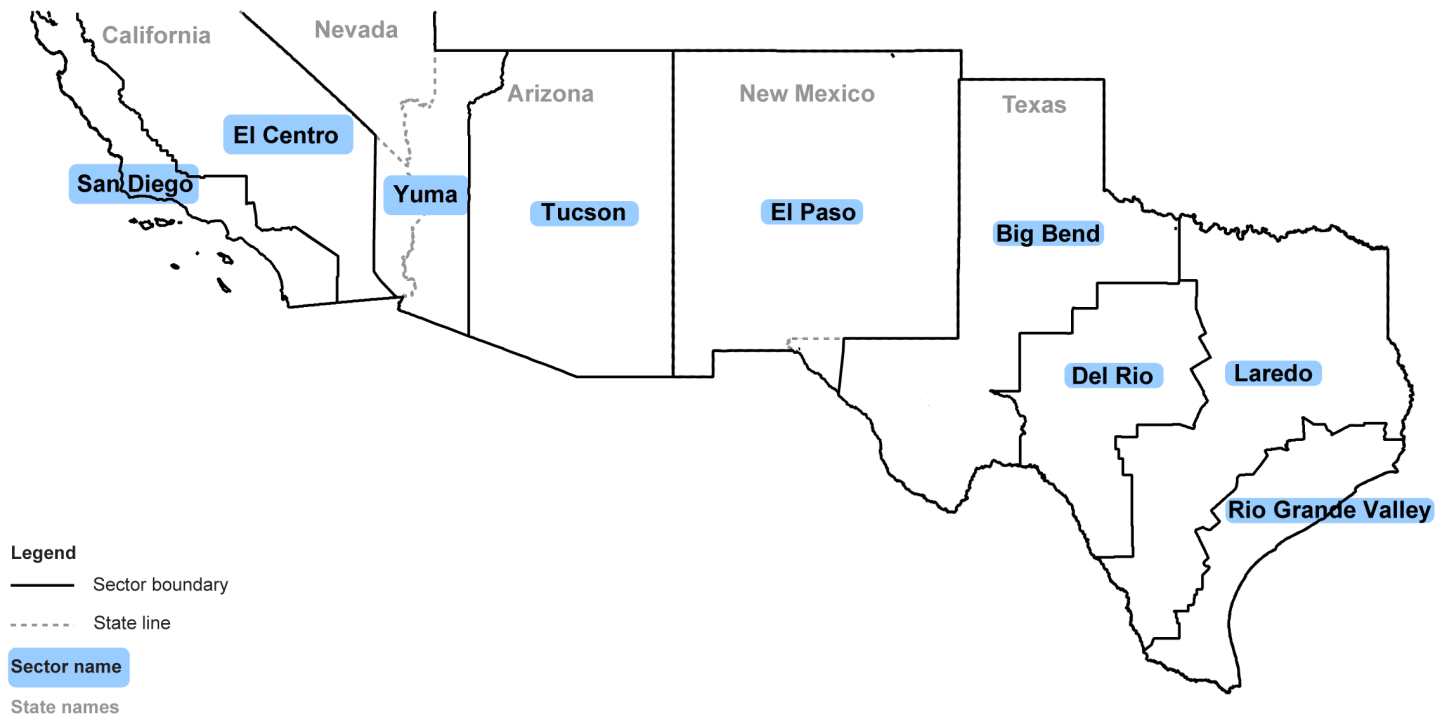
Note: OASSIS does not appear in this sector's fiscal year 2015 CDS guide, because the sector determined OASSIS was not applicable to any alien types.

According to CDS guidance, Border Patrol agents are encouraged to reference their sectors' CDS guide to select the Most Effective and Efficient consequence based upon the alien's classification. According to CDS PMO officials, agents can use discretion in selecting the consequence or consequences they apply to an alien based upon the circumstances of the subject's apprehension, federal partner agencies' capacity to provide support, and the prioritization of a consequence in that sector.

CDS PMO is responsible for providing guidance, training, analytical and other support to sectors for implementation of the CDS guide. See figure 4 for a map of Border Patrol's southwest border sectors' boundaries.

²¹CDS guides are updated on an annual and sector-specific basis. Some sectors' CDS guides do not list all consequences under CDS if the consequences are not available in that location.

Figure 4: Southwest Border Patrol Sectors



Source: U.S. Border Patrol, Mapinfo (map). | GAO-17-66

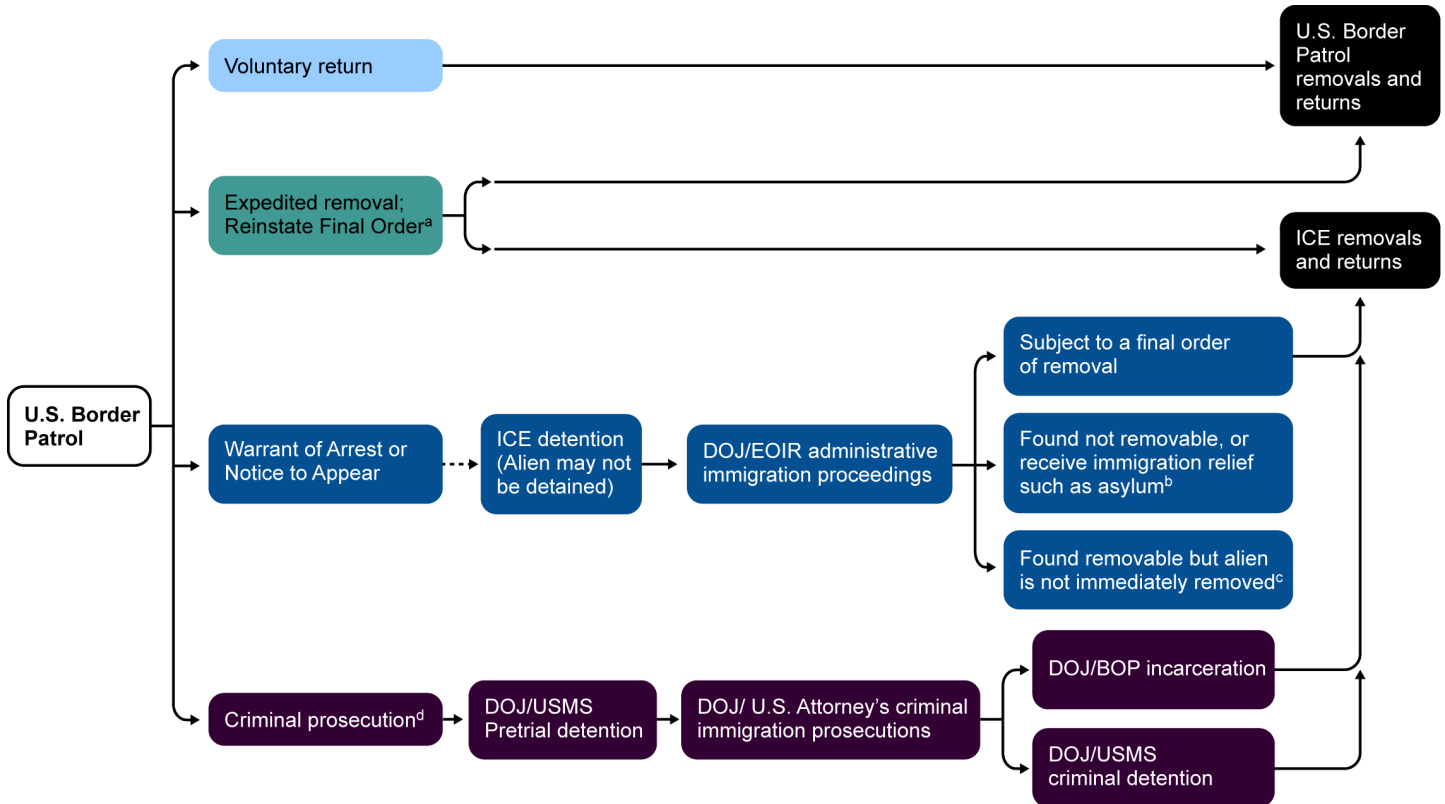
CDS PMO facilitates the annual development of a CDS guide for each sector. To develop each sector’s CDS guide, CDS PMO annually surveys sector management and uses the results of these surveys to inform the ranking of consequences. CDS PMO also requires each sector to convene at least 15 field staff (such as Border Patrol agents) to assess 15 factors related to the efficiency and effectiveness of each consequence for each alien classification. These factors include performance-related factors, such as the extent to which a consequence reduces recidivism; cost-related factors, such as Border Patrol’s cost to administer the consequence; and schedule-related factors, such as the amount of time it takes Border Patrol to apply a single consequence. To facilitate the annual process, CDS PMO program staff present previous year’s data to field staff related to 12 factors—such as the sectors’ estimated cost and recidivism rate for each consequence—and direct field staff to use their professional judgement for the remaining 3 factors (the extent a consequence requires the assistance of strategic partners, is perceived as severe by apprehended aliens, and has a deterring effect on other aliens who consider crossing the border illegally). In addition to soliciting

sector staff preferences, sector management complete a survey in which they are to prioritize factors regardless of the alien classification. After analyzing these results from sector staff and management, CDS PMO staff create a sector-specific guide that reflects the consequences' ranking from Most Effective and Efficient (for the highest ranked consequence), to Highly Effective and Efficient, Effective and Efficient, Less Effective and Efficient, and Least Effective and Efficient (for the lowest ranked consequence).

Most consequences available under CDS require the cooperation and resources of other federal agencies to detain, prosecute, litigate, and adjudicate removability of, or remove persons apprehended by Border Patrol, (see figure 5). DHS's ICE oversees detention facilities for persons awaiting administrative adjudication of their removability from the United States and eligibility for any requested relief or protection from removal by DOJ's Executive Office for Immigration Review (EOIR), and for persons awaiting ICE removal from the United States to their home country pursuant to a final order of removal.²² Additionally, DOJ's USMS oversees detention for persons awaiting prosecution for criminal immigration and other offenses by DOJ's USAO. Those convicted of a criminal immigration offense and sentenced to a term of imprisonment are incarcerated by DOJ's Bureau of Prisons.

²² The Immigration and Nationality Act, as amended, provides DHS with broad discretion (subject to certain legal standards) to detain, or release aliens on bond, conditional parole or terms of supervision, depending on the circumstances and statutory basis for detention. The law requires DHS to detain particular categories of aliens such as those deemed inadmissible for certain criminal convictions or terrorist activity. See 8 U.S.C. §§ 1225, 1226, 1226a, 1231.

Figure 5: Federal Agency Roles in Administering Consequences in the Consequence Delivery System



Legend

ICE U.S. Immigration and Customs Enforcement USMS U.S. Marshals Service
 DOJ Department of Justice BOP Bureau of Prisons
 EOIR Executive Office for Immigration Review

Source: GAO analysis of Department of Homeland Security Congressional Budget Justification. | GAO-17-66

^aThese actions are also applied in conjunction with the Alien Transfer Exit Program. For the Operation Against Smugglers Initiative on Safety and Security, Border Patrol sectors' prosecution and international liaison unit coordinates with officials from the Government of Mexico to coordinate transfer.

^bRemoval proceedings conclude with the respondent being found not removable or obtaining relief or protection from removal in the United States.

^cRemoval proceedings conclude with the respondent ordered removed, but removal order has not become administratively final, or a final order of removal has not yet been effectuated by ICE/Enforcement and Removal Operations.

^dCriminal Prosecution includes both Streamline and Standard Prosecution.

Border Patrol Methodology for Calculating Recidivism Makes It Difficult to Assess Effectiveness of the Consequence Delivery System

Border Patrol uses an annual recidivism rate for the southwest border, along with other performance indicators, to monitor the effectiveness of CDS; however, weaknesses in the methodology used to calculate this rate limit its usefulness in assessing CDS.²³ Border Patrol calculates its recidivism rate on an annual basis by dividing the total number of aliens apprehended multiple times within the fiscal year over the total number of aliens apprehended in that same fiscal year, as shown in figure 6. Border Patrol uses this rate among other performance indicators to assess the effectiveness of CDS, and DHS also reports the rate in its Annual Performance Report as one of six performance measures to assess efforts securing U.S. air, land and sea borders.

Figure 6: Border Patrol’s Annual Southwest Border Recidivism Rate Calculation

$$\frac{\text{Aliens apprehended multiple times within the fiscal year}}{\text{Total aliens apprehended in fiscal year}} = \text{Annual Recidivism Rate}$$

Source: GAO analysis of the Department of Homeland Security Annual Performance Reports. | GAO-17-66

In addition to using the recidivism rate to monitor performance of each Border Patrol sector, Border Patrol uses the recidivism rate to determine the effectiveness of CDS consequences and incorporates the recidivism rate into risk assessments it uses to make resource allocation decisions.²⁴ However, two limitations in the rate’s methodology hinder its usefulness in providing a complete picture of CDS effectiveness. These two limitations include (1) not accounting for an alien’s apprehension history beyond one fiscal year, and (2) not excluding apprehended aliens for whom ICE has no record of removal and who may remain in the United States.

Alien apprehension history over multiple fiscal years. Border Patrol’s methodology for calculating recidivism—the percent of aliens apprehended multiple times along the southwest border within a fiscal year—limits its ability to assess CDS effectiveness because this

²³In addition to the recidivism rate, Border Patrol tracks the average number of apprehensions per recidivist and the use of Most Effective and Efficient consequence and the use of Least Effective and Efficient consequence as performance metrics for CDS.

²⁴Border Patrol’s risk assessment methodology, State of the Border Risk Methodology, estimates the magnitude of risk through the use of intelligence information, a detailed awareness of threats at the border, and a standardized measure of risk. Border Patrol risk assessment methodology, which became operational in fiscal year 2014, monitors certain metrics at the sector level (including the recidivism rate, among others) and employs the results of the risk assessment to make day-to-day decisions with regard to how it uses its resources.

calculation does not account for an alien’s apprehension history over multiple years. We and the DHS Office of Inspector General have identified limitations with this methodology. In a 2015 report, the DHS Office of Inspector General found that Border Patrol’s recidivism rate methodology did not fully measure performance results because its recidivism rate did not reflect an alien’s re-apprehension over multiple years.²⁵ Specifically, the Office of Inspector General found the methodology did not properly account for persons apprehended near the end of a fiscal year who may re-cross the border a short time later in the new fiscal year, and recommended DHS develop and implement performance measures that track alien recidivism and re-apprehension rates over multiple fiscal years. DHS concurred with this recommendation and stated that it would address it as part of its broader State of the Border Risk Methodology— a strategy to identify high-risk areas along the border and to use this information to support decisions regarding the deployment of Border Patrol resources. However, in May 2016, CBP officials told us that the State of the Border Risk Methodology incorporates the same recidivism rate methodology discussed in the DHS Inspector General’s finding and is not intended to measure or report on performance of border security efforts overall. As of September 2016, the DHS Office of Inspector General’s recommendation to track recidivism over multiple fiscal years remained open.

Further, our analysis measuring recidivism on the southwest border using multiple years of Border Patrol apprehension data showed a higher recidivism rate than Border Patrol’s reported rate using one fiscal year of apprehension data. Specifically, using apprehension data we obtained from fiscal years 2013 through 2015, we found that 25 percent of aliens apprehended in fiscal year 2015 were recidivists over this time period, nearly double the Border Patrol-reported rate of 14 percent for fiscal year 2015. Additionally, while DHS reported in its Annual Performance Report for 2017 that the recidivism rate for the southwest border had decreased each year since the implementation of CDS in 2011, our analysis showed that the recidivism rate using apprehensions across multiple years had

²⁵Department of Homeland Security Office of Inspector General, *Streamline: Measuring Its Effect on Illegal Border Crossing*, OIG-15-95 (Washington, D.C.: May 2015)

increased from 21 percent in fiscal year 2014 to 25 percent in fiscal year 2015.²⁶

Apprehended aliens for whom there is no ICE record of removal from the United States. Another reason Border Patrol's methodology for calculating recidivism limits its ability to assess CDS effectiveness is because Border Patrol's calculation neither accounts for nor excludes apprehended aliens who may remain in the United States. According to ICE, aliens apprehended by Border Patrol may remain in the United States after their apprehension if they obtain immigration status or protection, or are awaiting the conclusion of immigration court proceedings or criminal trial, or are serving prison sentences, among other reasons.²⁷ Our analysis of Border Patrol and ICE data showed that Border Patrol included tens of thousands of aliens in the total number of aliens apprehended when calculating the recidivism rate for fiscal years 2014 and 2015, for whom ICE did not have a record of removal after apprehension and who may have remained in the United States without an opportunity to recidivate. Specifically, our analysis of ICE enforcement and removal data showed that about 38 percent of the aliens Border Patrol apprehended along the southwest border in fiscal years 2014 and 2015 may have remained in the United States as of May 2016. This percentage includes 133,594 of 334,427 aliens apprehended by Border Patrol in fiscal year 2014 and 88,693 of 256,223 aliens apprehended by Border Patrol in fiscal year 2015.

Our analysis measuring recidivism excluding aliens who ICE data show were not removed and may remain in the United States showed a higher

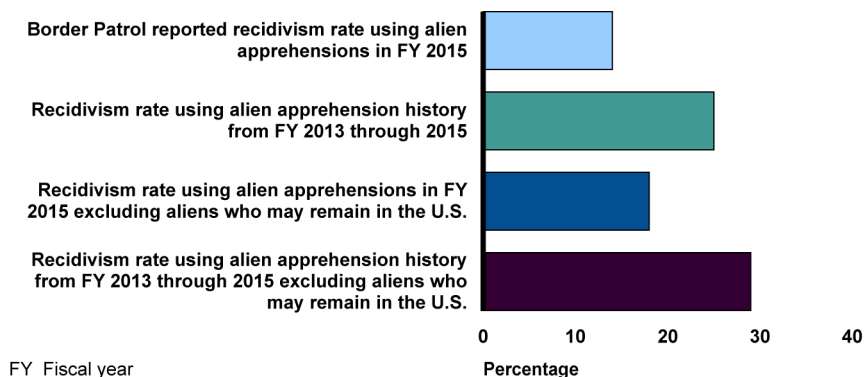
²⁶Appendix I provides the number of alien apprehensions subject to CDS, recidivism rates as calculated by Border Patrol, and a recidivism rate calculated using multiple years of data for each of the nine Border Patrol southwest border sectors as well as each of the alien classifications for fiscal year 2015. Our analysis measuring recidivism using multiple years of Border Patrol apprehension data potentially undercounts recidivism because we reviewed alien apprehensions from fiscal year 2013 through 2015 rather than an alien's full apprehension history. Therefore, we could not analyze the extent to which aliens apprehended during fiscal years 2013 through 2015 were previously apprehended in fiscal year 2012 or earlier.

²⁷Apprehended aliens with no record of removal may remain in the United States because they do not meet DHS's removal priorities, and could affirmatively apply for immigration benefits within the jurisdiction of the U.S. Citizenship and Immigration Services; or, if sought to be removed by DHS, may seek and ultimately obtain lawful immigration status or protection in immigration court, or be found not removable, or removable and not eligible for any requested relief or protection from removal. Apprehended aliens with no record of removal may also have departed the United States on their own accord.

recidivism rate than Border Patrol’s reported rate using all apprehended aliens regardless of removal status. Specifically, using apprehension data from fiscal year 2015 and excluding aliens Border Patrol apprehended but for whom ICE data show had not been removed from the United States, we calculated a recidivism rate of 18 percent compared to the DHS reported recidivism rate of 14 percent.

Further, our analysis measuring recidivism using both an alien’s apprehension history over multiple years and excluding aliens who may remain in the United States showed an even higher recidivism rate than Border Patrol’s reported recidivism rate or either method alone. Specifically, our analysis using a three year apprehension history—from fiscal year 2013 through 2015—and excluding aliens who may remain in the United States showed a recidivism rate of 29 percent for fiscal year 2015, compared to a 14 percent recidivism rate reported by Border Patrol as shown in figure 7.

Figure 7: Fiscal Year 2015 Southwest Border Recidivism Rates Calculated by Border Patrol and Accounting for Additional Factors



Source: GAO analysis of U.S. Border Patrol and U.S. Immigration and Customs Enforcement data. | GAO-17-66

CDS PMO officials stated that they include only one fiscal year of data in their recidivism rate calculation so that the agency can compare results and progress on an annual basis. However, analyzing apprehensions beyond one fiscal year to measure recidivism could provide Border Patrol with a more complete picture of CDS effectiveness and would not preclude Border Patrol from also comparing annual changes in the recidivism rate. While sector officials acknowledged that including apprehended aliens who may remain in the United States in the recidivism rate calculation is a limitation to assessing CDS effectiveness, Border Patrol headquarters officials stated that including aliens who may

remain in the United States serving prison sentences in the recidivism rate is appropriate because incarceration prevents recidivism. However, the extent to which a CDS consequence resulting in incarceration prevents recidivism for an alien would not be known until the alien is returned to his or her home country. Further, due to the lack of collaboration between Border Patrol and ICE, PMO and sector officials stated that they do not have access to ICE enforcement and removal data that would allow them to determine the number of aliens apprehended by Border Patrol who may remain in the United States, including those incarcerated. *Standards for Internal Control in the Federal Government* states that managers need operational data to determine whether they are meeting their goals.²⁸ Further, these standards state that information should be shared within the organization to ensure managers and others can effectively meet agency goals. Limitations in the methodology for calculating the recidivism rate hinder Border Patrol's ability to assess the effectiveness of CDS over time. Strengthening the recidivism rate methodology, such as by using an alien's apprehension history beyond one fiscal year and working with ICE to obtain access to alien case status data on removals to consider exclusion of aliens who may remain in the United States after their apprehension, would give Border Patrol a more complete assessment of recidivism along the southwest border. This in turn, would allow Border Patrol leadership to more effectively evaluate the extent to which CDS is supporting its goal of securing the border to better inform the effectiveness of CDS implementation and border security efforts. Additionally, more complete information about recidivism would help ensure that Border Patrol's risk assessments are accurate and that the decisions made based upon these risk assessments are sound.

²⁸ [GAO/AIMD-00-21.3.1](#). The update, GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014) effective beginning fiscal year 2016, further states that managers should use quality information on operational process to ensure the entity achieves its objectives and to assess the quality of performance over time.

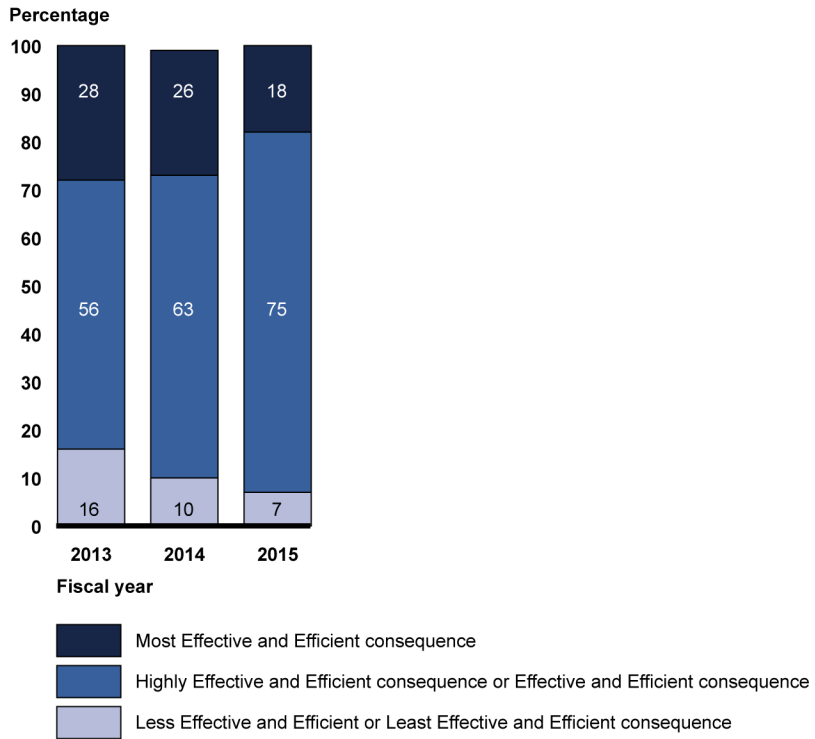
Border Patrol Agents Did Not Generally Apply the Consequence Identified in CDS guides as the Most Effective and Efficient in Each Southwest Border Sector

Our analysis of Border Patrol agents' application of the Most Effective and Efficient consequences as defined in each southwest border sector's CDS guide showed that agents applied the Most Effective and Efficient consequence for 18 percent of the approximately 300,000 apprehensions in fiscal year 2015, a decline over the previous two years.²⁹ Specifically, our analysis comparing results from fiscal year 2013 through fiscal year 2015 showed a decline in Border Patrol agents' application of the Most Effective and Efficient consequence from 28 percent of apprehensions in fiscal year 2013 to 26 percent of apprehensions in fiscal year 2014 to 18 percent of apprehensions in fiscal year 2015.³⁰ Over this three year time period, our analysis further showed that Border Patrol agents increasingly applied consequences CDS guides had identified as Highly Effective and Efficient as well as Effective and Efficient, and had decreased the application of the Less or Least Effective and Efficient consequences. Among more than 300,000 apprehensions in fiscal year 2015, Border Patrol applied a consequence CDS guides identified as Most Effective and Efficient 18 percent of the time, either Highly Effective and Efficient or Effective and Efficient 75 percent of the time, and Less- or Least-Effective and Efficient 7 percent of the time. (See figure 8 for Border Patrol's application of Most to Least Effective and Efficient consequences for fiscal years 2013 through 2015).

²⁹Border Patrol agents may apply multiple consequences for a single apprehension. To assess the frequency with which Border Patrol applied consequences in the CDS guides, we counted each apprehension based on the highest ranked consequence applied. For example, we included all apprehensions in which Border Patrol agents applied the Most Effective and Efficient consequence solely or in combination with other consequences as Most Effective and Efficient and only counted apprehensions in which a Less or Least Effective and Efficient consequence was given as Less or Least Effective and Efficient if no higher-ranked consequence was applied.

³⁰Appendix II provides the Most Effective and Efficient consequence for each sector and alien classification for fiscal years 2013 through 2015.

Figure 8: Percentage of Border Patrol Apprehensions for the Southwest Border by Agency Ranking of Consequence Applied



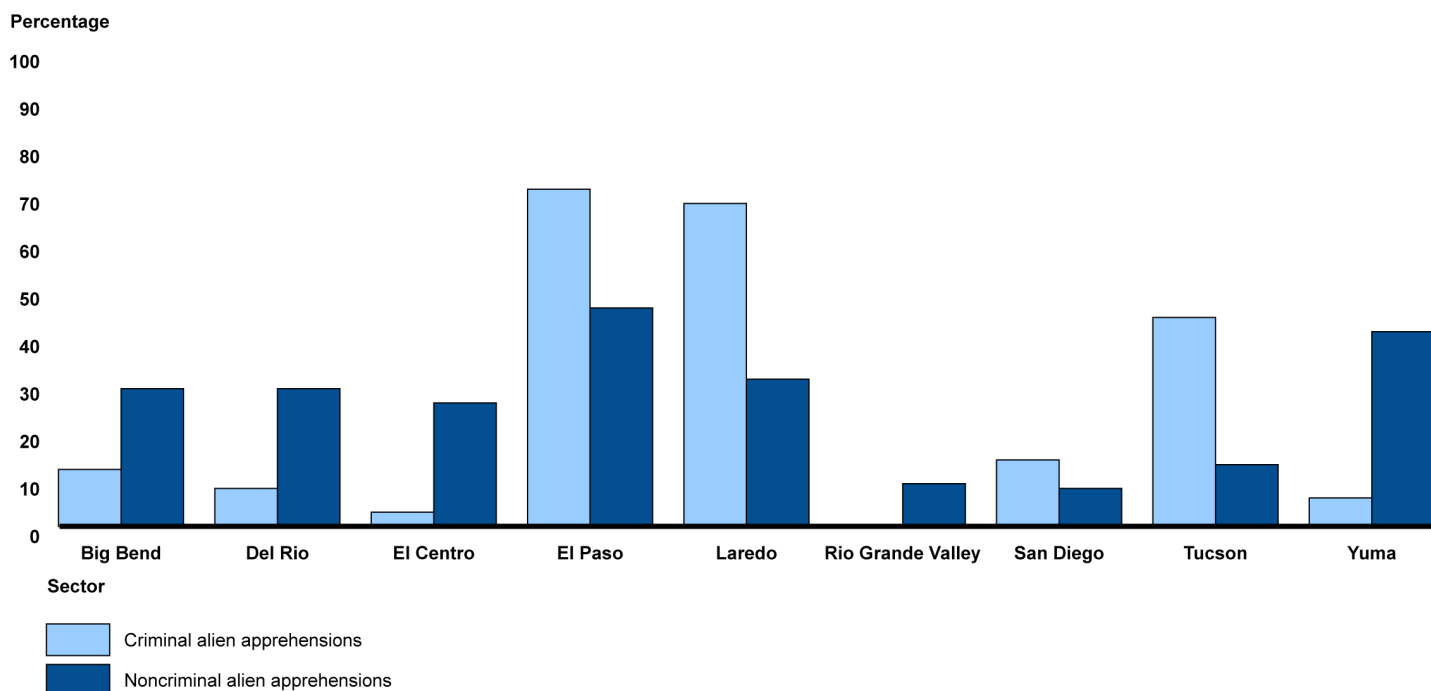
Source: GAO analysis of U.S. Border Patrol data. | GAO-17-66

Note: Border Patrol agents may apply multiple consequences for a single apprehension. To assess the frequency with which Border Patrol applied consequences in the Consequence Delivery System guides, we counted each apprehension based on the highest ranked consequence applied. Percentages do not add to 100 due to rounding.

Further our analysis showed that Border Patrol agents varied by up to 39 percentage points in their application of the Most Effective and Efficient consequence across the nine southwest border sectors, and applied the Most Effective and Efficient consequence more often to aliens classified as criminals than noncriminals. Specifically, Border Patrol agents in the El Paso sector applied the Most Effective and Efficient consequence for 48 percent of apprehensions in fiscal year 2015—the highest percentage across the nine sectors—while Border Patrol agents in the Rio Grande Valley sector applied the Most Effective and Efficient consequence for the lowest percentage of apprehended aliens in fiscal year 2015—9 percent. Across all types of alien classifications, Border Patrol agents applied the Most Effective and Efficient consequence for 23 percent of alien apprehensions classified as criminal in fiscal year 2015—including

targeted smugglers, suspected smugglers, and other criminals— compared to 17 percent of alien apprehensions categorized as noncriminal—first, second, or third time apprehensions, persistent apprehensions, and family units—with variance across sectors, as shown in figure 9.

Figure 9: Border Patrol Agent Application of Most Effective and Efficient Consequence for Criminal and Noncriminal Alien Apprehensions by Sector, Fiscal Year 2015



Source: GAO analysis of U.S. Border Patrol data. | GAO-17-66

Border Patrol has not assessed reasons agent application of the Most Effective and Efficient consequence in CDS guides is relatively low, but cited various challenges including agent concerns about whether the Most Effective and Efficient consequence has a greater impact on recidivism than other consequences. While Border patrol agents use discretion when applying consequences based on their sector’s CDS guide, Border Patrol officials in one sector told us that the CDS guide did not always reflect what they believe is the Most Effective and Efficient consequence and that while the Most Effective and Efficient consequence seemed appropriate for certain alien classifications, it did not seem appropriate for other classifications. Our analysis of Border Patrol apprehension data from fiscal year 2014 through fiscal year 2015 after

excluding aliens who ICE data show have not been removed and may remain in the United States, showed that while aliens classified as criminals were less likely to recidivate when Border Patrol agents applied the Most Effective and Efficient consequence, non-criminal aliens were more likely to recidivate when Border Patrol agents applied the Most Effective and Efficient consequence.³¹ Specifically, 22 percent of aliens classified as criminal who were given the Most Effective and Efficient consequence in fiscal year 2014 later recidivated in the time period fiscal year 2014 through 2015 compared to 27 percent of aliens classified as criminal and given other consequences. In contrast, 39 percent of aliens classified as non-criminal given the Most Effective and Efficient consequence in fiscal year 2014 later recidivated in the time period fiscal year 2014 through 2015 compared to 24 percent of aliens classified as non-criminal and given other consequences.

Another challenge includes a concern expressed by some Border Patrol sector officials that federal partners do not have the capacity to timely and fully implement consequences identified in CDS guides as Most Effective and Efficient, which may result in apprehended aliens remaining in the United States for an indeterminate amount of time. Specifically, some Border Patrol sector officials said agents may not apply the Most Effective and Efficient consequence listed in the CDS guide if it is Warrant or Notice to Appear, since it involves ICE detention and monitoring of an alien awaiting an immigration court date.³² Border Patrol officials in one sector in Southern California said that ICE may have to release noncriminal aliens from detention who were given a consequence of Warrant or Notice to Appear, prior to the conclusion of their removal proceedings, because it may take up to several years for the alien's merit hearing to occur in immigration court; and that agents are concerned that aliens released from detention will not show up for their immigration proceedings. According to EOIR, as of September 30, 2015, the number of pending cases for immigration courts in Southern California ranged

³¹To determine the extent that using the Most Effective and Efficient consequence resulted in differing rates of recidivism as compared to other consequences, we reviewed the ranking of the consequences received on an alien's first arrest and then determined if that alien later recidivated. To calculate recidivism, we used two years of apprehension data (fiscal years 2014 and 2015) and excluded aliens who may remain in the United States.

³²Pending a decision on whether the alien is to be removed from the United States, detention may continue or the alien may be released on bond, or conditional parole; and detention is mandatory for certain categories of criminal aliens. See 8 U.S.C. § 1226.

from 975 cases in one court location to more than 50,000 in another location, and DOJ data show that nationally, the number of initial immigration cases EOIR completed for detained aliens decreased 55 percent from fiscal year 2011 to 2015.³³ Our analysis of ICE case status data for fiscal years 2014 and 2015 showed that 94 percent (109,080) of the 116,409 aliens given a consequence of Warrant or Notice to Appear had an open case status and may remain in the United States, compared to 36 percent of aliens given other consequences.

Further, Border Patrol sector officials also told us that Border Patrol agents in some sectors may be hesitant to apply the Most Effective and Efficient consequence if it is a criminal prosecution and therefore requires support from DOJ and the federal courts. Specifically, officials from three southwest border sectors, two of which had a relatively high number of apprehensions in fiscal year 2015, told us that the USAO districts with which their sectors are aligned are limited in the number of criminal immigration cases that they will accept from Border Patrol sectors due to capacity and resource constraints of the USMS or the U.S. Courts. For example, criminal prosecution (both standard and streamline) was the Most Effective and Efficient consequence for five different alien classifications in the CDS guide for the Rio Grande Valley sector in fiscal year 2015. Rio Grande Valley sector officials said that while agents apprehended over 129,000 aliens in fiscal year 2015, the sector can only refer about 40 immigration-related cases each day to the corresponding USAO District (Southern District of Texas) for prosecution. Once this daily limit is reached, agents must apply an alternative consequence that is not the Most Effective and Efficient as defined by the CDS guide. Officials from the USAO Southern District of Texas stated that they limit the

³³In a December 3, 2015 testimony before the House Subcommittee on Immigration and Border Security, Committee on the Judiciary, EOIR attributed the approximately 450,000 pending cases in immigration courts at the end of fiscal year 2015 to an insufficient number of immigration judges, and stated that the agency was working to increase the number of judges from 250 to 374. EOIR's fiscal year 2016 appropriations included funds for 55 new Immigration Judge Teams to be hired and on-boarded by November 2016. See Explanatory Statement accompanying Division B—Commerce, Justice, Science, and Related Agencies Appropriations Act, 2016 (Pub. L. No. 114-113, div. B, 129 Stat. 2242, 2286-2333 (2015)), 161 Cong. Rec. H9693, H9738 (daily ed. Dec. 17, 2015); see also H.R. Rep. No. 114-130, at 33-34 (May 27, 2015); S. Rep. No. 114-66, at 57 (June 16, 2015). In December 2015, EOIR's Director indicated that the authorization of 55 new immigration judges for fiscal year 2016 would result in about 374 immigration judges nationwide if all such positions were filled. See Oversight of the Executive Office for Immigration Review: Hearing Before the Subcomm. on Immigration and Border Security of the H. Comm. on the Judiciary, 114th Cong. 15 (2015).

number of cases they accept due to limitations in the capacity of the U.S. Courts to provide physical space to conduct trials.

Standards for Internal Control in the Federal Government states that managers should assess the risks facing an agency from both external and internal sources and decide how to manage the risk and what actions should be taken.³⁴ In addition, management should have relevant and reliable operational data to determine whether they are meeting their goals for effective and efficient use of resources. While Border Patrol officials at CDS PMO and across sectors gather perspectives on consequences from agents during the annual development of the CDS guides, Border Patrol does not routinely nor comprehensively collect information from agents on why they did not apply the Most Effective and Efficient consequence. Without this information, Border Patrol may not be able to identify and assess the appropriate risk responses for addressing agent challenges to applying the Most Effective and Efficient consequence or determine any needed modifications to the development of the CDS guides across sectors. With such an assessment, Border Patrol could determine whether actions are needed to change agents' application of CDS guides or modify development of the CDS guides to strengthen effectiveness in reducing recidivism.

Border Patrol Could Enhance Guidance for CDS Cost Estimation and Strengthen Controls for Monitoring Performance and Data Integrity

³⁴ [GAO/AIMD-00-21.3.1](#). The update to the *Standards*, [GAO-14-704G](#), effective beginning fiscal year 2016, further states that managers should assess the risks facing an entity as it seeks to achieve its objectives and that this assessment should provide the basis for developing appropriate risk responses.

Border Patrol Established CDS Guidance, but Guidance Does Not Ensure Valid Cost Estimation

CDS PMO established guidance for sectors to implement CDS, including guidance on estimating the cost of applying CDS consequences. However this guidance does not ensure Border Patrol develops valid cost estimates for CDS consequences. On an annual basis, sector personnel are to estimate the unit cost of applying each available consequence to a single noncriminal, criminal, and family-unit alien within their sector.³⁵ According to CDS guidance, each sector is to report:

- average annual salaries for sector personnel as well as estimates of personnel time spent processing an alien;
- sector costs for office supplies used to process an alien, such as folders and binders;
- sector costs associated with facilities used for detaining an alien such as rent and electricity;
- sector costs for the housing and care of a detained alien, such as bedding, meals, and toiletries; and
- sector costs for transporting an alien.

These costs are to be based on the sector's previous year's expenses. CDS PMO uses the cost estimates to provide data to sector personnel for 4 of the 15 factors they are to evaluate as part of the annual development of the CDS guides. These factors include: (1) the cost per apprehension by alien type; (2) the cost of the consequence per border mile where it is available; (3) the cost per hour of Border Patrol processing time; and (4) the total personnel hours to complete the consequence. Sector personnel are encouraged to review these data when determining the ranking of CDS consequences from Most Effective and Efficient to Least Effective and Efficient.

However, our analysis of sector cost estimates identified errors, variations, and omissions in how sectors estimated costs, which limited the utility of the estimates in determining which consequences are Most Effective and Efficient. Since fiscal year 2013, CDS PMO has provided written guidance and workbooks to help sector staff estimate and

³⁵To estimate these costs, Border Patrol employs a Rough Order of Magnitude cost estimating technique. According to our Cost Estimating and Assessment Guide, a rough order of magnitude is an analogous method of cost estimation which uses actual costs from similar programs or situations and makes adjustments to account for differences. Usually based on historical ratio information, a rough order of magnitude is typically developed to support what-if analyses and can be helpful for examining differences in high-level program alternatives to see which are the most feasible. See [GAO-09-3SP](#).

examine cost differences among each of the CDS consequences, but these workbooks include calculation errors on housing and care costs that result in incorrect costs. Specifically, the workbooks calculate annual housing and facility costs on a per hour basis, not a per alien basis, and thus do not properly account for the volume of aliens each sector apprehends in a given year. As a result, Border Patrol staff from the San Diego sector using the workbooks estimated a cost of about \$2,366 per noncriminal alien receiving a consequence of reinstatement of a removal order for fiscal year 2015. However, once we accounted for the number of aliens apprehended in the San Diego sector—more than 25,000 aliens in fiscal year 2015—we calculated a cost estimate of \$282. Additionally, the housing and care cost estimates do not account for personnel time involved in housing an alien. For example, San Diego sector officials estimated that a noncriminal alien is detained for 36 hours to process a reinstatement of removal order, but estimated using six hours of personnel time, rather than 42 hours which would account for both processing and detention time. Further, the guidance does not state which costs sectors should use in their cost estimates for consequences, resulting in variation among sectors. For example, five sectors included facility costs such as electricity, gas, and rent in their cost estimates for the consequence of reinstating a removal order, while three other sectors did not include any facility costs in their estimates for the same consequence. As a result, the reported cost for this consequence for a noncriminal alien ranged from \$135 in Laredo sector to more than \$80,000 in Rio Grande Valley sector, see Table 1.

Table 1: Border Patrol Sector Cost Estimates for Reinstatement of Removal Order of a Non-Criminal Alien, Fiscal Year 2015

Sector	Laredo	El Centro	Big Bend	Tucson	Del Rio	El Paso	San Diego	Rio Grande Valley
Total Estimated Cost (\$):	135	186	597	880	1,780	2,263	2,366	80,189
Estimate Inclusive of Facility Costs:	X	X	✓	X	✓	✓	✓	✓

Legend: ✓ = yes, X = no
 Source: Border Patrol | GAO-17-66

Note: Yuma Sector did not provide cost estimates.

CDS PMO officials said that since each sector develops its own CDS guide, differences in how sectors calculate facility costs may not change the relative ranking of consequences as long as each sector is consistent in applying their cost methodology across all consequences. Sector officials also acknowledged that there might be additional errors in how housing and care costs are calculated but were unsure of how the errors

would affect the annual development of the guides. However, we determined that a cost estimate of \$282 instead of \$2,366 for a reinstatement of removal for a noncriminal class alien in the San Diego sector would change the relative ranking of this consequence from the third to fifth most costly consequence, which could affect how Border Patrol agents rank this consequence during the annual development of the CDS guides. As another example, standard prosecution was originally estimated as the least costly consequence for a criminal class alien in the El Paso sector in fiscal year 2015. However, once we accounted for the more than 13,000 aliens apprehended in this sector in 2015, we found that the standard prosecution would be the most costly consequence compared to other available consequences.³⁶

CDS program officials also stated that CDS guidance does not require sector staff to include estimates of CDS implementation costs to federal partners. As a result, consequences that Border Patrol considers Most Effective and Efficient may not reflect the optimal use of resources for the federal government overall. For example, by comparing Border Patrol apprehension data to ICE case data, we found that 64 percent of Border Patrol apprehensions required at least some involvement by ICE in fiscal years 2014 and 2015 to support consequences requiring administrative detention and removal of aliens from the United States. Additionally, USMS reported that more than half of all prisoners it received in fiscal year 2015 were from five federal districts along the southwest border (Southern California, Arizona, New Mexico, Southern Texas, and Western Texas) and, by 2017, projected an increase of more than 7,000 prisoners in those districts primarily for immigration-related offenses. According to CBP, some consequences, such as criminal prosecution, require involvement and resources of up to four federal agencies. CDS program officials said that CDS guidance does not require sectors to include federal partner costs because the CDS Program was designed around the Border Patrol's resources. However cost data are readily available for some federal partners involved in implementing CDS consequences, such as ICE and USMS, which provide detention services prior to and, as appropriate, during the pendency of, administrative hearings or criminal trials, respectively. For example, ICE reported an estimated daily housing

³⁶Our adjusted cost estimates account for alien apprehension volume which resulted in lower cost estimates. However, we were unable to estimate the cost of including personnel hours involved in detaining an alien because we did not have corresponding salaries. It is likely that including personnel hours involved in detaining an alien would result in a higher cost estimate.

cost of \$122 per day for each alien detained in fiscal year 2015, and we estimated an average daily cost of \$76 for detention services provided by USMS in fiscal year 2015 along the southwest border.³⁷ Including estimation of known costs, such as these, would increase Border Patrol's cost estimates for consequences that require detention services—such as criminal prosecution or a Warrant or Notice to Appear—and therefore could affect the rankings Border Patrol agents assign these consequences if they were to consider the effectiveness and efficiency of consequences across the federal government.

Our Cost Estimating and Assessment Guide states cost estimations used to support decision-making must be logical, credible, and acceptable to a reasonable person and avoid subjective judgement on which costs to include.³⁸ Additionally, the guidance states that if cost estimates are to support the comparative ranking of different alternatives, cost elements of alternatives should be estimated to make each alternative's cost transparent in relation to the others. Border Patrol would have greater assurance that the consequences ranked as Most Effective and Efficient within the CDS guides accurately reflect cost efficiency by revising cost estimating guidance provided to sectors to more fully and reliably account for Border Patrol and partner resources, as appropriate and available.

Border Patrol Sectors Set Some Performance Targets for CDS Implementation, but Did Not Fully Monitor or Communicate Results

Border Patrol established performance measures in fiscal year 2013 to assess each sector's application of the Most and the Least Effective and Efficient consequences for alien apprehensions; however, the agency does not fully monitor progress against these measures. To assess a sector's application of the Most Effective and Efficient consequence, Border Patrol calculates the percentage of apprehensions in which agents applied the Most Effective and Efficient consequence to aliens apprehended in that sector. Border Patrol conducts the same calculation

³⁷In fiscal year 2015 the U.S. Marshals Service detained an average of 10,467 aliens per day in districts along the Southwest border (the Southern District of California, the District of Arizona, the District of New Mexico, the Southern District of Texas, and the Western District of Texas) to implement the CDS consequence of criminal prosecution. Based on an average cost of \$76 per inmate per day for housing, medical and transportation costs, we estimate the U.S. Marshals Service spent more than \$290 million on detainees held for immigration related offenses along the Southwest border in fiscal year 2015. Information on U.S. Marshals Service average cost per detainee per day taken from GAO, *Prisoner Operations: United States Marshals Service Could Better Estimate Cost Savings and Monitor Efforts to Increase Efficiencies*, [GAO-16-472](#) (Washington, D.C.: May 23, 2016).

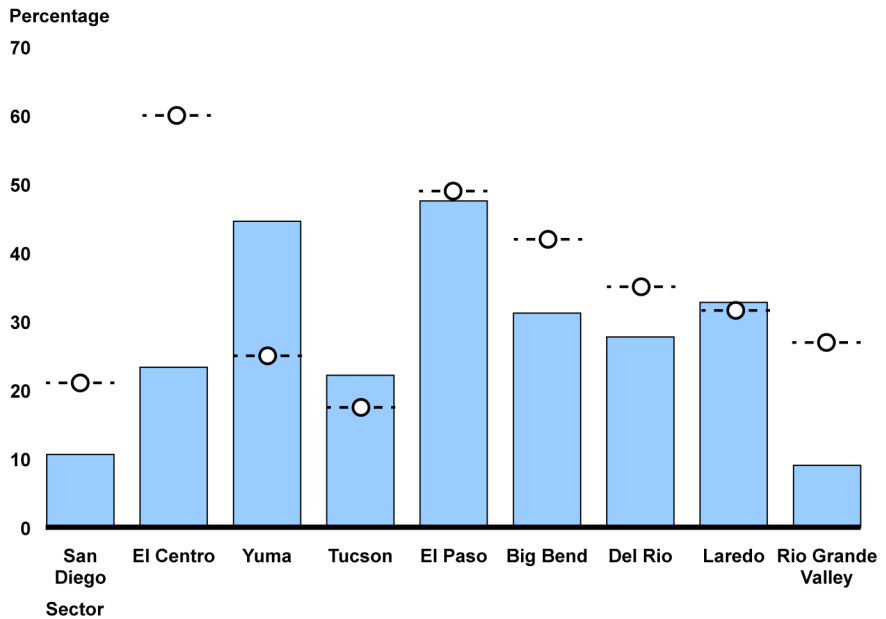
³⁸[GAO-09-3SP](#).

to determine a sector's application of the Least Effective and Efficient consequence.³⁹ According to CDS PMO officials, sector officials set their own performance targets for performance measures based on previous years' trends related to the application of the Most and the Least Effective and Efficient consequences. According to Border Patrol documentation, sector officials can use these targets to increase their application of the Most Effective and Efficient consequence and to decrease their application of the Least Effective and Efficient consequence over time.

Our analysis of Border Patrol data on apprehensions and CDS consequences showed that six of nine sectors missed some of their established performance targets by a range of 1 percentage point to 37 percentage points, as displayed in figure 10. Officials from three of the nine southwest sectors—Del Rio, El Centro and San Diego—reported that sector management did not monitor the extent that their agents were applying the consequences defined in CDS guides as Most or Least Effective and Efficient as of March 2016. CDS PMO officials said that while Border Patrol has a mechanism in place that sector management can use to monitor their progress in meeting performance targets, CDS PMO officials do not ensure sectors are monitoring performance or report sectors' performance information to Border Patrol headquarters. CDS PMO officials said that they discontinued monitoring and reporting performance results in fiscal year 2016 because sectors have access to data which would allow sectors to monitor their own performance targets.

³⁹Although agents may apply multiple consequences to an alien during a single apprehension, Border Patrol counts any apprehension in which the Most Effective and Efficient consequence was applied toward its performance target, regardless of whether other consequences were also applied. Similarly, any apprehension in which the Least Effective and Efficient consequence was applied is counted regardless of whether a higher rated consequence was also applied during that apprehension.

Figure 10: Border Patrol Sector Performance Targets and Application of the Consequence Delivery System's Most Effective and Efficient Consequence in Fiscal Year 2015.



--○-- Sector's performance target for use of the Most Effective and Efficient consequence

Source: GAO analysis of U.S. Border Patrol data. | GAO-17-66

Standards for Internal Control in the Federal Government states that management should monitor and assess the quality of performance over time. Additionally, these standards state that information is needed throughout an agency to achieve all its objectives.⁴⁰ Without ensuring that Border Patrol and sector management monitor progress in meeting established performance targets and communicate CDS-related performance targets, Border Patrol does not have the information it needs to fully assess the extent to which CDS is achieving its goals of reduced recidivism and cost efficiency.

⁴⁰GAO/AIMD-00-21.3.1. The update to the *Standards*, GAO-14-704G, effective beginning fiscal year 2016, further states that information sharing and communication is vital to ensure an entity achieves its objectives.

Border Patrol Does Not Have Controls for Its Classification of Aliens Necessary to Apply the Most Effective and Efficient CDS Consequence

Border Patrol reports that agent classification of aliens into one of the three criminal or four noncriminal classifications pursuant to CDS guidance is critical to selecting the Most Effective and Efficient consequence to deter future illegal border crossings. However, Border Patrol does not have controls in place to fully ensure that aliens are classified in accordance with CDS guidance. Border Patrol guidance to sectors provides definitions and additional details to determine the classification of each apprehension. For example, the guidance states that a first-time apprehension classification may be used on an alien that has been apprehended by another agency. Further, Border Patrol has established CDS data integrity activities at headquarters and at each sector as a control to better ensure the accuracy of data entry by Border Patrol agents and make any necessary corrections. CDS PMO officials said that they check the integrity of apprehension data for certain aspects, such as CDS consequence applied, alien nationality, and gender, to ensure quality and accuracy. According to CDS PMO officials, data integrity checks are done on a weekly basis and CDS PMO receives a quarterly report of potential errors in the data. CDS PMO then requests sector staff make corrections to the data as needed.

However, our analysis of Border Patrol apprehension data for recidivists from fiscal year 2013 through 2015 showed that Border Patrol did not classify 49,128 of 434,866 (11 percent) of apprehensions in accordance with the agency's guidance.⁴¹ Of these 49,128 apprehensions, 15,309 apprehensions were for aliens previously apprehended and identified as a type of criminal alien (targeted smuggler, suspected smuggler, or criminal alien) and were subsequently classified either as a noncriminal alien or different type of criminal alien, as shown in table 2.⁴² For example, 7,929

⁴¹To determine if and to what extent Border Patrol classified aliens according to CDS guidance, we reviewed classification records for all aliens apprehended more than once from fiscal year 2013 to fiscal year 2015 and compared their classifications from each arrest for consistency with CDS guidance. Because we relied on a previous apprehension record to determine if Border Patrol had classified an alien according to its guidance, we could only test a subset of Border Patrol records—434,866 out of 1,123,727 total apprehensions for that time period.

⁴²According to Border Patrol guidance, Border Patrol classifies aliens based upon the circumstances of their apprehension and therefore, in some cases, aliens can be apprehended multiple times and receive a different classification on each arrest, consistent with CDS guidance. For example, an alien could be arrested and classified as a First Time Apprehension and then later arrested and classified as a Second-or-Third Apprehension. However, some aliens were not classified according to the guidance on multiple apprehensions. Our analysis shows that 15,309 apprehensions representing 9,837 unique aliens were not classified according to CDS guidance.

aliens apprehended from fiscal year 2013 through 2015 were classified as a Criminal Alien (an alien with previous criminal convictions) and then were later re-apprehended and classified as a Persistent Apprehension (a noncriminal class alien arrested four or more times by Border Patrol). According to Border Patrol guidance, agents should classify an apprehension as a Criminal Alien apprehension if the apprehended alien has any prior criminal convictions whereas agents should only classify an alien as a Persistent Apprehension if another classification is not appropriate.

Table 2: Variances in Border Patrol Classification of Different Types of Criminal Aliens Across Southwest Border Apprehensions, Fiscal Years 2013-2015

Previous Apprehension Classification	Most Recent Apprehension Classification	Average Days Between Apprehensions	Number of Apprehensions
Criminal Alien	First Time Apprehension	170	151
Criminal Alien	Persistent Apprehension	135	7,929
Criminal Alien	Second-or-Third Apprehension	148	3,206
Suspected Smuggler	First Time Apprehension	107	414
Targeted Smuggler	Family Unit Apprehension	97	10
Targeted Smuggler	First Time Apprehension	125	210
Targeted Smuggler	Persistent Apprehension	135	1,528
Targeted Smuggler	Criminal Alien	267	370
Targeted Smuggler	Second-or-Third Apprehension	143	344
Targeted Smuggler	Suspected Smuggler	167	1,147
Total Across All Criminal Apprehension Classifications		149	15,309

Source: GAO analysis of U.S. Border Patrol data | GAO-17-66

Note: An alien may have multiple apprehensions and thus may have more than one apprehension not classified according to the guidance. If an alien had more than one instance of any of the above combinations, we included only the first instance of that combination in our analysis, which had the shortest duration between classifications.

Further, our analysis showed that criminal aliens not classified in accordance with agency guidance were less likely to face prosecution and more likely to be voluntarily returned to their home country than criminal aliens overall. Specifically, of the approximate 15,000 apprehensions of criminal aliens who were not classified according to CDS guidance between fiscal years 2013 and 2015, 8 percent were recommended for criminal prosecution (3,912 apprehensions) compared to 47 percent of all criminal aliens during that timeframe. Additionally, 24 percent of criminal aliens who were not classified between fiscal years 2013 and 2015 received the Least Effective and Efficient consequence of voluntary return to their home country (3,717 apprehensions) as defined

in the CDS guides compared to 9 percent of all criminal aliens classified during that timeframe.

CDS PMO officials provided several reasons why agents may not consistently classify a criminal alien to include issues related to guidance, implementation, and oversight. These officials said that agents received oral direction from headquarters to reclassify criminal aliens who cannot be given a consequence of federal prosecution, and that written data integrity guidance to sectors did not include activities for checking the accuracy of alien classifications. Further, officials said that agents may not always take the time to review previous CDS classifications, and may rely on other information sources that are incomplete and change over time, such as national or local lists of aliens identified for targeted enforcement.⁴³ However, our review of individual alien CDS history sometimes shows significant variance that may compromise the usefulness of the CDS program. For example, one alien apprehended 54 times in the Rio Grande Valley sector between October 2012 and May 2015 was classified as a First Time Apprehension 6 times, a Second or Third Time Apprehension 4 times, a Persistent Apprehension 22 times, a Suspected Smuggler 15 times and a Targeted Smuggler 7 times.

Standards for Internal Control in the Federal Government states that accurate and timely recording of events provide relevance and value to management when controlling operations and making decisions.⁴⁴ Without correctly classifying alien apprehensions according to its guidance, Border Patrol does not have reasonable assurance that aliens receive the most appropriate consequences and that Border Patrol is most effectively using CDS to address and reduce the threat from smuggling and other criminal activity.

⁴³CDS PMO officials said that they create and maintain a national list of aliens targeted for enforcement which includes aliens apprehended six or more times within a single year. However, aliens are removed from the list at the end of the year and the list is not inclusive of all aliens targeted for enforcement. Sectors and stations may also maintain their own lists of aliens targeted for enforcement that may or may not be shared across stations and sectors.

⁴⁴[GAO/AIMD-00-21.3.1](#). The update to the *Standards*, [GAO-14-704G](#), effective beginning fiscal year 2016 further states that management should obtain data reasonably free from error from reliable internal sources on a timely basis so that the data can be used to effectively monitor the program.

Conclusions

Border Patrol's implementation of CDS represents a key component of DHS's efforts to secure the southwest land border from transnational smuggling organizations and other threats. Additional actions on the part of Border Patrol could strengthen implementation and oversight of the CDS program. Specifically, measuring recidivism using an alien's apprehension history beyond one fiscal year and adjusting for aliens with no record of removal who may remain in the United States after apprehension would give Border Patrol a more complete assessment of CDS performance, which in turn would allow Border Patrol leadership to more effectively evaluate the extent to which CDS is supporting its goal of securing the southwest border. Additionally, collecting information on reasons agents do not apply the Most Effective and Efficient consequence identified in sectors' CDS guides could provide important information about how to increase agents' application of these consequences or allow Border Patrol to consider how factors such as federal partners' capacity constraints may further inform a need to modify the development process for each sector's CDS guide. Revising guidance to sectors for estimating costs to ensure these costs are accurately calculated across consequences and inclusive of partner agencies' costs, where appropriate and available, would also help ensure that sector staff and leadership are using valid information in determining which consequences are Most Effective and Efficient during the annual development of the CDS guides. Finally, mechanisms to monitor, manage, and communicate results of sector performance, alien classification, and data integrity efforts would provide Border Patrol with greater assurance that CDS is functioning as intended.

Recommendations for Executive Action

To better inform on the effectiveness of CDS implementation and border security efforts, we recommend that the Chief of Border Patrol:

- strengthen the methodology for calculating recidivism such as by using an alien's apprehension history beyond one fiscal year and excluding aliens for whom there is no record of removal and who may remain in the United States;
- collect information on reasons agents do not apply the CDS guides' Most Effective and Efficient consequences to assess the extent that agents' application of these consequences can be increased and modify development of CDS guides, as appropriate;
- revise CDS guidance to ensure consistent and accurate methodologies for estimating Border Patrol costs across consequences and to factor in, where appropriate and available, the

relative costs of any federal partner resources necessary to implement each consequence;

- ensure that sector management is monitoring progress in meeting their performance targets and communicating performance results to Border Patrol headquarters management; and
- provide consistent guidance for alien classification and take steps to ensure CDS PMO and sector management conduct data integrity activities necessary to strengthen control over the classification of aliens.

Additionally, we recommend the Secretary of Homeland Security direct the Assistant Secretary of ICE and Commissioner of CBP to collaborate on sharing immigration enforcement and removal data to help Border Patrol account for the removal status of apprehended aliens in its recidivism rate measure.

Agency Comments and Our Evaluation

We provided a draft of this report to DHS and DOJ for their review and comment. DOJ indicated that it did not have any formal comments on the draft report in a December 13, 2016 email from the department's Audit Liaison. DHS provided written comments, which are noted below and reproduced in full in appendix III, and technical comments, which we incorporated as appropriate. DHS concurred with five of the six recommendations in the report and described actions underway or planned to address them. DHS did not concur with one recommendation in the report.

With regard to the first recommendation, to strengthen its methodology for calculating recidivism such as by using an alien's apprehension history beyond one fiscal year and excluding aliens for whom there is no record of removal and who may remain in the United States, DHS did not concur. DHS noted that CDS uses annual recidivism rate calculations to measure annual change, which is not intended to be, or used, as a performance measure for CDS, and that Border Patrol annually reevaluates the CDS to ensure that the methodology for calculating recidivism provides the most effective and efficient post apprehension outcomes. DHS stated that external factors can affect the consequences available to each sector, which may change over time, and thus using the recidivism rate for multiple years would not benefit Border Patrol. Additionally, DHS noted that the support Border Patrol provides to its partners is not impacted by the aliens for whom there is no record of removal and who may remain in the United States. DHS stated that removing these individuals from the recidivism formula would not affect

the consequence given to a specific alien. DHS requested that we consider this recommendation resolved and closed.

We continue to believe that Border Patrol should strengthen its methodology for calculating recidivism, as DHS noted in its comments that the recidivism rate is used as a performance measure by Border Patrol and DHS. As noted in the report, strengthening the recidivism rate methodology, such as by using an alien's apprehension history beyond one fiscal year, would not preclude its use for CDS as a measure of annual change, and would provide Border Patrol a more complete assessment of the rate of change in recidivism. Further, while Border Patrol stated that excluding individuals from the recidivism formula would not affect the consequence given to an alien, recidivism is one of the factors considered by sectors when developing its CDS guide each year, and more complete information would help ensure that Border Patrol's risk assessments are accurate and that the decisions made based upon these risk assessments are sound. This in turn, would allow Border Patrol leadership to more effectively evaluate the extent to which CDS is supporting its goal of securing the border to better inform the effectiveness of CDS implementation and border security efforts.

With regard to the second recommendation, to collect information on reasons agents do not apply the CDS guides' Most Effective and Efficient consequences to assess the extent that agents' application of these consequences can be increased and modify development and of CDS guides as appropriate, DHS concurred. DHS stated that each year CDS PMO will interview subject matter experts from each sector to discuss the situations where the Most Effective and Efficient consequence is not applied to include in the annual development of their CDS guide. DHS provided an estimated completion date of September 30, 2017. Dependent on the methodology used by the subject matter experts to collect such information needed to assess further actions to increase agent application of the Most Effective and Efficient consequence or modify CDS guides, these planned actions, if fully implemented, should address the intent of the recommendation.

With regard to the third recommendation, to revise CDS guidance to ensure consistent and accurate methodologies for estimating Border Patrol costs across consequences and to factor in, where appropriate and available, the relative costs of any federal partner resources necessary to implement each consequence, DHS concurred. DHS stated that CDS PMO will add sector apprehension data to the "Cost per Apprehension" factor, to account for the volume of apprehensions each year, and will

meet with sectors to assist with cost estimates prior to the development of their CDS guides. DHS provided an estimated completion date of July 31, 2017. However, DHS further stated that relative costs of its federal partner's resources are irrelevant for CDS purposes as the program is Border Patrol specific, and an attempt to associate costs to resources spent by other federal agencies would not be prudent. We continue to encourage Border Patrol consideration of available federal partner costs incurred in supporting CDS consequences. As reflected in its agency comments, DHS states Border Patrol relies on federal partners in order to apply the Most Effective and Efficient consequences, that the application of consequences requires a holistic approach, and that it cannot effectively and efficiently achieve its mission without the assistance of partnering agencies. As Border Patrol has moved away from applying the Border Patrol specific consequence of Voluntary Return to other consequences requiring support and costs incurred by federal partners, including these costs would provide greater assurance that the consequences Border Patrol ranked as Most Effective and Efficient within the CDS guides accurately reflect cost efficiency. Further, to the extent that Border Patrol accounts for available federal partner costs as appropriate, these planned actions, if fully implemented, should address the intent of the recommendation.

With regard to the fourth recommendation, to ensure that sector management is monitoring progress in meeting their performance targets and communicating performance results to Border Patrol headquarters management, DHS concurred. DHS stated that CDS PMO will reinstitute quarterly sector performance progress reports that will include sectors' classification, recidivism, average apprehension per recidivist, and displacement rates. DHS provided an estimated completion date of September 30, 2017. These planned actions, if fully implemented and communicated to Border Patrol headquarters management, should address the intent of the recommendation.

With regard to the fifth recommendation, to provide consistent guidance for alien classification and take steps to ensure CDS PMO and sector management conduct data integrity activities necessary to strengthen control over the classification of aliens, DHS concurred. DHS stated that CDS PMO will work with Border Patrol's Enforcement Systems Division to implement a program or rule within Border Patrol's system of record that will allow the processing agent and supervisor to identify the alien's previous CDS classification and to ensure accuracy and compliance. DHS provided an estimated completion date of September 30, 2017. This

planned action, if fully implemented, should address the intent of the recommendation.

With regard to the sixth recommendation, that the Secretary direct the Assistant Secretary of ICE and Commissioner of CBP to collaborate on sharing immigration enforcement and removal data to help Border Patrol account for the removal status of apprehended aliens in its recidivism rate measure, DHS concurred. DHS stated that collecting and analyzing ICE removal and enforcement data would not be advantageous to Border Patrol for CDS purposes since CDS is specific to Border Patrol. However, DHS also stated that CDS PMO and ICE have discussed the availability of the removal and enforcement data and ICE has agreed to provide Border Patrol with these data, if needed. DHS requested that we consider this recommendation resolved and closed. While DHS's planned actions are a positive step toward addressing our recommendation, DHS needs to provide documentation of completion of these actions for us to consider the recommendation closed as implemented.

We are sending copies of this report to the appropriate congressional committees, the Secretary of Homeland Security, the Attorney General of the United States, and other interested parties. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions, please contact me at (202) 512-8777 or gablerr@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made significant contributions to this report are listed in appendix IV.

Sincerely yours,



Rebecca Gambler
Director, Homeland Security and Justice

Appendix I: Border Patrol and ICE Data Supporting Border Patrol's Recidivism Rate Methodology and Alternative Methods

Border Patrol collects and analyzes data on the number and classification of apprehended aliens and the Border Patrol sector in which the alien was apprehended. In addition, ICE collects and maintains data on the case status of apprehended aliens, including if and when an alien was removed from the United States. We used these Border Patrol and ICE data to calculate recidivism using Border Patrol's methodology and also using three alternative methods. Specifically, we calculated a recidivism rate using 1) Border Patrol's method to consider aliens' apprehension history within the fiscal year; 2) aliens' apprehension history over three years (fiscal years 2013 through 2015); 3) Border Patrol's method to consider aliens' apprehensions history only within the fiscal year after excluding aliens who ICE data indicate have not been removed and may remain in the United States; and 4) aliens' apprehension history over three years after excluding aliens who ICE data indicate have not been removed and may remain in the United States.¹ Figure 11 provides an overview of Border Patrol's recidivism rate calculation as well as the three alternative methods we used to determine the extent to which Border Patrol's measure of recidivism assesses CDS effectiveness.

¹Apprehended aliens with no record of removal may remain in the United States because they do not meet DHS's removal priorities, and could affirmatively apply for immigration benefits within the jurisdiction of U.S. Citizenship and Immigration Services; or, if sought to be removed by DHS, may seek and ultimately obtain lawful immigration status or protection in immigration court, or be found not removable, or removable and not eligible for any requested relief or protection from removal. Apprehended aliens with no record of removal may also have departed the United States on their own accord.

Figure 11: Border Patrol's Fiscal Year (FY) Southwest Border Recidivism Rate Calculation and Alternative Methods

Border Patrol's annual recidivism rate using alien apprehensions within FY

$$\frac{\text{Aliens apprehended more than once within FY}}{\text{Total aliens apprehended}} = \text{Recidivism Rate}$$

Recidivism rate using alien apprehension history over three FYs

$$\frac{\text{Aliens apprehended more than once over the past three FYs}}{\text{Total aliens apprehended}} = \text{Recidivism Rate}$$

Recidivism rate using alien apprehensions within FY excluding aliens who may remain in the United States

$$\frac{\text{Aliens apprehended more than once within FY excluding aliens who may remain in the United States}}{\text{Total aliens apprehended excluding aliens who may remain in the United States}} = \text{Recidivism Rate}$$

Recidivism rate using alien apprehension history over three FYs excluding aliens who may remain in the United States

$$\frac{\text{Aliens apprehended more than once over the past three FYs excluding aliens who may remain in the United States}}{\text{Total aliens apprehended excluding aliens who may remain in the United States}} = \text{Recidivism Rate}$$

Source: GAO analysis and the Department of Homeland Security Annual Performance Reports. | GAO-17-66

For each of the nine Border Patrol sectors along the southwest border and each of the seven alien classifications, tables 5 and 6 provide:

- the unique number of apprehended aliens,
- the recidivism rate based on Border Patrol's methodology (aliens' apprehension history within fiscal year 2015),
- the recidivism rate based on alien apprehension history over three years (fiscal years 2013 through 2015),
- the recidivism rate based on an aliens' apprehension history over three years (fiscal years 2013 through 2015) and excluding aliens who ICE data show have not been removed and may remain in the United States, and

- the percentage of apprehended aliens who ICE data show have not been removed and may remain in the United States.²

Table 3 presents data on apprehensions, recidivism, and aliens who may remain in the United States by the sector of apprehension for fiscal year 2015. As the table illustrates, sectors varied significantly in the volume of unique aliens apprehended for fiscal year 2015, ranging from a low of less than 5,000 unique aliens apprehended in the Big Bend sector to a high of more than 113,000 unique aliens apprehended in the Rio Grande Valley sector. Using Border Patrol's methodology considering only recidivists within the fiscal year, the San Diego sector had the highest rate of recidivism at 26 percent in fiscal year 2015. Our alternative analysis of recidivism rates using alien apprehension history over three years (fiscal years 2013 through 2015), showed that the San Diego sector had the highest rate of recidivism at 45 percent. In fiscal year 2015, the Big Bend sector had the lowest rate of recidivism considering only recidivists within the fiscal year (2 percent) and also analyzing recidivism using alien apprehension history over the 3 years (13 percent). Our analysis of recidivism rates using alien apprehension history over 3 years after excluding aliens who may remain in the United States showed that the San Diego sector had the highest recidivism rate (45 percent) in fiscal year 2015 and the Del Rio sector had the lowest recidivism rate (14 percent). The percentage of aliens apprehended by Border Patrol in fiscal year 2015 who ICE data show had not been removed and may remain in the United States as of May 2016 ranged from a high of 53 percent of apprehended aliens in the Yuma sector to a low of 22 percent of apprehended aliens in the Laredo sector.

²To avoid double-counting and to mirror Border Patrol's methodology, we present the number of unique aliens apprehended within the given timeframe, not the total number of apprehensions. We also looked at the characteristics of the recidivist alien (such as sector of apprehension and alien classification) based upon his or her most recent apprehension.

**Appendix I: Border Patrol and ICE Data
Supporting Border Patrol's Recidivism Rate
Methodology and Alternative Methods**

Table 3: Number of Border Patrol Apprehensions, Recidivism Rate Alternatives, and Percentage of Aliens for whom U.S. Immigration and Customs Enforcement (ICE) Did Not Have a Record of Removal from the United States by Southwest Border Sector, Fiscal Year 2015

Sector	Unique aliens apprehended^a	Border Patrol's recidivism rate^b	Recidivism rate using alien apprehensions over 3 years^c	Recidivism rate using alien apprehensions over 3 years excluding aliens who may remain in the United States^d	Percentage of apprehended aliens who may remain in the United States^e
Big Bend	4,445	2	13	15	47
Del Rio	16,968	3	15	14	33
El Centro	9,217	23	37	37	26
El Paso	12,980	5	18	16	30
Laredo	32,175	8	23	21	22
Rio Grande Valley	113,468	11	22	31	44
San Diego	17,778	26	45	45	23
Tucson	54,075	12	33	30	25
Yuma	5,782	5	29	39	53

Source: GAO analysis of U.S. Border Patrol and U.S. Immigration and Customs Enforcement (ICE) data | GAO-17-66

^aTo avoid double-counting and consistent with Border Patrol's methodology, we present the unique number of aliens apprehended—the number of distinct individuals apprehended.

^bThis recidivism rate only includes aliens' apprehension history within fiscal year 2015.

^cThis alternative recidivism rate includes alien apprehension history from fiscal years 2013 through 2015.

^dThis alternative recidivism rate includes aliens' apprehension history from fiscal years 2013 through 2015 after excluding aliens who had not been removed from the United States according to ICE data as of May 2016.

^eThis percentage includes aliens apprehended in fiscal year 2015 who had not been removed from the United States according to ICE data as of May 2016.

Table 4 presents apprehension, recidivism and removal data by alien classification for an alien's most recent apprehension in fiscal year 2015. As the table illustrates, aliens classified as first-time apprehensions represented the majority of unique apprehensions, accounting for more than 141,000 unique aliens apprehended in fiscal year 2015. In contrast, targeted smuggler apprehensions were the least common type of apprehension, with about 2,100 unique aliens classified as targeted smugglers. Recidivism rates by alien classification varied across methodologies. Aliens classified as Persistent Apprehensions had the highest rate of recidivism using Border Patrol's methodology only considering recidivists within fiscal year 2015 (15 percent). However, aliens classified as Targeted Smugglers had the highest rate of recidivism considering aliens' apprehension history over the 3 years (73 percent)

ending fiscal year 2015. In contrast, aliens classified as First-Time Apprehensions had the lowest rate of recidivism considering only recidivists within the fiscal year (one percent) and using apprehension history over three years (two percent). Further, our analysis of recidivism rates after excluding aliens who may remain in the United States and considering aliens' apprehension history over 3 years, showed that aliens classified as Targeted Smugglers had the highest rate of recidivism (66 percent). The extent to which aliens apprehended in fiscal year 2015 may remain in the United States ranged from a high of 93 percent for aliens classified as a Family Unit Apprehension to a low of 11 percent for aliens classified as a Second-or-Third Time Apprehension.

Table 4: Border Patrol Southwest Border Apprehensions, Recidivism Rates and Percentage of Aliens for whom U.S. Immigration and Customs Enforcement (ICE) Did Not Have a Record of Removal from the United States by Alien Classification, Fiscal Year 2015

Classification	Unique aliens apprehended ^a	Border Patrol's recidivism rate ^b	Recidivism rate using alien apprehensions over 3 years ^c	Recidivism rate using alien apprehensions over 3 years excluding aliens who may remain in the United States ^d	Percentage of apprehended aliens who may remain in the United States ^e
First-Time Apprehension	141,897	1	2	1	42
Second- or Third- Time Apprehension	68,804	12	62	57	11
Persistent Apprehension	25,923	15	55	45	14
Family Unit Apprehension	21,083	1	7	27	93
Suspected Smuggler Apprehension	6,398	3	38	29	27
Targeted Smuggler Apprehension	2,156	11	73	66	34
Criminal Alien Apprehension	19,732	10	36	30	27

Source: GAO analysis of U.S. Border Patrol and ICE data | GAO-17-66

^aTo avoid double-counting and consistent with Border Patrol's methodology, we present the unique number of aliens apprehended—the number of distinct individuals apprehended.

^bThis recidivism rate only includes aliens' apprehension history within fiscal year 2015.

^cThis alternative recidivism rate includes alien apprehension history from fiscal years 2013 through 2015.

^dThis alternative recidivism rate includes aliens' apprehension history from fiscal years 2013 through 2015 after excluding aliens who had not been removed from the United States according to ICE data as of May 2016.

^eThis percentage includes aliens apprehended in fiscal year 2015 who had not been removed from the United States according to ICE data as of May 2016.

Appendix II: Most Effective and Efficient Consequences Identified in Southwest Border Patrol Sectors' CDS Guides, Fiscal Years 2013 through 2015

Border Patrol agents implement CDS by classifying eligible apprehended aliens into one of seven noncriminal or criminal categories based on the circumstances of their apprehension and then applying one or more of eight different criminal, administrative and programmatic consequences. To assist Border Patrol agents in selecting the most appropriate consequence, Border Patrol rank orders these consequences from Most Effective and Efficient to Least Effective and Efficient for each alien classification and presents this information in an annual CDS guide for each Border Patrol sector. Table 5 provides an overview of the frequency with which each CDS consequence was identified in CDS guides as Most Effective and Efficient for all nine Southwest Border Patrol sectors across all alien classifications and fiscal years 2013 through 2015. To different extents depending on the sector and year, seven of eight consequences were identified as Most Effective and Efficient for one or more types of alien populations. The eighth consequence—Voluntary Return—was never identified as a Most Effective and Efficient consequence from fiscal year 2013 through fiscal year 2015 and was identified as the Least Effective and Efficient consequence across all sectors for all noncriminal classifications during fiscal years 2013 through 2015.

Among the three categories of consequences—Administrative, Criminal, and Programmatic—Administrative consequences were most frequently identified (60 percent) as Most Effective and Efficient in CDS guides, followed by criminal consequences (37 percent), and the programmatic consequence (3 percent). Among the eight consequences within these three categories, Warrant or Notice to Appear was most frequently identified as Most Effective and Efficient (36 percent) followed by Standard Prosecution (26 percent). Excluding Voluntary Return, the extent to which the remaining five consequences were identified as the Most Effective and Efficient ranged from 2 percent to 13 percent.

**Appendix II: Most Effective and Efficient
Consequences Identified in Southwest Border
Patrol Sectors' CDS Guides, Fiscal Years 2013
through 2015**

Table 5: Types of Consequences Identified as Most Effective and Efficient in Consequence Delivery System (CDS) Guides for Southwest Border Patrol Sectors, Fiscal Years 2013 through 2015

Consequence category	Consequence	Frequency Number	Percentage
Administrative	Warrant or Notice to Appear	68	36
	Expedited Removal	20	11
	Reinstate Removal Order	25	13
	Voluntary Return	0	0
Subtotal for Administrative Consequences		113	60
Criminal	Streamline Prosecution	17	9
	Standard Prosecution	49	26
	Operation Against Smugglers Initiative on Safety and Security (OASISS)	4	2
Subtotal for Criminal Consequences		70	37
Programmatic	Alien Transfer Exit Program (ATEP)	6	3
Subtotal for Programmatic Consequences		6	3

Source: GAO analysis of Border Patrol's CDS Guides | GAO-17-66

Over these years, more sector CDS guides moved toward identifying Standard Prosecution as Most Effective and Efficient, and moved away from the administrative consequence of Warrant or Notice to Appear, as shown in table 6.

Table 6: Consequences Identified as Most Effective and Efficient in Consequence Delivery System (CDS) Guides for Southwest Border Patrol Sectors, Fiscal Years 2013 through 2015

Consequence	Frequency number and (percentage)					
	2013		2014		2015	
Warrant or Notice to Appear	29	(46)	22	(35)	17	(27)
Expedited Removal	9	(14)	4	(6)	7	(11)
Reinstate Removal Order	6	(10)	9	(14)	10	(16)
Voluntary Return	0	(0)	0	(0)	0	(0)
Streamline Prosecution	4	(6)	3	(5)	10	(16)
Standard Prosecution	10	(16)	22	(35)	17	(27)
Operation Against Smugglers Initiative on Safety and Security (OASISS)	3	(5)	0	(0)	1	(2)
Alien Transfer Exit Program (ATEP)	2	(3)	3	(5)	1	(2)

Source: GAO analysis of Border Patrol's CDS Guides | GAO-17-66

Figures 12 and 13 show the Most Effective and Efficient consequences identified in each southwest Border Patrol sector's CDS guide for fiscal

Appendix II: Most Effective and Efficient Consequences Identified in Southwest Border Patrol Sectors' CDS Guides, Fiscal Years 2013 through 2015

years 2013 through 2015 by types of noncriminal aliens and criminal aliens, respectively. For alien family apprehensions, CDS guides consistently identified only administrative consequences as Most Effective and Efficient, primarily Warrant or Notice to Appear.

Figure 12: Most Effective and Efficient Consequence for U.S. Border Patrol Non-Criminal Apprehensions for Southwest Border Sectors, Fiscal Years 2013 through 2015

Sector	First-Time apprehensions			Second or third-time apprehensions			Persistent apprehensions			Family unit apprehensions		
	2013	2014	2015	2013	2014	2015	2013	2014	2015	2013	2014	2015
Big Bend	WN	WN	WN	WN	RR	WN	WN	FP	WN	RR	ER	ER
Del Rio	SP	FP	FP	FP	RR	RR	WN	RR	RR	WN	WN	RR
El Centro	WN	AT	WN	WN	AT	WN	AT	AT	AT	WN	WN	WN
El Paso	WN	FP	FP	RR	FP	FP	FP	FP	FP	WN	WN	WN
Laredo	WN	WN	FP	WN	ER	RR	FP	RR	SP	WN	WN	ER
Rio Grande Valley	ER	WN	FP	ER	WN	FP	WN	WN	FP	WN	WN	WN
San Diego	WN	FP	WN	WN	ER	WN	WN	FP	WN	ER	WN	WN
Tucson	WN	SP	SP	FP	SP	SP	FP	SP	SP	WN	WN	ER
Yuma	SP	WN	WN	SP	WN	FP	FP	FP	SP	WN	WN	WN

Administrative

- WN** Warrant or Notice to Appear
- ER** Expedited Removal
- RR** Reinstatement Removal Order

Criminal

- SP** Streamline Prosecution
- FP** Standard Prosecution
- OA** Operation Against Smugglers Initiative on Safety and Security (OASISS)

Programmatic

- AT** Alien Transfer Exit Program (ATEP)

Source: GAO analysis of U.S. Border Patrol data. | GAO-17-66

**Appendix II: Most Effective and Efficient
Consequences Identified in Southwest Border
Patrol Sectors' CDS Guides, Fiscal Years 2013
through 2015**

**Figure 13: Most Effective and Efficient Consequences for U.S. Border Patrol
Criminal Alien Apprehensions for Southwest Border Sectors, Fiscal Years 2013
through 2015**

Sector	Suspected smuggler apprehensions			Targeted smuggler apprehensions			Criminal alien apprehensions		
	2013	2014	2015	2013	2014	2015	2013	2014	2015
Big Bend	RR	FP	RR	RR	FP	RR	WN	WN	WN
Del Rio	RR	FP	RR	FP	RR	RR	FP	FP	ER
El Centro	WN	RR	OA	WN	WN	ER	WN	RR	WN
El Paso	ER	FP	FP	ER	FP	FP	ER	WN	RR
Laredo	ER	WN	SP	ER	RR	ER	WN	ER	FP
Rio Grande Valley	WN	FP	ER	ER	RR	SP	RR	FP	SP
San Diego	OA	WN	FP	WN	FP	RR	FP	FP	FP
Tucson	OA	FP	FP	OA	FP	FP	SP	FP	SP
Yuma	FP	WN	FP	AT	FP	SP	WN	WN	WN

Administrative	Criminal	Programmatic
WN Warrant or Notice to Appear	SP Streamline Prosecution	AT Alien Transfer Exit Program (ATEP)
ER Expedited Removal	FP Standard Prosecution	
RR Reinstatement Removal Order	OA Operation Against Smugglers Initiative on Safety and Security (OASISS)	

Source: GAO analysis of U.S. Border Patrol data. | GAO-17-66

Appendix III: Comments from the Department of Homeland Security

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



**Homeland
Security**

December 14, 2016

Rebecca Gambler
Director, Homeland Security and Justice
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Re: Management's Response to Draft Report, GAO-17-66, "BORDER PATROL:
Actions Needed to Improve Oversight of Post-Apprehension Consequences"

Dear Ms. Gambler:

Thank you for the opportunity to review and comment on this draft report. The U.S. Department of Homeland Security (DHS) appreciates the U.S. Government Accountability Office's (GAO) work in planning and conducting its review and issuing this report.

The ability of the U.S. Border Patrol (Border Patrol) to impose consequences on those illegally entering the United States varies between each state, judicial district, sector, and field office. As a result, Border Patrol uses a post-apprehension analysis, known as the Consequence Delivery System (CDS), in order to examine the variety of possible administrative, criminal, and programmatic consequences. Prior to CDS, the majority of Border Patrol apprehensions were processed as Voluntary Returns (VR). VRs are an administrative process that allows undocumented aliens from Mexico and Canada to depart the United States voluntarily in lieu of a formal immigration removal. VRs failed to deliver an effective consequence along the southwest border.

Using a methodology that measures the cost, schedule, and performance of 15 factors, known as the Analysis of Alternatives (AoA), CDS issues guidance to standardize the decision-making process to impose the most effective and efficient consequences for each individual. The CDS does not make changes to the consequences available or to statutory or policy requirements, but rather analyzes the consequences available at each sector to ensure that individuals entering the United States illegally receive the appropriate consequences. Since the implementation of CDS in January 2011, the use of VRs has declined, and data collected indicates that the appropriate consequences are being applied to the intended subjects.

The draft report contained six recommendations, five of which the Department concurs, and one with which it non-concurs. Attached find our detailed response to each recommendation.

Again, thank you for the opportunity to review and comment on this draft report. Technical comments were previously provided under separate cover. Please feel free to contact me if you have any questions. We look forward to working with you in the future.

Sincerely,



Jim H. Crumpacker, CIA, CFE
Director
Departmental GAO-OIG Liaison Office

Attachment

**Attachment: DHS Management Response to Recommendations Contained in
Draft Report GAO-17-66**

GAO recommended that the Chief of the Border Patrol:

Recommendation 1: Strengthen methodology for calculating recidivism such as by using an alien's apprehension history beyond one fiscal year and excluding aliens for whom there is no record of removal and who may remain in the United States.

Response: Non-concur. The Border Patrol already utilizes various metrics that assist in determining the overall effectiveness of enforcement efforts. Recidivism rate is a current performance measure reported by Border Patrol. The CDS uses annual recidivism rate calculations to measure annual change, which is not intended to be, or used, as a performance measure. The Border Patrol annually reevaluates the CDS to ensure that the methodology for calculating recidivism provides the most effective and efficient post apprehension outcomes.

In order to measure effectiveness and efficiency of post apprehension outcomes, CDS utilizes a the AoA methodology. The CDS Program Management Office (PMO) conducts annual re-evaluations of each sector's AoA to ensure that any yearly change that occurred in a particular sector is accounted for in determining effectiveness and efficiency. During the re-evaluation process, subject matter experts from each sector measure 15 factors, one of those being the sector's recidivism rate. Recidivism is only one of the factors evaluated and analyzed by Border Patrol during the annual reevaluation of the effectiveness of the CDS methodology. Due to uncontrollable, external impacts to the unique consequences available to a given sector, which may change at any time, using the recidivist rate of multiple years would not benefit Border Patrol.

In addition, the support Border Patrol provides to its partners is not impacted by the aliens for whom there is no record of removal and who may remain in the United States. Therefore, removing these individuals from the recidivism formula would not affect the consequence given to a specific alien. Border Patrol utilizes CDS to achieve the maximum effectiveness and efficiency of post apprehension outcomes within Border Patrol's control. The Border Patrol mission is impacted regardless of whether an alien is released on their own recognizance pending removal proceedings or under the supervision of Immigration and Customs Enforcement, Enforcement Removal Operations (ICE ERO). The CDS is a Border Patrol specific tool, therefore, aliens without a record of removal or who remain in the United States under another agency's custody should be included in the CDS methodology. We request that GAO consider this recommendation resolved and closed.

Recommendation 2: Collect information on reasons agents do not apply the CDS guides' Most Effective and Efficient consequences to assess the extent that agents' application of these consequences can be increased and modify development and of CDS guides, as appropriate.

Response: Concur. Border Patrol agents always utilize the most effective and efficient consequence available during the processing of an alien and when an agent does not use the CDS, it is because the circumstances are beyond Border Patrol's control. While Border Patrol does not have an automated means to capture this information and attempting to gather this data on an individual basis would increase the overall processing time of all aliens in Border Patrol custody, sectors have a high-level knowledge of the issues that impact when the most effective and efficient consequence is not applied. In these instances, the CDS-PMO will question the subject matter experts from each sector to discuss the situations where the most effective and efficient consequence is not applied, capturing that information to assure the CDS annual re-evaluation will include this high-level information, along with the 15 factors utilized during the annual CDS re-evaluation process. Estimated Completion Date (ECD): September 30, 2017.

Recommendation 3: Revise CDS guidance to ensure consistent and accurate methodologies for estimating Border Patrol costs across consequences and to factor in, where appropriate and available, the relative costs of any federal partner resources necessary to implement each consequence.

Response: Concur. To ensure consistency and accuracy in estimating costs at sectors, the CDS-PMO will add sector apprehension data to the "Cost per Apprehension" factor. "Cost per Apprehension" is one of the 15 factors analyzed by subject matter experts during the annual re-evaluations. The CDS-PMO agrees that current cost calculations do not account for the volume of aliens each sector apprehended in a given year. Applying sector apprehension data to the "Cost per- Apprehension" factor may improve cost estimation and accuracy. Furthermore, to ensure consistency among sectors, the CDS-PMO will meet with sector personnel prior to the re-evaluations to assist in the completion of the Rough Order of Magnitude. These measures will be implemented prior to the 2018 re-evaluations.

Relative costs of our federal partner's resources is irrelevant for CDS purposes and the AoA process because the CDS and AoA are Border Patrol specific. The AoA process measures effectiveness and efficiency within Border Patrol. An attempt to associate costs to resources spent by other federal agencies when no Border Patrol personnel or expenditures were utilized would not be prudent. ECD: July 31, 2017.

Recommendation 4: Ensure that sector management is monitoring progress in meeting their performance targets and communicating performance results to Border Patrol headquarters management.

Response: Concur. To ensure that sector management is monitoring progress in meeting performance targets and communicating performance results to Border Patrol headquarters, the CDS-PMO will reinstitute quarterly sector performance progress reports that will include the sector's; classification rate, measure and compare a sector's recidivism rate, measure and compare a sector's average apprehension per recidivist data, and analyze a sector's displacement rate. CDS-PMO will implement the quarterly progress reports when data for the third quarter, fiscal year 2017, becomes available. ECD: September 30, 2017.

Recommendation 5: Provide consistent guidance for alien classification and take steps to ensure CDS PMO and sector management conduct data integrity activities necessary to strengthen control over the classification of aliens.

Response: Concur. In order to strengthen control over the classification of aliens, the CDS-PMO will work with the Enforcement Systems Division at Border Patrol headquarters to implement a program or rule within Border Patrol's system of record, e3, that will allow the processing agent and processing supervisor to easily and conveniently identify the alien's previous CDS classification and to ensure accuracy and compliance with CDS rules for the classification of aliens. Having the alien's previous classification identified on form I-213 would allow the processing agent to efficiently identify the alien's previous classification and accurately apply the next appropriate classification. ECD: September 30, 2017.

GAO recommended that the Secretary of Homeland Security:

Recommendation 6: Direct the Assistant Secretary of ICE and Commissioner of CBP to collaborate on sharing immigration enforcement and removal data to help Border Patrol account for the removal status of apprehended aliens in its recidivism rate measure.

Response: Concur. In order to apply the most effective and efficient consequence, Border Patrol must rely on its strategic partnerships and a process already in place between ICE ERO and Border Patrol to share information. Border Patrol understands that it cannot effectively and efficiently complete its mission without the assistance of partnering agencies. The application of consequences requires a holistic approach that utilizes existing relationships, roles, and responsibilities that Border Patrol has fostered since the implementation of CDS.

Collecting and analyzing ICE ERO removal and enforcement data would not be advantageous to Border Patrol for CDS purposes since the CDS is specific to the Border Patrol. Border Patrol does not incur costs once a subject is released from its custody and Border Patrol has no role in the removal of aliens once they are released from Border Patrol custody. While removal data may be beneficial in a larger scheme or setting at the DHS level, for Border Patrol's purposes, ICE removal data is not necessary in determining the effectiveness and efficiency of post apprehension outcomes.

The availability of this data was not known to the CDS-PMO prior to this GAO review. However, CDS-PMO and ICE ERO have since discussed the availability of the removal and enforcement data and ICE ERO has agreed to provide Border Patrol with this data, if needed. We request that GAO consider this recommendation resolved and closed.

Appendix IV: GAO Contact and Staff Acknowledgments

GAO Contact

Rebecca Gambler at (202) 512-8777 or GamblerR@gao.gov

Staff Acknowledgements

In addition to the contact named above, Lacinda C. Ayers (Assistant Director), Giselle Cubillos-Moraga, Kathleen Donovan, Cynthia Grant, Michele Fejfar, Eric Hauswirth, Susan Hsu, DuEwa Kamara, Jon Najmi, Christine San, and Mike Tropauer made key contributions to this report.

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